

The Status of Ulayat Land of the Rempang Community in the Perspective of Deliberative Democracy

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Abstract

The Rempang land tenure polemic has become an issue of injustice for indigenous communities regarding land management by the government. Article 19 of the UUPA is in line with the Rempang community's land ownership in order to ensure legal certainty by the government, so land registration is carried out with the agency that makes land deeds. However, the obstacle is that the Rempang community is not a traditional community but has rights to their ulayat land, which cannot easily mean that their ulayat land has a certificate. This research uses a normative juridical method with a conceptual approach by collecting data through literature studies to analyze topics with legal issues based on statutory regulations. The results of the research are expected to show government support through a historical approach to ulayat land and the application of deliberative democracy theory in order to realize the welfare of indigenous peoples which is the main goal as is the implementation of democratic principles.

Keywords: Ulayat Land Tenure; Indigenous People's Rights; Deliberative Democracy; Rempang Island.

Abstrak

Polemik penguasaan tanah Rempang menjadi isu ketidakadilan bagi masyarakat adat terhadap pengelolaan lahan oleh pemerintah. Pasal 19 UUPA sejalan dengan kepemilikan tanah masyarakat Rempang guna menjamin kepastian hukum oleh pemerintah, maka diadakan pendaftaran tanah kepada instansi pembuat akta tanah. Namun, yang menjadi kendala yaitu masyarakat Rempang yang bukan merupakan masyarakat adat namun memiliki hak tanah ulayat mereka yang tidak bisa dengan mudah bahwa tanah ulayat memiliki sertifikat. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan konseptual dengan pengumpulan data melalui studi literatur untuk menganalisa topik dengan isu-isu hukum berdasarkan peraturan perundang-undangan. Hasil penelitian diharapkan adanya keberpihakan pemerintah melalui pendekatan historis tanah ulayat serta penerapan teori demokrasi deliberatif demi mewujudkan kesejahteraan masyarakat adat yang menjadi tujuan utama sebagaimana implementasi terhadap prinsip demokrasi.

Kata Kunci: Penguasaan Tanah Ulayat; Hak Masyarakat Adat; Demokrasi Deliberatif; Pulau Rempang.

A. Introduction

The existence of indigenous communities in Indonesia is enshrined in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that the state recognizes and respects the traditional law community units along with

their traditional rights as long as they are still alive and in accordance with the development of the society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law. It is on this constitutional foundation that the Indonesian state formulates laws and regulations, taking into consideration pre-existing rights as part of the constitutional mandate. As stated in the 1945 Constitution, the term “traditional law community” (*masyarakat hukum adat*) is a general concept used in Indonesia to refer to the original, indigenous peoples who inhabited certain regions prior to modern state formation.

However, it cannot be denied that in practice, conflicts have emerged between the cultural values of indigenous communities, which are based on harmony with nature and subsistence-based economic systems (such as farming, hunting, gathering, gardening, and others), and government policies related to the utilization of natural resources (Salamat, 2016).

In the realm of legal science and formal legal theory, the formulation of law is also expected to consider the norms embedded in society. Therefore, in its recent development, the concept of indigenous communities is not only confined to native groups inhabiting an ancestral area, but is also seen from various dimensions of livelihood and existence (Salamat, 2016).

The weak legal protection for indigenous peoples, despite the fact that Indonesia is a state governed by law whose legal system is largely codified, has led to disputes over indigenous rights, most of which relate to ulayat rights, which are not fully recognized as granting ownership over certain territories.

When it comes to land ownership within a given area, agrarian law, which regulates land and natural resources, is not confined to one branch of law. Rather, it extends into multiple legal domains, particularly in the regulation of control over natural resources in Indonesia.

Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) provides a legal framework that is rooted in *adat* law, which serves as the initial foundation for the law itself. As explained in the UUPA, ulayat rights refer to communal control over land by indigenous communities, and such control extends not only to land, but also to the earth, water, and airspace, in accordance with the provisions of Article 3 of the UUPA, so long as the land is being utilized according to its ulayat land function (Tanuramba, 2020).

However, the existence of ulayat rights often gives rise to disputes between indigenous communities and the state or investors, especially in cases where permits for use or prior ownership of land are claimed by external parties. Indigenous communities often consider the land in question as vacant and part of their *adat* domain, and when external control is asserted, conflicts over ulayat rights may arise.

These conflicts are often framed by competing interests, where the rights and aspirations of two different parties are both seen as legitimate and important, yet one is often sacrificed for the sake of the other.

