

Juridical Overview Of Ulayat Land Dispute Resolution And Its Existence

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Abstract. This study give clear picture about complexity conflict land ulayat in Indonesia and its importance confession as well as protection to right customary law as solution for solution conflict in public. This study use approach qualitative juridical with dig depth presenting issue analysis deep . Emphasis on recognition and protection right customary law as part from system law agrarian national show that awareness importance enter values local and wisdom local in regulations law national. This is important No only guard justice for public custom but create certainty necessary laws for all holder interest. Confession to right customary law No only formal , but also necessary accompanied with effective implementation in the field . This matter covers improvement awareness and understanding public as well as enforcement consistent law, and justice from party authorized . Customary rights as alternative solution conflict land that has not resolved, therefore with approach in a way holistic and inclusive in solution dispute land customary, can contribute in create environment conducive and stable social, economic, and political, as well support realization orderly administration land in a way overall in Indonesia.

1. INTRODUCTION

In perspective knowledge emphasized law the importance of "living law" in the realm public , as proposed by Karl Von Savigny, that law is product from context historical and cultural a public . In context law agrarian Indonesian national , this leads to recognition to law traditional or right customary law as politely as possible well established rules in regulation legislation agrarian . The National Agrarian Law (HAN) has recognizes two types system law custom ;, ie right ulayat (rights land customs) and rights on land individual . Customary rights referring to the source Power customary nature (SDA) which is dominated by tradition buhun , incl land , water and natural resources contained therein . Constitution Number 5 of 1960 concerning Regulation base Basics Agrarian Affairs (UUPA) has accommodate rights land custom with limitation certain things that have to be done fulfilled . One of limitation main is that right customary law is must be implemented along relevance national or not leaving behind with applicable legislation .

Existence customary law in the UUPA reflects principle that law agrarian must acknowledge and respect limitation tradition law life in society (*living law*) at a time ensure that its implementation in line with interest national regulations and applicable legal norms . Difference understanding and interpretation about condition right customary law as well as multiple interpretations to provision legislation of course become challenge in implementation of HAN based on law custom . This matter reflect complexity in accommodate diverse context local , cultural , and existing interests in society . Nonconformity between various provision legislation and multiple interpretations to right customary law can result obscurity in implementation law agrarian , which in turn can produce conflict political , economic , and social . Even though the UUPA has give room special and regulating values main in defend people's interests , however challenge in its implementation appears frequently Because exists contradiction between interest local and interests national , as well between interest economics and sustainability environment .

There are many rules below published laws For arrange HAN implementation , however its success Not yet fully materialized in a way intact . This shows necessity effort more carry on in align various provision legislation , strengthening mechanism enforcement law , and improve participation public in the retrieval process decision related utilization of natural resources is step important For ensure emerging policies consider diverse interests and perspectives society , especially in context right customary law . On the side problems faced that understanding and interpretation about right customary law as well as provisions related in legislation is challenge Serious in implementation policy agrarian affairs in Indonesia. Multiple interpretations or difference interpretation to

requirements and placement right customary law in various provision law indicated exists complexity in handle issue agrarian , esp in related context with rights customary law .

Nonconformity between various provision applicable law can create ambiguity and uncertainty law , which in turn can worsen conflict agrarian and detrimental public custom . Apart from that , there are obstacles politics , economics and social matters too complicate things implementation policy inclusive and just agrarian affairs . Despite the current UUPA This assessed has embrace all people's needs , will but challenge in implementation No can considered trivial . Required effort concrete For overcome problems , including ;

1. Alignment and harmonization various provision related laws with right customary law and society custom For reduce ambiguity and conflict interpretation .
2. Strengthening mechanism protection law to right customary law at a time For preservation rights public custom , incl monitoring and enforcement effective law .
3. People's aspirations as confession from country to involved in various policy connect with natural resource management in the region where law life That applies in public custom .
4. Development of development programs based on principles sustainability and justice with notice needs and interests public custom .

Success implementation policy agrarian as it happens hope society and conditions state law in particular prickly land national need Work hard , collaborative between various party related , as well strong commitment from the country as well government as holder interest use create more system fair and sustainable . Uncertainty law , lack of protection laws , and lack thereof justice in implementation regulation executor about agrarianism problem classics that don't Once clear finishes has Lots harm society , especially natural resources and agrarian affairs exploited society the other party without notice interests and rights communities who have customary territories during hundreds year .

