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Customary Rights Versus Land Use Rights

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ABSTRACT
The 1945 Constitution, Article 33 paragraph (1) grants the State the authority to regulate and manage natural resources, including land, for the welfare of the people. This authority is further elaborated in the Basic Agrarian Law (UUPA), which establishes regulations concerning land ownership, utilization, and management. The UUPA recognizes the state's right of control (recht van beschikking), customary land rights (hak ulayat), and land use rights for business purposes. However, these rights must align with the principle of prioritizing the public interest. In practice, the subordination of customary rights and land use rights to public interest policies can potentially lead to conflicts and economic losses for the rights holders. Issues such as inadequate compensation, lack of consultation, and improper recognition of customary rights often arise, particularly in regions where land is closely tied to indigenous traditions and livelihoods. To address these concerns, there is an urgent need for a standardized regulatory framework that balances the principle of public interest with the protection of customary rights and business land use rights. Such a framework should ensure legal certainty, equitable compensation, and mechanisms for conflict resolution to prevent injustice. By harmonizing state authority with individual and communal rights, the regulation can contribute to sustainable land management while upholding justice and public welfare. This study highlights the importance of legal reform to create comprehensive and inclusive land policies that safeguard the rights of all stakeholders.

INTRODUCTION

In essence, customary rights and land use rights are an integral part of Indonesia's agrarian law politics, both types of land rights need to be fostered because they are related to the problem of land control and use that has the potential to harm the land rights of others (the people or the community) (Abby, 2016). Therefore, the existence of the two land rights must involve the state (state authority) in order to regulate for the achievement of state goals in order to improve the welfare and prosperity of all Indonesian people. The involvement of the state in the land sector is not as a land owner (domein) as referred to in Agrarische Wet 1870. By the power of law, Indonesia adheres to the concept of the right to control the state (the right of disposal), which is given the authority to regulate the allocation, use, supply and maintenance of land, as well as regulating the legal relationship between the subject of the law and the land in its control, including the regulation of the transfer of rights to the land concerned (Adhie, 2002).

Efforts to foster customary rights and business use rights must receive special attention because since ancient times Indonesian customary law has recognized customary rights to land (Pen; still must be saaner), one of which is customary rights to land. Customary rights are known in various regions as a federal right to land which according to R. Van Dijk and R. Supomo is called "lord rights", while by B. Ter Haar it is called "lordship rights" which can apply in and out of the indigenous community concerned. Van Vollenhoven against the rights of lords or lords is called "beschikkingsrecht", as a type of land right that cannot be transferred. Meanwhile, Yan Pramadya Puspa explained that the word "beschikking (Bld)" is interpreted as a decision or decree, where the word "recht (Bld)" is interpreted as a law. However, by B. Ter Haar, the word "beschikken", is interpreted as the right to absolute control over land (Urasana et al., 2023).

The existence of lord rights or lords (beschikkingrecht) over land spread across various customary areas in Indonesia, has different names but is still considered as an object of economic and magical-religious-cosmic value. These rights are maintained by the Customary Head, and are exercised with full compliance of the indigenous people concerned. For example; patuanan (Ambon), wewengkang (Java), panyampeto or pawatasan (Kalimantan), prabumian or payar (Bali), tatabuan (Bolaang Mangondo), torluk (Angkola), limpo (South Sulawesi), nuru (Buru), paer (Lombok), and ulayat (Minangkabau). Customary rights are meant to be nothing but beschikkingrecht in the technical sense as subjective rights (RAHARJO, 2022). When examined in terms of Indonesian, the word "ulayah or ulayat" is interpreted as an area or region. Meanwhile, UU.No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) uses the term customary rights, translated beschikkingrecht. So the UUPA recognizes the existence of customary rights with certain restrictions (their existence and implementation) which means that as long as in reality the right still exists, and if it no longer exists, there is no need to revive it (Rahadiyan Veda Mahardika et al., 2022).

Similarly, the right to use land was initially subject to various obstacles because it was considered to have the potential to cause misery to the people (for example; forced planting). However, due to the insistence of private (large) companies, the colonial government promulgated the enactment of the Agrarische Wet 1870 and labeled the erfpacht right as the most extensive and strongest land right and the validity period could be extended. In fact, the regulation provides a policy, that the authority to control and use it is the same as eigendom land that can be burdened with a mortgage to obtain credit (Ulukyanan, 2023). Nowadays, the existence of erfpacht rights is still recognized by the UUPA under the name "right to use business" intended for agricultural, fishery and livestock businesses. However, its existence still rests on the right to control from the state which must not contradict the applicable laws and regulations, and is only intended for the earth's crust (soil) and not at all for the natural resources contained in it.

