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Ulayat Land of Customary Law Communities Post Efforts to Administer Ulayat Land in Indonesia

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Abstract: Failure to achieve the objectives of the law results in legal conflicts, in this case if there is a difference in treatment of customary law communities, it has the potential to result in the loss of customary law community customary rights over their customary forests, thus causing customary law communities to have difficulty in obtaining natural resources from the forest to meet their living needs. This study uses normative legal research using data collection techniques through literature studies and documents or archives. The results of this study are that the Regulation of the Minister of Agrarian Affairs has regulated the recognition of customary law communities and the granting of rights to customary law communities and customary institutions, the area where customary rights take place, the relationship, connection, and dependence of customary law communities with their areas, and the authority to regulate the use of land in their respective areas together. The public dimension of customary rights can be seen from the authority of customary law communities to regulate land/areas as their living space related to their use.

1. Introduction

The land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, is the sound of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, after this referred to as the 1945 Constitution. The state controls the land, water, and space, both those that have been claimed and those that have not been claimed. The contents of the rights limit the state's power over land that already has a legal basis, but over land that does not yet have a legal basis, the state's power is broader and fuller. The state's power over this land is also limited by the customary rights of the customary law community; the limitation of state power by these customary rights in Article 3 of the UUPA is regulated by several conditions, namely as long as it still exists in reality, by national interests, and must not conflict with higher laws and regulations.

Control of land still contains an element of togetherness, known as communal rights to land, which are joint ownership rights to the land of a customary law community or joint ownership rights to land given to communities in certain areas, control of which is based on the Regulation of the Minister of ATR/Head of BPN No. 10 of 2016.[1]

[1] Wimba Roofi Hutama, Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019, *NOTAIRE* Vol. 4 No. 3 (2021) 491.

Customary Law is "law that is not based on regulations made by the former Dutch East Indies Government or other instruments of power that were the basis and were held independently by the former Dutch government."[2] Land is an essential and fundamental thing because of its unchanging (permanent) nature and its protective function.[3] For example, land has various functions, including a place to live, a place to reside, a place to do activities, and a medium for planting. The development of law in Indonesia has changed in a substantial direction, which meets the demands of the times, social, cultural, economic and political demands.[4]

The concept of HMN is also contained in the Forestry Law. However, in reality, the Forestry Law that emerged at the beginning of the reform era was not as expected by the Indonesian people, especially by the customary law community; this law is considered to have failed to shift the dominant influence of the Government in terms of control of customary forests so that the position of the customary law community regarding the control and management of natural resources in the forest area is still marginalized.[5] Indigenous communities are a group of people who have the same feelings in a group, living in one place or region because of genealogy or geological factors. Moreover, indigenous communities have customary laws that regulate rights and obligations on material and immaterial goods. Furthermore, indigenous communities also have social institutions, customary leadership, and customary justice that are recognized by groups within the scope of the customs.

The Forestry Law classifies customary forests into state forests where this classification has the effect that forests owned by customary law communities are hereditarily under the control of the State, and their status is less recognized. "Customary forests are only subordinate or sub-sections of state forests, as stated in Article 5 paragraph (2) of the Forestry Law. As a result, millions of hectares of customary forests are a source of livelihood for customary law communities that are seized and experience stabilization."[6] To support the paradigm of development dominated by the Government, many laws and regulations are enacted that are meaningful as government law, in the sense that the rules that are enforced only merely show the power of the Government by ignoring or setting aside other laws that exist in society, for example, customary law. So, the law that is applied and developed by the Government is repressive.

This repressive legal model has the following characteristics: community rights are formulated ambiguously, on the one hand their existence is recognized but on the other hand their absolute limitations are imposed, and even their existence is explicitly ignored in laws and regulations; criminological stigmas are included to displace the existence of community rights to natural resources, with the predicates of "forest encroachers", "forest product looters", "illegal cultivators", "shifting cultivators", "unlicensed miners", "wild grazers", "forest destroyers" and others."[7] The Forestry Law also provides different treatment to customary law communities as legal subjects; in

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2 Surojo Wingnjodipuro, *Pengantar dan Asas-Asas Hukum Adat*, (Jakarta: Gunung Agung. 1983) 15.