One such case is the development of Batam Island, including Rempang and Galang Islands, into a Free Trade Zone and Free Port Area, formalized by Presidential Decree No. 28 of 1992. This decree expanded the area under the Batam Industrial Area Authority to include Rempang and Galang Islands, as well as several smaller surrounding islands. This led to overlapping authority between the Autonomous Government of Batam City and the Batam Authority Agency, creating legal uncertainty and unclear land allocations (Nuraini, et.al., 2021).

In connection with this study's focus, namely, the legal certainty for indigenous communities, particularly the people of Rempang, serious concerns arise due to the allocation of land for development without prior coordination or rationalization regarding the legal status or previous land-use permits.

The right of indigenous peoples to reside and maintain their livelihoods is at stake if relocation occurs, or even if they remain in the area but are deprived of land-use rights, especially considering that Article 6 of the UUPA defines land as having a social function, which means it must not be used solely for private interests.

B. Research Method

This research employs a normative juridical legal research type, which involves examining and analyzing legal materials and issues based on statutory regulations. Normative juridical research refers to a method of addressing the core legal problems by proposing a conceptual framework for legal protection of indigenous communities as reflected in constitutional provisions and laws governing agrarian matters, while also incorporating a case reflection on the indigenous Rempang community and their efforts to obtain land use rights or to address the issue of land relocation.

The collection of legal source materials includes primary, secondary, and tertiary legal sources. This research is conducted through a literature study approach, reviewing academic literature relevant to the research problem, as well as document studies that analyze laws and regulations pertinent to the issues under examination (Ibrahim, 2008).

C. Results and Discussion

1. The Status of Rempang Community Land

Ulayat rights, according to Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), are explicitly recognized in Article 3, which states that ulayat rights shall be acknowledged as long as,

in reality, such rights still exist (Isnaini, et.al, 2022). Ulayat land cannot be converted into ownership rights if the land is still strongly held and justified by the existence of an indigenous law community (Asmara, H., 2020).

In the traditional land ownership system of the Rempang community, land is collectively owned and managed by the community as a whole. The land is considered a communal resource jointly owned and utilized by all members of the community (Lakburlawal, 2016). This system is based on customary principles referring to adat law and traditions that regulate the social structure of the community.

The traditional land ownership system of the Rempang community is deeply rooted in their cultural and social practices. This reflects a strong sense of collective identity within the community and their commitment to preserving and maintaining their land resources for future generations. However, this assertion contrasts with the opinion of Tjahjo Arianto, a Land Law expert, who argues that Rempang Island was originally uninhabited forest land cultivated by a settler community and is not adat land. According to him, land in Rempang does not constitute ownership rights but rather acknowledgment rights gained through cultivation, even though its legal status is considered illegal.

Nonetheless, acknowledgment rights are implicitly regulated in Article 3 of the UUPA, which includes the principle of recognizing ulayat rights. This recognition principle implies that although ulayat rights are still acknowledged within the National Agrarian Law system, for development purposes, adat law communities may not refuse the use of land for development on the basis of their ulayat rights. The state retains the authority to open land on a large scale for agricultural areas and national interests.

The discussion around ulayat or adat land in Rempang reveals the absence of a specific legal basis that formally affirms the settlements as legally established adat land. The people in the area have cultivated and lived there for generations, which could be considered a strong basis to classify them as an indigenous community. The term “state land” does not apply strictly in this case; rather, the government serves as an intermediary in the management of such land. The land is now planned to become the property of the government under the management of BP Batam, which has been granted land management rights (HPL). If an investor files for cooperation with BP Batam, they will be granted building use rights (HGB).

Ownership rights under the UUPA are defined as rights passed down through hereditary succession, originating from one's ancestors, and granting full authority over the land. These rights can be transferred to other parties (Eliana, 2019). This aligns with the opinion of Bivitri Susanti, a Constitutional Law expert, who asserts that ulayat or adat land cannot easily be held or certified because such rights are inherited and binding. Therefore, in the case of Rempang,

ownership cannot be legitimized through an individual certificate, considering the nature of the land as ulayat land.

To reinforce ownership rights in Indonesia, it is required to possess a land certificate, which grants full legal power, issued by the National Land Agency (BPN). Thus, the certificate acts as juridical documentation proving legal ownership over an object. Referring back to ulayat land in Rempang, there is still no written legal basis that affirms the settlements as legal adat land, even though the people have cultivated and lived there hereditarily, which makes it reasonable to consider them an indigenous community.

2. Legal Protection of Ulayat Rights for the Rempang Community

As stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), that the earth, water, and the natural resources contained therein are controlled by the state and shall be used for the greatest prosperity of the people. This article ensures that such rights are not violated or arbitrarily dismissed by the government or any other party. By upholding the principle of legal certainty, the people of Rempang can seek legal remedies and protection when their adat rights are violated. They may rely on the clarity and certainty of the legal framework to assert their rights and hold accountable those who infringe upon them (Darnus et al., 2022).

