

Agrarian Law Study on the Settlement of Customary Land Disputes in Sorong Regency

Demianus Aru¹, Dwi Pratiwi Markus², Sri Yati³, Kristi Warista Simanjuntak⁴
^{1,2,3,4} University of Muhammadiyah Sorong, Indonesia

ABSTRACT

Land is considered very important for human life that needs to be maintained. Land law in Indonesia has been regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which means that it is a whole of written and unwritten legal norms. Land is not only a place to stand, but also a place for the growth of natural resources, habitat for various types of living things, as well as the foundation for economic and social development, not infrequently this causes a problem or conflict. This research aims to find out the existence of agrarian law in solving customary land problems in Sorong Regency. This research uses a sociological juridical approach method to examine the problems studied. The results of this study indicate that Agrarian Law becomes the basis for resolving customary land issues in Sorong Regency without overriding Customary Law and Customary Law that already exists in the community in Sorong Regency.

Keywords: Agrarian Law, Customary Land, Land Disputes

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INTRODUCTION

Humans have a close relationship with land, for humans land is seen as an eternal property because it will not be destroyed under any circumstances, in addition the land serves as a place to live for citizens and where they seek life and a place where they will be buried if they die (Rahman et al., n.d.). Land is considered very important for human life that needs to be maintained. The land referred to here does not regulate land in all its aspects, but only regulates one of its aspects, namely land in the juridical sense called rights (Santoso & SH, 2017). Along with the development of the current population, public awareness of the importance of land as a valuable asset in the future is increasing. Increased awareness of the importance of land is crucial given its irreplaceable role in human life. Land is not only a place to stand, but also a place to grow natural resources, a habitat for various types of living things, and a foundation for economic and social development. Land as a strategic natural resource for the nation requires state intervention to regulate it. so the relationship between individuals, families, and communities with land is based on their nature as God's creatures to live individually and socially by exercising rights (abilities and skills) and obligations (obligations) in a

balanced manner for the sake of justice, and the benefit of individuals, families and communities (Fitri, 2018).

Rights arising on the right to the surface of the earth (land rights) including buildings or objects located on it are a legal issue. The legal issue in question is an issue related to the adoption of principles relating to the relationship between land and plants and buildings located on it. Land issues that occur in the lives of indigenous peoples as long as they still live in the area they are entitled to are inseparable from customs, customary law, fellowships and fellowship members (Uktolseja & Radjawane, 2019).

Ulayat rights and similar rights of customary law communities are still recognized as long as in reality in the community they still exist, but due to the individualist process, ulayat rights often begin to be urged, which gives special recognition to individual rights. The growth and strength of individual rights in customary law communities has resulted in the depletion of ulayat rights. This ulayat right is recognized by the government as long as the reality still exists (Putra & Farda, 2019). The basis of national agrarian law is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). The Basic Agrarian Law (UUPA) itself is a national agrarian law whose presence is based on indigenous Indonesian law known as customary law, while the relationship between customary law and national land law itself is the existence of a functional relationship between customary law and national land law, the customary law referred to here is the original customary law of the Indonesian Nation (Markus & Purnawan, 2017). Based on its importance, agrarian law is divided into two. The first is administrative agrarian law, which is the overall regulation that becomes the basis for the state or ruler or government in determining and carrying out special actions in the agrarian field.

Land is one of the most important elements in human survival, therefore land should be cultivated to achieve the greatest prosperity of the people (Darmayanti, 2020). Customary land is land that has been controlled and utilized for generations by indigenous peoples based on local customary law. Customary land has sacred, historical and social values for indigenous peoples, as well as being a source of livelihood and their identity. Customary land also faces various challenges, such as conflict, marginalization, and dispossession by other parties claiming rights to the land (Shebubakar & Raniah, 2023).

Customary land has an important role in society, especially for indigenous peoples living under customary law. Customary land is not only a natural resource, but also a symbol of the identity, culture and history of indigenous peoples. Customary land is also a medium for establishing social, economic, political and religious relations between members of the indigenous community. Customary land also has sacred and historical values that are respected and preserved by indigenous peoples. The term customary law community is an official term listed in various laws and regulations. The term customary law community was born and used by customary law experts, which mostly functions for theoretical - academic purposes. Meanwhile, the term indigenous peoples is a term commonly expressed in everyday language

by non-legal circles that refers to a number of international agreements (Aru et al., 2024a). Indonesia itself has various terms that refer to the category of "indigenous peoples". The terms used start from the terms *putera*, indigenous peoples, customary societies, customary law societies, customary law societies, alienated tribal peoples, remote customary communities, and traditional societies. This research aims to determine the existence of agrarian law in relation to the resolution of problems related to customary land in Sorong Regency.