3 Indraprasta Bagus Bramantyo, Analisis Yuridis Penatausahaan Tanah Ulayat Masyarakat Hukum Adat, *NOVUM : JURNAL HUKUM*, 167.

4 Thontowi, J., Perlindungan dan Pengakuan Masyarakat Adat dan Tantangannya dalam Hukum Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 20(1), (2016) 21–36.

5 Erwin Dwi Kristanto, *UU No.41 Tahun 1999 Paska Putusan-Putusan Mahkamah Konstitusi*, (Jakarta, HUMA, 2014) 6.

6 *Ibid*

7 Fifik Wiryani, *Reformasi Hak Ulayat Pengaturan Hak-Hak Masyarakat Adat dalam Pengelolaan Sumber Daya Alam,* (Malang, Setara Press, 2009) 7.

the Forestry Law, there are 3 (three) legal subjects, namely the State, customary law communities, and rights holders (individuals or legal entities).

The State can control land and forests. Likewise, rights holders can also have rights to their forests, but customary law communities are not regulated regarding their rights. The failure to realize justice will cause legal problems, and it will be the same if it is juxtaposed with different treatment of customary law communities. It can be ascertained that there is the potential for the loss of traditional rights of customary law communities over their customary forests, thus having an impact on the difficulty of customary law communities in obtaining natural resources from the forest for their living needs.

The loss of these rights is sometimes done arbitrarily, so it is not uncommon for it to result in conflict between customary law communities and rights holders. Conflicts within customary groups require a harmonious resolution or through family deliberation; not a few customary problems will develop into large ones and have the potential to cause chaos in customary communities over a considerable amount of time. The upheavals that occurred were what caused several representatives of the customary law communities to join together in an organization called the Alliance of Customary Law Communities of the Archipelago (AMAN), the Customary Law Community Unity of Kuntu Riau, and the Customary Law Community Unity of Kasepuhan Cisitu Banten.[8] They filed a judicial review or material test to the Constitutional Court of several articles in the Forestry Law. The articles that were submitted for the material test were Article 1 number 6, Article 4, paragraph (3), and Article 5, paragraphs (1) to (3).

After going through several trials, finally, on May 16, 2013, the Constitutional Court Judge decided to grant several of the applicant's requests, which, in their decision, basically stated that the Forestry Law, which has so far classified customary forests as state forests, is a form of neglect of the rights of customary law communities and violates the constitution so that customary forests are removed from their position as part of state forests to become part of rights forests.[9] The decision of the Constitutional Court of the Republic of Indonesia on case Number 35/PUU-X/2012 concerning the Material Review of the Forestry Law (from now on referred to as the Constitutional Court Decision Number 35) also explicitly states: "The position of customary forests is part of the customary land of customary law communities, customary forests (also called clan forests, master forests, or other terms) are within the scope of customary rights because they are in a single territorial unit (territory unity) of customary law communities, whose implementation is based on ancestors (traditio) who live in a people's atmosphere (in de volksfeer) and have a central administrative body that has authority throughout its territory."[10]

After the issuance of the Constitutional Court Decision Number 35, it turns out that it does not automatically mean that indigenous legal communities can take over control of their customary territories from the State. According to Yance Arizona in his paper, "operational and integrated legal steps are still needed to follow up on the Constitutional Court's decision in the field."[11] Namely,

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8 Putusan Mahkamah Konstitusi Republik Indonesia atas perkara Nomor 35/PUU-X/2012 tentang Uji Materiil Undang-undang Kehutanan.

9 Putusan Mahkamah Konstitusi Republik Indonesia atas perkara Nomor 35/PUU-X/2012 tentang Uji Materiil Undang-undang Kehutanan, 173-174.

