

The Policy on the Application of National Land Law and Its Influence on the Existence of *Ulayat* Rights of the Samin Tribe Indigenous People in the Karts Kendeng Mountains

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Abstract. *This study aims to identify and analyze the problems of the existence of customary rights of the Samin tribal people against the policy of implementing national land law and their solutions. The approach method in this study is sociological juridical, with descriptive analytical research specifications. The data needed includes primary and secondary data, the data is collected by means of interviews and literature study, which are then analyzed using qualitative analysis. The research results show that the problem of the existence of customary rights of the Samin tribe in the karts kendeng mountains of Rembang is modernization and a change in the mindset of the indigenous people. Factors that influence these changes are internal factors in the form of changes from their indigenous peoples and external factors that are influenced by other cultures from outside. The samin community in the Rembang karts kendeng mountains is identical and has merged into an organic society in terms of social solidarity. With this change, the Samin people are no longer guided by their culture and customs and then become a society in general, so that customary rights which were formerly the rights of the Samin people are now individual rights, then PT Semen Indonesia uses them to build a factory in the area. The solution in particular is that the Samin community must care for, protect, preserve, manage, and utilize their Ulayat land so that their Ulayat land rights do not disappear. The general solution is that the government is expected to be able to realize legal certainty for indigenous peoples determine special legislation that thoroughly discusses customary rights.*

Keywords: Customary; Land; Society; Tribe.

1. Introduction

The existence of indigenous and tribal peoples in Indonesia is an inevitability.¹Van Vollenhoven in his literature research once stated that indigenous peoples who lived in Indonesia, since hundreds of years before the arrival of the Dutch, had or owned and lived within their own legal system. The legal system of the indigenous people is known as customary law.²The existence of indigenous peoples is regulated in the 1945 Constitution Article 18B paragraph 2, Article 28I paragraph 3, Article 32 paragraphs 1 and 2. Customary law communities cannot be separated from land law and natural resources, because humans (customary law communities) and land have a fundamental relationship of ownership and use of land.

Arrangements regarding the ownership, use, control and use of land prior to independence had a dualistic nature or dualism. After Indonesia's independence, the legal product that became the basis of land use was the 1945 Constitution Article 33 paragraph 3. Fifteen years later the basic agrarian regulations were placed, precisely on September 24, 1960, known as the Basic Agrarian Law Number 5 of 1960 (hereinafter referred to as UUPA). Customary law communities have the right to control their own land, namely customary rights, where this is stated in UUPA article 3. Literally *Ulayat* rights can be interpreted as the authority according to customary law owned by customary law communities over a certain area with regard to their efforts to take advantage of land and other natural resources.³

Since UUPA was enacted, a concept called "State *Ulayat* Rights" has emerged, the authority and decisions of customary leaders or customary heads who lead adat and are attached to indigenous peoples in various matters, especially the use of customary land for the benefit of indigenous peoples themselves then shift to Country. For indigenous peoples this is something that threatens their survival by means of resistance either openly or by way of negotiation and deliberation, because indigenous peoples expect not just recognition marked by being given "Recognitie" but full acknowledgment of their rights that are ensure legal certainty and justice for the customary law community itself. Especially for the indigenous people of the Samin tribe.

The Samin tribe is an example of Indonesian indigenous people who are still alive by maintaining local wisdom. The Samin tribe is located in Central Java and

¹Hendra Nurtjahjo and Fokky Fuad, 2010, Legal Standing of Customary Law Community Units, in litigation at the Constitutional Court, Jakarta: Salemba Humanika, p. 40

²Julianto Jovar Jotam Kalalo, 2018, Legal Politics of Protection of Customary Rights of Indigenous Peoples in Border Areas, Dissertation of the Faculty of Law, University of Hasanudin Makassar, p. 2

³Hilman Syahril Haq, 2020, Introduction to Indonesian Customary Law, Klaten: Lakeisha, p. 133

inhabits parts of Pati, Rembang and Blora Regencies.⁴Currently, the Samin community is in the spotlight of many parties because of their resistance against PT. Semen Indonesia for the construction of a cement factory in the Karts Kendeng Mountains Area which is the residential area for the Samin community in the Rembang Regency area. The Karts Mountains are limestone mountains that can be used as raw material for making cement. So that this area has become a target for cement companies in Indonesia. However, on the other hand, this area is a source of water and livelihoods for Samin community farmers, so this is what sparked conflict between the Samin indigenous people and cement companies in Indonesia, especially PT. Indonesian Cement.

