

Type: Research Article

Legal Certainty and Protection of Indigenous Peoples' Land Rights Ownership on Land from Coastal Reclamation Based on Indonesian Positive Law

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ABSTRACT

This research aims to analyze the issue of legal certainty and the protection of indigenous peoples' land rights and ownership of reclaimed coastal land in Indonesia's positive legal system. Although the 1945 Constitution and the Basic Agrarian Law (*UUPA*) have recognized the existence of indigenous peoples and their customary rights, legal reality shows that reclaimed land is often not included in the recognition area. Coastal reclamation carried out by the state or corporations usually ignores the participation of indigenous peoples, resulting in agrarian conflicts and legal uncertainty. Through a normative juridical approach and the concepts of legal certainty theory and legal protection theory, this research concludes that participatory and fair policy reformulation and administrative mechanisms are needed, so that the rights of indigenous peoples are not marginalized in the process of coastal development, especially in coastal reclamation.

KEYWORDS

Customary Rights;
Indigenous Peoples;
Beach Reclamation;
Legal Certainty; Legal
Protection



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INTRODUCTION

Indonesia is one of the countries in the world that has abundant natural resources, both in land and sea areas.¹ Human needs for land from time to time are increasing in line with development, population growth, and economic progress. Considering the importance of land for human life and considering that the price of land always increases, humans always make every effort to own and control land to meet the needs of life and improve the welfare of the Indonesian people. The existence of land will not be separated from all human actions, because land is a place for humans to live and continue their lives. Therefore, land plays a very important role in every member of society, so disputes often occur among each other and with the government.²

Land for indigenous peoples in Indonesia has a meaning that goes far beyond the economic dimension; it is an integral part of their identity, culture, and survival. Indigenous peoples' relationship with land is collective, spiritual, and passed down from generation to generation. Customary land or customary territory becomes a living space that provides basic needs as well as a place where customary practices and cultural values are maintained for generations. Within the framework of the rule of law, the existence of land rights of indigenous peoples should receive adequate recognition and protection by the principles of social justice and respect for the diversity of laws that exist in society.³

Based on Article 33, paragraph (3) of the 1945 Constitution, it is mandated that the earth, water, and natural resources contained therein can be controlled by the State and can be used for the prosperity of the Indonesian people. This means that the State can exploit the natural resources owned by the State.⁴ The right to control from the State, as referred to in the Constitution of the Republic of Indonesia Article 33 in paragraph (3), is emphasized in paragraph 2 of the UUPA that the state controls. The word control does not mean ownership. The state is authorized to regulate as the highest power at the state level. Article 4, paragraph (1) of the UUPA stipulates that land rights over the earth's surface are the same as land rights. However, UUPA does not provide an understanding of what is meant by land rights. Boedi Harsono states that land rights are rights to a certain portion of the earth's surface, which is limited, two-dimensional, with length and width measurements.⁵

As a construction in the state, the islands are a very valuable capital of a nation, capital in which all political instruments, geographical and layout of the islands separated by distance, become a special treasure for our Indonesianness and nationality.⁶ One of the important parts of the islands, especially small islands, is

¹ Fathul Hamdani & Ana Fauzia, "IKN dan Masyarakat Adat: Mengupayakan Demokrasi Deliberatif dalam Setiap Pengambilan Kebijakan" in Yanuardi Syukur, ed, *Menyambut Ibu Kota Negara Nusantara Gagasan Multidimensi Masy Indones untuk Kejay Bangsa* (Bantul: Mata Kata Inspirasi, 2024) 262.

² Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya* (Jakarta: Djembatan, 2007).

³ Yance Arizona, *Tanah Adat dan Reforma Agraria* (Bogor: Sajogyo Institute, 2018).

⁴ Eli Ruslina, *Dasar Perekonomian Indonesia Dalam Penyimpangan Mandat Konstitusi UUD Negara 1945* (Jakarta: Total Media, 2013).

⁵ Harsono, *supra* note 2.

⁶ Farida Patittingi, *Dimensi Hukum Pulau-Pulau Kecil di Indonesia* (Yogyakarta: Rangkang Education, 2012).



land, in addition to waters and their surroundings, because land is the glue of a nation that must be regulated regarding its control and utilization.

Development in Indonesia's coastal areas is growing rapidly as the need for space increases for economic activities, tourism, settlements, and public infrastructure.⁷ One way to overcome the limited land on the coast is through coastal reclamation. This reclamation is a process of filling or dumping water into new land, which changes the ecosystem and spatial structure of the area.⁸

However, in the practice of national development, including coastal reclamation projects, the existence of indigenous peoples' rights to land is often marginalized. Coastal reclamation, which is generally carried out by the state or corporations in the name of infrastructure development, tourism, or the blue economy, has a direct impact on changes to coastal areas, including those that have historically been controlled and utilized by indigenous communities. Reclamation projects are often carried out without substantive involvement of indigenous peoples in the planning process or determination of the legal status of reclaimed land. As a result, serious issues arise regarding the legal status of land ownership and potential violations of indigenous peoples' rights.⁹

On the other hand, Indonesian positive law, through various instruments such as Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), has recognized the existence of customary law communities and their customary rights. However, this recognition is normative and often not accompanied by concrete mechanisms in its implementation. Administrative and technical derivative regulations have also not fully provided a clear and certain space for indigenous peoples to claim their rights to land, especially reclaimed land, whose legal status is often considered as state land or new land.