Confession to existence land customary law is very important Because concerning right custom on land customary law they . In various area , rights customary law This often called with different names , show diversity culture and traditions in Indonesia. In Maluku Province , Ambon City , for example , is known with the name "Hak Patuanan " , while in Kalimantan it is called " Panyampeto " or " Pawatasan " . In Java, the term is used is " Wewengkon " , while in Bali it is known with the name " Prabumian " . In Bolaang Mangondow , society use the term " Tatabuan " , while in Sulawesi, is known with the name " Wanua " or "Limpo". In Minangkabau, the name is used is " Ulayat " . All term This refers to the concept traditionally held public deep old customs management , and utilization land they .

Article 1 (1) Minister of Agrarian Affairs / Head of BPN Regulation Number 5/1999 concerning " Guidelines "Resolving Customary Law Communities' Customary Rights Problems , " explained that right customary law and similar rights with him refer law existing life in public customs in the area the . Customary rights is right mastery highest in public law custom certain on land which is possession with its citizens . Although Thus , provisions UUPA also provides limitation related with existence from right customary law public law custom . Authority This possible public For utilise source Power natural one area land , which is intended For continuity life and existence from generation to generation with provision enforced customs as law customs in the area concerned .

Ownership rights highest in public custom is customary law . This right has two components that is aspect law civil and aspects state law . Subject the law is public custom Good in regional context as well stated genealogy (heredity) . in a way custom is right owned by custom inhabitant his country . Customary land constitute land ancestors existing traditions right in a way together by members covered citizens in a way law each other's customs . Head rights ethnic group custom is administrator its citizens in a way law customary and entitled , dominating , guarding , and directing utilization land together . Indigenous rights in this country can covers various type land like land agriculture , plantations , fields grass , graves , ponds , rivers and forests as well as source Power natural other .

Existence land customs during Dutch colonialism , according to Maria SW Sumardjono , " Recognition right custom as law life has There is before formation of the Republic of Indonesia. This

reflects award to diversity culture and systems existing laws in Indonesia. Confession to right customary law and law customs are also important For ensure justice and prosperity for living society based on system the . Honor right customary law and law custom , then the state establishes it connection Good with its people , and strengthen sovereignty as well as sustainability of the country.” Customary law in context right customary law No can revoked , transferred , or exiled in a way permanent (eternal). However , although right customary law recognized in a way law , its implementation often give rise to conflict in society . One of problem main is laying right custom and law custom in public No There is clarity . This matter often become root from conflict about right ulayat , esp in context implementation mastery land customary law .

Conflict often appear Because determination of the boundaries of the rights area customary law that does not clear , claim on mixed soil stir between the people, customs and government as well as party others , as well need will sustainable natural resource management . Conflict this , requires solution to clarify the boundaries of the rights area customary and public , and strengthen mechanism solution dispute , and improve participation as well as involvement taking nature of decisions right public . Dispute land custom appear consequence overlapping overlap regulation legislation . By specifically , the original UUPA become base law agrarian and so No Again effective , because There is significant inconsistencies between regulation legislation , such as which govern about right customs and procedures administration land ulayat , including : Law No.41/1999 concerning forestry , Law No.18/2004 concerning Plantations, Law No.23/2014 concerning Regional Government , Law No.39/1999 concerning Human Rights, Minister of ATR/BPN Regulation No.18/2019 concerning mechanism arrangement land customary law .

Prolonged conflict like happen in Kampar Regency in Riau Province , Indonesia, which has The area is around 1,128,928 hectares . Prolonged conflict in the Regency This related with various problems , like conflict agrarian , dispute land , tension inter-societal , or problems related development and utilization source Power nature . Solution for conflict sort of This usually involves dialogue between disputing parties , mediation , or efforts involving reconciliation participation active from parties related , incl government regions , communities and other stakeholders .

A number of time then , the district government. Kampar publishes Regional Regulation (Perda) No.12/1999 concerning Ulayat Land Rights . All order This have the same status and make the state a the goal . Conflict sectoral difficult For avoided due to different interpretations against the same law by stakeholders interests and authority emerging sectors in context dispute ownership the same land . System law land in Indonesia is rooted strong on the law custom . Customary rights , one of them form law traditional , is right controlled collective in a way collectively by custom on land natural resources in the region . This matter covers right on land , water and other natural resources including its contents . UUPA 1960 recognizes right customary law as one of the form law land with terms certain . In UUPA Article 3 emphasizes " rights custom as law life must still There is in its reality and application must in accordance with interest national as well as No OK violate provision Constitution other ." Existence customary law No OK opposite with interest national . This also reflects principle protect right custom and preserve environment and natural resources in the region .