The survival of indigenous peoples is completely dependent on their customary land. With regard to the utilization and use of customary rights objects (land) it is designated for indigenous people groups led by customary leaders. However, in reality, currently customary land rights or customary land for indigenous peoples, especially the indigenous people of the Samin tribe, are being used by certain elite elements in terms of their use and function, by granting permits to open mining lands to entrepreneurs in the areas where indigenous peoples live without considering the rights of the indigenous peoples, especially the indigenous people of the Samin tribe. For this reason, it is important to carry out a research so that the existence of customary rights can be maintained and protected.

Based on the description above, the writer is interested in knowing and analyzing the extent to which the customary rights of indigenous peoples exist in relation to national land law policies.

2. Research Methods

This study uses a sociological juridical approach. The specification of the research used is descriptive analysis. The data used includes primary data and secondary data. Retrieval of data using interviews and literature study. Data analysis using qualitative analysis.

3. Results and Discussion

3.1. Problems of Existence of Customary Rights of the Samin Tribe Indigenous People Against the Policy of Implementing National Land Law

⁴Primandha Sukma Nur Wardhani and Samsuri, 2020, "Sedulur Sikep As Part of Javanese Cultural Diversity", Journal of Anthropology: Socio-Cultural Issues, No. 2, Vol. XXII, p. 257. url: <http://jurnalantropologi.fisip.unand.ac.id/>

The results of research conducted by the author through field studies related to the problem of the existence of customary rights of the Samin tribal people towards the policy of implementing national land law, found the fact that the Samin tribal people in the northern Karts Kendeng mountains, to be precise in Rembang Regency, have disappeared. The word "disappeared" here What this means is that the Samin people here have mingled with society in general, so that the Samin people there, who were previously bound by their customary legal order, are now bound by national law. This is supported by the statement of Kang Jono, a resident of Bitingan, Sale District, Rembang Regency, one of the activists who opposes the existence of a cement factory in the karts kendeng mountain area.⁵

Another fact found by the author is that there is no Samin tribe that still exists in the Karts Kendeng Mountains of Rembang Regency, thus there is also no customary land for the Samin community in that area. This was corroborated by Kang Jono's statement that "The land around this mountain [kendeng] is the land of the people here themselves, mas, it is no longer the land of sedulur sikep (samin people), it already belongs to individuals." From this information it can be concluded that the land around the karts kendeng mountains in Rembang Regency was formerly the customary land of the Samin community in that area, since the Samin community in that area no longer exists, their customary rights (*Ulayat* land) have also disappeared. The loss of customary rights is due to the strengthening of individual rights.

Another fact found by the author is the conflict that occurred between PT. Semen Indonesia and the Samin community are not concerned with the land taken or the land where the factory is located, namely the customary land of the Samin community, but land with individual ownership rights. The conflict occurred due to differences in interests in the utilization of natural resources contained in the Kendeng karts mountains. This was supported by Kang Jono's statement which stated that "The problem is not the land where the factory was built, the *Ulayat* land of the sedulur sikep (samin people), but the case where the factory destroyed nature. People here all live only relying on the results of nature, if nature is continuously damaged, how do people here continue their lives, bro?"⁶

Then, another fact is that the conflict that occurred was the aftermath of the conflict in Pati Regency. This is because at first PT Semen Indonesia was going to build a cement factory in the karts kendeng mountains in the Pati Regency area. In 2006 PT. Semen Indonesia plans to build a factory in Sukolilo District, Pati Regency. However, the Samin people rejected the plan because they thought it

⁵Interview with Kang Jono as Kendeng Activist, 11 February 2023.