Coastal reclamation activities are not only to get cheaper land but also to improve public facilities. Coastal reclamation is a change in the function of the coastal area from a coastal area to a land area. Procurement of coastal reclamation is generally carried out to make areas that were previously not economically calculated into areas that have economic benefits. Reclaimed areas are usually utilized for agricultural areas, settlements, industries, shops or businesses, and tourist attractions.¹⁰

In national land law, reclaimed land is, in principle, state land as stipulated in Law No. 5/1960 on Basic Agrarian Principles (UUPA), which states that land that is not owned by a right is referred to as state land. Land from reclamation can only be given rights to individuals or legal entities after going through land administration procedures and by the applicable regional spatial plan.

⁷ Baiq Riska Anggi Safitri & Catur Erwin Setiawan, "The Granting of Industrial Plantation Forest of PT Sadhana Arif Nusa on the Land of Customary Law Communities in Sambalia District from the Perspective of Legal Certainty Theory" (2025) 1:1 *Iuris Philos J* 72-80, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal/article/view/9>>.

⁸ Kementerian Kelautan dan Perikanan Republik Indonesia, *Pedoman Umum Reklamasi Pantai dan Pulau-Pulau Kecil* (Jakarta: Direktorat Jenderal Pengelolaan Ruang Laut, 2019).

⁹ Myrna A Safitri, *Hukum dan Kebijakan Pengakuan Wilayah Adat di Indonesia* (Jakarta: Epistema Institute, 2017).

¹⁰ Hasni, *Hukum Penataan Ruang dan Penatagunaan Tanah dalam Konteks UUPA-UUPR-UUPLH* (Jakarta: Rajawali Pers, 2010).



Spatial utilization in coastal areas has been regulated in Law No. 27 of 2007 jo Law No. 1 of 2014, which states that the management of coastal areas and small islands is a process of planning, utilization, supervision, and control of Coastal Resources and Small Islands between sectors, between the Government and Regional Governments, between land and marine ecosystems, as well as between science and management to improve the welfare of the community.¹¹

Based on Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands, reclamation is an activity carried out by everyone to improve land resources from an environmental and socio-economic point of view by filling, draining land, or drainage. Furthermore, based on the status of rights to reclaimed land, it is regulated in Government Regulation Number 16 of 2004 concerning Land Use Management, which emphasizes that land originating from arising land or reclamation results in coastal waters, tides, swamps, lakes, and former rivers is directly controlled by the state.

More detailed arrangements regarding reclamation licensing and the granting of rights to reclaimed land are clarified in Law Number 11 of 2020 concerning Job Creation, as well as Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing.¹² In this case, coastal reclamation is categorized as an activity that requires government permission, taking into account technical, environmental, and spatial aspects. After the reclamation process is completed and declared legal, the land can be applied for rights based on the provisions of Permen ATR/BPN Number 17 of 2021 concerning Procedures for Determining Management Rights and Land Rights.

Based on the Circular Letter of the Minister of Agrarian Affairs/Head of the National Land Agency (BPN) of the Republic of Indonesia Number: 410-1239 dated May 9, 1996 regarding the Control of the Status of Embossed Land and Reclaimed Land: Naturally arising lands such as beachfronts, lake shores, riverbank deposits, emergent islands and other naturally arising lands are declared as lands directly controlled by the state, and their control/ownership and use are regulated by the Minister of Agrarian Affairs/Head of the National Land Agency by the prevailing legislation.

In coastal areas, reclamation is carried out to fulfill various development needs, both for public facilities, businesses, and residences. However, in practice, several legal issues arise, including:

1. Unclear legal status of reclaimed land;
2. Reclamation licensing is not synchronized with the regional spatial plan;
3. Procedures for granting land rights that are not by the provisions;
4. Potential disputes between the government, investors, and local communities.

Problems become more complex as reclamation often involves the interests of the state, business entities, and individuals. Disputes over ownership claims, unclear

¹¹ See General Provisions Article 1 Paragraph (1) of Law Number 1 of 2014 Concerning the Amendment to Law Number 27 of 2007 Concerning the Management of Coastal Areas and Small Islands. Biro Hukum Kementerian Kelautan Dan Perikanan RI, "Info Hukum", online: <http://infohukum.kkp.go.id/Index.Php/Hukum/?Produk_Id>.