One of obstacle main is difference interpretation and placement right customary law in various provision legislation , which causes obscurity in application and protection rights public custom . Additionally , implementation law Agrarian affairs are also affected by factors complex political , economic , and social issues . For example , there is interest parties certain things are possible want to utilize natural resources in community areas custom For profit they alone , without consider rights and interests public local . Certainty law and protection law to problem agrarian society and nature also become problem Serious . This can cause exploitation is not fair to source Power nature and society dependent custom to him .

Protection and position law customs and ulayat in Indonesia are recognized , especially various regulations and decisions court . However , challenges Still There is in implementation and protection rights at that level local , esp when happen conflict interest between citizens , companies and local governments who want it access to land customary law For interest development or investment . From illustration on interesting For studied author and describe it after researched and analyzed more deep

with answer conflict law land customary law through How confession right Indigenous Peoples in Indonesia? and how protection and position of Ulayat Rights in law in Indonesia?

2. METHODOLOGY

Approach used in study This is approach law normative . This method is one type study law that focuses on analysis to material library or secondary data , in particular law positive , as well How its implementation in practice . Approach This possible researcher For investigate connection between various regulation legislation , theoretical law , and facts empirical in its implementation to topic studied . This study chosen Because topic being researched related with connection between regulation one piece of legislation with others, esp related with existence law custom society and its protection . By using normative juridical methods, researchers can analyze legal aspects related to the topic based on relevant references, as well as considering relevant legal theories in practice.

The approach method used in study the is method approach juridical qualitative . Approach This involve analysis hierarchy legislation as well as connection between various applicable regulations , with objective For understand the extent of the regulations the implemented in a way effective by enforcers law . In study This confession existence customary law along with his protection , approach juridical qualitative possible researcher For do in -depth analysis about How existing laws implemented in practice . With see aspects qualitative like implementation , interpretation , and understanding on laws the researcher can understand dynamics and challenges that occur in the field related customary law This .

3. DISCUSSION

Recognition of Indigenous Peoples' Rights to Ulayat Land

UUPA uses draft right customary law , that is according to Article 3 UUPA: " Remembering provisions 1 and 2 apply moment this , then realization right customary law in public as law life in accordance with verses 1 and 2. Fact still Yes , there must be put first state and national interests , whether based on the Republic of Indonesia or not opposite with the law on it . However understanding custom customs explained in a way clear , except stated "... rights branches and similar rights is what 's deep literature law general called " beschikkingsrecht ". According to Roestandi Ardiwilaga " right customary law as law life in public is right a gathering law For utilize existing natural resources in its territory For interest gathering the law in the people ."

Customary rights of course related tightly with customs and culture territorial communities certain . Draft This covers rights , authority and obligations possessed by society custom to land as well as source Power nature in it , like waters , land and other natural resources that are considered owned by customs and culture public For benefit citizens and eyes livelihood life for they . Many cultures and societies custom , right customary law recognized as right traditions inherent in the community certain in exploit natural resources. This matter often based on inheritance down hereditary and traditional existing customs taking place during centuries . Important For remembered that right customary law varies from person to person area with public others , depending on tradition , custom customs , and context socio-cultural existing in the region . In some cases , recognition and protection to right customary law become debates and issues complex laws , esp in context modernization and development that impact land and resources Power nature .

According to Hans Kelsen, concept State recognition is divided into two categories ie politics and law . Aspect political from state recognition is that a country stated his wish For intertwine connection politics and relationships other with country or other recognized communities . This includes opening connection diplomatic , trade , culture and cooperation other between the countries involved . Temporary the , aspect law from state recognition involves actions law certain obligations that are binding on the granting country confession . This is possible including confession to validity government a country, recognition to sovereignty and integrity territory , as well multilateral agreements between the countries involved . With So , confession one country by another country does not only is statement political , but also involving consequence law certain rules connection between these countries .

Based on reference mentioned above , namely about importance existence law custom so recognition by the government Good in a way political nor law , which regulates about law livein public . That means the government give respect , opportunity and protection for development public law customs and rights its traditional in unitary state framework Republic of Indonesia.

Confession official by the state against right customary land and natural resources owned is step important in protection and enforcement rights the . With confess rights the in a way official , government confirm that public custom own valid claim towards natural resources in the region , as well give not quite enough answer to government For become from obstacle the other party wishes control in a way illegal . Confession official like this can also be done become base For development framework Work laws and policies that recognize and strengthen position inhabitant custom in processing natural resources so push development sustainable in a way inclusive in the region .

Confession This can materialized through various mechanism , like confession in Constitution or regulation government to existence right customary law in society , recognition in freedom in permanent natural resource manager take into account existence and needs public custom , as well confession in policies and practices maintenance respectful government rights public law custom .

