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The resolution of customary community land rights issues based on government regulation no. 18 of 2021 and its relevance to the constitution in indonesia

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ABSTRACT

This research aims to find a solution to the issue of customary community land rights concerning the usurpation of customary land rights in the Percut Sei Tuan District, Deli Serdang Regency. The purpose of this research is to determine the direction of Government Regulation No. 18 of 2021 in shaping policies regarding the resolution of customary land rights of indigenous communities. The research method used in this study is a normative juridical approach conducted by examining secondary data, both primary legal materials (primary sources) and secondary legal materials (secondary sources). The primary legal materials used consist of regulations related to the issues under investigation. The research approach used by the author in this paper is a qualitative approach to examine the problem formulations present in this paper. The nature of the research used by the author is normative research that tests the topic in this paper. The research findings indicate that the orbit of Government Regulation No. 18 of 2021 in shaping policies for resolving disputes regarding the customary land rights occupied by PTPN II. PTPN II is considered not in line with and deviates from the applicable laws, given that the actions of PTPN II have obstructed the indigenous communities from realizing their livelihoods based on their customary land rights. Various efforts have been made to curb the encroachment on customary land in Percut Sei Tuan, but their activities continue due to protection from certain law enforcement authorities, preventing the people of Percut Sei Tuan from benefiting from their customary land rights.



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Introduction

The existence of Customary Land Rights (Hak Ulayat) is regulated in Article 3 of Law Number 5 of 1960 concerning the Basic Agrarian Principles (hereinafter referred to as UUPA). The article states, "Taking into account the provisions in Articles 1 and 2, the implementation of Customary Land Rights and similar rights of Indigenous Communities, as long as they still exist in reality, must be in such a way that it is in accordance with the national and state interests, based on the unity of the nation, and must not contradict higher laws and regulations." (Riki et al., 2022). In addition to Article 3 of the UUPA, the recognition of the existence of Customary Land Rights is also regulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the

1945 Constitution of the Republic of Indonesia, as well as People's Consultative Assembly Decree No. XVII/MPR/1998 on Human Rights,(Gayo, 2018). Due to the acknowledgment of the existence of Customary Land Rights of Indigenous Communities in Indonesia, there are legal regulations and mechanisms for determining the existence of these rights. These are outlined in Minister of ATR/BPN Regulation No. 18 of 2019 concerning the Procedures for the Administration of Customary Land of Indigenous Community Units. (Afinnas, 2022).

The understanding of the term "Hak Ulayat" is emphasized by G. Kertasapoetra and his colleagues, who state that: "Hak ulayat is the highest right to land owned by a legal entity (village, tribe) to ensure the orderly use and utilization of the land. Hak ulayat is a right owned by a legal entity (village, tribe), where the members of the community (legal entity) have the right to control the land, with its implementation governed by the leader of the community (tribal chief/village head in question). (Aditian Situngkir, 2022).

Hak ulayat is a series of authorities and obligations of an indigenous legal community related to the land within its territory. Every member of the indigenous legal community has the right to freely cultivate and utilize the land and natural resources within that area.(Irawan, 2021). The indigenous legal community is positioned appropriately within present-day Indonesia, as reflected in Article 3 of Law No. 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which states that the implementation of hak ulayat and similar rights of indigenous legal communities, as long as they still exist in reality, must be in such a way that it is in accordance with the national and state interests, based on the unity of the nation, and must not contradict higher laws and regulations.(Yogatiyana & Hidayatullah, 2022).

Hak ulayat, in this context, also has minimal elements that must be possessed by something referred to as a right. Generally, there are three elements that constitute the existence of a right, namely the subject of the right, the object of the right, and the authority of the subject of the right over the object protected by the law. In customary law systems, two types of land rights are recognized that influence and relate to each other, namely collective rights or hak ulayat and individual rights." (Rahmadi, 2022).

