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LEGAL ANALYSIS OF DETERMINATION OF ULAYAT LAND IN KAMPUNG NEGARA BATIN SUB-DISTRICT OF NEGARA BATIN, WAY KANAN REGENCY BASED ON ARTICLE 5 OF THE PRINCIPAL AGRARIAN LAW OF 1960

NOPAN WIJAYA

Universitas Bandar Lampung

Jl. Zainal Abidin Pagar Alam No.26, Labuhan Ratu, Kedaton, Kota Bandar Lampung, Lampung 35142

Correspondence Email: nopan.17211026@student.ubl.ac.id

ABSTRACT Land is a very basic human need. Humans live in carrying out activities on the ground so that every time humans are always in contact with the ground, it can be said that almost all activities of human life, either directly or indirectly, always require land. Land has a very important role in the life of the Indonesian nation or in the implementation of national development which is held as a sustainable effort to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. legal recognition and the supporting and inhibiting factors for the determination of ulayat land in the Negara Batin Village, Negara Batin District, Way Kanan Regency, Lampung Province. The research method used in this study is a normative juridical approach and an empirical approach. The normative juridical approach is defined as an approach to the legal rules related to the determination of customary land based on Article 5 of the Basic Agrarian Law of 1960. While the empirical approach is intended as an attempt to approach the problem under study with a real legal nature or in accordance with the reality in society.

Keywords: ulayat land, ulayat rights

INTRODUCTION

Indonesia is known to be rich in customs and each region has indigenous peoples with their own distinctive traditions.(Kartika, 2018) Customs are social habits that have long existed in society with the intention of regulating order.(Marzuki, 2021) There are also those that bind norms and behavior in society, so that in carrying out an action they will think about the consequences of their actions.(Nurhardianto, 2015; Siregar, 2018) The existence of customary law communities in Indonesia has existed since ancestral times to the present. And recognized by the state as regulated in Article 18 B paragraph (2) of the 1945

Constitution which reads "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia. Indonesia, which is regulated by law."(Nurdin, 2019; Rosyada dkk., 2018)

Recognition of the rights of indigenous peoples or indigenous peoples is a consequence of that Indonesia is a multi-ethnic, multi-cultural, multi-religious and multi-lingual country. The guarantee of respect for the rights of traditional communities is emphasized in Article 28 I paragraph (3) of the 1945 Constitution which states that traditional cultural and community identities are respected in line with the development of the times and civilization is strengthened by provisions.(Thontowi, 2013; Zakaria, 2016)

Land is a very basic human need.(Nurmadany, 2016) Humans live in carrying out activities on the ground so that every time humans are always in contact with the ground, it can be said that almost all activities of human life, either directly or indirectly, always require land. (Silviana, 2012) Land has a very important role in the life of the Indonesian nation or in the implementation of national development which is carried out as a sustainable effort to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.(Amiludin, 2016)

Society is a system of customs, ordinances, of authority and cooperation between various groups, of classifying, and controlling human behavior and habits. Indigenous peoples or indigenous peoples are a group of people who have the same feeling in a group, living in one place because of genealogy or geological factors.(Wulansari & Gunarsa, 2016) They have their own customary law governing rights and obligations on material and immaterial goods. Customary law communities are community groups that are organized, live in a certain area, have their own power, and have their own wealth in the form of visible and invisible objects, where members of each unit experience life in society as a natural thing according to their nature.(Thontowi, 2013) nature and none of the members have the thought or inclination to dissolve the bond that has grown or leave in the sense of breaking free from that bond for good.(Alting, 2011) So that it can be interpreted that indigenous peoples are a group of people who live for generations in a certain geographical area, have ancestral origins and/or common residence, cultural identity, customary law, a strong relationship with land and the environment, as

well as a value system that determines economic, political, social, cultural, and legal institutions.(Salim, 2016)

