

The Existence of Customary Law Community's Rights (Hak Ulayat) Over Land in Kalimantan

Lolita¹, Salfius Seko², Chandra Maharani³, M.Tohir⁴, Herlina⁵
^{1,2,3,4,5}Fakultas Hukum, Universitas Tanjungpura, Pontianak, Indonesia
lolita@hukum.untan.ac.id

Abstarct

Land is the source of life and, at the same time, a symbol of identity in which the honor and dignity of its owners are embedded. Land holds significant and vital meaning for the Dayak people, reflecting their identity. The relationship between the Dayak community and the land (nature) is a reality of life, where they are interrelated in the unity between living beings and nature. The indigenous communities in Kalimantan understand "Hak Ulayat" as customary land. The conception of customary land is understood as land subject to customary law. This customary land consists of three important aspects in relation to its ownership: firstly, communal customary land held by the indigenous community, which is jointly possessed, protected, maintained, and utilized for collective interests. "Hak Ulayat" faces challenging and burdensome issues in its recognition and protection. Article 3 of the Basic Agrarian Law (UUPA) asserts that the implementation of "Hak Ulayat" and similar rights of indigenous communities, to the extent they still exist in reality, must be carried out in a manner that aligns with national and state interests, based on national unity, and in compliance with higher laws and regulations..

Keywords: Indigenous Communities, Dayak, Hak Ulayat

Introduction

The existence of customary law community's rights (Hak Ulayat) over land in Kalimantan is a topic of significant importance, given the rich cultural heritage and traditional practices of the indigenous communities inhabiting this region. Kalimantan, also known as Borneo, is the largest island in Indonesia and home to diverse indigenous groups with distinct cultural identities. For centuries, these communities have established a deep connection with their ancestral lands, considering them not merely as resources but also as sacred territories intertwined with their collective identity and heritage.

The issue of Hak Ulayat has become a central concern for indigenous communities in Kalimantan, both from economic and socio-cultural perspectives. The land is not only viewed as a source of sustenance but also symbolizes the dignity and honor of its owners. Through generations, the indigenous people have perceived nature and land as a mother figure, a sacred entity that demands protection, respect, and responsible use, discouraging massive and destructive exploitation (Djuweng, 2001:23). The cultural significance of land in Kalimantan highlights the delicate balance between human existence and the natural world, where communities see themselves as integral components of their environment.

Mythical narratives play a vital role in shaping the Dayak people's relationship with their land. Stories of creation and natural phenomena underscore the interconnectedness between humans and nature, infused with religious significance. The tales of Batang Garing, Kayu Ara, Pasang Rura, Pisang Bangkit, Pohon Kupang, Akar, Tulang daun, and others form a crucial aspect of Dayak culture, guiding their attitudes and behaviors in relation to their environment (nature). These myths, though not historically verifiable, are seen as genuine histories by the Dayak people, reflecting their profound connection to the land and its significance in their lives (Coomans, 67).

In the cultural context, the Dayak people demonstrate their commitment to preserving their ancestral lands by cultivating fruits for future generations. This practice signifies their determination to maintain familial ties across generations, fostering a continuous sense of community within their clans. The

preservation of communal living in the clans is prioritized over individual interests, promoting harmony and unity among the indigenous communities in Kalimantan. This experience has been passed down through generations, instilling a sense of responsibility in caring for their environment, as they see themselves as an integral part of nature, living and coexisting as one.

Hak Ulayat, as a right intrinsically tied to indigenous customs, cannot be dissociated from these communities. From a human rights perspective, Hak Ulayat deserves respect, recognition, and protection from the state and all stakeholders involved. Understanding the essence of Hak Ulayat involves acknowledging its role in shaping the identity of indigenous communities and their relationship with the land. Determining the continued existence of Hak Ulayat requires the collaboration of local authorities, indigenous law experts, community representatives, non-governmental organizations, and resource management agencies.