¹² Fathul Hamdani et al, "Persoalan Lingkungan Hidup dalam UU Cipta Kerja dan Arah Perbaikannya Pasca Putusan MK Nomor 91/PUU-XVIII/2020" (2022) 3:4 J Indones Berdaya 977-986.



legal status, and overlapping licenses are crucial issues that must be addressed. Legal protection of land rights resulting from reclamation becomes very important to provide legal certainty, prevent conflicts, and guarantee the legal rights of the parties involved.

Therefore, it is important to examine how the provisions of positive law in Indonesia regulate the certainty and legal protection of indigenous peoples' land ownership rights on land reclaimed from coastal reclamation. To ensure novelty in this article, several similar studies will be described. First, research from Ahmad Akbar in 2018 published at the Faculty of Law of the Islamic University of Indonesia entitled review of the implementation of the acquisition of rights to land from coastal reclamation in Kaloka Regency based on Permenag Number 9 of 1999, the research conducted by Ahmad Akbar focuses more on the implementation of the acquisition of rights to land from coastal reclamation based on Permenag Number 9 of 1999. Meanwhile, this research focuses on the legal certainty of indigenous peoples' land rights ownership on coastal reclamation land based on Indonesian positive law. Second, research from Zulfikar Rangga Utama in 2024 published by the University of Mataram entitled juridical study of the acquisition of land rights resulting from coastal reclamation in the city of Bima, research conducted by Zulfikar Rangga Utama discusses the acquisition of land rights resulting from coastal reclamation based on Bima City Regional Regulation Number 4 of 2012 concerning the Regional Spatial Plan of Bima City 2011-2031. While this research discusses the legal protection of indigenous peoples' land rights ownership on coastal reclamation land based on Indonesian positive law.

METHOD

This article aims to reveal the rules of law, legal doctrines, and legal principles related to positive legal provisions in Indonesia regulating the certainty and legal protection of the ownership of indigenous peoples' land rights on coastal reclamation land. This research uses the normative juridical method. The approaches used are statutory and conceptual. The statutory approach is used to review and analyze various regulations related to the legal issues under study.¹³ Meanwhile, the conceptual approach is used to analyze concepts, principles, and theoretical aspects relevant to this research. The technique used in collecting legal materials is through literature studies, including books, journals, and websites. The legal materials collected were then analyzed using descriptive qualitative analysis.

RESULT & DISCUSSION

I. Relationship Between Legal Subjects and Land

In the Indonesian land law system, the relationship between legal subjects and land is regulated to provide clarity on who has the right to use, control, and enjoy the benefits of a piece of land. This relationship is a private law based on the regulation of the state as the holder of the right to control the land.¹⁴

1. Legal subjects about land

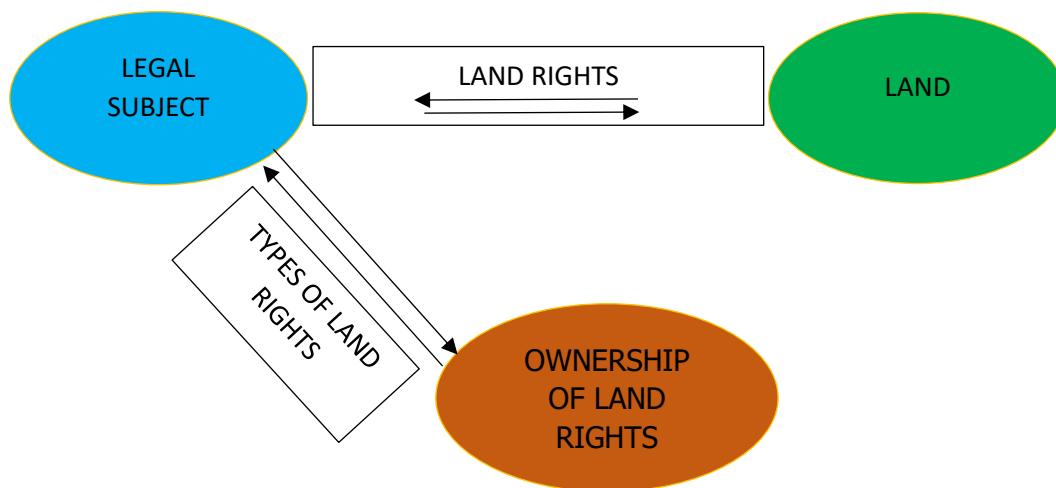
¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed (Jakarta: Kencana, 2017).

¹⁴ Eduard Awang Maha Putra, *Peraturan Kebijakan (Beleidsregel) dalam Hukum Positif Indonesia* (Yogyakarta: Samudra Biru, 2024).