The intersection between customary rights and land use rights reflects the complexity of land management in Indonesia. Customary rights, deeply rooted in traditional practices, represent a communal connection to land that holds cultural, economic, and spiritual significance for indigenous communities. In contrast, land use rights are a modern legal construct aimed at fostering economic development through regulated land usage. These two rights often coexist uneasily, creating tensions in both legal and practical contexts as Indonesia seeks to balance traditional land ownership systems with contemporary legal frameworks and economic objectives (Rafiqi et al., 2021).

The recognition of customary rights underscores the importance of protecting indigenous communities' heritage and livelihoods. However, the increasing pressure of economic growth and the need for large-scale agricultural, industrial, and infrastructure projects often lead to conflicts over land ownership and usage (Pratama et al., 2022). The right to use business land, particularly in sectors like agriculture, fisheries, and livestock, is critical for national economic

growth. Yet, this right frequently comes at the expense of customary rights, as large-scale land acquisitions can displace local communities and disrupt traditional land-use practices (Sanjaya et al., 2021).

In addition to conflicting interests, the regulatory framework governing these rights often exacerbates the issue. The overlapping authority of customary laws and national regulations creates ambiguities, leading to disputes between indigenous communities and business entities. Customary rights, while recognized in principle, are sometimes not formally registered, making them vulnerable to being overridden by business use rights. Meanwhile, the extension of land use rights for up to 120 years raises concerns about equitable access and the sustainability of such arrangements (Devita, 2021).

Moreover, the principle of social justice in land management, as stipulated in the UUPA, remains a challenge to implement effectively. The notion that land should benefit both its owners and the broader community is frequently sidelined in favor of commercial interests. This undermines the social function of land and fuels resistance from indigenous communities, who see their rights and way of life under threat. The lack of adequate mechanisms to address grievances further aggravates tensions, leading to protests and legal disputes (Apricia, 2022).

Moving forward, Indonesia must reconcile customary rights with land use rights by fostering an inclusive and adaptive legal framework. This involves ensuring that both customary and modern land rights are respected and harmonized, while upholding the social function of land (Rampengan, 2023). Efforts should focus on strengthening legal certainty for customary rights, creating equitable mechanisms for land acquisition, and conducting rigorous oversight of business use rights to prevent misuse. By addressing these challenges, Indonesia can pave the way for a land management system that supports both economic development and the preservation of its rich cultural heritage (Gunawan et al., 2022).

This research introduces a comprehensive analysis of the complex interplay between customary land rights (hak ulayat) and land use rights (hak guna usaha) within Indonesia's agrarian legal framework, highlighting the need for reconciliation between traditional communal practices and modern economic development. Unlike previous studies that often focus on either customary rights or state-driven land regulations independently, this research offers a unique perspective by emphasizing the socio-legal conflicts arising from overlapping rights. It brings forward a balanced approach to harmonizing customary rights with business land use rights while ensuring the social function of land remains a priority, as mandated by the UUPA and the 1945 Constitution.

Despite various studies addressing land conflicts in Indonesia, a significant gap remains in understanding the systematic erosion of customary land rights due to the growing dominance of business land use rights. Existing literature tends to overlook the historical and cultural dimensions of customary rights when juxtaposed with modern legal constructs. Additionally, there is insufficient exploration of regulatory ambiguities and their practical implications for indigenous communities. This research fills that void by examining the inadequacies in the legal framework, highlighting how state policies often prioritize economic growth at the expense of social justice and indigenous land rights.

The novelty of this study lies in its proposal to establish a structured and inclusive legal framework that bridges the divide between customary rights and land use rights, ensuring both coexist in harmony under the UUPA. This research underscores the importance of revisiting land policies to introduce mechanisms that prioritize equitable compensation, recognition of indigenous claims, and the enforcement of land's social function. By offering policy recommendations grounded in empirical findings, this study provides actionable solutions to minimize agrarian conflicts and safeguard both economic development and indigenous traditions.

The purpose of this study is to analyze the legal and practical conflicts between customary land rights and land use rights in Indonesia, emphasizing the need for policy reform to promote equitable land management. The benefits of this research include providing a deeper theoretical understanding of how customary law intersects with state regulations and business rights, contributing to the broader discourse on agrarian justice. Practically, this study offers valuable insights for policymakers to develop legal mechanisms that protect indigenous land rights while fostering sustainable economic development. Furthermore, it serves as a resource for legal practitioners, academics, and communities advocating for fair and just land policies. By addressing these concerns, this research aims to support Indonesia's commitment to equitable land governance and social justice.