The Basic Agrarian Law recognizes Hak Ulayat as communal rights over land within the territory of specific indigenous communities. This concept aligns with the indigenous communities' notion of "hak petuanan" or "lingkungan kekuasaan," signifying their ownership and governance over the land. The terms "Binua," "Banua," and "Benua," used by different Dayak tribes in Kalimantan, denote this communal connection to their ancestral lands. Understanding the complexity and intricacy of Hak Ulayat requires a multidimensional perspective that encompasses its historical, cultural, and legal significance.

As Kalimantan faces various challenges, including rapid development and resource exploitation, protecting the rights of indigenous communities becomes crucial in preserving their cultural heritage and maintaining ecological balance. Ensuring the recognition and safeguarding of Hak Ulayat necessitates collaborative efforts between the government, legal experts, indigenous communities, and environmental organizations. By respecting and preserving Hak Ulayat, Kalimantan can uphold its diverse cultural tapestry and contribute to sustainable development that respects both the indigenous people's rights and the environment they cherish..

Methods

This research is a study conducted using the literature review method. It involves reviewing and analyzing the findings of previous research that has been conducted. The data search and collection were done by exploring e-journals using Google Scholar.

Findings dan Discussion

Dayak Community's Conception of Land

Land as an agrarian resource and natural resources is a central issue for indigenous and tribal peoples, both from an economic and socio-cultural perspective. Land is a source of life and at the same time a symbol of identity which contains the honor and dignity of its owner. Traditionally, indigenous and tribal peoples perceive nature and land as a " *mother*" that must be guarded and respected and protected and not exploited massively and destructively (Djuweng. 2001: 23).

Thus, land has an important meaning and is very vital for the Dayak people. Its importance and vital meaning lies in the issue that land is an identity that shows ethnicity and tribal identity which must be maintained for its existence, because it relates to the territory/territory of a group or tribe where they live and live which explains the existence of an ethnicity and concerns the nature of one world unit (cosmos) which is transcendental and outward in nature, to explain the origin of a particular tribe and the existence of that tribe. In this understanding, the land for the Dayak people has several functions, including:

1. **Magical religion.** Land and Dayak people are seen in the close relationship between Dayak people and the land itself, which is expressed in the customary system (Garang: 103). In a relationship that is transcendent (which overcomes something, stands outside something) there is a supernatural correlation between humans and land symbolized through mythical stories such as ara wood, banana trees rise and so on as symbols as well as confirmation of how close the relationship between Dayak humans and the forest/nature is (Fridolin Ukur, 12). These myth stories, according to Van Peursen, are stories that provide guidance and direction to a group of people. Thus, these mythical stories function

to make people aware that there are magical powers, provide guarantees for the present and provide knowledge about the world. However, this is not only marked by the togetherness of creatures in mystical stories such as myths about creation, but also seen within the framework of not losing their power. Therefore, in order for the "power" to exist, then the treatment of nature must be constructed on the balance and harmony of the cosmos. Dayak people basically don't dare to damage the land intentionally (Fridolin Measure: 11). Forests, earth, rivers and everything is seen as part of life itself. And the meaning of life does not only lie in well-being, reality or objectivity as understood by modern humans, but is seen in the balance of the cosmos. Life is good when the cosmos remains in balance and harmony. Thus, mythic events constitute a *transcendental* reality as an objectivity of myths that reside in the environment, flora and fauna, water, earth, air and so on, from the objective side as well as from the subjective side (Fridolin Measure: 13).