Legal subjects in the context of land are individuals and legal entities that, according to the law, can own, acquire, and use land rights. Article 21, paragraph (1) of Law No. 5/1960 on Basic Agrarian Principles (UUPA) states that property rights to land can only be owned by Indonesian citizens. Meanwhile, certain legal entities designated by the government, such as agricultural cooperatives and religious bodies, can also be granted certain land rights. These legal subjects have legal rights and obligations towards land, including the right to use, utilize, transfer, as well as the obligation to pay land and building tax, maintain the land, and use the land according to its designation. Related to this research, based on the theory of legal certainty, there is ownership of land rights that give rise to legal relations. The legal relationship in question is the legal relationship between the legal subject and the land. Related legal relationships in land rights ownership can be described through the following figure:

Figure 1. Relationship between Legal Subjects and Land



Based on the picture above, the following explanation related to the legal relationship between legal subjects and land can be distinguished based on the type of rights they have, as regulated in Article 16 of the UUPA, namely:

a. Property Rights

It is the hereditary, strongest, and fullest right that can be held over land. This right gives the right holder full freedom to use and treat the land according to their interests, within the limits set by the law.

b. Cultivation Rights (*HGU*)

The right to cultivate land directly controlled by the state, granted for agricultural, fishery, or livestock purposes, within a certain period.

c. Building Rights Title (*HGB*)

The right to construct and own buildings on land that is not one's own, valid for a certain period, and may be extended.

d. Right of Use

The right to use and/or collect products from land controlled by the state or land owned by others, for certain purposes and within a certain period.

e. Right to lease, right to open land, right to collect forest products



In addition to the above primary rights, other relationships between legal subjects and land also include forms of secondary rights, such as lease rights for buildings and customary rights that are still valid to the extent that they are recognized by national law.

2. Customary Land Rights

Customary land rights, also known as hak ulayat, are a form of collective rights owned by customary law communities over certain areas that they have controlled and utilized for generations. In this legal relationship, several main principles govern the relationship between legal subjects and land in Indonesian law, among others:

a. Principle of Nationality

Only Indonesian citizens can own property rights to land. Foreigners can only be granted use rights with certain restrictions.

b. Social Principle of Land Function

Land ownership is not absolute; land use must take into account the public interest and the surrounding environment.

c. Principle of Legal Certainty

Land rights must be registered and evidenced by a certificate to provide legal certainty to the rights holder.

d. Principle of Appropriate Use

Land rights holders must use the land according to the regional spatial plan established by the government.

e. Principles of Legal Protection

Land rights holders must be given legal protection for ownership of land rights that have been determined by the government based on their designation. The legal protection in question is to provide legal certainty to the ownership of land rights.

f. The principle of respect for traditional rights

Recognition of customary land rights is part of human rights, especially the right to cultural identity and the sustainability of indigenous peoples' lives.

II. Relevance of Customary Law to Land

Customary law is a law that is born directly from the thoughts and ideas, and needs of the people, which then develops into a law that is born from the personality of the nation, and then increases to become Indonesian customary law.¹⁵

There are three (3) conditions for adat or custom to become customary law, namely:¹⁶

1. Material requirements, the existence of behavior that is permanent (steady), repeated, meaning a series of the same actions, which lasts for some time. It must be able to be aimed at the existence of long-lasting actions; there must be what is called *longa et inveterata consuetudo*.
2. Intellectual Requirements (*opinio necessitates*), meaning that the custom or habit must give rise to the belief of public opinion as it should be, that the act is a

¹⁵ Hilman Syahril Haq, *Hukum Adat Eksistensi Dan Problematikanya di Indonesia* (Makassar: PT. Nasmedia, 2024).

¹⁶ *Ibid.*



legal obligation. The habit must be done because of the belief that it is objectively appropriate to do, and by doing it, one believes that one has performed a legal obligation.

3. There are legal consequences or legal consequences if the custom is violated.

Customary law is a law that has a different reasoning from Western law (modern law). It is this law whose norms and systems are relatively not oriented towards Western law, so it is not excessive if many parties believe that customary law is the original law of Indonesia, which was born from the values and outlook on life of the Indonesian people. F.D. Holleman, in his inaugural speech entitled “De Commune trek in het Indonesische rechtsleven” (the pattern of cooperation in Indonesian legal life), concluded that there are four general patterns of customary law in Indonesia that should be viewed as a unit. These patterns consist of:¹⁷

1. Religio-Magical

Religio-magic is a rounding off or combination of words that contain elements of several traits or ways of thinking, such as prelogic, animism. In other words, religio-magic is the unity of the physical world and the supernatural world, where there is a relationship with ancestors and other spirits. They believe in the existence of supernatural powers, the existence of several taboos, the existence of magic powers, the existence of spirits that occupy the universe, such as the occurrence of natural phenomena, plants, animals, stones, and others, so that every activity is always accompanied by religious ceremonies.

According to traditional Indonesian beliefs, every society is pervaded by supernatural forces that must be nurtured to keep society safe, peaceful, happy, and so on. There is no distinction between the physical world and the supernatural world, and no separation between the various spheres of life. Such as human life, nature, the spirits of ancestors, and the lives of other creatures. There is worship, especially of the spirits of their ancestors, as protectors of the customs necessary for the happiness of the community. Every activity or joint actions, such as clearing land, building houses, planting, and other important events, are always held religious ceremonies aimed at getting blessings and no obstacles, and always succeeding well.

