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# Legal Urgency Regarding the Protection of Customary Land in The Minahasa Region, Indonesia

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**Abstract**

This study aims to analyze local regulation of indigenous land legal protection in Minahasa North Sulawesi. This research is legal research using a legal approach, a case approach, and a conceptual approach. The types of legal materials in the study are primary and secondary legal materials. Legal materials were obtained from literature studies and analyzed qualitatively. The results of this research show that there is no local regulation related to indigenous land legal protection in Minahasa North Sulawesi. Any land disputes regarding customary land refer to Law Number 5 of 1960 concerning Agrarian Principles, specifically, there are no regulations governing legal protection of indigenous land in Minahasa. Whereas Law Number 5 of 1960 concerning Agrarian Principleshas general characteristics in regulating land issues in Indonesia. In the future, it is hoped that the local government is able to protect indigenous land rights in the Minahasa area through regional regulations.

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## 1. Introduction

Indonesia is a large nation consisting of more than 300 ethnic groups or tribes in Indonesia (Kuowoni,2021). Based on census data from the Central Statistics Agency, there are 1,340 ethnic groups (Central Bureau of Statistics,2019). So the Father of Indonesian Customary Law, Prof. Cornelis Van Vollenhoven, divides it into nineteen (v,2014), including the Minahasa Customary Law Community. There is pluralism in the cultural structure of the community spread from Sabang to Merauke. Differences are not only ethnic differences, religious beliefs but also differences in community interests that often cause various communal conflicts of indigenous communities or social unrest due to different legal choices in the agrarian sector in several places in the country, depicting sociological anthropological reasons that are based on the reason that the community does not get opportunities for access to law and social justice (Saidin,2020).

In paragraph IV of the 1945 Constitution it is stated that the Indonesian Government protects all Indonesian people and all of Indonesia's territory, and also promotes public welfare as a form of enforcing the human rights of every citizen through the creation of a safe, peaceful, orderly, peaceful and prosperous atmosphere, both physically and mentally, because communal conflicts of indigenous communities caused by disputes over the conflict of interests of indigenous legal community groups can cause national stability and hamper national development. The government has the authority to procure land for the public interest based on the principle in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which stipulates "All rights to land have a social function."

In general, land disputes faced in North Sulawesi are about land issues located in the environment of a customary law community, sometimes there is an overlapping issue of authority of the local customary law community on the one hand and the use of land for the government for development in the Republic of Indonesia. Customary communal conflicts caused by disputes over the conflicting interests of community groups can be a cause of national stability and hamper national development. This should receive serious attention in order to implement national agrarianism.

Based on this thinking, the researcher is interested in conducting research that raises the topic "Legal Urgency for Customary Land Protection in Minahasa in the Form of Regional Regulations."

## 2. Methods

This research is a researchnormative law (legal research).The research approaches used include the statute approach, case approach, and conceptual approach (Irwansyah,2020). Legal materials collected from library research are then analyzed descriptively qualitatively. Analysis by grouping and selecting data obtained from research according to quality and truth, then connected with theories from library studies, so that answers to the problems in this study are obtained.

## 3. Results and Discussion

### A. *Form of national legal protection regulations for customary land in Minahasa.*

In Indonesian legal regulations, the existence of indigenous peoples and customary land is recognized in the 1945 Constitution Article 18 (B) paragraph (2) and paragraph (3), which states that

the state recognizes and respects the unity of indigenous legal communities and their traditional rights. In addition, Article 3 of the UUPA also mentions respect for and protection of customary rights of indigenous legal communities. Regarding the determination of communal rights over customary legal community land, the state has also issued PMNA/Ka. BPN No. 9 of 2015 concerning Procedures for Determining Communal Rights over Land of Indigenous Legal Communities and Communities in Certain Areas, PMNA/Ka. BPN No. 5 of 1999 concerning Guidelines for Resolving Customary Rights Issues of Indigenous Legal Communities, and Permen ATR/BPN No. 10 of 2016 concerning Procedures for Determining Communal Rights over Land of Indigenous Legal Communities and Communities in Certain Areas. In land acquisition for development (PTUP), Law Number 2 of 2012 has also stated that customary law communities are one of the parties entitled to receive compensation (explanation of Article 40).

