

## **Legal Certainty Regarding the Determination of Transmigration Areas on Customary Land Rights in the Raimuna Transmigration Area, Maligano District, Muna Regency**

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**Abstract.** *This study aims to analyze the legal certainty of the determination of transmigration areas on customary land rights in the Raimuna Transmigration, Maligano District, Muna Regency, and analyze the legal consequences that arise for customary law communities and the implementation of transmigration. The background of this study is based on the continued uncertainty of the legal status of customary land rights that are used as transmigration areas, the less than optimal formal recognition of customary law communities, and the differences in understanding between the local government and customary communities regarding the legal status of land in the area. This research is an empirical legal study using a sociological juridical approach. The research data consists of primary data obtained through interviews with the Muna Regency Traditional Community Institution, the customary law community in the Raimuna Transmigration Area, the National Land Agency, the Transmigration and Manpower Office, and the Muna Regency Housing and Settlement Office. Secondary data were obtained through a literature review of relevant laws and regulations, books, journals, and documents. All data were analyzed descriptively and qualitatively using the logical deduction method. The results of the study indicate that the customary rights of the Wuna customary law community to land designated as a transmigration area are still recognized factually by the customary law community and verbally by the government. However, this recognition has not been formalized in a Regional Regulation, thus not providing legal certainty regarding the existence of customary rights. In addition, the administration of customary land as regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 has not been implemented optimally. This study also found that the determination of transmigration areas on customary rights land gave rise to different views between the Wuna customary law community and the Muna Regency Government regarding the status of the transmigration area, which has the potential to cause legal and*

*social conflicts. Therefore, a regional government policy is needed in the form of the formation of a Regional Regulation regarding the recognition of customary law communities and strengthening coordination between stakeholders to achieve legal certainty, protection of customary law community rights, and the sustainability of transmigration implementation.*

**Keywords:** *Communities; Law; Legal; Transmigration.*

## 1. Introduction

Legal certainty is one of the fundamental principles in Indonesian agrarian law which aims to provide protection for community rights to land, including the rights of customary law communities. Recognition of customary rights as the traditional rights of customary law communities has a constitutional basis through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and is reinforced in the Basic Agrarian Law (UUPA). However, in the practice of implementing national development, particularly in the transmigration program, the implementation of recognition of customary rights still faces various problems. Previous research shows that the conflict between development interests and the protection of customary law community rights remains a growing problem in Indonesian land law.<sup>1 2</sup>This condition shows that legal certainty regarding customary land rights still requires strengthening through policies that provide balanced protection for the interests of the state and customary law communities.

Land plays a crucial role in the lives of Indonesian people, not only because of its economic value but also because it has social, cultural, religious, and political dimensions. For indigenous communities, customary land is an integral part of community identity and a source of life passed down from generation to generation. As Ter Haar points out, land serves as a place of residence, a source of life, and a burial ground for ancestors, and has a magical-religious connection to indigenous communities.<sup>3</sup>Therefore, the existence of customary rights is not simply a legal relationship to land, but rather reflects the historical, spiritual, and social relationship between indigenous communities and their territories. In this context, any state policy related to the use of customary land should continue to

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<sup>1</sup> Farida Patittingi, (2012). "Customary Legal Communities in Natural Resource Management," *Amanna Gappa Journal of Legal Studies* 20, no. 3: 291–92.

<sup>2</sup> Maria SW Sumardjono, (2006). *Land Policy Between Regulation and Implementation* (Jakarta: Kompas Books).

<sup>3</sup> B. Ter Haar Bzn, (1980). *..Principles and Structure of Customary Law*. Translated by K. Ng. Soebekti Poesponoto (Jakarta: Pradnya Paramita).

consider the rights of indigenous communities in accordance with the principles of justice, benefit, and legal certainty.<sup>4</sup>

On the other hand, the transmigration program is a government policy aimed at achieving equitable population distribution and improving community welfare. This program is expected to stimulate regional development, open new centers of economic growth, and improve the welfare of transmigrants. However, its implementation still faces various problems, particularly when transmigration areas are designated on land traditionally controlled by indigenous communities. This situation raises questions regarding the legal basis for land ownership, recognition of customary rights, and legal protection for both indigenous communities and transmigrants occupying these areas.<sup>5</sup>

This problem also occurred in the Raimuna Transmigration area, Maligano District, Muna Regency. Based on research results, the transmigration area was designated on land that the Wuna customary law community believes to be customary land. To date, there is still uncertainty regarding the legal status of the land, the mechanism for transferring rights, the boundaries between state land and customary land, and the form of government recognition of the existence of the customary law community. As a result, differing views have emerged between the government, the customary law community, and transmigrants regarding the legal status of the land, potentially giving rise to agrarian disputes and reducing legal certainty for all stakeholders.<sup>6</sup>

Based on the description, there is a gap between the normative provisions that recognize and protect customary rights and the empirical reality in the field, which indicates the still weak legal certainty regarding the determination of transmigration areas on customary land rights. Previous studies generally discuss the recognition of customary law communities or the protection of customary rights in general, while studies on the legal certainty of the determination of transmigration areas on customary land rights, especially in the Raimuna Transmigration, are still very limited. Therefore, this study is important to conduct to provide an analysis of the legal certainty and legal consequences arising from the determination of transmigration areas on customary land rights as a basis for formulating equitable land policies and guaranteeing the protection of the rights of customary law communities and transmigrants.