10 *Ibid*, 172-173.

11 Yance Arizona, *Peluang Hukum Implementasi Putusan MK 35 ke dalam Konteks Kebijakan Pengakuan Masyarakat Adat di Kalimantan Tengah,* Makalah dalam Lokakarya "*Fakta Tekstual (Quo Vadis) Hutan Adat Pasca Putusan MK No.35/PUU-X/2012*", Palangkaraya 20 November 2013 yang diselenggarakan oleh AMAN Kalimantan Tengah dan WWF Program Kalimantan Tengah

with the requirement of recognition of customary law communities so that the State can fully recognize the rights of customary law communities over their customary territories.

After the reading of the Constitutional Court Decision Number 35, customary forests, which were previously regulated under the Ministry of Forestry, were transferred to the Ministry of Agrarian Affairs and Spatial Planning. In 2015, the Ministry of Agrarian Affairs and Spatial Planning issued a new policy to implement the objective of the Constitutional Court Decision, namely to protect the rights of Indigenous peoples, by enacting the Minister of Agrarian Affairs Regulation Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Residing in Certain Areas (State Gazette of the Republic of Indonesia 2015 Number 742) (from now on referred to as the Minister of ATR Regulation Number 9 of 2015) and simultaneously revoking the Minister of Agrarian Affairs Regulation Number 5 of 1999 concerning Guidelines for Resolving Customary Rights Issues of Indigenous Peoples which regulates issues related to customary rights of indigenous peoples. Regulation of the Minister of ATR Number 5 of 2015 was revoked by Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Residing in Certain Areas (from now on referred to as Regulation of the Minister of ATR Number 10/2016), the issuance of the Regulation was due to the consideration that in order to guarantee the rights of customary law communities and the rights of communities residing in certain areas who have controlled the land for an extended period, protection needs to be provided in order to realize the land as much as possible for the prosperity of the people.

Communal rights to land are joint ownership rights to a customary law community land or joint ownership rights to land given to communities residing in certain areas. Such joint control can be registered, and the registrant can be given proof in the form of a certificate containing physical data and legal data. Legal data, according to Article 1 number 11 of the Regulation of the Minister of ATR Number 10/2016, is information regarding the legal status of land plots and apartment units registered by their rights holders and the rights of other parties and other burdens that burden them. The definition of physical data according to Article 1 number 12 of the Regulation of the Minister of ATR Number 10/2016 is information regarding the location, boundaries and area of land plots and apartment units that have been registered, including information regarding the existence of buildings or parts of buildings on them.

The land rights regulated in Article 1 number 15 of the Regulation of the Minister of ATR Number 10/2016 are as regulated in Article 16 of the UUPA. About this, as is known, the various types of land rights in Indonesia are regulated in Article 16 paragraph (1) of the UUPA. However, this article does not include the type of communal land rights, so the communal land rights regulated in this Regulation of the Minister of ATR are a new type of land rights. The commitment of the Government in its legal reform related to the protection, respect, and recognition of the rights of Indigenous legal communities, especially those related to agrarian rights over natural resources, by the Indigenous Legal Community Alliance of the Archipelago (AMAN) in its journal entitled "Year-End Notes of the Indigenous Legal Community Alliance of the Archipelago 2015" is said to be still not felt. According to AMAN in its journal, the Ministry of Agrarian Affairs and Spatial Planning is considered to have ignored the reality of land ownership in the community, namely by enacting the ATR Regulation Number 9 of 2015, where this Regulation has simplified the concept

of Ulayat rights into Communal Rights.[12] Land registration is carried out to ensure legal certainty of land rights as stated in Article 16 of the UUPA so that the absence of communal rights in the article creates a vagueness of norms related to the registration of communal rights to land.