History of Land Law in Indonesia Before the Implementation of UUPA, in addition to Western agrarian law, there was customary law. In which it recognized aspects such as hak ulayat that naturally applied with the values believed by the community.(Kristiani, 2020). Legal issues arose when the state sought to build a national legal system for the entire territory amidst a population that already had diverse legal systems. According to proponents of sociological jurisprudence like Eugen Ehrlich, good and effective law is one that aligns with or reflects the values present in society. (Harahap et al., 2022). (Lestari & Sukisno, 2020). History views that good law is one that arises from the soul of the nation/people (volkgeist) and popular feeling, commonly referred to as customary law of the respective community. The Dutch colonial government acknowledged the existence of customary law, placing it on equal footing with European and Western law, as stated in Article 131 paragraph (6) of the Indische staatsregeling. This also declared customary law as a positive legal source for the Indonesian nation. Upon closer examination, customary law originates from the values and traditions that have developed within Indonesian society traditionally, representing the culture of the nation. It must align with national and state interests, based on national unity and must not contradict higher laws and regulations. The hak ulayat remained regulated by Indigenous Legal Communities.(Tanjung, 2019).

Regarding the granting of HGU (Hak Guna Usaha or Right to Cultivate) to PTPN II, a reevaluation and land mapping process involving Indigenous Custodians and the local Village Head should have been conducted to prevent conflicts with the customary law community neighboring the land intended for HGU. However, this process was not carried out by the government, which clearly violated Article 22 paragraph (3) of Government Regulation No. 18/2021, as it did not consider the condition of the land and the presence of the surrounding community. Instead, the local government never involved the local population in the land acquisition process.(Salamat, 2016). In fact, the community, Custodians, and the Village Head should have been involved, as the land included in the concession is still actively cultivated by the community, which has been managing and cultivating the land since 1870.(Safuddin, 2018). Historically, in 1870, the Dutch made an agreement with the Sultanate of Deli for the use and utilization of land known as the Deli Maatschappij Concession, where this company collaborated with the Sultanate of Deli in the agricultural sector, specifically in tobacco cultivation, which was a major commodity at that time. After Indonesia's independence in 1945, the Dutch left, and the assets were returned to the Sultanate of Deli. However, after the nationalization efforts of Dutch companies (PTP), they were renamed as PTPN, which continued the work of the Dutch PTP.(Firmansyah et al., 2019). After 1960, a restructuring of land tenure known as UUPA 1960 was introduced. However, even after the implementation of UUPA 1960, it still failed to resolve the Customary Land Rights of the Indigenous Legal Community within the Sultanate of Deli, and PTPN II continued its efforts to obscure the Customary Land Rights in order to take control and manage the assets, thus colonizing

the rights and assets of the Indigenous Community.(Alviolita, 2022). In the field, PTPN II seized and managed the land belonging to the Indigenous Community through land encroachments, land that should have been returned to its original custodians. Historical records show that the Dutch contracted the land for their benefit, and when PTPN II was established, it continued the Dutch's activities. When the Dutch left, they returned the Customary Land Rights to their original custodians (Sultanate of Deli). However, what is considered a blunder today is that PTPN II forgot about the land that should have been returned to the Sultanate of Deli and instead seized these assets through the unilateral issuance of HGU. In reality, PTPN II's HGU had expired since 2000, and according to the law, these assets should have been returned to their original custodian (Leader of Wajir XII in the Sultanate of Deli). To this day, these assets that should have been returned to their original custodian have been unilaterally controlled by PTPN II, resulting in the failure of Government Regulation No. 18 of 2021 to resolve the Customary Land Rights of the Indigenous Legal Community. This is due to ongoing land encroachments by PTPN II, leading to the Indigenous Community's livelihoods being compromised and their source of sustenance being taken away. (Pancarani & Wahyuni, 2023).

Currently, a fundamental issue arises regarding the essence of Customary Land Rights (*hak ulayat*) for Indigenous Legal Communities, which has been reduced due to government regulations governing these rights. Legal aspects have become a key domain in this determination. The status of Customary Land Rights for Indigenous Legal Communities must be validated through a legislative process (a political process) that results in regional regulations recognizing these rights. In the author's opinion, this approach is highly detrimental to Indigenous Legal Communities..(Aji, 2018). Local leaders often have a vested interest in land, whether for personal gain or political power. Consequently, the status of Customary Land Rights that is validated through regional regulations becomes highly dependent on these local leaders. Many disputes over Customary Land Rights for Indigenous Legal Communities arise due to the actions of local leaders. The power of regional leaders who do not validate these rights within customary law areas can be seen as politically disruptive. (Krismanoro, 2022).