Law Number 5 of 1960 on Basic Agrarian Principles (UUPA) provides certainty and legal protection regarding land ownership and land rights for the people. Article 19 of the UUPA is in line with the Rempang community's ownership of ulayat land. Therefore, in correlation with this article, in order to guarantee legal certainty by the government, land registration is carried out with the authorized land deed registration agency, so that the principle of legal protection can be upheld.

This principle provides a foundation for the legal protection and recognition of the adat rights of the Rempang community. It is reinforced by the content of Article 24 of the UUPA and Government Regulation No. 18 of 2021 concerning Land Management Rights, Land Titles, Apartment Units, and Land Registration, which states that land registration resulting in the issuance of a certificate of title constitutes strong legal evidence. "Strong" in this case means that the community has the right to receive legal protection and certainty through a certificate.

However, the main obstacle lies in the fact that the Rempang community, although not formally classified as a traditional indigenous community, holds ulayat land rights. These rights cannot easily be formalized, as ulayat land is not readily eligible for certification under the national land administration system.

Overall, the principle of legal certainty plays a crucial role in ensuring the protection of the Rempang community's ulayat rights, by providing a legal framework that is clear and predictable for the recognition and enforcement of those rights.

To understand the 2023 Rempang land dispute, one must trace the historical origin of the ulayat land status. According to Presidential Decree No. 41 of 1973, land management rights (HPL) over the entire area of Batam Island were granted to the Batam Authority Agency (BP Batam). Article 6 paragraph (2) letter a of this decree states that all areas on Batam Island were granted HPL status under the Batam Authority. In this case, investors requiring land in the area are not allowed to take over ownership rights; they may only receive building use rights (HGB).

If there are previously existing adat ownership rights over the land, in accordance with the UUPA, adat land individually held can later be converted into "rights on the ownership rights land" (hak atas tanah hak milik) (Yazid, 2020). The development of the Rempang Eco City project is indeed appropriate for tourism, but it must be carried out with the participation of the local community. If relocation is implemented, the land ownership must be recognized, and not merely replaced by building use rights under BP Batam. If the local people are only granted HGB, then the ownership rights of the Kampung Tua residents, who are the long-time local inhabitants, would be lost and unacknowledged, replaced merely with a leasehold.

Article 18B paragraph (2) of the 1945 Constitution affirms that the state recognizes and respects indigenous communities and their traditional rights as long as they still exist and are in accordance with the principles of the Unitary State of the Republic of Indonesia (NKRI). In the case of Rempang, land ownership is uncertain and based on hereditary use, which creates legal ambiguity.

The UUPA allows for the participation of the Rempang community in decisions concerning their adat land through various mechanisms. One such mechanism is the recognition of their right to Free, Prior, and Informed Consent (FPIC). FPIC is a principle articulated in international law, including in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesia has endorsed. FPIC requires that the Rempang community be consulted and give consent before any decisions or actions are made that may affect their ancestral lands and resources.

This is in line with the theory of deliberative democracy as proposed by Jürgen Habermas, which emphasizes inclusive public discourse and community-based decision-making. Its implementation among indigenous communities is seen in efforts to bring policies closer to public interest, restore the meaning of people's sovereignty, and reduce elite domination in the policymaking process.

Rempang is a relevant example in this regard, as its land conflict directly touches on the rights of local people, which have become a major point of contention in the eviction process. In

resolving this issue, the government continues to pursue consultations and consent-seeking efforts to support decision-making on the territorial land dispute. This includes activities such as land development, resource extraction, or infrastructure projects. The law recognizes that the people of Rempang have the right to participate in decision-making processes and to have their voices heard (Darnus et al., 2022).

Legal protection from the state in handling the Rempang case can also be based on Regulation of the Minister of Home Affairs Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Communities. Article 9 of this regulation explicitly states that the Minister of Home Affairs, through the Directorate General of Community Empowerment and Villages, is responsible for providing guidance and oversight in the implementation of indigenous rights recognition and protection.

Thus, the government, through the Ministry of Home Affairs, can take repressive and historical approaches to the community in Rempang. The people there need clarity regarding the legal status of the land and their associated rights. By referring to this regulation, the government can provide certainty and resolve ambiguities resulting from administrative provisions previously issued by local governments.

The state must guarantee land rights and provide fair compensation. If those rights are inconsistent with the principle of justice, then the government must reinterpret its policies in order to fulfill the ulayat rights of indigenous peoples.