2. Communal or societal

The nature that puts the public interest ahead of self-interest, meaning that human life is always seen in the form of a group, as a whole. Individuals with each other cannot live alone; humans always live in society (group). In simple terms, communal means that humans are bound to society, not free from all their actions. Every citizen has rights and obligations by their position, which subjective rights function socially, are cooperative, polite and patient, non-prejudiced, and respectful of each other.

3. Kontan

Usually in Indonesian society, transactions are in cash; that is, the achievement and counter-achievement are carried out together at one time. In other words, the delivery and acceptance events must be simultaneous. This is intended to maintain balance in the society.

¹⁷ *Ibid.*



4. Concrete

In general, in Indonesian society, when performing (holding) a legal action, it is always concrete (real), such as in a sale and purchase agreement, the buyer hands over money or panjer money. This means that there is a visible sign, namely, every action or desire in every legal relationship must be expressed with tangible objects. In other words, no promise is paid for with a promise; everything must be accompanied by concrete actions, and there is no mutual suspicion of one another.

In addition, there are three unique characteristics of customary law when compared to modern law: it has a very traditional nature, can change, and can adjust. This characteristic shows that although customary law maintains its traditional values, at the same time, it can also accept changes that affect it; this is where the flexibility of customary law lies.¹⁸ Customary entities can be filled according to the demands of the place (*desa*), time (*kala*), and circumstances (*patra*), this is because customary law works with the main principles of harmony, appropriateness, and harmony in life.¹⁹

The ILO categorizes indigenous peoples as; first, indigenous tribes who have socio-cultural and economic conditions different from those of other groups in a country, and whose status is partly or wholly governed by custom or tradition or by their special laws or rules; Secondly, tribes who consider themselves or are considered by others to be indigenous because they are descended from the original inhabitants of the country long before the entry of colonizers, or before the setting of administrative boundaries as they exist today, and who retain or seek to retain regardless of their legal status some or all of their social, economic, cultural and political characteristics and institutions. In this sense, indigenous peoples are also recognized as having a language, culture, religion, land, and territory separate from other groups of people, and living long before the formation of modern nation states. Several characteristics distinguish indigenous peoples from other community groups, namely:²⁰

1. They occupy lands belonging to their ancestors, either wholly or in part;
2. They share a common lineage, originating from the original inhabitants of the area;
3. They have a distinctive culture in terms of religion, tribal system, dress, dance, way of life, daily living equipment, including for earning a living.
4. They have their language, and
5. They usually live separately from other communities and reject or are cautious about new things that come from outside their community.

In the context of law, indigenous peoples view that deliberation is part of their identity in solving a problem, which is why the *adar* law in the concept of the youth oath, for example, strongly upholds the populist principles of sitting equally low,

¹⁸ Siti Maryam Salahuddin, "Pesan Hukum Adat dalam Pembangunan Hukum Nasional" (2008) 5:2 J Konstitusi.

¹⁹ Agni Udayati, *MOHAMMAD Koesnoe dalam Pengambaran Gagasan Hukum Indonesia* (Jakarta: Epistema Institute, 2013).

²⁰ A Sony Keraf, *Etika Lingkungan Hidup* (Jakarta: Penerbit Buku Kompas, 2010).



standing equally high, carrying the same weight, carrying lightly, and so on. This is a value that is highly respected in a life of social justice.

Based on these characteristics, it can be seen that traditional communities in carrying out their lives are based on old ways or habits inherited from their ancestors. In their daily lives, even though there are now many outside influences from their social life, traditional communities still try to maintain the noble values or customs that they have held since long ago. This is done to maintain the identity of the community group and to create a harmonious relationship between the community and the surrounding environment.

This is where modern society differs from indigenous societies. Modern society tends to think of a group of people (even certain individuals) and prioritizes the interests of the present rather than future generations. In contrast, indigenous societies are characterized by holistic, communalistic, and transcendental characteristics as explained by Sudyat as special characteristics that distinguish indigenous societies from society in general, namely:²¹

1. The ruler of an indigenous community decides whether an act constitutes a legal act or decides disputes between its members according to adat, according to the customs that the group deems appropriate or proper;
2. Certain persons or individuals within an indigenous community perform an act, and the entire indigenous community benefits or suffers a loss;
3. In indigenous communities, there are objects, land, water, plants, temples, and buildings that must be maintained and defended together, kept clean together from supernatural forces;
4. Only members of the community in question can benefit from the objects, land, water, plants, temples, and other buildings, which they maintain and defend together, keeping them clean with supernatural forces;
5. The existence of an adat community is felt by its members as a natural necessity, a meta-juridical reality, so that such an adat community cannot be established or held by a higher authority, formalized/formed and dissolved by outsiders, held by law or other regulations, more so by foreign agencies, and so on, therefore adat communities arise spontaneously;
6. There is no thought of the possibility of dissolving the indigenous community;
7. If an outsider (not a member of the indigenous community) wants to enjoy the goods (land and so on) of the indigenous community, he gives something to the indigenous community as a sign of the outsider's recognition of the indigenous community's rights;
8. In indigenous societies, there is a structure of society which constitutes the characteristics of that society, namely that within that society, there are layers consisting of several people or small groups who have priority, superiority, or authority (*voorrang, overuricht of gezag*) over other members; and
9. Indigenous peoples are at the bottom of Indonesian society.