In reality, the current state recognizes the existence of Customary Land Rights by imposing normative criteria that must be met for these rights to be acknowledged as a subject and object of Customary Land Rights for Indigenous Communities. Once again, these regulations have led to numerous local conflicts in the country. The disputes mentioned above are just one example of the many cases that occur in this republic. Many other disputes have also resulted in the loss of Customary Land Rights for Indigenous Legal Communities. These disputes are intentionally highlighted by the author to provide additional arguments in this paper. The aim of this research is to determine the position of Customary Land Rights for Indigenous Legal Communities residing in the Percut Sei Tuan District, Deli Serdang Regency, in accordance with Government Regulation No. 18 of 2021. It also seeks to understand the efforts of the Percut Sei Tuan Community to regain its Customary Land Rights in the face of encroachment by PTPN II and to explore the resolution of Customary Land Rights disputes in the Percut Sei Tuan District.

Method

The research methodology employed in this study is normative juridical, conducted by examining secondary data, including primary legal materials (primary sources) and secondary legal materials (secondary sources). The primary legal materials used include legislation related to the issue under investigation, such as the 1945 Constitution of the Republic of Indonesia (UU NRI Tahun 1945), Law No. PP No. 18 of 2021 concerning Land Management, Land Rights, Condominium Units, and Land Registration, as well as regional regulations governing Indigenous Legal Communities and their customary land, including Regional Regulation No. 6 of 2008 of North Sumatra Province regarding Customary Land and Its Utilization. Meanwhile, secondary legal materials consist of books, articles, journals, and research reports related to the research issue.(Nafa & Tanawijaya, 2022).

The main issue addressed in this study is the analysis of legal materials to understand the conceptual meaning of the terms used in legislative rules, as well as their practical application and legal decisions. This is done through two examinations. First, the researcher aims to obtain new meanings contained within the relevant legal rules. Second, the legal terms are examined in practice through the analysis of legal decisions. The author will conduct an examination of the research topic by seeking and processing information from various sources. The literature sources will include journals discussing Customary Land Rights of Indigenous Legal Communities in Percut Sei Tuan based on Government Regulation No. 18 of 2021 and its impact on the existing legal policies in Indonesia regarding Customary Land Rights. Additionally, relevant books on this issue will also be used to support the discussion.

Results and Discussions

The purpose of the Results and Discussion is to state your findings and make a interpretations and/or opinions, explain the implications of your findings, and make suggestions for future research. Its main function is to answer the questions posed in the Introduction, explain how the results support the answers and, how the answers fit in with existing knowledge on the topic. The Discussion is considered the heart of the paper and usually requires several writing attempts.

The Position of Customary Land Rights of Indigenous Communities Residing in Percut Sei Tuan District, Deli Serdang Regency, in Light of Government Regulation No. 18 of 2021

Following the issuance of Constitutional Court Decision No. 35/PUU-X/2012 (Constitutional Court Decision No. 35), the state is not considered the owner of the land but rather a sovereign authority responsible for regulating and managing land. It exercises its authority over Indigenous Legal Communities in Indonesia concerning Customary Land, which is part of Indonesian territory held or owned by Indigenous Legal Communities. (Veronika & Winanti, 2021). In practice, the issue of Customary Land Rights goes beyond the mere granting of rights to ulayat. Indigenous Legal Communities view the land as an ancestral legacy that must be defended. There exists a religio-magical principle between Indigenous Legal Communities and their land, which has been possessed and cultivated since 1870, akin to two sides of the same coin that cannot be separated. Customary Land refers to land on which ulayat rights are held by an Indigenous Legal Community. These ulayat rights grant authority over the area where they reside and continue their lives, including the natural resources produced from the Customary Land. These rights empower Indigenous Legal Communities to use and utilize natural resources, including the land within that territory, for their livelihoods.(Achmad et al., 2020).