In the sense of land law has a very important role, because it is a source of life and human livelihood itself, all activities carried out by humans, always and definitely need land as a support for activities in their lives.(Awaludin, 2018) People view land as source of human life from birth to death.(Amiludin, 2018) Land is used as a place to live and as a source of human livelihoods such as to grow rice, corn, vegetables. Land is a very important foundation for human survival, besides that land is also a source of wealth for those who own and control it because everything contained in it can be a source of income or a source of income.(Ismail, 2012)

It is not only understood as a source of economics, but land for other parties views land as something sacred and must be protected. One of them is indigenous peoples. They view land, especially communal land, because it is a relic of their ancestors or as a symbol of their identity. This is because almost all aspects of life, especially for Indonesian people who are agrarian. Considering the importance of land for the community, especially in the environment of customary law communities, the majority of the population depend on land for their life and livelihood.(Ismi, 2012)

Definition of Soil is the accumulation of nature that inhabits the planet earth which is capable of growing plants and has properties as a result of the influence of the climate and living organisms acting on their parent material under certain conditions of relief for a certain period of time.(Darmawijaya, 1990) While Ulayat means territory, so that ulayat land is the territory of certain customary law communities.

Ulayat land is defined as land that is jointly controlled by members of the customary law community, where the management arrangements are carried out by customary leaders (customary heads) and the utilization is intended for both the members of the customary law community concerned and outsiders. So, the land tenure rights by customary law communities are known as Ulayat Rights.(Wiliam dkk., 2005) Customary rights are a series of authorities and obligations of a customary law community, which relate to land located within its territory.

Basically, the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This is enshrined in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The exercise of the right to control from the state can be delegated to

regions and customary law communities, if necessary and does not conflict with national interests, according to the provisions government regulations.(Arisaputra, 2021)

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which regulates the rights to land, water and air. It also includes basic rules and provisions for possession, ownership, use or utilization national agrarian resources in Indonesia, land registration, criminal provisions and transitional provisions. Furthermore, Law No. 5 of 1960 is an affirmation that the control and utilization of land, water and air must be carried out based on the principles of justice and prosperity for the development of a just and prosperous society.⁶ This is in line with the 1945 Constitution Article 33 paragraph 3 which reads: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.(Ismail, 2012)

Given the importance of converting customary land rights to land as proof of legal ownership of land rights in accordance with Article 23, Article 32 and Article 38 of the LoGA, an opportunity is given to register customary land, especially customary property rights or ulayat land. In order to be successful in agrarian reform, it is necessary to have qualified knowledge (from scientists, officials, and activists) as well as awareness and support from the community. The UUPA in its implementation has many shortcomings because it is more than 50 years old. Until now, the UUPA has not been maximally implemented in solving problems, especially related to legal dualism regarding agrarian regulation in Indonesia. Policy taken by the leader. The state must coordinate the interests of all Indonesian citizens without discriminating against class or the policies must be the same as the principles of the applicable laws and regulations.(Clarisha dkk., 2020)

Way Kanan Regency with the capital city Blambangan Umpu, is one of the expansion areas of North Lampung. Way Kanan Regency was formed based on Law Number 12 of 1999 dated April 20, 1999 regarding the Establishment of Way Kanan Dati II Regency, East Lampung Regency of East Lampung and Metro Municipality. Indigenous people in Way Kanan Regency are called the Buay Pemuka Pangeran Ilir Inner Negara community. Pahman Jamal Ramli as the leader of the Indigenous Buay Pemuka Pangeran Ilir Inner State, explained that on the basis of the Lampung Resident Bisluit Number 41/AA dated July 14, 1928, the territory of the Buay Pemuka Pangeran Ilir clan in Way Kanan, was limited to the following areas:(Erina Pane, 2016)

- a. In the north it is bordered by South Sumatra Province (East OKU).
- b. To the south, it is bordered by the Bunga Mayang clan.
- c. In the east it is bordered by the Raja Bangsa Marga.
- d. In the west it is bordered by the Bara Sakti clan.