In addition to the above, there are still many differences in understanding, interpretation or multiple interpretations regarding the requirements for the recognition of customary land; even various provisions of laws still place customary land in different and conflicting positions, thus causing conflict in efforts to control customary land. The purpose of regulating customary land and its utilization is to continue to protect the existence of customary land according to customary law and customary law. Communities can benefit from land, including natural resources, for the continuity of life and life from generation to generation and uninterrupted between customary law communities and the areas where they live. Utilization of customary land by members of customary law communities can be carried out with the knowledge and permission of the relevant customary ruler by the provisions and procedures of applicable customary law.[13]

Research related to the protection of customary land or efforts to resolve customary land disputes is vital because Indonesia still has much customary land. Unfortunately, not much customary land has been registered by the provisions of the ATR Ministerial Regulation No. 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Community Units. The absence of official documents recorded regarding customary land, including regarding the ownership of the clan or tribe and the boundaries of the land, opens up the possibility that certain parties will then make certificates for the land without the approval of the tribal chief.

2. Method

This research is Normative Legal Research and a legal research method which is carried out by researching library materials or secondary materials only.[14] The approach used in this study is the legislative approach, namely an approach that prioritizes legal materials in the form of laws and regulations as basic reference materials in conducting research. Data collection techniques in this study were carried out by studying legal material literature. The search for legal materials was carried out by reading and searching through internet media and documents. The data analysis used was descriptive qualitative, namely by explaining secondary data obtained from library research to obtain a conclusion as an answer to the formulation of the problem.

3. Legal Certainty Regarding the Recognition and Determination of Customary Land of Customary Law Communities in the 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

Customary land is owned collectively by the customary law community, which is believed to have magical religious properties left by ancestors and is the main supporting element for the live-

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12 Aliansi Masyarakat Hukum Adat Nusantara (AMAN) dalam jurnalnya yang berjudul "*Catatan Akhir Tahun Aliansi Masyarakat Hukum Adat Nusantara 2015*", 5.

13 Kurnia Warman dan Syofiarti. "*Pola Penyelesaian Sengketa Tanah Ulayat di Sumatera Barat (Sengketa antara Masyarakat vs Pemerintah)*", Masalah-Masalah Hukum 41, No. 3 (2012). 407-415.

14 Soerdjono Seokanto dan Sri Mamudji. 1994. Penelitian Hukum Normatif Suatu Tinjauan Singkat. (Jakarta: Raja Grafindo Persada) 23.

lihood and life of the customary law community throughout time or period, with the communal nature of customary land ownership.[15] Constitutionally, customary law communities' customary rights are owned by customary law communities where these rights must be respected. Article 28 I, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution) states that cultural identity and traditional rights must be respected in line with development and civilization.

The customary rights of customary law communities were recognized by the State for the first time and are stated in the UUPA. As a law that regulates national land, customary rights in the UUPA where Article 3 states that: "taking into account the provisions in articles 1 and 2, the implementation of customary rights and similar rights from Customary Law Communities, as long as in reality they still exist, must be such that they are by national and State interests, which are based on unity and other higher regulations."

Furthermore, in its implementation, the Customary Rights of Customary Law Communities are regulated by Permen ATR/BPN No. 18 of 2019 as the implementing regulation for the Customary Rights of Customary Law Communities. This implementing regulation of Customary Rights guarantees legal certainty in implementing Customary Rights of Customary Law Communities.

Article 5 of the Regulation of the Minister of ATR/K BPN No. 18 of 2019, which states: (1) To guarantee legal certainty, the Government organizes the administration of customary land of Customary Law Community Units throughout the territory of the Republic of Indonesia; (2) The administration of Customary Land of Customary Law Community Units as referred to in paragraph (1) is carried out based on the determination of recognition and protection of Customary Law Community Units as referred to in Article 3; (3) Applications for the administration of Customary Land of Customary Law Community Units are submitted to the Head of the local Land Office. (4) The administration of Customary Land of Customary Law Community Units includes: a. Measurement; b. Mapping; and c. Recording in the land register."