RESEARCH METHOD

This study uses a qualitative descriptive approach to analyze the relationship between customary rights and land use rights in Indonesia. The research instruments used include interview guidelines with indigenous community leaders, land officials, and agrarian law experts, as well as document analysis of regulations such as the Basic Agrarian Law (UUPA) and the Regulation of the Head of BPN. Data were collected through in-depth interviews, document studies, and observations to understand the implementation of these two rights and potential conflicts that arise.

The research procedure begins with the identification of the problem through a preliminary study of the literature and regulations. Furthermore, the data collected was analyzed using thematic methods to identify patterns and relationships between customary law and national law. This analysis aims to uncover regulatory gaps and provide recommendations to strengthen land management that is fair, sustainable, and in accordance with national interests.

RESULTS AND DISCUSSION

Flashback of Customary Rights and Land Use Rights

Taking part from the previous description, it is clearly illustrated that the existence of land for humans is very much needed. Therefore, there needs to be rules that contain the values of justice, usefulness and legal certainty. However, it should be realized, that to make land rules (laws) is not as easy and easy as imagined. Levelt is an expert in the field of autonomy and decentralization during the Dutch East Indies Government in his book; Handleiding voor locale belastingverordeningen (1933), states that; Making laws is a difficult job. This is proven when the Government tries to make a UUPA, several times drafting the UUPA to be agreed upon as Indonesian land law. Therefore, it is very important to first look in the rearview mirror which means trying to study and see a flashback of a phenomenon that occurred (once occurred) in the process of forming land law, including the recognition of customary rights and land use rights as one of the legal norms regulated in the UUPA.

Talks on Indonesian land law should start in 1948 when the Jogya Agrarian Committee was formed (Presidential Decree dated May 21, 1948 No. 16), because this phenomenon can be a milestone in the beginning of efforts to reform the agrarian law to replace the colonial heritage (colonial) Agrarische Wet 1870 and its various implementing rules that regulate land law. The Jogya Agrarian Committee proposed several principles as the basis of the new agrarian law, one of which was to abandon the principle of domein and give recognition to customary rights and consider the rights to land proposed by Sarimin Reksodihardjo (including the right to use business). Then through the Presidential Decree dated March 19, 1951 No. 36/1951 the Jogya Agrarian Committee was dissolved and replaced with the Jakarta Agrarian Committee, one of the valuable points in its report that it is necessary to set the maximum and minimum limits of land tenure and legal entities are not given the opportunity to work on small

farms, and customary rights are approved to be regulated by or under the authority of law in accordance with the basic principles of the State.

Furthermore, through the Presidential Decree dated March 29, 1955 No. 55/1955 jo Presidential Decree dated January 14, 1956 No. 1/1956, the Jakarta Committee was dissolved, then the State Committee for Agrarian Affairs was formed known as the Soewahjo Committee. One of the main ideas of the Committee is the abolition of the principle of domein and the recognition of customary rights that must be subordinated to the public interest (the State), and the recognition of the existence of the right to use business.

Then through the Presidential Decree dated May 6, 1958 No.97/1958 the Soewahjo Committee was dissolved and then the Soenarjo Committee was formed, this committee adjusted several things from the Draft UUPA of the Soewahjo Committee so that it received approval from the Council of Ministers to be submitted to the House of Representatives for further discussion.

Based on the Presidential Decree of July 5, 1959, it is necessary to re-enact the 1945 Constitution with a guided democratic political life, form a Cabinet of Work and complete state institutions, namely the MPR (S), DPA and DPRGR. This is the reason for the withdrawal of the Soenarjo Committee Draft from the DPRGR, because it still refers to the 1950 Constitution (Presidential Official's letter dated May 23, 1960 No. 1532/HK-1960). Based on the adjustment of the 1945 Constitution and the Political Manipesto, the Draft UUPA was born called the Sadjarwo Draft, its discussion in Commission sessions (secret) and after being plenary received approval to be designated as a UUPA which recognizes customary rights with certain restrictions, especially on their existence and implementation (Article 3 of the UUPA), and the right to use business (Articles 28, 29, 30, 31, 32, 33, and 34 of the UUPA). Formulation of Article 3 of the UUPA; "Taking into account the provisions in articles 1 and 2 of the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way that they are in accordance with the national and state interests, which are based on the unity of the nation and must not be contrary to other higher laws and regulations". The formulation of Article 28 paragraph (1) of the UUPA; "The right to use business is the right to cultivate land directly controlled by the State, within the period as mentioned in article 29, for agricultural, fishery or livestock companies".