In addition, indigenous peoples in Indonesia are composed of two dominant factors, namely genealogical and territorial. In the beginning, the genealogical factor had a very strong dominance in the formation of an indigenous community due to

²¹ Abdurrahman, *Hukum Adat Menurut Perundang-Undangan Republik Indonesia* (Jakarta: Cendana Press, 1984).



the regional relationship between them that bound and formed a solid bond. However, due to the widespread relationship between ethnic groups, the dominance of genealogical factors gradually began to be displaced by internal factors.

Genealogical factors are factors that bind members of the fellowship based on blood ties or a common descent, or from the same ancestors. Meanwhile, the territorial factor is the factor that binds the members of the fellowship based on the area (where they live together) and the place where they seek the same livelihood. Based on these two factors, the legal alliance structure can be divided into 2 (two), namely:

1. Genealogical alliance (based on descent) is an indigenous community whose members feel bound in an order based on the belief that they all come from the same descent. This alliance consists of 3 (three) kinds of ties, namely:
 - a. The arrangement based on the law of the father (Patrilineal), which is the arrangement of society that draws the line of descent in personal relationships with others through the male line (blood relations according to the father's line) such as in indigenous tribes in Lombok, Bali, Nias, Gayo, Batak, Ambon.
 - b. Matrilineal, which is the structure of a society that draws its lineage by joining with others through the female line (blood relations according to the mother's line), such as the Minangkabau indigenous community with the rule of "bermamak kemanak", including the Kerinci indigenous community.
 - c. Parental/Bilateral legal order, i.e., hereditary ties that are drawn in the line of descent through the father's or mother's line, such as the Mbojo tribe, Javanese tribe, Sundanese tribe, Dayak tribe, etc.
2. Territorial legal alliance (based on common residence), i.e., an indigenous community organized based on a regional environment, is an indigenous community whose members feel united and together constitute the unity of the indigenous community concerned. There are 3 (three) kinds of territorial legal alliances, namely:
 - a. Persekutuan Desa is when each group of people is bound to a certain area as a place of common residence, also when there are isolated dukuhs that do not stand alone (not independent), while the head or officials of the association all reside in the central residence, for example villages in Java and Bali.
 - b. Persekutuan Daerah is when within a certain area there are several villages, each of which has its structure and government headed by an official who holds a similar position, stands alone, but all of them are part of the region, has its wealth (property), has forest and jungle boundaries and rights to land that is dipertuan (regional rights) to be planted or managed by itself (for example Kuria in Angkola and Mandailing which have forest forests in their areas such as Marga in South Sumatra with hamlets in their areas).
 - c. Perikatan Desa (an alliance of several villages) is when alliances of villages, each complete with its government and its area and located close together, agree to maintain common interests or establish a traditional cooperative relationship in the field of government, this cooperation does not have a higher authority among the positions of one another (for example, the alliance of huta-huta in the Batak tribe).

In reality, no life does not depends on the land where it was born, cultivates life, and dies. The structure of this community is a unit of society where members



are not only bound to the place of residence, but are also bound to the relationship of descent in ties of blood and or kinship. This form of society is found in the Kuria community with huta-huta in the South Tapanuli community (Angkola, Mandailing), Umi (Mentawai), Euri (Nias), Nagari (Minangkabau), clans with hamlets in South Sumatra, and clans with tiyuh-tiyuh in Lampung.

A paradigm that sees reality only in a single frame, namely law in the sense of the law, has indirectly shown its weakness by eliminating other realities outside the law, which may contain true values of justice or truth, such as the belief of indigenous peoples in the nobility of customary law and its ecosystem.

It is realized that efforts to maintain the existence of customary law are often constrained by matters relating to issues of national interest, public interest, legislation and legal certainty, given that this is related to the reality that customary law tends to be traditional, particular, plural, and unwritten, while on the other hand the national legal system has been built by following the tradition of the Western (Continental European) legal system which is all written and unification in the form of positive law as a manifestation of state power. The implications of the state's legal politics are also felt in solving problems in the community that dismiss customary law, which is more relevant.²²

Mochtar Kusuma Atmadja assured that the spirit of adat cannot be abandoned as the empire of the national legal system. In short, adat will never die, considering that it always inspires the development of the social life of its people. In addition, customary law has its characteristics compared to other legal systems. The three characteristics are that it is traditional, changeable, and adaptable. This characteristic shows that although customary law maintains its traditional values, at the same time, it can also accept changes that affect it. This is where the flexibility of customary law lies.²³

In this context, Mohammad Koemoe points out that based on the formulation of the text of the Second Youth Congress Decision, it appears that customary law is mentioned as one of the foundations of Indonesian unity along with "will", "history", and "education and scouting". Therefore, if customary law is interpreted as binding the unity of the entire Indonesian nation, it is impossible if customary law is seen as a diverse law that differs from one region to another so that what is interpreted as law here is more interpreted as a principle (ideal law) which is abstract and general and applies equally to all Indonesian people, and not in the form of non-empirical social realities.