Article 18B paragraph (2) of the 1945 Constitution carries two significant interests related to ulayat rights as one of the traditional rights of Indigenous Legal Communities: national and state interests and the unity of the Unitary State of the Republic of Indonesia. Both play crucial and fundamental roles in achieving the aspirations of the Republic of Indonesia's independence.(Safiuddin, 2018). The recognition of ulayat rights is a necessity, as without these communities, there would be no state. Ulayat rights, along with Indigenous Legal Communities, existed before the establishment of the Republic of Indonesia on August 17, 1945. Ulayat rights are a form of fundamental human rights that must be protected and respected, making them collective ownership rights of Indigenous Legal Communities. (Yahyanto et al., 2023). It can be said that ulayat rights are communitarian in nature because they constitute a shared right among members of the Indigenous Legal Community over the respective land. The religio-magical nature of ulayat rights points to the belief that these rights represent communal ownership, something with mystical qualities and an inheritance from ancestors and forebears in the Indigenous Legal Community. This is seen as the most essential element for the sustenance and livelihood of the community throughout time and the course of their lives. (Melfi et al., 2022).

In addressing the issue of ulayat rights for Indigenous Legal Communities, it's important to consider that Indigenous Legal Communities are organized groups residing in a specific area, possessing their own authority, and owning both visible and invisible wealth. These groups are united and live within a community as a natural order, with no inclination to dissolve. Indigenous Legal Communities have their unique legal institutions within the Indonesian legal framework. The presence of the Basic Agrarian Law (UUPA) was designed to end the plurality of legal systems governing land and create a unified national land law, with customary law as its foundation. (Adonia, 2021).

Based on Government Regulation No. 18 of 2021, the realization of land rights has not been felt by Indigenous Communities since their ulayat rights were usurped by PTPN II. In this context, the Indigenous Communities residing in Percut Sei Tuan are raising the issue of the ulayat rights' existence, on which HGU (Business Use Rights) permits were granted without the knowledge of Indigenous Legal Community representatives. What's even more distressing is that the ulayat rights of Indigenous Legal Communities are still neglected, and remarkably, the government has not supported their resolution. The resolution of ulayat rights is always met with obstacles and obstruction by the government. Furthermore, the laws that have been enacted for ulayat rights resolution are often dichotomized by the government, leading to persistent difficulties in the implementation of the law (Wawancara: Ihwan, 2023).

Ulayat rights are based on Article 3 of the Basic Agrarian Law. The presence of Pancasila (the national ideology of Indonesia) serves as the fundamental basis and goal that every law or regulation must adhere to. The national character of the Basic Agrarian Law (hereinafter referred to as UUPA) is considered with respect to the argument that there are deficiencies in its provisions. UUPA governs the ownership of land by Indonesian citizens. In this context, the subject referred to is the Indigenous Legal Communities. Therefore, the relationship between Indigenous Legal Communities and their land/territory is a relationship of ownership

and asset possession, similar to the concept of the relationship between the state and land according to Article 33 paragraph (3) of the 1945 Constitution. During the New Order regime, there was no new law governing the rights of Indigenous Legal Communities; the only regulation in place was issued during the Reform era, specifically Minister of Agrarian Affairs/Head of BPN Regulation No. 5 of 1999 on Guidelines for Resolving Issues of Ulayat Rights of Indigenous Legal Communities, which is considered the *lex specialis* of this provision. This demonstrates that legal certainty and the full benefits of the law have not been achieved (Kristiani, 2020).