According to Van Vollenhoven (in Aria Zurnetti, 2020) that ;

“ System enforcement law custom No based on the provisions issued by the government or tools other powers distributed and exercised by the Dutch authorities , but rather on perceived actions appropriate and binding by custom and society . The same meaning , that leader ordinary and official other must follow rule custom customary and customary practices sanctions .”

Confession to existence law traditional or custom to in the country's constitution has Article 18b of the 1945 Constitution states , "...the state respects exists unity law existing life in environment social society , accordingly with dynamic life social society and the principles of the Republic of Indonesia." Article 28 letter I paragraph (3) of the 1945 Constitution states " identity." culture and society traditional must respected aligned with development of time and civilization Indonesian nation."

The 1945 Constitution is being amended fourthly , Article 32 paragraph (1) states that the state encourages For preservation culture and development culture in the middle civilization globalization and guarantee freedom inhabitant to preservation and maintenance as well as develop values sublime culture nation . International recognition to rights custom society is also regulated in provision United Nations (UN) in 1993. Represents form convention underlining international importance governments of UN member states immediately carry out fulfillment right public law custom .

Protection and Position of Customary Rights In Indonesia

Customary rights in public is rights traditional from grandma born ancestors hundreds year then and it happened before the existence of the Republic of Indonesia and its nature communal . Although nature communal , however in there are also practices possible personal rights that individual can own part object rights customary and understandable in a way law custom during There is agreement in a way custom . It means somebody can own right For acquire and process land custom For intended or used for interest public custom in term time certain without remove right customary law on land the . Customary rights still recognized and more superior from right personal or individual . Customary rights restored when somebody divert right his on land custom . At the same time , rights use give chance For use land the For its interests myself , which is normal related with paddy fields and fields that have been logged and managed in term long . Therefore that 's right customs and rights use results different in scope and scope , however both of them important from corner look management source Power nature and use land .

UUPA Article 3 is interpreted right custom recognized as land alone , when has fulfill two conditions , namely First ; right That There is or exist , and secondly ; implementation right That There is during No contradictory with the Act. In the law in question No explained in a way clear How condition right customs / ulayat and their limitations in frame of the Republic of Indonesia. According to Boedi Harsono , UUPA is in place organize rights customary law and will preserve

culture custom customary law as law custom public certain Because is inheritance ancestors Indonesian society .

Based on research history , apparently existence right ulayat (rights customary law) already recognized Far before independence . According to Maria W Sumardjono , that confession right custom For land customary law is a matter important to asset nation in public law life that has been form The Indonesian nation became independent on August 17, 1945.

Customary rights divided in three characteristics , namely ;

1. There is something unity law fulfilling customs traits certain as subject law custom
2. A country/ region with certain limits which are subject law custom
3. Strength law For do deed certain action with specified way

ATR/BPN Ministerial Regulation No.5/1999 is written that For know There is or not right ulayat , the regional office must do investigation with experts law custom and authority duty excise related natural resource manager . However define existence right customary law consists from three elements , namely 1) target right custom or customary law is inhabitant public certain ones still use custom as law in environment social . 2) existence a land custom certain areas which become habitat and food public custom ; 3) there are procedures law custom in maintenance , control and utilization land together that is valid and followed by the community law custom .

Existence land custom or land custom in KSPI (Congress Indonesian Youth Pledge) on 28 October 1928 attention in a way special to law live in society as custom culture diverse nation and assets nation as well as sources law national . Along the way , the Indonesian people became aware that arrangement or existence custom customary law part from journey history nation This . In Article 6 of Law Number 39 of 1999 , it is stated that ;

1. " Protection right basic humans , law , society , and government must consider differences and needs public normal as well as protect him . "
2. " Identity culture public custom , incl right on land custom , must protected in accordance with development moment This . "
3. "In order to enforcement right basic people , differences and needs in public law custom must considered and protected by law , society and the government . "
4. " Identity culture public law custom , incl right on land customary law protected , harmonious with current development . "

After constitutional reform, the 1945 Constitution was amended second 2000 load provision confession custom customary law public . In accordance rules of Article 18B paragraph (2) of the 1945 Constitution. MPR Tap No.XVII /MPR/1998 Human Rights Human II. Law No.39 of 1999 on rights basic people and conditions regulation other related legislation , may known similarities the equation that in confession public law customs and rights Traditionally , the same recognition model Because order new , that is confession conditional layered , on implemented during the reform period.