⁶Ibid.

would threaten agriculture and springs. Where land and water are the basic needs used by the Samin community as a source of their livelihood. In 2009 the Samin people won their lawsuit at the Administrative Court. So that PT. Semen Indonesia was forced to withdraw from starch and move to Gunem District, Rembang Regency. PT. Semen Indonesia succeeded in entering Rembang by establishing a factory in 2014.⁷

This was supported by a statement from Kang Jono who stated that "The action against cement started in 2006 when a cement factory wanted to build a factory in the Sukolilo Pati area, mas. In Pati, the cement factory lost a lawsuit at the Administrative Court which was filed by friends and sedulur sikep (samin people) who refused to have a cement factory, after that the cement factory moved to Rembang, friends and sikep people (samin people) who previously refused the cement factory in Pati took part in the action against the cement factory in Rembang mas, so this action was a combination of friends from Pati, Sedulur sikep (samin people) friends from Grobogan, and Rembang friends, the short story is like that's it, bro."⁸

Another fact that the author found was that the Samin people took action against PT. Semen Indonesia is a resistance to the government regime, this is an ideological legacy from Ki Samin Surosentiko which is embraced by his successors (the Samin community). The movement of the Samin people in rejecting colonialism today in the form of transaction politics and corporate economic interests can be seen in the rejection of plans to build a cement factory in the Kendeng Mountains.⁹The construction of the cement factory is the exploitation of materials from the Kendeng mountains, which have been the source of livelihoods, springs and nature reserves in the Sukolilo area. The Samin community considers that the karts kendeng mountains are "nails of the earth" for the balance of the Javanese ecosystem.¹⁰The destruction of the karts kendeng mountains for the Samin people is the beginning of the destruction of the land of Java in general. This is supported by the testimony of Mbah Tarno, an elder of the Samin community in Baturejo, Sukolilo, "Yes, that was earlier, so the ancestors were cultivating crops, which became the ancestors of the people of the archipelago. Those who want to manage the land, who want to plant crops, plant sources of food-clothing [food-clothing]. This is the share of children and

⁷Hasna Bararah et al, 2022, "The Samin Community Movement Against Cement Factory Development Plans (John Fiske's Semiotic Analysis in Samin vs Cement Film)", Journal of Communication Studies, No. 1, Vol. XVIII, p. 81. url: <http://doi.org/10.20884/>

⁸Interview with Kang Jono as Kendeng Activist, 11 February 2023

⁹Munawir Aziz, 2012, "Post-Colonial Samin Identity, Struggle of the State, Religion, and Customs in the Pros and Cons of Cement Factory Development in Sukolilo, Pati, Central Java", Scientific Journal of Social and Humanities, No. 3, Vol. II, p. 259. url:<https://doi.org/10.22146/kawistara.3937>

¹⁰Ibid.,

grandchildren, great-grandchildren and so on. However, now what is being played is actually the rules, this is the share for posterity, great-grandchildren and so on. If you want to plant it, go ahead, if not, it's up to you."¹¹

From the facts found by the authors above, it can be concluded that the Samin people in the Karts Kendeng Mountains of Rembang have disappeared. This is due to modernization and changes in the mindset of the indigenous people, factors that influence these changes are internal factors and external factors. If it is related to Emile Durkheim's statement that due to the change from traditional to modern society, solidarity will change from mechanical to organic.¹²In this case the Samin community is in accordance with the opinion of Emile Durkheim. The samin people who live in the mountainous karts kendeng region of Rembang no longer adhere to the teachings of saminism due to changes in their society. Apart from that, the people who live in the karts kendeng mountain region of Rembang after the loss of the culture of saminism, collective consciousness reappears. This is evidenced by the existence of a social movement that rejects the existence of a cement factory in the Karts Kendeng mountain area on the grounds that the existence of a factory will damage the natural ecosystem. This movement cannot be separated from the role of the Samin people who still adhere to the teachings of Saminism in the karts kendeng mountain area of Sukolilo Pati, therefore this movement is a combination of mechanical and organic societies.¹³ In contrast to the samin community in Rembang, they (the Pati samin community) are still closely attached to the culture of the teachings of saminism.