METHODS

This research is a sociological juridical research, namely an approach based on binding norms or regulations, so that it is expected to know how the law which is a symptom of society can be studied as a causal variable that causes effects on various aspects of social life. Sociological juridical research involves data collection through interviews, surveys, and statistical analysis, namely presentation and correlation analysis to understand legal behavior in the Existence of Agrarian Law in the Settlement of Customary Land Problems, researchers are able to identify why, what, and how social phenomena occur (Irwansyah, 2020). The research approach used is a sociological legal approach, namely an approach in the study of law that emphasizes the reciprocal relationship between law and other social symptoms. In this approach, law is seen as a social phenomenon that is influenced by various social factors (Aru et al., 2024).

This research uses data sources in the form of written agrarian law sources, namely laws and unwritten agrarian law sources, namely customary law and customary law that develops in the Papuan customary law community, which regulates the relationship between people and the earth, water, space, and natural resources contained therein, as well as land rights and compensation. The data collection techniques used are interviews conducted to obtain relevant information about the problems to be studied, literature study, and data analysis, namely the data obtained is processed qualitatively to obtain information related to the research.

DISCUSSION AND RESULT

The existence of agrarian law in resolving customary land issues is a topic that has received special attention. The legal basis for the formation of national agrarian law is the 1945 Constitution of the Republic of Indonesia, which is contained in Article 33 paragraph (3), which stipulates as follows: "The earth, and the waters, and the natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people". The Explanation of Article 33 of the 1945 Constitution states: "The earth, the waters, and the natural resources contained therein are the staples of the people's prosperity", therefore they must be controlled by the state and used for the greatest prosperity of the people. Agrarian Law is the entirety of legal rules and legal norms, both written and unwritten, that regulate agrarian and agrarian affairs (management) (Arba, 2021). The state in this case as the highest organization of power is given the authority and

responsibility to realize the welfare of its people. Research conducted through journals and theses highlights several key aspects related to this issue. The recognition of customary land rights by the agrarian legal system, both in the context of national and international regulations.

The analysis of land conflicts is also a focus, identifying mismatches between national agrarian law and indigenous peoples' customary land rights that are often at the root of conflicts. Land disputes are caused by many factors or causes. These factors are dominant in all land disputes, due to imperfect regulations, inconsistency with regulations, and lack of response from land authorities to the integrity and quantity of available land. Incomplete and inaccurate land data, limited resources to resolve land disputes, inaccurate land transactions, legal actions of applicants, and comparisons with other authorities. This leads to duplication of authority. Land conflicts that occur in Indonesia are usually related to land ownership agreements, transfer of rights, transfer of rights, and previous control of privately owned land (Sukmawati, 2022). Research also pays attention to the implementation of government policies related to customary land, this condition is influenced by government policies that have not fully paid attention to the development of land tenure by indigenous peoples (Sulisrudatin, 2018). The control, ownership and utilization of land rights are basically not only limited to individualistic relationships, but also groups (communal) based on a customary legal bond between people and land (Ramadhani, 2019). Indigenous peoples' participation in decision-making about their customary lands is also a concern, with research evaluating the extent to which such participation influences agrarian policy (Demianus Aru, 2024). The importance of supervision and enforcement to protect customary land rights and enforce just compensation policies. The protection of customary land rights requires effective supervision and enforcement.

The Basic Agrarian Law and related regulations often do not take into account the customary law system that has been adopted by indigenous peoples. This can result in complex conflicts between state law and customary law in the context of land ownership and management. Recognition of customary law is very important in efforts to create harmony between national agrarian law and the customary land rights of indigenous peoples. An approach that respects and recognizes customary law as part of the cultural wealth and local wisdom of indigenous peoples is key to ensuring sustainability and justice in resolving customary land issues. Utilization and use of land by the state must be fair, transparent and productive by prioritizing the rights of local people (ulayat rights and indigenous peoples) based on a balanced regional spatial planning (Wardani, 2018).

The recognition of customary law is an important point in understanding the complexity of customary land issues in the context of agrarian law. Customary law includes a set of norms, traditions and rules that have been rooted in people's lives since ancient times. In Indonesian communities, including in the Southwest Papua region, customary law is the main basis for regulating land ownership, use and management rights. Structure relates to policies decided by the government, or policies from the

head or leader of the community (adat), while culture concerns values, norms and beliefs that are believed for generations. To minimize conflict, only the process side can be changed, because this side provides the dynamics of daily interactions that provide free space from the bonds of structure and culture (Suwitra, 2020).