Article 5, paragraph (2) stipulates that the Administration of Customary Land is carried out for Customary Law Communities that have received a determination of recognition and protection of Customary Law Communities as stipulated in Article 3. Article 3 of the Regulation of the Minister of ATR/K BPN Number 18 of 2019 states that the provisions of laws and regulations carry out the determination of recognition and protection of Customary Law Community Units. "Regarding the determination of recognition and protection of Customary Law Communities, Article 18B paragraph 2 of the 1945 Constitution contains provisions stating that the State recognizes and respects customary law community units along with their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

Although until now, there has been no law that specifically regulates Customary Law Communities, regulations regarding the determination of recognition and protection of Customary Law Communities are regulated in sectoral laws. The provisions of Article 2 Paragraph (4) of the UUPA and Article 3 of the UUPA legally affirm that customary property is recognized as long as it meets the requirements, namely its existence and federal and state legal interests, and does not conflict

[15] Boedi Harsono, *Hukum Agraria, Sejarah Pembentukan Isi dan Pelaksanaannya,* (Jakarta: Djambatan,*2008*) 102.

with stricter laws and regulations. These prerequisites, when connected with the provisions of Article 18 B paragraph (2) of the 1945 Constitution, actually have the same meaning regarding the criteria for recognition and protection by the State of the existence of customary law communities. This shows that the rights of customary law communities have been recognized by law.[16]

Soetandiyo Wignjo Soebroto stated that the four conditions are legal standards that the government must consider in recognizing the existence of customary law communities, and it is also clear that the national government must secure the state of the nation's interests with its central position, must still be prioritized. He stated that it is inevitable that the "recognition" mentioned in the legislation will be interpreted, both ipso jure and ipso facto, as "recognition" that must be requested, with the burden of showing the existence of a common law community. This is done by the indigenous people themselves, by the strategy of recognizing or not recognizing that they are under the central government's control.[17] These customary rights are attached to regulations for managing and utilising customary land in customary law communities. In technical legal terms, land regulation for legal certainty is regulated in Government Regulation 24 of 1997 concerning Land Registration.

According to the provisions of Article 1 paragraph (1) of PP No. 24 of 1997 concerning land registration, it is stated that: "Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and legal data, in the form of maps and lists, regarding land plots and apartment units, including the provision of certificates of proof of rights for land plots that already have rights and ownership rights to apartment units and certain rights that burden them".

Article 1 paragraph (1) of PP No. 24 of 1997 shows that the government carries out land registration according to long-term and annual work plans. The primary purpose of land registration is to provide legal certainty. This is seen in Indonesia's land registration system, which uses negative publicity with opposing tendencies. From the provisions of Article 19 of the Basic Regulations on Land Principles Number 5 of 1960, the legal consequences of land registration are in the form of proof of rights, usually referred to as proof of land ownership to the holder of land rights.[18] PP No. 24 of 1997 concerning Land Registration states that if an item has been issued legally, a deed will be made in the name of a person or legal entity who believes and has absolute power over the item. Then, another party that believes it has rights to the land cannot sue for legal enforcement. If within five (5) years from the date of issuance of the certificate, no written objections are submitted to the certificate holder and the head of the relevant state office, and no action is taken against the ownership or issuance of the certificate.

Article 1 paragraph (2) of the Regulation of the Minister of ATR/KBPN No. 18 of 2019 stipulates that customary rights of standard law units or comparable customary rights of common law units are customary rights of standard law units to regulate, manage, and/or use their customary land by applicable customary values and laws. Article 2(2) of the Regulation of the Minister of ATR/KBPN Number 18 of 2019 also outlines the criteria for recognizing customary law communities and granting community rights: a) customary communities and institutions; b) The area where

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[16] Wayan Resmini, "Hak Atas Tanah Adat Dan Permasalahannya," *GARA* 13, no. 1 (2019): 120–25.

[17] Marulak Togatorop, *Perlindungan Hak Atas Tanah Masyarakat Hukum Adat Dalam Pengadaan Tanah Untuk Kepentingan Umum*, (Yogyakarta: STN Press, 2020) 32.

the Customary Rights are held; c) the relationship, connection, and dependence of the customary law community unit with its territory; and d) The power to regulate the use of land within their respective territories jointly.