The law also states that compensation for customary land can be in the form of replacement land, resettlement, or other forms agreed upon by the customary law community. (Sumardjono, 2008 )added in his opinion that in addition to the forms of compensation in the provisions of the law, it is also necessary to think about how to ensure that local communities do not lose their sources of life/livelihood so that their survival is guaranteed, and even efforts are made to improve their quality of life. However, Law Number 2 of 2012 does not specifically discuss the mechanism for land acquisition for customary land or communal land. This is also not regulated more explicitly in its derivative laws and regulations regarding land acquisition, such as Presidential Regulation Number 71 of 2012, Regulation of the Head of the National Land Agency Number 5 of 2012, Regulation of the Head of the National Land Agency Number 5 of 2012, Regulation of the Minister of Home Affairs Number 72 of 2012, and Regulation of the Minister of Finance Number 13 of 2013.

The existence of customary land and communal land does seem to be in the "grey area" in the constellation of Indonesian land law. Even so, its existence is recognized by law, although in its implementation, the existence of recognition of its rights has never been explicitly regulated until now, and often triggers normative conflicts between state law and customary law (Ismi,2012). In the national land law regulation, recognition of land rights is articulated through land registration activities and the issuance of land rights certificates, which means that the state provides de jure recognition, where the subject and object of land rights can be clearly identified. On the other hand, in its implementation, it is very difficult to determine the subject and object of customary land. In the land registration system in Indonesia, communities must actively apply for their land rights accompanied by adequate evidence of control and ownership. In (Sumardjono, 2008) opinion stated that it should be seen wisely, related to the fact that from existing experience it is not uncommon for land acquisitions to be faced with rights holders who cannot show proof of ownership.

It is undeniable that customary land rights are not yet registered. In practice, proof of tax payment is considered as proof of land ownership. Data from such evidence can be seen as a strong indication of the status of the land as customary land rights, and the taxpayer who is generally the owner. Registration of land rights also requires a fixed boundary regarding the boundaries of control and ownership of land that are certain for measurement and mapping purposes. In the context of customary land, this is very difficult to implement, considering that most customary land in Indonesia is not explicitly mapped, and it is often difficult to determine the exact boundaries (fixed boundaries) of the customary land (Kurniawan,2017).

Another problem that may arise in customary land is the difficulty of 'translating' customary law on control and ownership of customary land into the national legal system. Customary law in Indonesia is very diverse, including in the regulation of control and ownership of customary land. In many places, customary/ulayat land is under the management of customary elders, and indigenous peoples are allowed to use and utilize the land, as a place to live or a source of livelihood. In customary law, these lands remain controlled by indigenous peoples, although control and utilization are carried out by individuals. This then causes complications in land registration based on the perspective of Indonesian land law, regarding how to describe the subject and object of land rights for customary land.

In order to describe the subject and object of land rights for customary land, there are several requirements that must be met by customary rights in Article 3 of the UUPA :

1. As long as in reality the customary law community still exists: Regarding this matter, according to the explanation in Article 67 paragraph (1) of Law No. 41 1999 concerning forestry, "the existence of a customary law community is recognized if in reality it fulfills the following elements:
   a. The society is still in the form of a community (rechtsgemeenschap)
   b. There are institutions in the form of customary rulers' apparatus
   c. There is a clear customary legal area
   d. There are legal institutions and instruments, especially customary courts, which are still adhered to.
   e. Still collecting forest products in the forest areas in the surrounding forest areas to meet daily living needs.
2. State and in accordance with national interests.
3. Not in conflict with higher laws and regulations, the criteria for determining customary rights are:
   a. Elements of indigenous communities, namely the existence of a group of people who are still bound by their customary legal order as a particular legal association, which recognizes and applies the provisions of this association in everyday life.
   b. Territorial elements, namely the existence of certain customary land which is the living environment of the members of the legal association and the place where they obtain their daily necessities, and
   c. An element of the relationship between the community and the territory, namely the existence of a customary legal order regarding control, possession and use of land. Its customary law is still valid and obeyed by the residents of the legal community.

The above requirements are about the fulfillment of customary land or customary land in order to be called customary land. If it does not meet the above requirements, then the land cannot be called customary land and the subject of this customary land is the indigenous community.

Customary land law has been enacted in a new regulation, namely the Basic Agrarian Law or known as UUPA. In the formation of this law, customary law is the main source in the formulation of UUPA because it is a source of taking the materials needed to build national land law. Customary land law has a legal position for customary land in UUPA, namely that national customary land law is compiled based on customary law on land, stated in the considerations of UUPA.

All customary land law issues are practically accommodated by the laws and regulations made by the government. And customary land law itself is positioned as the main source in taking materials and then used as material in making UUPA. The explanation of UUPA paragraph confirms that the

customary law referred to in UUPA is "customary law that is perfected and adjusted to the interests of society in a modern country and in international relations, and adjusted to Indonesian socialism" so that land law becomes the main source of national agrarian law is the principles of customary law construction in Indonesia that are used.