2. **Economical.** The economic life of the Dayak people is based on agriculture/shifting cultivation and hunting (a small part). Shifting cultivation is a livelihood closely linked to the Dayak community (see, for example, Dove, 1998; Lebar, 1972; and Conley, 1973). The traditional agricultural pattern of the Dayak people in the form of cultivation on dry land relies on local wisdom that has been practiced for generations and has lasted hundreds of years. In practicing cultivation, when clearing new land they first ask for the blessing of the "master" of the land guard with a series of traditional ceremonies. The purpose of the ceremony is that their land and their plants are blessed so that they get abundant results. The plants grown in these fields are also diverse, such as rice, vegetables and medicinal plants to meet their own needs and to keep these plants sustainable. After the harvest, they will plant the former fields with productive crops such as fruit, rubber, ironwood (ironwood), sugar palm and other plants of economic value. Apart from shifting cultivation, the economic life of the Dayak people also depends on hunting. In the life of the Dayak people, hunting is an integral part of tribal life related to their daily needs and also hunting animals associated with traditional ceremonies such as pigs. Hunted animals such as wild boar, deer, deer or others are not only intended for today, but also for long-term needs, because hunting is not always done all the time. Therefore, they always make *salai* (meat that has been grilled on hot coals) and *pekasam* (meat or fish that has been preserved/pickled with rice and salt) to meet their needs for quite a long time. Related to this, in hunting animals they must be equipped with expertise and wisdom in hunting, they must not be greedy in taking their prey, hunting only to meet the needs of a certain time. And every time they are going to hunt, they usually have to perform a traditional ceremony to ask for the blessing and permission of the "owner" of the animal, because they believe that the animals in the land have an "owner". The most important thing is how the balance in nature is maintained so that nature is always friendly and always provides for their needs now and in the future.
3. **Ecological.** Continuity of past, present and future lives is seen as intertwined like an unbroken chain (*sustainable*). The present life is determined by the past life, and the future is determined by the present. Thus the most important thing is how the bonds that exist in each phase of life are not interrupted and not damaged, because damage will cause destruction in the next generation. In land management (the narrow sense is land) it must be seen in a series that supports each other, taking into account the wisdom and balance of environmental management in a wise way. In a cultural dimension, Dayak people maintain the sustainability of the land (read: land) for generations by planting fruits that can be enjoyed from generation to generation. This reality is not only understood as an effort to enjoy the results (economic in nature), but is also seen as an effort how people maintain the continuity of existing family life from generation to generation, so that communal life between clans (*sedatuk*) continues continuously without interruption. Maintaining community within the clan is an effort that must be prioritized, above individual interests. This cultural wisdom really determines the sustainability and integrity of the land and its natural surroundings. The destruction of nature lies in how humans behave towards the natural surroundings, if greed dominates humans, then the continuity of nature will not be able to survive. Conversely, if human treatment of nature is wiser, then nature will provide benefits and prosperity for humans. The cultural reality that is formed in Dayak people regarding how they must be wise in managing nature is a life experience that they did not learn in formal school, but it is an experience of their life in and in the natural surroundings. This experience has taught them from generation to generation in protecting and managing the natural surroundings because they are part of nature itself, nature is their own life and nature is their own world. Therefore,

before taking something from nature, the Dayak people must give something first, such as opening new land, cultivating land for cultivation, they must meet certain conditions (cf. Mubyarto 60-63).

4. **Socio-political.** According to Masri Singarimbun throughout Indonesia there is a close relationship between legal alliances and land within the territory of the legal alliance. Therefore, the legal alliance has rights over the land, which is called *beschikkingrecht* by Van Vollenhoven, "lordship rights" by Soepomo, "lordship rights" by Mahadi, "territory rights" by M.Tauchid and "ulayat rights" by Soekanto (Ridwan, 1982; 26). Furthermore, according to Masri Singarimbun, this land applies both inside and out (Singarimbun, 1992; 297). This means that ulayat land concerns the territory of a group or tribe related to places of residence and places to live which explains the existence of a particular ethnicity so that the relationship between the communal group and the land cannot be separated given the nature and facts.