After fulfilling the requirements of the legal community as referred to in Article 2 paragraph (2) of the ATR/KBPN Ministerial Regulation Number 18 of 2019, the customary law community must complete the state administration procedures regulated in Articles 5 to 17 of the KBPN Regulation Number 10 of 2016, there are three stages that the customary law community must pass to obtain legal certainty. The first stage is the application stage, in which the BPN applies to the legal area of the local customary land.

The second stage is the administration of customary land. The Administration-Administration of customary land is regulated in Article 6 of the ATR/KBPN Ministerial Regulation Number 18 of 2019, which contains three stages, namely: first, measurements are carried out on the boundaries of the customary law community's uniform land plots; second, mapping, which is carried out through land registration cards; and finally, the inscription in the cadastral, which means that the Customary Unit Land area is a receivable of the customary law community. This stage shows that legal certainty over customary land is in the customary land list through stages, namely recording in the land list, which is given a Land Plot Identification Number with a Regency/City area unit.

The system of proof of customary land as an old right can be found in the provisions of Article 24 paragraph (2) of PP Number 24 of 1997 which stipulates that: "In the event that the means of proof as referred to in paragraph (1) are not or are no longer completely available, proof of rights can be carried out based on the fact of physical control of the land area in question for 20 (twenty) years or more consecutively by the applicant for registration and his predecessors, with the following conditions: a. such control is carried out in good faith and openly by the person concerned as the person entitled to the land, and is supported by the testimony of a trustworthy person; b. such control either before or during the announcement as referred to in Article 26 is not disputed by the customary law community or the village/sub-district concerned or other parties".

The provisions of Article 24 paragraph (2) of Government Regulation Number 24 of 1997 are the legal basis for ownership of customary land that a certificate has not proved. Article 24 of Government Regulation Number 24 of 1997 stipulates physical control for 20 consecutive years and in good faith, as previously explained. About the requirement of good faith, it can be interpreted that he is the owner of the land, not the land belonging to someone else. In addition, from a factual legal aspect, the legal subject who controls the land makes the land a source of daily life on the land so that the land is managed continuously without interruption. In practice, the village government issues this physical control of the land in the form of a certificate of physical control of the land. The physical control of the land letter can be used as a guideline, reference and proof of ownership for customary law communities as long as the ownership is carried out for 20 (twenty) consecutive years, in good faith and openly and proven by the testimony of a trusted person.

The land letter's physical control can be used to prove land ownership. Customary law communities constrained by the recognition and protection regulated in PerKBPN No. 10 of 2016 can carry out land management by issuing a physical land control letter regulated in Article 24 paragraph (2) of PP No. 24 of 1997 concerning land registration. Government Regulation (PP) No. 24 of 1997 concerning Land Registration, which is regulated in Article 26, states that a statement of physical control is an alternative evidence if there is no legal evidence. The provisions of Article

24 paragraph (2) provide a legal solution if the rights holder does not have proof of ownership either in the form of written evidence or other reliable forms. Recognition and protection of the rights of customary law communities in the form of collective recognition is the government's task to guarantee the rights of customary law communities as a unit of Indonesian citizens. Collective recognition of the existence of legal communities is the main thing, as is the level of development of recognition of customary communities, which has also been carried out in the international world.