Based on the results of interviews with researchers with Yotam Kalaibin ST based on his information, the existence of agrarian law in addressing agrarian law has an important role in resolving land issues "Agrarian law can provide a clear legal basis for customary land rights, including ulayat rights, which are collective ownership rights traditionally recognized by indigenous peoples. anah has an important position for indigenous peoples. Land is the only wealth object that, despite any circumstances, will remain in its original state (Hastarini, 2022). Having a strong legal basis, indigenous peoples can use agrarian law as a tool to fight for their rights in the ownership, use and management of customary land. agrarian law also provides dispute resolution mechanisms that can be used to resolve customary land conflicts in a fair and equitable manner. Resolving disputes through legal channels can help avoid physical conflict and ensure that the interests of all parties involved are carefully considered.

The process of recognizing customary law also needs to avoid the possibility of abuse by certain parties. The recognition of customary law must be carried out in a transparent and accountable manner, and consider the interests of all indigenous peoples without discrimination. In addition, the protection of individual rights in indigenous communities must also be taken seriously to avoid oppression or exploitation. Efforts to achieve sustainable recognition of customary law require cooperation between the central government and local governments. Local governments have an important role in implementing customary law recognition policies in accordance with the local context and the needs of local communities. The recognition of customary law is not only a legal issue, but also an issue of human rights, sustainable development and social peace. Close coordination between the government, indigenous peoples, NGOs, and other relevant parties to create an enabling environment for customary law recognition. Strong collaboration between all parties can strengthen advocacy and awareness-raising efforts on the importance of customary law in the protection and management of customary lands. Recognition of customary law also requires an active role from international institutions in promoting human rights principles, including community rights to customary land.

Customary land issues are often complex and unique, so more specific regulations are needed that are sensitive to the local context. This can be done through improvements in existing regulations or even by issuing new regulations that specifically regulate customary land. It is important to actively involve indigenous peoples in the process of formulating policies and regulations related to customary land. A number of countries have recognized customary land rights through specific laws or policies. This includes providing guarantees for the ownership, management and use of land by indigenous peoples. However, in practice, the implementation of these

protections often faces complex challenges. Implementation of the protection of customary land rights is often constrained by conflicts of interest between indigenous peoples and other parties. Economic interests, including the exploitation of natural resources, often conflict with indigenous peoples' rights to their lands.

This often leads to conflicts that victimize and damage relationships between the parties involved. Unclear land boundaries are also a serious obstacle to the protection of customary land rights. Customary land is often not officially registered, and boundaries are not clearly defined, leading to protracted conflicts between indigenous peoples and other parties claiming rights to the same land. Not only that, the weak judicial system is also a serious problem in protecting customary land rights. Indigenous peoples often do not have adequate access to the justice system or face discrimination in legal proceedings, leading to injustice and legal uncertainty. A strong commitment from the government is needed to effectively enforce the protection of indigenous land rights. The government must ensure that existing laws are applied fairly and equitably, without discrimination against indigenous landowning communities.

Based on the results of the researcher's interview with Yotam Kalaibin ST, Agrarian Law is the main legal basis in resolving customary land issues in Sorong Regency by not overriding the values that already exist in society and customary law.

The existing Agrarian Law is the main basis for resolving customary land disputes in Sorong Regency by providing limitations on conflicts arising from customary land, providing structured procedures in dispute resolution and becoming a codified basis for solving problems. Problems that arise in customary law communities due to transfers as a result of buying and selling that are not accompanied by proof of ownership rights, based on this, land registration must be carried out first, even though the agrarian law does not regulate the registration of customary land and is only regulated by laws and other laws and regulations (Tanuramba, 2020). The law enforcement process, for example, is related to the issue of compensation for customary land. The law enforcement process does not exclude wisdom that adapts to local dynamics, often relying on traditional leaders or community leaders in enforcing rules and resolving conflicts.

CONCLUSION

Agrarian Law in resolving customary land issues in Sorong Regency is still the main foundation as the basic rules for resolving customary land issues. Problems related to rights arising on the right to the surface of the earth (land rights) including buildings or objects contained thereon are a legal problem with the existence of Agrarian Law as a legal basis codified in the form of laws to limit the problem of customary land by involving elements into the settlement process such as the Government, Indigenous Peoples and parties related to the customary land conflict. The application of Agrarian Law in resolving customary land issues in Sorong.

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