The results of the author's analysis of the problem of the existence of customary rights of the Samin indigenous people in the Karts Kendeng Mountains of Rembang using Emile Durkheim's theory of social solidarity is that the identical Samin community has merged into an organic society in terms of social solidarity. Because there is a change through modernization in all fields. With this change, the Samin people are no longer guided by their culture and customary culture and then become a society in general, so that *Ulayat* rights that used to be the rights of the Samin community are now individual rights (the existence of *Ulayat* rights that disappeared), which is then utilized by PT Semen Indonesia to set up a factory in the region.

¹¹Interview with Mbah Tarno as an elder (elder) from the samin community in Sukolilo Pati, 12 February 2023

¹²Umi Hanifah, 2019, "Social Transformation of the Samin Community in Bojonegoro", Scientific Journal of Sociology of Religion and Social Change, No. 1, Vol. XIII. p. 62. url:<http://dx.doi.org/10.14421>.

¹³Agung Wibowo, 2011, 'Strategy of the Samin Community in Maintaining Ecological Balance', Periodic Journal of Biological Research E, Berk. Panel, Live Special Edition: 4E(35-42). p. 35. url: <http://berkalahayati.org/files/journals>.

3.2. The solution to the existence of customary rights of the Samin tribal people

There are two solutions related to the existence of customary rights of the Samin tribal people, including:

a. Solution specifically

This solution is shown to the Samin people who are still thick with the teachings of Saminism.

1) Maintaining traditional cultural values

The loss of customary rights is a big problem for indigenous peoples, the factors that influence this are none other than the loss of the culture of indigenous peoples due to the entry of a new culture which then shifts the old culture. This affects high individualism and weak collective awareness.¹⁴ Customary culture should be maintained as long as it does not conflict with the values embodied in religion and the values of Pancasila, so that customary rights exist and exist.

2) Protecting customary rights

According to article 2 paragraph 2 of the Regulation of the State Minister for Agrarian Affairs or the Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Settlement of Problems with *Ulayat* Rights of Indigenous Peoples, it explains that customary rights of indigenous peoples are still considered to exist if:

- There is a group of people who still feel bound by their customary legal order as joint citizens of a certain legal alliance, who recognize and apply the provisions of that partnership in their daily lives,
- There is a certain customary land which is the living environment for the members of the legal alliance and the place where they take their daily needs, and
- There is a customary legal order regarding management, control and use of communal land which applies and is obeyed by the members of the legal alliance.

¹⁴Umi Hanifah, 2019, "Social Transformation of the Samin Community in Bojonegoro", Scientific Journal of Sociology of Religion and Social Change, No. 1, Vol. XIII. p. 63. [urls:http://dx.doi.org/10.14421](http://dx.doi.org/10.14421).

From the contents of the article above, it can be concluded that in order to protect customary rights so that they continue to exist and exist, indigenous peoples must apply several things, including:

- Customary law communities must remain bound by their customary law order,
- Applying the provisions of their customary alliance in everyday life,
- There is a customary legal order regarding management, control and use of communal land
- Caring for, guarding, managing, utilizing and preserving customary land

b. Solutions in general

This solution is shown to the government regarding actions regarding regulation making, empowerment, and preserving the values of customary law.