The Dayak people's relationship with the land is inseparable from mythical stories about the occurrence of the universe which explain the reality of the universe in relation to humans and other living things as the religious meaning of the surrounding environment (nature). The story of the creation of Batang Garing (Fridolin Ukur, 35-37), Kayu Ara, Pasang Rura, Rising Bananas, Kupang Trees (Laubscher, 238-239), Roots, Leaf Bones and so on describe the supernatural correlation between humans and the land (nature). This adventure of the Dayak people into the world of myths is not just to find out, but an attempt to open a window full of secrets that underlies and underlies the cultural attitudes and behavior of Dayak people. Mites are stories that have a historical background, are believed by the community to be stories that really happened, are considered sacred, contain many miraculous things, which are generally represented by gods (Big Indonesian Dictionary), have become the basis for organizing the life of the Dayak people, which appear in various provisions such as customs, rites and cults (Fridolin Measure, 12). These mythical events are beyond the bounds of time and space, but when viewed in the inner experience of the Dayak tribe, these myth stories are valued as history, but not in the sense that these events can be verified historically. It is valued as history, because that is how Dayak people live it, which Coomans sees as genuine history (*oergeschiendenis*) or even about prehistory (Coomans, 67).

The relationship between the Dayak people and the land (nature) is a reality of life in interrelated relationships (interplay) in the unity between living things and nature. Nature (soil) and humans and other living things are a unit that has a very close relationship. This is based on a totality philosophy which explains that nature, humans and other living things are interdependent and influence one another. When nature is damaged, the balance and unity between the unseen and the real will be disrupted. By Ter Haar said that balance disorders must be restored immediately so as not to cause shock. Its restoration must be carried out by a customary reaction. Land that supposedly has a spirit is a mythical reality that is understood in the context of religio-magical, seen as an effort that not only understands how humans must maintain ecological sustainability, but also how humans create a harmonious relationship with the god of the land (the spirit of the land) who gives fertility, success in harvests and prosperity for humans.

In a cultural dimension, Dayak people maintain the sustainability of the land by planting fruits that can be enjoyed from generation to generation and are understood as an effort to maintain the continuity of family life (sedatuk kinship) from generation to generation, so that communal life between clans continues uninterrupted. Maintaining community within the clan is an effort that must be prioritized, above individual interests. This cultural wisdom in viewing nature and treating nature is what really determines the sustainability and integrity of the land and its natural surroundings. The destruction of nature lies in how humans behave towards the natural surroundings, if greed dominates humans, then the continuity of nature will not be able to survive. Conversely, if human treatment of nature is wiser, then nature will provide benefits and prosperity for humans. The cultural reality that is formed in Dayak people regarding how they must be wise in managing nature is a life experience that they did not learn in formal school, but it is an experience of their life in and in the natural surroundings.

This experience has taught them from generation to generation in protecting and managing the natural surroundings because they are part of nature itself, and nature is life itself. They live in and are "lived" by nature. Nature and them unite so that they form a unified whole. Nature gives life to them and they take advantage of nature for their livelihood so that this relationship is symbiotic reciprocal (dependency).

Therefore, they must maintain the harmony and balance of nature, through reasonable behavior towards the natural surroundings.

The natural surroundings can maintain balance and harmony if they are able to create harmony with nature and manage nature wisely. This harmonious relationship will provide balance and happiness for them. Conversely, if they act unwisely in managing nature, then they will get the wrath of nature, calamity and calamity. . Therefore, before taking something from nature, the Dayak people must give something first, such as opening new land, cultivating land for farming, they must meet certain conditions (cf. Mubyarto 60-63). This requirement is related to a prohibition or *Sympatische Taboo* (Mali/Pemali) because in the Dayak Pemali/Mali community it is always associated with a provision regarding things that cannot be done, which if violated will cause an imbalance in the cosmos. Taboo or taboo or Mali/Pemali is a strong social prohibition against words, things, actions or people that are considered unwanted by a group, culture or society. Taboo violations are usually unacceptable and may be considered offensive. Some acts or customs that are taboo may even be legally prohibited and their violation may result in severe sanctions. Taboos can also cause shame, disgrace, and harsh treatment from the surrounding community.