This study aims to analyze legal certainty regarding the determination of transmigration areas on customary land rights in the Raimuna Transmigration Area, Maligano District, Muna Regency.

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<sup>4</sup> Bachtiar Effendie, (1993). *Land Registration in Indonesia and Its Implementing Regulations* (Jakarta: Alumni).

<sup>5</sup> "Law Number 29 of 2009 concerning Amendments to Law Number 15 of 1997 concerning Transmigration" (nd).

<sup>6</sup> Sudargo Gautama, (1990). *Interpretation of the Basic Agrarian Law* (Bandung: Alumni).

## **2. Research Methods**

This research uses a sociological (empirical) juridical approach, namely research that examines the application of applicable legal provisions by connecting them to the facts that occur in society. This approach is used to analyze the legal certainty of the determination of transmigration areas on customary land rights and the legal consequences that arise for the customary law community in the Raimuna Transmigration Area, Maligano District, Muna Regency. The research specifications used are analytical descriptive, namely research that aims to systematically describe the research object while analyzing various legal problems related to the determination of transmigration areas on customary land rights based on the provisions of laws and regulations and empirical conditions in the field. The data used consists of primary and secondary data. Primary data was obtained through interviews with the Muna Regency Traditional Community Institution, the Wuna customary law community in the Raimuna Transmigration area, the Muna Regency National Land Agency, the Muna Regency Transmigration and Manpower Office, and the Muna Regency Housing and Settlement Office. Secondary data was obtained through a literature study that includes primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, scientific journals, research results, and documents related to customary rights, agrarian law, and the implementation of transmigration, as well as tertiary legal materials that support the research. The data analysis method used is qualitative descriptive analysis with a deductive thinking pattern, namely analyzing data based on applicable legal provisions, then linking it to empirical facts found in the field so that conclusions are obtained regarding the legal certainty of determining transmigration areas on customary land rights and their legal consequences.

## **3. Results and Discussion**

### **3.1. The Existence of Customary Rights to Land Designated as a Transmigration Area**

The results of the study indicate that the Wuna customary law community in Maligano District, Muna Regency, factually still fulfills the elements of a customary law community unit as required by various laws and regulations. The existence of this customary law community is not only proven through the history of the formation of the customary community that has been going on for generations since the time of the Wuna Kingdom, but also through the continued functioning of customary institutions, the existence of customary territories, customary legal norms that are still adhered to, and the land control and management system that is passed down from generation to generation.

Based on an interview with the Head of the Raimuna Transmigration Implementation Unit, the Wuna customary law community is an indigenous

community that has inhabited the Muna Island region since before the formation of the Unitary State of the Republic of Indonesia. In their social life, the community still maintains a customary institutional structure consisting of the Kaomu, Walaka, Olindo Fitu Bengkauno, and Wawono Liwu groups. In addition, customary institutions still carry out the functions of dispute resolution, preservation of customs, providing advice to local governments, and overseeing the implementation of customary norms. These facts indicate that the elements of the existence of customary law communities as required by positive law are still clearly fulfilled.<sup>7</sup>

The existence of these customary law communities is also reflected in the continued recognition of land tenure systems based on customary law. The Wuna community's customary land is divided into several categories, including Ome, Kaindea, Bungi, and inherited land, each of which has distinct social and economic functions. Land management is carried out based on customary provisions that prioritize the collective interests of the community over individual interests. Land is not only viewed as an economic object but also holds historical, social, and spiritual value as it forms part of the community's identity. Therefore, the relationship between customary law communities and customary land is a communal legal relationship that is passed down through generations.

The research findings show that the existence of the Wuna customary law community has actually fulfilled the indicators as stipulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles. Both provisions provide recognition of customary rights as long as the customary law community is still alive and the implementation of its rights does not conflict with national interests. Based on the empirical conditions found during the research, the Wuna customary law community still maintains all of these basic elements so that sociologically its existence cannot be denied.<sup>8</sup>

However, research findings reveal a fundamental difference between sociological and legal recognition. Sociological recognition is reflected in the fact that communities, traditional leaders, and even some government officials still acknowledge the existence of the Wuna customary law community and its customary territory. Conversely, legal recognition has not yet been realized through regional legal policies in the form of Regional Regulations concerning the recognition of customary law communities or the determination of customary rights areas. As a result, customary law communities only receive factual recognition without adequate legal protection from the state.