1) Obtain clear legal certainty

The National Land Law is still unreliable. The path of recognition is convoluted, sectoral, avoids conflict, and contains various restrictions. Meanwhile, the Indigenous Peoples Draft Law (RUU) that is expected to address these problems has yet to be clarified. That is why customary territories are transferred very easily by irresponsible parties.¹⁵ For example Permendagri 52/2014 mandates governors and district heads or mayors to recognize indigenous peoples through regional regulations in their respective areas. However, this regulation cannot be used as a legal tool for indigenous peoples to propose recognition of customary forest rights within forest areas.¹⁶ This is because the Ministry of Environment and Forestry is bound by Article 67 paragraph 2 of Law Number 41 of 1999 concerning Forestry which requires legal products to recognize indigenous peoples in the regions in the form of "Regional Regulations" if they are in forest areas.

From the foregoing it can be said that there is no legal certainty from the government in regulating customary community customary rights. Therefore, the government needs to make a special rule in the case of indigenous peoples, especially customary rights so that the rights of indigenous peoples are fulfilled, so that legal certainty arises.

¹⁵Cahyadi, "Prioritizing the Fulfillment of Indigenous People's Rights in the National Capital City Plan", Deputy Secretary General of AMAN for Political and Legal Affairs, Power Point, Slide. 4

¹⁶Ibid.,

2) Empowering customary alliances

Presidential Regulation Number 18 of 2020 concerning the National Medium Term Development Plan (RPJMN) 2020-2024. The policy direction contains suggestions for revitalizing and actualizing local wisdom culture, as well as protecting cultural rights and cultural expressions, of course, supporting the realization of more progressive recognition and protection of indigenous and tribal peoples in the future. This means that it is only natural for indigenous peoples to have their own customary territories and have traditions that have been passed down from generation to generation.

Indigenous peoples are also part of the population and citizens of Indonesia, they are also entitled to receive facilities, services and assistance from the government just like other Indonesian people, both material and non-material, they must also be given encouragement and improve their social and economic life. There are still many tasks that must be carried out by the government to improve the welfare of indigenous and tribal peoples in Indonesia, including the lack of infrastructure and facilities in areas where indigenous and tribal peoples exist, which are generally difficult to reach.¹⁷The success of development carried out by the government cannot be separated from the support of all parties, both the central government, local regional governments, the wider community, including the customary law community itself. Therefore, the empowerment of customary law communities is included in the solution so that customary rights of customary law communities continue to exist

3) Strengthening the fulfillment of the rights of customary law communities

- Protecting the rights of indigenous and tribal peoples so that they can live safely, grow and develop as a community group in accordance with their human dignity and dignity and are protected from acts of discrimination,
- Providing legal certainty for customary law communities in exercising their rights,
- Making the recognition and protection of the rights of indigenous and tribal peoples the basis for administering government and developing development programs, and

¹⁷AS and TD (Initials), "How are the Government's Efforts in Recognizing and Protecting Coastal and Island Customary Law Communities", Directorate General of Marine Spatial Management, <https://kkp.go.id/djprl/p4k/artikel/19691> accessed on February 16, 2023 at. 16.34.

- Carrying out empowerment for customary law communities Recognition and protection of the rights of indigenous peoples is carried out by the Government and Regional Governments by means of:¹⁸
- Identification of customary law communities,
- Verification of indigenous peoples, and
- Ratification of customary law communities

4. Conclusion

The problem of the existence of customary rights of the Samin tribal people in the karts kendeng mountains of Rembang is identical, has merged into an organic society in terms of social solidarity. With this change, the Samin people are no longer guided by their culture and customs and then become a society in general, so that customary rights which were formerly the rights of the Samin people are now individual rights, then PT Semen Indonesia uses them to build a factory in the area. .There are 2 ssolutions to the existence of customary rights of the Samin tribal people, namely: First, maintaining customary cultural values that are not contradictory to other values that exist in the Indonesian nation, protecting customary rights by implementing several things, namely: indigenous peoples remain bound by the social order customary law, applying the provisions of the alliance, carrying out arrangements regarding management, control and use of communal land, as well as caring for, guarding, managing, utilizing and preserving the customary land. Second, indigenous peoples must obtain a clear legal certainty, empower customary alliances, and strengthen the fulfillment of indigenous peoples' rights.

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