Recognition and Protection of Indigenous Rights

In the Big Indonesian Dictionary, acknowledgment (*erkenning*) means the process, method, act of confessing or acknowledging, while the word acknowledging declares rights. Recognition in the context of international law leads to *de facto* and *de jure recognition* . Real recognition of certain entities to exercise effective power in an area is called *de facto recognition* . *De facto* recognition is an acknowledgment that is temporary, because the acknowledgment is shown in the facts regarding the position of the new government, whether it is supported by the people or whether the government is effective which causes its position to be stable. If it can then be maintained and the recognition progresses, then the *de facto confession* can turn into a *de jure confession*. *This de jure* recognition is permanent and accompanied by other legal actions. In relation to a "recognition" in the context of recognition of a State, Hans Kelsen in his book "*General Theory of Law and State*" :

"There are two actions in a confession, namely political action and legal action. Political action recognizes a State, which means that the State recognizes the will to enter into political relations and other relations with the people it recognizes. Meanwhile, legal action is a procedure established by international (national) law to establish State facts in a concrete case.

Based on Kelsen's opinion, the recognition of indigenous peoples by the State leads to political recognition and legal recognition by regulating the rights and obligations of the government in respecting, fulfilling and protecting their traditional existence and rights which must be formulated in a legal form. According to Austin, recognition through state law is defined as laws made by people or institutions that have sovereignty, and this recognition applies to members of an independent political community. Members of the community recognize the sovereignty or supremacy of the person or law-making institutions concerned. Thus, customs will only apply as law if the law requires or expressly states the enforceability of these customs.

Austin's conception that sees state law as the only law that regulates people's lives is criticized by followers of the school of history, according to him that every society has its own characteristics that depend on life history and social structures that live and develop to regulate their interests. This was emphasized by Freidrich Carl Von Savigny (the main figure of the school of history) who saw that law is one of the factors in the common life of a nation such as language, customs, morals, state administration. Therefore, law is something that is supra individual, a symptom of society. However, these societies are born in history, develop with history, and disappear in history. Thus, the law is a historical phenomenon whose existence will be different at any time, depending on the place and time the law applies. Law is an incarnation of the soul or spirit of a nation (*volksgeist*). The assumption of Carl von Savigny's statement is based on: There is an attachment between history and law, so that law is not compiled and created by people, law grows and develops together with the people, but the development of law itself is basically outside awareness and is an organic process.

Law developed from a simple view, understood as a legal relationship in primitive society, developed into a complex civilization in modern civilization. This public awareness cannot be manifested in oneself directly but is represented by jurists who formulate legal principles technically. These jurists are only an

organ of the legal consciousness of society, which is limited in its duties to capture the raw legal materials they find in society.

Laws have no validity and/or cannot be applied universally, because each society has developed its own laws, manners, customs and language. Thus, the only source of law is the legal awareness of the community which is embodied in customary law and statutes, both of which are equal, because the nature of laws is formalized habits.

Article 33 paragraph (3) of the 1945 Constitution reads: "earth, water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". The mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia is the spirit of the state's right to regulate the use and management of agrarian and natural resources (SDA). In detail Article 33 of the 1945 Constitution of the Republic of Indonesia states: (1) The economy is structured as a joint venture based on the principle of kinship; (2) The branches of production which are important for the state and affect the life of the people at large are controlled by the state; (3) Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people; (4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity; (5) Further provisions regarding the implementation of this article are regulated in the law.

Explicitly, the provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia above, regulate the basic principles, directions and policies in managing the Indonesian economy, as well as the state's social obligations towards fulfilling people's rights, for a decent living for humanity. Observing the contents of the state's authority which originates from the right to control agrarian and natural resources by the state, solely of a public nature, that is, the authority to regulate (regulatory authority) and not physically control land or land and use it as the authority of private land rights holders. The quote from Article 33 of the 1945 Constitution of the Republic of Indonesia above also shows an important *point that "people's prosperity" is the entry point* in the nation-building process. Included in the category of the people, there are local/customary communities who are the legal owners of agrarian and natural resources. So that this community group also has the right to obtain the goal of "the greatest prosperity of the people".