Paper believes that in the legal context, tradition has a parallel function with legislation or law formation to provide order to society. There is no contradiction between tradition and legislation about this function. Some traditions have developed into customs that are adhered to by a community as legal norms. Similarly, some customary law norms have been accepted by legislation as part of the positive legal system in a modern state. This means that rational positive law

²² Lastuti Abubakar, "Revitalisasi Hukum Adat sebagai Sumber Hukum dalam Membangun Sistem Hukum Indonesia" (2013) 13:2 Din Huk.

²³ Mochtar Kusumaatmadja & Shidarta, *Mochtar Kusumaatmadja dan teori hukum pembangunan : Eksistensi dan implikasi* (Jakarta: Epistema Institute, 2012).



can be formed based on tradition because both have the same social function to establish and maintain social order.²⁴

However, the existence of customary law in the formation of national law should be directed towards the perspective of unity and integrity, not contradicting basic norms and not having the impact of contradiction with legislation because in fact, an effective law is a law that is by the culture and style of the community, as has been promulgated Tap. MPR No. 11/MPRS/1960, which clearly and explicitly explains the position and role of customary law in the development of national law, namely as long as it does not hinder the development of a just and prosperous society, which is its foundation.

It cannot be denied that Indonesia has become part of the vortex of modernization, whose consequences as a jurisdiction where various legal systems meet will be wide open, as the meeting of various legal systems, even the legal system, has occurred since the formation of a plural Indonesian state with various existing customary laws. Therefore, functionalist comparatists believe that legal convergence is inevitable in a legal system. This argument is based on functional equivalence, whereby a legal system can appear different because they have different doctrines and institutions, but the differences only appear on the surface because the institutions in question are still able to fulfill the same and similar functions as the existence of customary law and national law.²⁵

For indigenous peoples, land is not merely an economic object that can be traded, but is an integral part of social, cultural, and spiritual life. Indigenous peoples' relationship with land is holistic and sacred. The land is seen as a life-giving mother, a place where ancestors reside, and a space to carry out various customary rituals and collective traditions. Land is a source of identity and identity for indigenous communities, and plays an important role in maintaining the continuity of generations through a local wisdom-based natural resource management system.²⁶

Land rights in indigenous communities are known as hak ulayat, which is a collective right owned by a customary law community over a certain area, where the community has the authority to regulate, use, and protect the land and the resources within it for the common good. This right is passed down from generation to generation and recognized by the indigenous community itself through a system of living law. This system is generally unwritten, but is strongly adhered to and preserved in the practice of their daily lives. Customary land cannot be freely transferred due to its status as communal property, not individual property.²⁷

²⁴ Aidul Fitriadi Azhari, *Rekonstruksi Tradisi Bernegara dalam UUD 1945* (Yogyakarta: Genta Publishing, 2014).

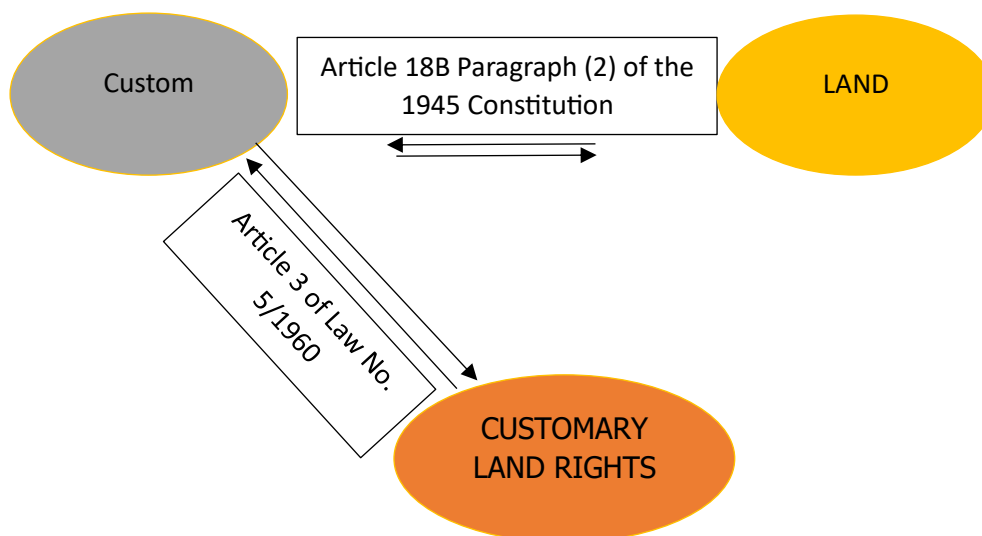
²⁵ Suriyaman Mustari Pide, *Hukum Adat, Dahulu, Kini dan Akan Datang* (Jakarta: Prenada Media Group, 2015).