4. The Existence of Customary Land After Efforts to Administer Customary Land of Customary Law Communities in Indonesia

The basis for the implementation of Agrarian law in Indonesia is customary law as stated in Article 5 of the UUPA, as long as the customary law used as the basis does not conflict with national and state laws and interests and regulations both stated in the UUPA and other laws and regulations and everything by paying attention to elements that are based on religious law. The provisions regarding the basis for the implementation of the UUPA are customary law, where it is shown that customary law is used as the basis for agrarian law that applies nationally with the requirements including that the customary law used as the basis does not conflict with national and state interests, Indonesian socialism, laws and regulations without forgetting the elements that are based on religious law. Article 5 of the UUPA provides limitations for the implementation of customary law in Indonesia, namely that customary law is not permitted to conflict with national and state interests that are based on national unity, with Indonesian socialism and with regulations stated in the UUPA and other laws and regulations, everything by paying attention to elements that are based on religious law. However, if we look at the provisions of Article 5 of the UUPA, customary law is legally in an essential position in the national agrarian legal system. Unfortunately, various problems often arise in determining and actualizing customary law, which is the basis of national agrarian law.[19]

The customary law that is used as the basis for national agrarian law is not the original customary law that applies in the customary law community unit, but rather customary law that has been reconstructed, perfected, and sanitized, which, according to Moch Kosnoe is considered to be the customary law in the UUPA that has been lost materially, due to the influence of institutions and characteristics of western law or has gone through a process of modification by Indonesian socialism so that all that remains is its formulation.[20]

The application of customary law as the basis for the UUPA cannot be separated from the history of agrarian law that the civil agrarian legal system is "dualistic and even pluralistic, namely with the application of western civil law for non-indigenous people and the application of customary agrarian law for Indigenous people". The customary law applied is "customary law that has been perfected or disaneer, so that its application does not conflict with other laws and regulations by paying attention to elements based on religious law. Therefore, the granting of a National nature with this improvement is expected to be able to bridge the problems that arise regarding Na-

[18] Aartje Tehupiory, *Pentingnya Pendaftaran Tanah Di Indonesia,* (Jakarta: Raih Asas Sukses, 2012) 21.
[19] Ida Nurlinda, *Prinsip-Prinsip Pembaruan Agraria Perspektif Hukum,* (Jakarta: Rajawali Pers, 2009), 48.
[20] *Ibid.*

tional land law based on customary law, namely, where the location/position of customary law is about National land law, which is as much as possible stated in the form of laws and regulations".

Customary rights are found in the provisions of Article 3 of the UUPA, which states that customary rights and similar rights from customary law communities, as long as they still exist, are still recognized. Customary rights, according to the Explanation of Article 3 of the UUPA, "what is meant by "customary rights and similar rights" is what is called beschikkingsrecht in the customary library. beschikkingsrecht for the equivalent of the term "customary rights" or "ownership rights". Customary land rights are also found in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (PP No. 18 of 2021) regulates customary land as Article 1 number 13 island located in the area of control of the customary law community which in reality still exists and is not attached to any Land Rights.

This article defines customary land no different from other definitions of customary land, namely that the land is located in the area of control of the customary law community, which in reality still exists, and the customary land is not attached to any land rights. The land rights referred to are the land rights as Article 16 paragraph (1) of the UUPA. Cornelis van Vollenhoven says customary rights are, "Beschikkingsrecht is a right to land that exists only in Indonesia, a right that cannot be divided and has a religious basis."[21] The issuance of Permen ATR No. 18 of 2019 with the consideration that Indonesian national land law recognizes and respects the existence of traditional rights from customary law community units or similar, as long as, in reality, they still exist and are by the development of society and the principles of the unitary state of the Republic of Indonesia.

In reality, currently, there are still customary lands of customary law community units whose management, control and use are based on local customary law provisions and are recognized by the members of the relevant customary law community unit". If communal rights to land are registered so that there is legal certainty, but in the control of customary land rights, there is no registration of customary land rights, but rather the Administration of Customary Land of Customary Law Community Units. However, in Permen ATR, there is no explanation for land administration. Land administration is intended to guarantee legal certainty; the Government organizes the administration of Customary Land.