Regarding the existence of Indigenous Peoples, it is widely recognized and has been mentioned in several international agreements, including the Convention of the International Labor Organization Concerning Indigenous and Tribal Peoples in Independent Countries (1989), the Cari-Oca Declaration on the Rights of Indigenous Peoples (1992), the Rio de Janeiro Earth Summit Declaration (1992), the Declaration on the Rights of Asian Indigenous Tribal Peoples in Chiang Mai (1993), and the Vienna Declaration and Programme of Action formulated by the United Nations World Conference on Human Rights (1993). On June 29, 2006, the United Nations Declaration on the Rights of Indigenous Peoples was adopted. This declaration is progressive in nature as it recognizes important foundations for the protection, recognition, and fulfillment of the rights of Indigenous Peoples. It encompasses recognition of both individual and collective rights of Indigenous communities, including rights to cultural identity, education, health, language, and other fundamental rights. The declaration acknowledges the Indigenous Peoples' right to self-determination and recognition of their rights to land, territories, and natural resources, as well as participation in development. The requirements related to Indigenous Peoples and their ulayat rights under the post-amendment 1945 Constitution have a history that can be traced back to the colonial era. The Agrarian Regulations (Aglemene Bepalingen) of 1848, the Government Regulations (Reglemen Regering) of 1854, and the Indian State Regulations (Indische Staatregeling) of 1920 and 1929 stated that native and eastern foreign people who did not submit to European Civil Law would be subject to religious laws, institutions, and customary practices of their communities as long as they did not conflict with generally recognized principles of justice. Such requirements were discriminatory as they were closely related to the existence of culture. The orientation of these requirements was an effort to subordinate local/customary law and direct it towards formal/positive/national law. On the other hand, it had the preconception that Indigenous Peoples were a community that would be "eliminated." (Tumbel, 2020).

According to Asmawito, the indigenous community leader in the Percut Sei Tuan District, Deli Serdang Regency, Indigenous Peoples do not mind if some of their customary territories are included in larger administrative regions. However, what they desire is recognition of their Indigenous Peoples' status and customary territories. For Indigenous Peoples in the Percut Sei Tuan District, Deli Serdang Regency, issues related to the acquisition of ulayat rights are often linked to the delayed recognition of their customary territories. The existence of ulayat rights for Indigenous Peoples is also dependent on the recognition of these customary territories, including the overall recognition of their customary law, known as Adati Tongano Wonua. The efforts to gain recognition and respect for the existence of Indigenous Peoples are essential for the survival of Indigenous communities in the Percut Sei Tuan District, Deli Serdang Regency.

Efforts of Indigenous Peoples Living in Percut Sei Tuan to Secure Their Ulayat Rights Against Land Seizure by PTPN II.

Before the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles, Indonesia had a dual legal system as the basis for land law, which included both customary law and Western law. At that time, customary lands were defined as those not owned by individuals but rather by communities, clans, villages, and so on. No one claimed ownership of these lands as private property, and they were not subject to ulayat rights. The state has an obligation to recognize, respect, protect, and fulfill the rights of its citizens. This includes the right to control and own ulayat rights, which has not been optimally implemented until now. (Shebubakar & Rahniah, 2019). The struggle of Indigenous Peoples is a form of asserting their constitutional rights as citizens. They fight for full recognition of their constitutional rights as special citizens. Until the issuance of Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Ulayat Rights Issues (hereafter referred to as Permenag No. 5/1999), there had been no laws and regulations governing the recognition of the existence of Indigenous Peoples and their rights to land, natural resources, and their territories. (Dirkareshza et al., 2020).

Permenag No. 5/1999 marked a turning point in the seriousness of the government in resolving land disputes, especially those related to ulayat land. The ulayat land is crucial for Indigenous Peoples in Percut Sei Tuan, and it is important for them to maintain, protect, and fight for it. The legal value of customary law

remains intact and is not in conflict with the prevailing legal system. Its existence does not threaten the sovereignty of the Republic of Indonesia. (Marizal et al., 2022).

The issuance of Government Regulation Number 18 of 2021 concerning Land Management, Land Rights, Condominiums, and Land Registration (PP No. 18/2021) aimed to simplify and codify regulations by consolidating several laws, replacing outdated norms, and addressing new legal needs. PP No. 18/2021 revoked Government Regulation Number 40 of 1996 concerning Land Use Rights, Building Rights, and Land Use Rights (PP No. 40/1996), Government Regulation Number 103 of 2015 concerning Ownership of Residential Houses or Dwellings by Foreigners Domiciled in Indonesia (PP No. 103/2015), and provisions related to systematic and sporadic land registration timeframes in Article 26 paragraph (1) and Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24/1997). (Cahyaningrum, 2022). PP No. 18/2021 has several positive aspects. It is the first comprehensive regulation addressing the scope of state land and its management and utilization, which can be regulated by ministerial regulations. This regulation provided a ray of hope for Indigenous Peoples in Percut Sei Tuan to resolve conflicts with PTPN II. (Maufiroh et al., 2021).