Understanding of Land Rights According to the UUPA

1. Understanding Customary Rights to Land

The UUPA as a land law is prepared based on Indonesian customary law (original law), but the customary law must be clean from its defects (first it must be sanganer) in order to eliminate the characteristics of feudalism as empirical evidence of the influence of colonizers on the original customary law of the Indonesian people. Therefore, by referring to the formulation of Article 3 of the UUPA, it becomes clearer, that the State (Indonesia) recognizes the existence of customary rights to land if in fact the right still exists, meaning that if it no longer exists, there is no need to hold it. Customary rights here regarding land rights are communal in nature, so for legal certainty (according to Mhd. Yamin Lubis, et al., 2010) must be registered. However, from the results of my dissertation research (2006), I found a legal fact that the land plots in the Ammatowa Kajang customary area and the customary lands in Tanatoraja, still receive a guarantee of legal certainty from the State even though none of them have been registered according to the Indonesian land registration law (further research is needed).

Maria S.W. Sumardjono gave criteria as a benchmark for determining whether or not there are still customary rights, as follows:

a. The existence of a customary law society that meets certain characteristics, as the subject of customary rights;

b. The existence of land/territory with certain boundaries as Lebensraum which is the object of customary rights;
c. The existence of the authority of customary law communities to carry out certain actions;
d. There is State recognition of certain land plots as customary right land;
e. There is an obligation of customary law communities not to abandon customary land rights, to maintain land, to increase soil fertility, and to preserve the environment.

Then what if customary rights to land are no longer visible in reality among indigenous peoples?, the answer is; The UUPA has emphasized that if it no longer exists, there is no need to revive it. Meanwhile, even if the fact is that the customary rights still exist (for example; the customary rights of the Ammatoa Kajang and Tanatoraja Customs), then its implementation must be in accordance with the national and state interests (Article 33 paragraph (3) of the 1945 Constitution jo Article 2 of the UUPA. Means; customary rights, must not conflict with other laws and higher regulations (see Article 7 paragraph (1) of the Law. No.12 of 2011 concerning the Order of Legislation). In fact, the UUPA itself emphasizes that the strengthening of customary rights must be followed by land use planning and land reform activities.

2. Understanding Land Use Rights

According to the legal norms contained in the UUPA, the right to use business is only intended for agricultural, fishery or livestock companies to cultivate lands that are directly controlled by the State and given a certain period of time. Are customary right lands including land controlled by the State, and can be built into land with business use rights? This needs to receive attention from the Government (State), because the existence of the right to use business in the UUPA jo Regulation of the Head of BPN No. 3 of 1992 is given a maximum period of 35 years and can be extended for a period of 25 years, and can be renewed for 35 years and can be extended again for 25 years (cumulatively for 120 years). and can be transferred and transferred to other parties as long as it meets the conditions specified in the laws and regulations, meaning that it must not be based on a lower regulation (hierarchy) and must be registered in accordance with the provisions of the law on land registration.

How wise the Government is to provide opportunities for land ownership for 120 years for entrepreneurs with large capital through the granting of business use rights, so that there needs to be periodic supervision so that these land plots remain productive for the improvement of the welfare of all Indonesian people. The policy of determining the period of non-business use is intended as one of the government's efforts to attract investors to invest in Indonesia. However, for entrepreneurs who are clearly proven to have violated the provisions of Indonesian land law, or are no longer qualified as holders of business use rights, they should be given relatively heavy sanctions in the form of abolition or revocation of business use rights.

In this regard, the UUPA also provides certain limitations that can cause the abolition of business use rights, including:

a. The term expires;
b. Terminated before the end of the term due to a condition that does not
c. Fulfilled;
d. Released by the right holder before the expiration of its term;
e. Revoked in the public interest;
f. Abandoned;
g. The land was destroyed;
h. No longer qualified as the holder of the right to use uasaha.

Empirical Facts of Man Vayat VS Land Use Rights

How is the existence of customary right lands, if they are linked to land with land use rights? Some research results provide scientific information about the existence of a reverse cycle, where customary rights are increasingly eroded (weakened) while business use rights are increasingly strengthened. One of the strengthening tools for the right to use business is the

issuance of the Regulation of the Head of BPN No. 3 of 1992. However, the substance regulated in it (the length of the time period) is allegedly contrary to its basic regulations (Article 29 of the UUPA). Policies that violate the basic rules (Article 7 paragraph (1) of the Law. No.12 of 2011 concerning the Order of Legislation), if not anticipated, it can trigger public turmoil to resist (demonstration).