Administration of Customary Land of Customary Law Community Units is carried out based on the determination of recognition and protection of Customary Law Community Units, as per Article 3 of Permen ATR No. 18 of 2019. This means that the administration of customary land rights is based on the determination of recognition, which is the basis for controlling customary land rights to obtain legal protection. Customary land rights controlled by community units in their implementation do not apply to land areas that, at the time of determination, have been controlled by individuals or legal entities with certain land rights or that have been obtained or released by government agencies, legal entities or individuals by the provisions of laws and regulations, as per Article 4 of the Regulation of the Minister of ATR No. 18 of 2019. This provision shows that customary rights are only granted to customary law community units based on the determination of recognition only to land areas that have not been controlled by individuals or legal entities

[21] I Made Suwitra, 'Konsep Komunal Religius Sebagai Bahan Utama Dalam Pembentukan UUPA Dan Dampaknya Terhadap Penguasaan Tanah Adat Di Bali', *Jurnal Perspektif* (2010) 15,. 13.

with certain land rights or that have not been obtained or released by government agencies, legal entities or individuals.

Application for administration of Customary Land of Customary Law Community Units is submitted to the Head of the local Land Office. Administration of Customary Land of Customary Law Community Units, including measurements carried out on the boundaries of the Customary Land of Customary Law Community Units that have been determined. Mapping of Customary Land of Customary Law Community Units in the land registration map, Recording in the land register. Customary Land of Customary Law Community Units is given a Land Plot Identification Number with a Regency/City area unit, per Article 5 and Article 6 of ATR Regulation No. 18 of 2019. The above matters related to the administration of customary land are intended to ensure certainty that there are still members of the customary law association or other people whose existence has permission from the association head. The community is given the right to collect or utilize wild lands in their authority area, and the community is prohibited from transferring the land whose benefits are taken.

The guarantee of legal certainty given to the community holding customary rights to the land is related to obtaining legal certainty. This means customary rights grant rights to customary law communities as subjects holding customary rights to land to take advantage of controlled, not owned land, so customary rights holders to land are not obliged to register their rights. Customary rights as common property to ensure legal certainty, land administration is carried out, which includes measuring the boundaries of the customary land that has been determined—mapping of land areas in land registration maps.

Measurement and mapping are carried out using the rules for measuring and mapping land areas. Based on the description and discussion mentioned above regarding the characteristics of customary law communities' customary rights after the issuance of Permen ATR No. 18 of 2019 concerning Procedures for Administration of Customary Land of Customary Law Community Units, it can be explained that communal rights to land that have been issued before the enactment of this Ministerial Regulation, are declared to remain valid, as per Article 7 of Permen ATR No. 18 of 2019. However, Permen ATR No. 10 of 2016 has been revoked by Permen ATR No. 18 of 2019; communal rights to land, both subjects, objects and legal certainty regarding the registration of communal rights to land are different from customary rights to land as regulated in the Regulation of the Minister of ATR No. 18 of 2019, the revocation legally does not affect the existence of communal rights to land.

5. Conclusion

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 has regulated the recognition of customary law communities and the granting of rights to customary communities and institutions, areas where customary rights take place, the relationship, connection and dependence of customary law communities with their territories, and the power to regulate land use in their respective territories jointly. However, this recognition is not immediately binding because customary law communities must still complete the state administration procedures regulated in Articles 5 to 17 of the Regulation of the Head of the National Land Agency Number 10 of 2016, which consists of 3 stages. In addition to this, recognition of the existence of customary land must also be accompanied by recognition of the ex-

istence of customary law community units by the local Regional Government; this is what is still a potential dispute between customary law community units and the Regional Government because it does not yet exist.

The law explicitly protects the customary law community that still exists in Indonesia. The characteristics of customary law community customary rights are that customary rights to the land are controlled by the customary law community, namely a community that lives in groups, passed down from generation to generation based on ties of origin/ancestors or the same place of residence, has the same culture, lives in a particular area, has customary property that is jointly owned, has customary institutions containing sanctions, as long as it is still alive according to developments and does not conflict with national law. The customary rights have a public dimension, as seen in the authority of the customary law community to regulate land/area as its living space related to its use, including its maintenance, has a civil dimension because there is a legal relationship between the customary law community and its land and legal acts related to the land of the customary law community.

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