Article 28 I paragraph (3) of the 1945 Constitution indirectly relates to the respect and recognition of ulayat rights as human rights. It states that cultural identities and traditional community rights should be respected in line with the development of time and civilization. Article 32 paragraph (1) of the 1945 Constitution emphasizes that the government encourages the advancement of Indonesian culture while ensuring that communities are free to preserve and develop their cultural heritage. (Rahdania & Djaja, 2023). (Nubatonis et al., 2023). There are two key elements concerning ulayat rights: recognition and respect. These elements emphasize that ulayat rights have equal status and importance as other governmental units such as districts and cities. This recognition is explicitly stated in Article 28 I paragraph (2) of the 1945 Constitution, as amended, which relates to the existence and rights of Indigenous Peoples. In this context, ulayat rights are not only about the land, land rights, or natural resource management but also extend to the broader protection of the rights of citizens. (Randy Zethdan Pellokila, 2021). (Rosyada et al., 2021).

Resolution of Customary Land Disputes in Percut Sei Tuan District

According to Article 12 paragraph (1) of Law No. 39 of 2014 concerning Plantations, if the land required for plantation activities is customary land rights, plantation operators must consult with the indigenous community that holds these customary land rights to obtain approval for land transfer and the compensation to be received. (Randy Zethdan Pellokila, 2021). Article 4 paragraph (2) of Minister of Agrarian Affairs and Spatial Planning Regulation No. 5/1999 states that the release of customary land for agricultural purposes and other purposes that require Right to Cultivate (HGU) or Right to Use can be done by the indigenous community by transferring land use for a specified period, and when that period expires, the HGU and right to use will cease. According to Article 1 paragraph (1) of the Minister of Home Affairs Regulation No. 15 of 1975 concerning Provisions on Land Acquisition, land acquisition refers to the termination of the legal relationship between the landowner and the landholder by providing compensation. (Marizal et al., 2022).

In its implementation, customary land rights apply both externally and internally. This means that non-indigenous individuals are not allowed to acquire rights to customary land unless they pay customary fees and are granted permission by the traditional leader. (Ibrahim, 2020). Furthermore, an inventory and mapping of customary land owned by indigenous communities should be conducted to determine the boundaries of customary land. This is done to prevent conflicts. Additionally, an inventory of individual land formerly under customary rights should also be conducted as part of indigenous communities' efforts to ensure administrative order and promote literacy as part of their culture. After the individualization of rights, further steps should be taken to strengthen and empower the indigenous community's legal actions on land to ensure that their livelihoods are not compromised. (Jannah et al., 2022).

In Law No. 23 of 2014 concerning Regional Government, Article 2 paragraph (1) states that the Republic of Indonesia is divided into Provinces, Provinces are divided into Regencies and Cities, Regencies and Cities are divided into Districts, and Districts are divided into Villages. In paragraph (2), it is stated that Regencies/Cities are divided into Sub-districts, and Sub-districts are divided into Villages. Therefore, according to the legislation, regional government authorities clearly have the power to enact Regional Regulations (Peraturan Daerah) regarding the protection of the rights of their communities. However, in practice, the situation in the field does not always align with the legal mandate. (Marbun, 2021).

According to the Minister of ATR/BPN Regulation No. 10/2016, it mentions communal rights, and the existence of communal rights is seen in the Land Procurement Law, as explained in Article 40 of Law No. 2/2012. It stipulates that those entitled to compensation include indigenous communities. In the case of land acquisition involving communal rights (customary land rights), it is done through a fair and just mechanism

involving the provision of replacement land, resettlement, or other forms agreed upon by the relevant indigenous community.(Ramadhani, 2019). The state, in this case, makes efforts to protect indigenous communities in Indonesia while preserving the benefits, local wisdom, social, and cultural aspects in the use of customary land rights. The recognition of customary law as mentioned in the Basic Agrarian Law (Undang-Undang Pokok Agraria) is not clearly regulated, and this ambiguity suggests that lawmakers were unsure about which customary laws should be applied. The rise of individualistic tendencies and the weakening of communal aspects have led to customary land rights not being fully recognized or even disappearing from society.(Sari et al., 2022).