Land registration as a matter of fact has been stipulated in Article 19 of the UUPA. Namely that land registration is the duty of the Government which is carried out in order to guarantee legal certainty in the land sector. In addition, land registration provides legal certainty, also provides legal protection for the holder of rights to a plot of land, apartment units, and other registered rights. Which will later be in the form of a certificate as proof of land registration. And this is the main purpose of land registration whose implementation is ordered by Article 19 of the LoGA. Then to provide information to interested parties, including the government, so that it is easier to obtain the data needed to carry out legal actions regarding land parcels, apartment units that have been registered. And another goal is to carry out orderly land administration. (Harsono, 2008)

As is currently happening in the Negara Batin Village, Negara Batin Subdistrict, Way Kanan Regency, there are a number of people who want to make ulayat lands upgraded to property rights in the form of stipulating Land Title Certificates. For this reason, the participation of traditional leaders or competent related officials is needed so that the land remains ulayat land used for the benefit of the surrounding community.

Based on the explanation above, the author in writing this thesis with the title "Legal Analysis of the Determination of Ulayat Land in the Negara Batin Village, Negara Batin District, Way Kanan Regency Based on Article 5 of the Basic Agrarian Law of 1960" and for the problem of research is How is the legal acknowledgment of the determination of ulayat land in the Negara Batin Village, Negara Batin Subdistrict, Way Kanan Regency, Lampung Province and What are the supporting and inhibiting factors for the determination of customary land in Negara Batin Village, Negara Batin Subdistrict, Way Kanan Regency, Lampung Province.

METHODOLOGY

The research method used is a normative juridical approach and an empirical approach. The normative juridical approach is defined as an approach to the legal rules related to the determination of customary land based on Article 5 of the Basic Agrarian Law of 1960. While the empirical approach is intended as an attempt to

approach the problem under study with a real legal nature or in accordance with the reality in society. investigated with a real legal nature or according to the reality in society.

The data needed in this study are:(Marzuki, 2010)

- a. Primary Legal Materials, Primary legal materials are legal materials that are authoritative in the form of statutory regulations or materials whose contents are binding because they are issued by the government. In this study the Primary Law materials used include:
 - 1) The 1945 Constitution of the Republic of Indonesia.
 - 2) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.
 - 3) Law Number 12 of 1999 concerning the Establishment of the Second Level District of Way Kanan, the Second Level District of East Lampung, and the Second Level Municipal Municipality of Metro.
 - 4) Ministerial Regulation Number 18 of 2019 concerning Procedures for Administration of Communal Land.
- b. Secondary Legal Materials, are legal materials that explain or discuss primary legal materials, which consist of literature books, websites, journals, research results and other scientific works that are still related to this research.
- c. Tertiary legal materials, are legal materials that provide explanations of primary legal materials and secondary legal materials consisting of a large Indonesian dictionary, English dictionary, website and so on.

1. Data Collection And Processing Procedures

- a. Data collection

- 1) Literature Study

Literature study is an activity to collect information relevant to the topic or problem that is the object of research. This information can be obtained from books, scientific works, theses, dissertations, encyclopedias, internet, and other sources. By conducting a literature study, researchers can take advantage of all relevant information and thoughts related to research.

- 2) Field Study

Field Study is an activity to collect information directly needed in this research. In this study the authors conducted a literature study through:

a) Observation

Observation or observation is the activity of a process or object with the intention of feeling and then understanding the knowledge of a phenomenon based on previously known knowledge and ideas, to obtain the information needed to continue a research. This research was conducted in Negara Batin Village, Negara Batin Subdistrict, Way Kanan Regency.

b) Interview

Interview or interview is an oral question and answer where two or more people face to face. In the interview process there are two parties who occupy different positions. One party functions as an information seeker (interviewer) while the other party functions as an informant. The interview that the author did was to conduct a question and answer session with the people of Kampung Negara Batin, Negara Batin Subdistrict, Way Kanan Regency. Those who will be interviewed in this research are:

- 1) Traditional figures consist of 2 people
- 2) Village head consists of 1 person
- 3) Indigenous people 2 people
- 4) Total 5 people

b. Data processing

Data processing is done to facilitate the analysis of the data that has been obtained in accordance with the problems studied. Data processing is carried out in the following stages:

1) Editing

Editing or checking is checking or re-examining the data that has been collected to find out and assess the suitability and relevance of the data collected for further processing.