Existence right custom in the 1945 Constitution amendment secondly , UUPA, and TAP MPR.IX of 2001, contains confession as following ;

1. Amendment Second, the 1945 Constitution. There are two articles also published existence and respect to rights public custom , namely ; 1). Article 18 B paragraph 2 which reads : "The state recognizes and respects units public law custom along with rights its traditional throughout Still lively and appropriate with principles development society and the Unitary State The Republic of Indonesia is regulated with Constitution , "
2. Paragraph 3 Article 28 I regulates ; " Identity culture and rights public traditional respected in accordance with development of time and civilization . "
3. MPR Regulation Number IX/MPR/2001 concerning reform agrarian and natural resource management , Article 4 states one necessary principle embraced in implementation reform agrarian and natural resource management are recognition , respect and protection rights customs and assets culture / nature nation .
4. Law No.39/1999 concerning Human Rights, Article 6 paragraph 2 " culture , customs customs , rights customary law protected by law accordingly with current development .
5. Law No.41/1999 concerning forestry .

- a. Article 1 paragraph 1 f is existing state forests in the community area custom .
 - b. Article 4 paragraph 3 must still notice rights public custom during review to temporary state forest rights the truly There is . Still exists and is recognized its existence as well as No contradictory with interest national .
 - c. Paragraph 1 Article 5" forest , based on the status , consists from : a) state forests and b) forests right . Paragraph 2 paragraph 5 of the Law arrange that state forests mentioned in paragraph 1 letter a can form forest normal forest .
 - d. Article 67(1) “ Customary rights throughout they exists and is acknowledged its existence ; a) pick up results forest For fulfil need daily public law custom the ; b) do activity management forest . based on law existing customs and not contradictory with law and (c) can increase his welfare .
6. UU no. 22 of 2001 concerning Oil and Gas
- a. Paragraph 1 Article 34 " If businessman or place business still use land owned by personal or country then company still concerned must moreover formerly agreed with owner right on state land or user land according to provision regulation applicable legislation . Buy and sell based on consideration and agreement , exchange , replace appropriate loss , recognition or change make a loss other to holder right or user .
 - b. Article 34 (2) “In provisions This intended confession ie exists right customary law together a public decided through deliberation and consensus based on law custom ."

Provision Constitution intended with rights custom recognized , respected and protected , which has been stated in the Constitution if reviewed still at the level assumptions or conditional . Existence the only accomplished when right custom truly exist (exist) and implementation right custom . Existence customary law must set with decision government area Where place right customary law the is at . Publishing letter decision by the Regional Government No is giving or diversion right customary law , rather is form confession or affirmation right customary law . As draft that existence right customary law No born or not still , but arise (and with itself is lost or is lost natural) appropriate with existing dynamics in public That Alone .

4. CLOSING

Customary rights is right public custom on all natural resources (esp land) is in its territory . Customary Rights are right built separately hundreds year then a different one with right on land ordinary and ground custom No is state property . In agrarian national , even Amendment Second, the 1945 Constitution recognizes , respects and protects rights custom throughout rights That truly exists and is implemented in One unity republic according to principles nation and state . Indonesia. Determination and registration right custom seen as alternative solution conflict related land customs that are not yet resolved completely . Besides , it is expected can give guarantee certainty law and protection law to owner right customary law as well as support implementation management good land . Confessor right customary law in Indonesian society does not off from history with the founding of this country , because That rights customary law Already should recognized and accommodated by the state of existence Because is part law life from nation This . In article 18 B. of the 1945 Constitution states "the state recognizes ; and respect units public normal as well as rights its traditional throughout Still alive and in harmony with development society and the principles of a unitary state Republic of Indonesia, as arranged in Article 28 of the 1945 Constitution I Paragraph 3, identity culture and society traditional must respected and recognized by the state , even in the international world in Convention Organization Laborer International nine (ILO-9) Number 169 of 1989 is recognized its existence . Likewise in the Constitution and UUPA. Existence law custom or ulayat is very dependent on the conditions provided by the state, esp in context modern developments . In the case of the Unitary State Republic of Indonesia (NKRI), where is the land owned by together arranged in Constitution For get protection , p This show that law custom is below state law . In other words, the law custom recognized in the laws of the land and given legal status . Statement this also highlights hierarchy law where the law of the land is considered more tall than law custom in system law general (*common law*). It means that confession or it's legal law custom depends on recognition

and approval state law . With thus , existence law custom or ulayat is very dependent on grace law or confession from state law . In context This is important for system law For acknowledge and protect rights law custom or customary , while still ensure consistency with principles state law and development more laws wide . With Thus , harmonization between law customs and state laws become important For ensure justice and sustainability in government and society .

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