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<sup>7</sup> Abidin, "Interview with the Head of the Transmigration Settlement Unit" (Muna Regency, 2026).

<sup>8</sup> "Law Number 5 of 1960 concerning Basic Agrarian Regulations" (nd).

The absence of this Regional Regulation is a major issue in this research. Based on the research results, the Muna Regency Government, at the time of the study, had not yet established regulations governing the recognition of the Wuna customary law community or the boundaries of its customary rights. This situation resulted in the lack of a legal basis for the indigenous community to defend its land rights when the government designated part of the area as a transmigration zone. Thus, the existence of the indigenous law community, which is still sociologically viable, has not yet received administrative legitimacy from the local government.

From the perspective of Gustav Radbruch's theory of legal certainty, law is not only required to provide justice and benefit, but also to create legal certainty for every legal subject. Legal certainty can only be achieved if there are clear, consistent, and effectively enforceable rules. In the context of this research, the absence of regional regulations regarding customary law communities has left the Wuna community without a strong legal basis to defend its customary rights. As a result, rights that have existed within the community become difficult to defend when confronted with government administrative policies.<sup>9</sup>

Furthermore, research findings indicate that local governments place greater emphasis on implementing transmigration programs as part of national development policies than on identifying and recognizing indigenous communities who have previously inhabited the region. However, based on the principle of the rule of law, all administrative policies related to land must respect the rights of indigenous communities recognized by the constitution. Neglecting the identification process for indigenous communities has the potential to lead to agrarian conflicts due to overlapping customary rights areas with transmigration areas.<sup>10</sup>

Based on the overall results of this research, it can be understood that the main problem is not the disappearance of the Wuna customary law community, but rather the lack of formal legal recognition through Regional Regulations. Therefore, local governments should immediately conduct an inventory of customary law communities, determine customary territories in a participatory manner, and establish Regional Regulations concerning the recognition and protection of customary law communities as a basis for providing legal certainty regarding customary rights. This step will strengthen the protection of customary

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<sup>9</sup> Salim HS & Erlies Septiana Nurbani, (2013). "Application of Legal Theory in Thesis and Dissertation Research."

<sup>10</sup> Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, "Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 Concerning Procedures for the Administration of Customary Land of Customary Law Community Units" (Jakarta: Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia, 2019).

rights and reduce the potential for land disputes arising from the implementation of the transmigration program.

### **3.2. Legal Consequences of Establishing Transmigration Areas on Customary Land Rights**

The research results show that the designation of a transmigration area in Maligano District has complex legal consequences for the customary land status of the Wuna customary community. This complexity arises from the existence of two concurrent legal regimes: state law, which serves as the basis for the implementation of the transmigration program, and customary law, which regulates the hereditary ownership of land by the customary community. These differences in legal basis then give rise to differing perceptions regarding land ownership status, potentially leading to agrarian conflict if not resolved through legal mechanisms that protect both interests.

Based on interviews with the Wuna customary law community, it was discovered that the area currently designated as a transmigration area is part of customary land that has long been used for agriculture, plantations, customary forest areas, and areas of historical value to the community. This land was never viewed as state land, but rather as communal land under the authority of the customary law community. Therefore, establishing a transmigration area without prior recognition of customary rights is seen as a disregard for the traditional rights of the indigenous community.<sup>11</sup>

Conversely, based on interviews with the Muna Regency National Land Agency, the government believes that the Wuna customary law community's customary rights have not yet been administratively recognized and therefore cannot be used as a basis for determining transmigration areas. The government stated that the transmigration land reservation was carried out based on a Governor's Decree and in accordance with the Muna Regency Spatial Plan in effect at the time.<sup>12</sup> These differences in views indicate a gap between sociological facts and legal recognition of customary law communities.

Research findings also show that after the transmigration areas were designated, the government implemented an asset legalization program by issuing Land Ownership Certificates (SHM) to transmigrants. The distribution of these certificates aims to provide legal certainty regarding land ownership by transmigrants as part of the government's Trans Tuntas Program. As of the time

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<sup>11</sup> La Sali, "Interview with the Maligano Customary Law Community" (Maligano District, Muna Regency, 2026).

<sup>12</sup> H. Irwan, "Interview with the National Land Agency Measurement Officer, Muna Regency" (Muna Regency, 2026).

of the study, 402 Land Ownership Certificates had been issued to transmigrants in the Raimuna/Mutiara area.<sup>13</sup>

While the issuance of these certificates provides legal certainty for transmigrants, it also raises legal issues for indigenous communities, as the certified areas are still believed to be part of their customary lands. This creates a dualism in land ownership: ownership based on customary law and ownership based on certificates issued by the state. This dualism has the potential to give rise to land disputes if not accompanied by a resolution mechanism that allows for the verification of customary rights of indigenous communities.