Land and land as agrarian resources and natural resources are a central issue for the local community (local community/customary community) from an economic and socio-cultural perspective. Land and land become a source of life and at the same time a symbol of identity which contains the honor and dignity of the owner. It is a tradition for local/indigenous people to perceive nature and land as *mothers* who must be looked after and respected and protected and not exploited massively and destructively.

The formulation of Article 33 paragraph (3) becomes the legal basis governing land (land is the upper part of the earth or is the surface of the earth), and as the implementer of the provisions of Article 33 paragraph (3) is the Basic Agrarian Law No. 5 of 1960. The Basic Agrarian Law also contains provisions relating to one of the most important aspects of indigenous peoples' rights related to their living space, namely customary rights. Article 3 of the UUPA states: "taking into account the provisions in Articles 1 and 2 of the implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, they must be such that they are in accordance with national and state interests, which are based on national unity and may not conflict with laws and other higher regulations". The provisions of Article 3 of the UUPA are reaffirmed in Article 18 B paragraph (2) of the 1945 Constitution as a form of recognition and respect by the State for customary rights which reads as follows: "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia regulated in law". Furthermore, Article 28 I paragraph (3) states: "Cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilization". The provisions of the aforementioned article also provide implicit recognition that the State recognizes the existence of the traditional rights of indigenous peoples and all of their existence, including customary/customary land rights.

The recognition given by the State to indigenous peoples formally provides a basis for indigenous peoples to achieve equality with other communities that they are part of Indonesian society who are entitled to receive equal treatment in all aspects including the use of earth, water, space for their welfare. However, this formal acknowledgment must also be followed by a material acknowledgment so that there is no longer a conditional acknowledgment. The use of the word "as long as it exists and does not conflict with..."

emphasizes the existence of a half-hearted acknowledgment from the State, meaning that this condition does not give broad scope for indigenous peoples to make use of the earth, water and the natural resources on it for their welfare. The word "as long as there are...", gives an affirmation that in order to recognize the existence of indigenous peoples, they must meet the criteria as stipulated in Article 2 paragraph (2) of the Minister of Agrarian Affairs Number 5 of 1999 concerning Guidelines for the Settlement of Ulayat Rights Issues of Indigenous Peoples, namely: a. there is a group of people who still feel bound by their customary legal order as joint citizens of a particular legal alliance, who recognize and apply the provisions of that partnership in their daily lives; b. there is a certain customary land which is the living environment for the members of the legal alliance and the place where they take their daily necessities of life; and c. there is a customary legal order regarding management, control and use of communal land that applies and is obeyed by the members of the legal alliance. Recognition and protection of customary law communities and their rights are stipulated by Regional Regulations.

The existence of ulayat rights is an indisputable necessity, therefore the commitment to respect and protect ulayat rights, both regionally and nationally, has an important meaning because ulayat rights are basic rights of indigenous and tribal peoples that must be respected and protected. The importance of respecting and protecting customary rights is contained in the commitments of the international community which include various international conventions, including *The United Nations Charter* 1945, *The Universal Declarations of Human Rights* (1948), etc. Likewise with respect and protection in various instruments of legislation in Indonesia, including amendments to Article 18B of the 1945 Constitution, TAP MPR No. IX/MPR/2001, and various other laws and regulations.