Colonization with a positivist legal system has also influenced Indonesia's legal system significantly. However, in the Decree of the Minister of Agrarian Affairs/Head of BPN No. 5 of 1999, Article 1 paragraph (1) explicitly states that customary land rights are the authority held by certain indigenous communities over specific territories, including land within those territories, for their livelihoods. This authority arises from both tangible and intangible connections passed down through generations and is not interrupted.(Krisnantoro, 2022). Regarding "Land Cases" in the decision of the Head of BPN No. 34 of 2007, a land case refers to land disputes or conflicts that are resolved through the judiciary. It is a unique aspect of land dispute resolution because it involves not only the General Court (District Court and High Court) but also the Administrative Court (State Administrative Court and State Administrative High Court) and Religious Court (Religious Court and Religious High Court). This condition has led to a large number of land cases being brought before the Supreme Court for examination and trial at the cassation or reconsideration level. (Adonia, 2021).

Based on the information provided by the Village Scientist, the current debate over customary land rights is in the process of solidifying customary land rights in line with the mandate of the 1945 Constitution and Pancasila as the spearhead of the resolution. There are still several issues that are currently being addressed based on Law No. 18 of 2021. In essence, the law grants veto power to indigenous communities, but in practice, the legal enforcement agencies are not prepared, which has led to the circumvention of the law. Indigenous leaders have provided several documents as part of the conflict resolution process between the Indigenous Community in Percut Sei Tuan and PTPN II regarding the occupation of indigenous land rights, including the following documents: Decree of the Provincial DPRD (No. Reg: 021/SEK-PMSM.SD/PW.12.K/2017), Decree of the Attorney General of North Sumatra (No. Reg: B-4933/N.2.1/DEK.1/08/2015), Decree of the DPR RI (No. Reg: 016/RKM/PANSUS TANAH/DPR RI/2004), Decree of BPN RI (No. Reg: 451/5.13-100).(Junita, 2021).

It can be understood that despite the issuance of documents as tools for the functioning of customary authorities, there are still many obstacles in the field from certain elements within the military, police, and paid thugs. These elements are often used to hinder the activities of customary authorities. The government has issued Minister of Agrarian Affairs and Spatial Planning Regulation No. 5 of 1999 regarding Guidelines for Resolving Customary Community Land Rights Issues. Although this regulation was created to address the legislative gaps and pressure from various indigenous communities, it still has limitations and ambiguities that prevent its full implementation in resolving customary land rights issues. This is mainly due to the lack of enforcement capability among law enforcement officials. practice, much of the land belonging to indigenous communities has been unilaterally taken over by PTPN II and the government, often using the pretext of acting in the name of the state. In these activities, the police and military, who should be protecting the rights of the community, sometimes act contrary to the law and without proper legal procedures. What's even more concerning is that these activities often involve forceful land seizures without clarity on who issued the orders. This situation has led to the perception that the police, military, and other law enforcement elements are under the influence of a "Land Mafia." Currently, law enforcement agencies can do little as they witness the usurpation of indigenous land rights by PTPN II, often utilizing a defective legal basis. It is understood that the resolution of indigenous land rights issues has not yet found a common ground due to the grip of these land mafias. Resolution will be possible if the rights are returned to the indigenous leaders (Wajir 12 of the Sultanate of Deli), as stipulated in the 1945 Constitution and also referred to in Minister of Agrarian Affairs and Spatial Planning Regulation No. 5 of 1999 regarding Guidelines for Resolving Customary Community Land Rights Issues. Furthermore, the recent Presidential Regulation No. 18 of 2021 concerning Land Management, Land Rights, Apartment Units, and Land Registration is aimed at codifying and simplifying regulations by consolidating several rules, replacing outdated norms, and addressing new issues in line with legal and societal needs. This regulation has repealed several previous regulations, including those related to land use rights. Therefore, if BPN (National Land Agency) of North Sumatra and law enforcement agencies follow the systematic instructions of the law, this issue can be resolved promptly. (Wawancara: Ihwan, 2023).