²⁶ Tania Li, *The Will to Improve: Governmentality, Development, and the Practice of Politics* (Durham: Duke University Press, 2007).

²⁷ AMAN (Alian Masyarakat Adat Nusantara), *Potret Keadaan Masyarakat Adat di Indonesia* (Jakarta: AMAN, 2019).



Figure 2. Relevance of Customary Law to Land



Based on the figure above, we can see that recognition of the strong relationship between indigenous peoples and land is also reflected in various legal and anthropological studies. As Van Vollenhoven, one of the experts on customary law, pointed out, indigenous peoples have a “beschikkingsrecht” or right to control land that is different from the concept of individual ownership in Western law. This right reflects the existence of a separate legal system born from and for indigenous peoples, which cannot be ignored by the national legal system.²⁸

In the Indonesian context, recognition of the relationship has also been accommodated in Article 18B paragraph (2) of the 1945 Constitution which states that “The State recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia.” This is then emphasized in the Basic Agrarian Law (UUPA) of 1960, specifically Article 3, which states that the implementation of customary rights and similar rights of customary law communities is respected as long as, according to reality, they still exist.

Although normatively recognized, in practice, indigenous peoples still face serious challenges in obtaining legal certainty and protection over their land, especially when dealing with state development projects or commercial interests such as coastal reclamation. Therefore, it is important to understand that for indigenous peoples, land is not just about physical control, but about the sustainability of the community's existence, culture, and right to life as a whole.²⁹

²⁸ Van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië (Adat Law in the Netherlands Indies)* (Leiden: Brill Nijhoff, 1928).

²⁹ Rachmi Hertanti, *Perampasan Tanah di Wilayah Adat: Studi Kasus di Indonesia* (Jakarta: Indonesia for Global Justice, 2016).



III. Principles of Recognition and Legal Certainty

The principle of recognition of indigenous peoples' rights refers to the principle of legality and respect for local cultural identity, as stipulated in Article 18B, paragraph (2) of the 1945 Constitution and Article 3 of the UUPA. In the context of reclamation, this principle must be translated into formal recognition of indigenous territories through local regulations or decrees of regional heads that recognize the existence and boundaries of indigenous territories before reclamation is carried out. In addition, technical regulations are needed that ensure indigenous peoples are actively involved in the reclamation planning process through the principle of FPIC (Free, Prior and Informed Consent). Without a definitive and legal process, the legal status of reclaimed land will remain uncertain, which is contrary to the principle of legal certainty.³⁰

IV. Legal Protection Mechanism

Legal protection of indigenous peoples' rights to reclaimed land can be provided through several mechanisms. First, strengthening the legal basis for the recognition of customary rights with binding derivative regulations. Second, data collection and participatory mapping involving indigenous communities in determining territorial boundaries. Third, conflict resolution through a mediation approach based on local wisdom and customary law. Fourth, the establishment of an inclusive and transparent oversight institution for reclamation implementation. All of these instruments are a concrete form of application of legal protection theory, which emphasizes the need to guarantee the protection of rights through a legal system that is responsive to vulnerable groups.³¹

CONCLUSION

Reclaimed land is legally categorized as state land, but not all legal aspects pay attention to the historical and sociological attachment of indigenous peoples to reclaimed coastal areas. Recognition of indigenous peoples' rights is still normative in the laws and regulations, without a concrete mechanism for implementing the recognition of customary rights to reclaimed land. The absence of specific rules governing indigenous peoples' land rights in reclaimed areas has led to legal uncertainty and ownership conflicts between the state, investors, and communities. Legal certainty theory demands clarity of legal status and predictable procedures, while legal protection theory emphasizes the importance of fair treatment of structurally vulnerable groups, such as indigenous peoples. The main recommendations of this study include: (a) the drafting of national regulations governing indigenous peoples' rights to reclaimed land; (b) the application of the FPIC principle in the reclamation process; (c) the strengthening of participatory mapping mechanisms; and (d) administrative recognition through regional regulations or regional head decisions.

³⁰ Gustav Radbruch, *Legal Philosophy* (England: Oxford University Press, 2006).

³¹ Philipus M Hadjon & Tatiek Sri Djatmiati, *Hukum Administrasi dan Tindak Pidana Korupsi* (Yogyakarta: Gadjah Mada University Press, 2012).



DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

The authors would like to thank all parties involved in this research, and thank them for their support and contribution in the implementation of this research.

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