**B. *Implementation of Legal Protection for Customary Land in Minahasa.***

In general, the land status in Minahasa Regency is dominated by customary land or in Minahasa it is more popularly known as pasini land and kalakeran land. It is estimated that the area of pasini and kalakeran land reaches 80% of the area of Minahasa Regency, which is around 335,136 ha and the remaining approximately 83,784 ha is state land consisting of protected customary lands, former western customary production lands (HGU) and so on. The largest part of the pasini and kalakeran lands until now has not been registered, so they do not have certificates.

Philipus M. Hadjon argues that legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in judicial institutions (Philips,1987).

First, the form of preventive legal protection is contained in laws and regulations to prevent the occurrence of a violation of a crime and to provide limitations in carrying out obligations so as not to cause losses to each legal subject. While Repressive Legal Protection functions to resolve disputes that have arisen due to violations or crimes that cause losses or cause victims. This protection is the final protection in the form of imposing sanctions against violations or crimes that have been committed.Everyone may claim to have rights to something, including land. Land ownership can be proven through evidence such as written evidence and witness statements. In order for the person concerned to receive legal protection regarding the ownership of the land claimed to be his, he must at least have sufficient evidence. Sufficient evidence of ownership is by showing a certificate of ownership. A certificate of ownership is a valid document. However, it will be more valid if the certificate issued is based on legal facts and correct field facts so that there are no defects in the issuance of the certificate in question.

One of the objectives of land registration as stated in Article 3 letter a of PP No. 24 of 1997 concerning Land Registration is to provide legal certainty and legal protection to the holder of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights concerned. Legal protection for holders of written evidence of land ownership rights, including land formerly owned by customary law, is needed as a manifestation of the State's legal protection responsibility to citizens who hold land ownership rights. Legal protection will be carried out against a person, if based on legal facts he has the right to own the land object in question. Ownership of land rights or what is called ownership rights is a hereditary, strongest and most complete right that a person can have over land. The granting of this nature does not mean that the right is an absolute, unlimited and inviolable right.

Each tribe in Indonesia has a territory and only members of the tribe are allowed to open it at will, cut down trees and collect the products of the customary lands. People who are not members of the tribe are not given this authority and to protect the customary lands-forests from possible encroachment of customary lands by them, the tribal chief sends out police patrols, who must explore

the customary lands-forests (Adnan,1987).Land registration activities are carried out to provide legal certainty to the holders of the land rights, which enables the holders of land rights to easily prove their rights to the land they control, and for interested parties to obtain the necessary information regarding the land that is the object of the legal action to be carried out, as well as for the government to implement land policies.This provision means that as long as the contrary has not been proven, the physical data and legal data listed in written evidence of the former customary land must be accepted as correct data, both in daily legal actions and in disputes in court, as long as the data is in accordance with what is listed in the relevant measurement letter and land book.

Legal protection for land rights holders is generally caused by the lack of knowledge and public concern about the importance of proof of ownership. Although normatively the government has attempted through regulations that have been drawn up to protect the public as much as possible regarding the law of ownership and control of land.

As a regulator in the land sector, the state must be able to make regulations that provide legal protection to citizens who hold written evidence of former customary land, not ignore or deny it. The meaning of being protected by law according to Sudikno is an action in protecting something that has the right and obligation to act according to the law, namely to fulfill the existence of a land, so that it can be utilized properly, namely the implementation of every authority owned, for those who have ownership of land rights based on a regulation that functions to be able to regulate it as a legal binding basis.

In practice, in the Minahasa customary law community, there is still little knowledge and little concern about the application for the creation of written evidence in the form of land rights certificates. In general, from the results of a survey at the Airmadidi District Court and the Bitung Court in taking research data samples, the written evidence owned by the community is only in the form of girik and letter c / register.It's just that if we look at the history of agrarian law after the enactment of Law Number 5 of 1960 concerning Basic Agrarian Laws, Government Regulation Number 10 of 1961 emerged as the implementer of the Basic Agrarian Law.