Based on the information obtained, it is evident that the indigenous customary land rights in Saintis Village have not been granted due to the influence of the land mafia, particularly PTPN II, which has spread its

influence within the village. This influence poses a significant obstacle for the indigenous community to secure their land rights, even though the existence of these rights has been recognized. PTPN II continues to exert pressure on the village head not to grant land rights to the community. The village head has mentioned that there are no individuals with valid land ownership documents such as Land Certificates (SHM), and even if there were individuals with Land Use Certificates (SKT) to SHM over the land concessions, the authenticity and legality of these documents are questioned. The village head believes that the resolution of land rights can only be achieved by returning the land to its original custodians or adhering to the guidelines set out in Minister of Agrarian Affairs and Spatial Planning Regulation No. 5 of 1999 regarding Guidelines for Resolving Customary Community Land Rights Issues. This would result in the resolution and legalization of the land rights issue for the indigenous community in Saintis Village. The village head has concluded that PTPN II, which is currently acting as a mafia, has successfully undermined the indigenous land rights hidden within the government. (Wawancara: Asmawito, 2023).

Relevance of Indigenous Land Rights to the Statehood in Indonesia

The position of indigenous land rights is equivalent to similar rights held by indigenous communities, as long as they remain a reality, they must be harmonized in a manner that aligns with the state. It should be based on the unity of the nation and should not conflict with higher laws and regulations. The recognition of the position of indigenous land rights indicates that if these rights are recognized and acknowledged by the originating state, they continue to exist in practice (Randy Zethdan Pellokila, 2021). The position of indigenous land rights is also regulated in Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 5 of 1999, Article 1 paragraph (1), which explains the position of indigenous land rights for customary communities. Indigenous law serves as the primary source for obtaining the materials needed by National Land Law; hence, the relevance of customary law to the existing legal framework in Indonesia, such as National Land Law, is that customary law norms complement the legal framework (Rosmidah, 2010)

n Article 18B paragraph (2) of the 1945 Constitution, it is stated that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law. (Kristiani, 2020). Dalam Pasal 67 ayat (1) In Article 67 paragraph (1) of Law No. 41 of 1999 concerning Forestry, it is stipulated that customary law communities will be recognized by the state if, in practice, they meet certain criteria, including the community still being in the form of a customary community (Rechtsgemeenschap), the existence of institutions in the form of customary leadership apparatus, clear customary law areas, the presence of customary institutions and legal instruments, especially customary courts that are still respected, and the continued collection of forest products in the surrounding forest area to meet daily needs (Laike, 2019).

Indonesia, as a country that still values customary law, highly regards the indigenous land rights of its communities. Indigenous land rights are not just a legal action but also a political one because the state acknowledges that it has taken over pre-existing legal rights within indigenous communities before the formation of the Indonesian state. However, these indigenous land rights can be taken over by the government if the land with indigenous land rights is genuinely used for public purposes.

Conclusions

Based on the research findings and the information obtained, in accordance with Article 18B paragraph (2) of the 1945 Constitution, in conjunction with Article 3 of the Agrarian Law, it is affirmed that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.

The indigenous land rights of the Saintis customary community have not yet been fully recognized due to the grip of land mafia (PTPN II) that has proliferated within the Saintis village. This proliferation poses a significant obstacle for the customary law community in obtaining their rights to the land that has been legally recognized for its existence. Until now, the power of PTPN II has consistently pressured and exerted influence on both the customary leaders and the head of the Saintis village to prevent the resolution of these indigenous land rights. It is emphasized that these statements have been directed at the village head, who acknowledges that the indigenous land rights of the customary law community have deliberately been obstructed by mafia elements to prevent them from obtaining their rightful land.

The resolution of indigenous land rights can be achieved when the land is returned to its rightful owners, following the principles outlined in Minister of Agrarian Affairs/Head of the National Land Agency

Regulation No. 5 of 1999 regarding the Guidelines for Resolving Issues of Indigenous Land Rights for Customary Law Communities. In this regard, if indigenous land rights are returned to their rightful custodians (the leaders of the 12 sultanates of Deli), the issue of indigenous land rights will be promptly resolved and legalized, further supported by the enactment of Government Regulation No. 18 of 2021, which has revitalized efforts to resolve indigenous land rights issues.

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