3. Legal Remedies for the Rempang Community Based on the Perspective of Deliberative Democracy Theory

The control of land owned by individuals by the government or the state constitutes an authority held by the state, as regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). However, one must not forget the other side of this matter, namely, that the people also have the right to own land, particularly ownership rights over land (Marwanto, 2017). The ownership rights of indigenous peoples are hereditary and full, and such rights must be viewed in light of their social function, as embedded in the concept of land rights. This is emphasized in Article 3 of Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), which acknowledges ulayat rights as long as they fulfill a social function that benefits the wider community (Alting, 2011).

The case of land management in Rempang and its relationship with the local community is one of many examples of land disputes, which often arise due to various "land transactions" emerging from business dealings and the transfer of land ownership or control, often carried out without the knowledge or consent of the local people who hold legitimate claims to the land they occupy.

The control of land by indigenous communities has not yet received adequate legal guarantees from the prevailing legal system. Furthermore, government and corporate interests often exclude indigenous communities from land management, when instead they should be included in accordance with the principles of justice, welfare, and mutual deliberation (Supriadi, 2023).

Another issue regarding land tenure in Rempang is the occurrence of forced eviction through violence against the Rempang community. Such actions violate legal norms related to dispute resolution and disregard the obligation to seek peaceful means, namely deliberation. The government, perceived as prioritizing legal politics and business interests over the empowerment of indigenous rights, raises serious doubts about the state's commitment to legal protection of those rights.

Government alignment with indigenous rights is crucial, not only to prevent the prioritization of political and economic gain, but to ensure that the people's welfare remains the primary goal. As long as indigenous peoples exist, any agreements and laws related to land management must take into account their rights and voices.

Thus, the recognition of indigenous land rights should not be limited to legal acknowledgment by the state but should also reflect the legal pluralism that exists in Indonesian society. The government's support for indigenous communities must involve a genuine understanding that land serves not only an economic role, but also a social function, as established in Article 6 of the UUPA. Therefore, land must not be used solely for the interests of specific groups, particularly in the context of land conversion for the benefit of investors (Rumiarta, 2019).

This recognition must also be grounded in the understanding that law is not only born from state regulation, but also from norms that live within society, i.e., adat law. This aligns with the ideas of Van Vollenhoven, who argued that the application of law is not based solely on rules made by the government or authorities, but also on local norms regarded by the community as binding. In addition, local residents share the belief that these rules must be upheld by adat leaders and officials, and that such norms may carry sanctions, provided they do not contradict the national constitution (Ismi, 2012).

In relation to the land management conflict between the Rempang community, the government, and companies claiming ownership, a parallel may be drawn with the planned development of the new capital city in East Kalimantan. This shows that in cases of land management for new purposes, negotiation must take place beforehand, recognizing that land is not only an economic asset but also: "a tool of social control", meaning it is not only intended to maintain stability but also to update the perspective of indigenous communities regarding the function of their adat lands in a way that contributes to a conducive development process, without

abandoning the application of deliberative democracy which aspires to produce responsive legal products (Sujana, 2019).

In essence, in relation to law-making, democracy must create laws that are both participatory and aspirational for the people. Therefore, by strengthening the principle of deliberative democracy, broader space is opened for citizen participation, such as for the Rempang community, to be fully aware of the land management process, including the need to ensure balanced compensation.

Law must serve as a legitimization of the general will; thus, regardless of how it is created, it must involve renewal, development, and community participation, so that the legal products reflect consensus-based deliberation (Halim, 2016).

The enforcement of Law Number 5 of 1960 on the Basic Agrarian Principles (UUPA) marked the beginning of formal regulations on adat law and its derivatives, especially those related to land ownership for indigenous communities. However, when conflicts arise between the government, corporations, and indigenous peoples, agrarian legal policy must be revised, including by implementing land reform that is fair and just, considering land ownership for the people, whether in rural or urban areas (Santoso, 2017).

D. Conclusion

The traditional land ownership system of the Rempang community is deeply rooted in their cultural and social practices. The ownership of ulayat land among the people of Rempang is based on hereditary rights passed down from their ancestors. Article 19 of the Basic Agrarian Law (UUPA) aligns with the land ownership of the Rempang community, which holds ulayat land. Therefore, this article serves as a basis for ensuring legal certainty by the government through land registration with authorized land deed agencies in order to obtain legal protection. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects adat law communities along with their traditional rights, so long as they are still alive and evolving in line with the principles of the Unitary State of the Republic of Indonesia (NKRI).

In line with the implementation of deliberative democracy theory, the approach must create broad opportunities for public participation, one of which is enabling the Rempang indigenous community to be involved in understanding and negotiating the land management process by taking into account fair and proportional compensation. The government's alignment with the rights of indigenous peoples is essential. Therefore, the state must take a proactive role in field research, applying a historical approach to the area, and conduct passive socialization by engaging in dialogue with the Rempang community.

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