From a national agrarian law perspective, Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations recognizes the existence of customary rights as long as they still exist in reality and their implementation does not conflict with national interests. This provision indicates that the state does not actually abolish customary rights, but rather grants recognition under certain conditions. Therefore, if the Wuna customary law community still fulfills the elements of a customary law community, the government should first identify, verify, and recognize these customary rights before designating the area as a transmigration area.<sup>14</sup>

Further research results indicate that the absence of a Regional Regulation concerning the recognition of customary law communities results in local governments lacking a clear legal basis for determining customary areas. This situation has resulted in the absence of a customary land administration process as stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Community Units. This regulation, however, mandates that the government conduct measurement, mapping, recording, and administration of customary land as a form of providing legal certainty to customary law communities.<sup>15</sup>

The failure to implement these administrative mechanisms has left the legal status of the Wuna customary land remaining uncertain. This uncertainty impacts not only the indigenous community but also the implementation of the transmigration program, as potential legal disputes can arise at any time if claims are made to land for which land titles have been issued.

When analyzed using Gustav Radbruch's theory of legal certainty, this situation indicates that the objectives of the law have not been optimally achieved. Legal

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<sup>13</sup> Abidin, "Interview with the Head of the Transmigration Settlement Unit."

<sup>14</sup> Law Number 5 of 1960 concerning Basic Agrarian Regulations.

<sup>15</sup> Indonesia, "Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Community Units."

certainty should be realized through regulations that provide equal protection to all legal subjects.

In this study, legal certainty was first granted to transmigrants through the issuance of property rights certificates, while indigenous communities have not yet received legal protection for the customary territories they have traditionally controlled. As a result, the principles of justice and legal benefit have not been implemented proportionally.<sup>16</sup>

In addition to the theory of legal certainty, the findings of this study are also relevant to Notonagoro's theory of justice. According to this theory, the state is obliged to distribute rights proportionally to every citizen. In the context of this research, the government has provided legal protection to transmigrants through land rights, but has not provided the same protection to indigenous communities who have historically controlled the area. Therefore, the principle of distributive justice has not been fully realized in the policy of establishing transmigration areas.<sup>17</sup>

The research also found that the Wuna customary law community does not fundamentally oppose development or the transmigration program. They simply desire recognition of customary rights as the basis for legal protection of the customary land they have traditionally controlled. Therefore, conflict resolution requires more than just an administrative approach, requiring a participatory approach involving local governments, the National Land Agency, customary institutions, and the customary law community in the process of identifying and establishing customary territories.

Based on the overall results of the study, it can be understood that the legal consequences of establishing transmigration areas on customary land rights are not only in the form of changes in land ownership status, but also give rise to legal uncertainty, potential agrarian conflicts, reduced protection of the rights of customary law communities, and hampered implementation of the principle of justice in the management of agrarian resources.

Therefore, the regional government needs to immediately establish a Regional Regulation on the recognition of the Wuna customary law community, conduct an inventory of customary areas, and implement customary land administration in accordance with the provisions of the Regulation of the Minister of ATR/BPN Number 18 of 2019 to create legal certainty for all parties.

#### **4. Conclusion**

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<sup>16</sup> Nurbani, "Application of Legal Theory in Thesis and Dissertation Research."

<sup>17</sup> Nurbani.

The results of the study indicate that the Wuna customary law community in Maligano District, Muna Regency, sociologically still fulfills the elements of a customary law community unit that has customary rights over its customary territory. This is indicated by the continued existence of customary communities, customary institutions, customary territories, and customary laws that are still adhered to in community life. However, to date, the existence of the Wuna customary law community has not received legal recognition through Regional Regulations, so that customary rights are only recognized factually without any legal certainty. This condition has an impact on the determination of transmigration areas on land claimed as customary rights of indigenous peoples and has given rise to legal consequences in the form of unclear land ownership status, the emergence of dualism in rights claims between indigenous peoples and transmigrants, and the potential for agrarian conflict due to the lack of harmonization between transmigration policies and the protection of customary law community rights. The Muna Regency Government needs to immediately conduct an inventory, verification, and recognition of the Wuna customary law community through the establishment of a Regional Regulation as a basis for providing protection and legal certainty for customary rights. Furthermore, the designation of transmigration areas should be preceded by identification of the existence of customary law communities and the implementation of customary land administration in accordance with statutory provisions so that development policies can be aligned with the protection of customary law community rights and minimize the potential for future land disputes.

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