In Bandar Lampung, not a small area of customary right land is gone, because it is converted into oil palm plantations with the status of business use rights, causing losses to the indigenous people concerned. In addition, there are several indigenous groups that dispute customary rights land that have been controlled by entrepreneurs with large capital through business rights facilities. Such a government policy, as if reviving the right of erfacht as stipulated in the Agrarische Wet 1870). As a result, indigenous peoples are very disadvantaged, because they have lost agricultural land (plantations) that have been processed into a source of family income. At least it has shifted the legal principle of the UUPA, "land for farmers is changed into land for entrepreneurs with large capital".

Indonesian land law practitioners and theorists do not have the same perception of the existence of land expanses with customary rights so that they are used as objects to be determined as business use rights through the concept of the right to control the state (the right of disposal). The existence of this difference in perception is reminiscent of a land dispute between residents (as the plaintiff) versus Pertamina (as the defendant). Similarly, the case is with agricultural land covering an area of ± 300 hectares in Jatimulyo and Way Huy Villages in South Lampung, where customary land plots are considered free state land (vrij landsdomein) so that the government issues business use rights on the land plots concerned.

Furthermore, regarding efforts to weaken customary rights and strengthen business use rights, it is inseparable from the regulation itself (for example; Regulation of the Head of BPN No. 3 of 1992). The same issue was highlighted by Boedi Harsono in his article "Land Law Reform in Favor of the People" edited by Brahmin Adhie and

Hasan Basri Nata Menggala, found the legal fact that through the issuance of laws and regulations, various facilities and means are provided to facilitate and ensure the acquisition, control and use of lands...., including customary lands of customary law communities in the form of forests. In fact, various television media have reported how many and vast customary rights lands have been used as "Tool Roads" to trigger demonstrations by the indigenous peoples concerned. The encouragement of demonstrations from indigenous peoples whose customary lands are used as a tool has been predicted in John Finley Scoot's theory as a reflection of human existence as a social creature that responds very strongly to the interactions it has with other members of society. The goal is to jointly defend the land plots of customary rights.

Is it possible that in the middle of the metropolitan city there are plots of land with customary rights?, if possible, there will be no bloody Koja incident. The background of this embarrassing event is due to the difference in perception of "the right to control the state over land" and "the customary rights of the Betawi indigenous people". Examples; the action of the Jakarta Pamongpradja Police Unit (Satpol.PP), which on Wednesday, April 14, 2010 had made a fatal mistake. The mistake occurred during the eviction of land in Koja, North Jakarta, so that victims fell both from the Satpol.PP itself and from the community members who defended the land, because on the land there was the grave of one of the spreaders of Islam (Habib Koja). This embarrassing event is known as the Bloody Koja. If the Jakarta Regional Government officials, considering the call for "Social Function on Land" (Article 6 of the UUPA), it is likely that the Koja Berdarah incident would not have occurred.

Land political pressure contained in Article 6 of the UUPA, reads; All land rights have a social function, intended so that each plot of land is truly utilized as it should, beneficial to its owners and beneficial to the community. Therefore, the social function of land rights can at

least be used as a compromise to avoid the collision of weakening customary rights from strengthening business use rights. The social function of land rights as regulated in Article 6 of the UUPA, must still refer to the legal provisions contained in Article 33 paragraph (3) of the 1945 Constitution. Where the existence of the State is still awaited, in order to eliminate the dispute between customary rights and business use rights.

CONCLUSION

Based on the description and explanation above, it becomes increasingly clear that the UUPA (UU.No. 5 of 1960) needs to be reviewed and adjusted to the development of community law. The effort to reform the UUPA is to maintain the existence of customary rights and business use rights in the Indonesian land law system. Customary rights are maintained, as long as their existence can be held accountable and do not conflict with the provisions of the applicable law, and from it is attached the social function of land rights.

Similarly, the existence of business use rights is given a relatively long period of time, so it is necessary to carry out continuous supervision. If the results of the supervision prove that there is a violation of the holder of the right to use the business in using and utilizing, then the person concerned must be sanctioned (criminal, civil and state administration). If the holder of the right to use the business no longer meets the conditions stipulated in the laws and regulations, the right to use the business concerned should be revoked or abolished.

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