2) Classification

Data classification is the activity of placing data according to predetermined groups in order to obtain data that is really needed and accurate for further analysis.

3) Data Systematics

It is an activity of compiling data that are interconnected and constitute a unified and integrated unit on the sub-topics of discussion so as to facilitate the interpretation of the data.

2. Data Analysis

data obtained from the results of information in the form of theories, doctrines, regulations and research literature studies related to problems which are then linked to the existing literature, then look for ways to solve the problem by analyzing the form of sentences so that it is easy to understand and finally draw conclusions to obtain the results are in the form of answers to problems based on research results.

RESULTS AND DISCUSSION

In order to be considered as customary rights and recognized, at least three things must be fulfilled:

- a) As long as in reality the customary law community still exists.
- b) In accordance with national and state interests.
- c) Does not conflict with higher laws and regulations.

The term customary law community is actually still a topic of debate until now. Some people view that the customary law community contains confusion between the "customary law community" and the "customary law community". The term Indigenous Law Community emphasizes "law community", and the term Customary Law Community emphasizes customary law.

On the other hand, there are also those who argue that the Customary Law Community only reduces the customary community in the legal dimension. Whereas indigenous peoples also depend on other dimensions, such as social, political, religious, cultural, ecological and economic dimensions. In simple terms, not all indigenous peoples have instruments that can qualify as law but they still have traditional rights or customary rights that are based on historical relationships and sublime local norms from interactions that occur.

Article 3 of the UUPA mentions the Indigenous Law Community, without providing further explanation regarding its meaning. In fact, on various occasions in the memory of the explanation, the term legal community is often used, which means the customary law community which is explicitly mentioned in Article 3.

Thus, the LoGA provides conditional recognition of ulayat rights, namely:

- a. First, the condition for its existence (its existence) is that the customary land rights are recognized as long as in reality they still exist. This means that in areas that originally had customary land rights, but in subsequent developments, individual property rights became stronger, causing the loss of customary land rights, the customary land rights would not be revived. Likewise, in areas where there has never been customary land rights, new land rights will not be born.
- b. Second, the implementation requirements are in accordance with national and state interests based on national unity and must not conflict with other higher laws and regulations.

In Law no. 10 of 2004 concerning the Establishment of Legislation Article 53 stated; The public has the right to provide input orally and in writing in the context of preparing or discussing draft laws and draft regional regulations. Provisions regarding participation are also regulated in the Convention on Indigenous Peoples and Indigenous Peoples. Article 6 states: requires that the State conducts consultations with indigenous peoples and indigenous peoples through appropriate procedures, especially through the institutions they have when legislative or administrative measures can have an impact on them. and the State shall assign the necessary equipment to them.

The participation of indigenous peoples is a form of implementation of human rights. George Pring and Susan Y Noe argued that public participation includes all the names used to describe various mechanisms, and are used by individuals or groups to communicate their opinions or views on a public issue.

The special rights to land owned by indigenous peoples are:

- a. Participate in its use. This participation means that indigenous peoples have the right to use, take the proceeds or to be used for other purposes. The meaning of participation is that indigenous peoples participate when the government or private parties use or utilize natural resources for commercial purposes so that indigenous peoples also benefit from these activities. .
- b. Indigenous peoples' rights in natural resource management
- c. The rights of indigenous peoples for the preservation of natural resources.

CONCLUSION

Customary rights are the rights of customary law communities related to land. Having a close relationship between land and humans in the area of a customary law community. This close relationship occurs because of their close relationship with the environment and natural resources. Indigenous peoples do so through the process of interaction and adaptation of the environment and natural resources. To maintain the survival of indigenous peoples, they create a value system, and a pattern of life. A strong understanding by indigenous peoples of their land provides a deep knowledge for groups in customary law communities in managing their local resources.

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