Government Regulation Number 10 of 1961 article 2 states that "Land registration is carried out village by village or areas of the same level (hereinafter in this Government Regulation referred to as: village)." In the 1960s, the State Land Agency did not yet exist and there were also no land ownership certificates, what existed at that time were only Girik, Letter C, Petok D, Green Letter or green letter in Surabaya, Land Pipil and Eigendom Verponding. As regulated by Government Regulation Number 10 of 1961 article 2 above, data collection on land ownership rights refers to evidence in the form of records in the Village Office, namely Girik, Letter C, Petok D, Green Letter or green letter in Surabaya, Land Pipil and Eigendom Verponding. In fact, it is simple, the government, in this case the regional government, can issue policies to record land that does not yet have a certificate and provide legal understanding and even legal assistance to the legal community for the process of making land certificates.

Second, Repressive Legal Protection functions to resolve disputes that have arisen due to violations or crimes that cause losses or cause victims. This protection is the final protection in the form of imposing sanctions on violations or crimes that have been committed.Land disputes arise due to claims/complaints/objections from the community. In essence, defense cases can be categorized into law and conflict of interest. A dispute is a conflict between two or more parties that originates

from different perceptions of an interest or property right that can have legal consequences for both.While land disputes are conflicts between two or more people who have the same interest in the status of land rights of one or several land objects that can cause certain legal consequences for the parties who have the same interests in the land plots. Often occurs in Indonesia, especially in matters related to land, these are several cases about land covering several types, including:

1. Regarding the issue of land status
2. Ownership issues
3. The problem of evidence of acquisition which is the basis for granting rights and so on.

In resolving land disputes, two steps are usually used, namely by legislative means or through a judicial body which is usually assisted by the BPN and the second is using non-legislative means, namely by using deliberation, usually involving village officials or using traditional leaders in areas where land disputes occur. There are several types of land dispute resolution, namely:

1. Alternative resolution according to Law Number 30 of 1999 concerning arbitration and alternative resolution of land disputes.
   a) Civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside litigation resolution in the District Court.
   b) Settlement of disputes or differences of opinion through alternative dispute resolution as referred to in paragraph (1) is resolved in a direct meeting by the parties within a maximum of 14 (fourteen) days and the results are stated in a written agreement.
   c) In the event that a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then by written agreement of the parties, the dispute or difference of opinion will be resolved with the assistance of one or more expert advisors or through a mediator.
   d) If the parties are unable to reach an agreement within a maximum of 14 (fourteen) days with the assistance of one or more expert advisors or through a mediator, or the mediator is unable to bring the two parties together, then the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator.
   e) After the appointment of a mediator by an arbitration institution or alternative dispute resolution institution, mediation efforts must be started within a maximum of 7 (seven) days.
   f) Efforts to resolve disputes or differences of opinion through a mediator as referred to in paragraph (5) while upholding confidentiality, within a maximum of 30 (thirty) days must reach an agreement in written form signed by all parties involved.
   g) A written agreement to resolve a dispute or difference of opinion is final and binding on the parties to be implemented in good faith and must be registered at the District Court within a maximum of 30 (thirty) days from signing.
   h) The agreement to resolve disputes or differences of opinion as referred to in paragraph (7) must be completed within a maximum of 30 (thirty) days from registration.
   i) If the peace efforts as referred to in paragraphs (1) to (6) cannot be achieved, then the parties, based on a written agreement, may submit efforts to resolve the dispute through an arbitration institution or ad-hoc arbitration.
2. Litigation.
   In the process of resolving litigation through the judicial body, according to Usman, resolving land disputes through litigation is a reflection of the trian politica doctrine where judicial bodies are given authority and hold the authority to try a dispute.
3. Non-litigation or alternative dispute resolution
   That is the settlement of disputes outside the mechanism of the Judicial Body. Usually, dispute resolution through non-litigation channels can be through negotiation, mediation and arbitration.

a) Negotiation. The word negotiation is often called “consulting” or “deliberating”
b) Mediation is a dispute resolution process that involves a third party as a mediator.

## 4. Conclusion

Examining the regulations concerning Customary Land Protection in Minahasa, particularly in the form of Regional Regulations, it is evident that they primarily reference the Basic Agrarian Law Number 5 of 1960 and other general implementing regulations. However, the role of Corporate Social Responsibility (CSR) from modern retail companies in mitigating household waste has not been fully realized, as outlined in Articles 12 and 13 of Regional Regulation Number 1 of 2021 regarding Waste Management in Manado City. Moving forward, it is essential to foster a close and collaborative partnership between the government and the community. Additionally, it is hoped that the CSR initiatives of retail companies—both in terms of budget allocation and program activities—will significantly contribute to reducing household waste, particularly since a substantial portion of packaging from retail products ultimately becomes household waste. Furthermore, in terms of law enforcement, it is crucial for the government to engage retail companies as partners in the effort to minimize household waste.

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