Existence of Ulayat Rights in Kalimantan

The Basic Agrarian Law uses the term customary rights (territory) to denote land which is the area of the legal community concerned. This term is the same as the term used by local communities, where the term used is "rights of attorney" which refers to the notion of "environment of power". Meanwhile Van Vollenhoven uses the term "*beschikkingsrecht*", where this term describes the relationship of the alliance with his own land. In the customary law community in West Kalimantan, customary rights (sphere of power) are referred to as Binua (Dayak Kanayatn group), Banua (Dayak Bakati group), Benua (Tobag Dayak group). In Ambon they call it *pertuanan* (owned land), Jawa- *wewengkon*, Bali- *prabumian* (limited area). The different designations show pluralism in customary land law on the one hand, on the other hand, indicating that customary land law has many dimensions or in short it has a broad meaning in terms of content and concept. In reality, customary rights face difficult and formidable challenges in their recognition and protection. Article 3 of the UUPA confirms "By bearing in mind the provisions in Articles 1 and 2 of the implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, they must be such that they are in accordance with national and state interests, which are based on national unity and may not conflict with laws and other higher regulations". The acknowledgment is a conditional and layered acknowledgment, "as long as there is..., as long as it does not conflict with...". Satjipto Rahardjo describes the juridical clauses that are the criteria for the existence of indigenous peoples and their rights as follows:

1. "As long as you live"

We do not only observe from the outside, but also from within, by greeting the feelings of the local community (participatory approach).

2. "In accordance with the development of society"

This condition carries the risk of *imposing* gigantic interests in the name of "development of society". Does not provide an opportunity to let the dynamics of the local community process independently.

3. "According to the principles of the Unitary State of the Republic of Indonesia"

The weakness of this paradigm is to see the Unitary State of the Republic of Indonesia and indigenous peoples as two different and face-to-face entities.

4. “Registered by law”

Indonesia is a country based on law, if in such a country everything is left to the law, daily life will not run productively. Law, which always wants to regulate its own domain and feels capable of doing so, has failed (if it doesn't involve other social phenomena).

Article 2 paragraph (1) Permen ATR/Head of BPN Number 10 of 2016 concerning Procedures for Determining Land for Customary Law Communities and Communities Residing in Certain Areas emphasizes the following: (1) MHA who meet the requirements can have their rights over land confirmed. Furthermore, in paragraph (2) community groups that are in a certain area and meet the requirements can be given their rights to land. Whereas Article 4 paragraph (1) emphasizes that MHA must meet several requirements, including: a. society is still in the form of associations; b. there is an institution in the apparatus of customary rulers; c. there is a clear area of customary law; d. there are legal institutions and instruments that are still adhered to. The granting of land rights is given in a communal form.

Ulayat rights as a right attached to indigenous peoples cannot be separated from indigenous peoples. In the human rights dimension, customary rights are rights that must be respected, recognized and protected by the state and all parties. To make it easier for us to understand ulayat rights in more depth, ulayat rights must be seen in another dimension, namely the characteristic dimension that introduces, explains the identity and content of said ulayat rights. Citing Van Vollenhoven's opinion, there are characteristics of the community rights to the land (ulayat rights), including:

1. only the legal association concerned and its members are free to work on land that has not been touched by other people for various purposes, may clear land for agriculture (clearing it for agriculture), establish a village (founding a village), and collect forest products (gathering forest produce *or to exploit any virgin land*);
2. people may do so, only with the permission of the association;
3. outsiders and sometimes members of the association have to pay land rent, in order to be given permission to carry out such actions (*recoqnisi*);
4. customary law alliances still have control rights over *cultivated lands*;
5. the partnership is responsible in terms of *unaccountable delict within the area* (eg the guilty party is unknown or cannot be arrested);
6. customary rights *can not be permanently alienated* or cannot be relinquished forever.

Based on the characteristics mentioned above, the use of customary rights has the nature of its application, namely:

1. Depth Nature. Based on this nature, each member of the customary community has the right to take products from the land and animals and plants that are above customary rights.
2. Exit Nature. This exit nature means that customary rights also apply to outsiders, namely people who are not members of the association. If outsiders want to enter the fellowship, they must first seek permission from the head of the fellowship.

Meanwhile, the criteria for determining customary rights of customary law communities are considered to still exist if three elements are met, namely:

1. elements of indigenous peoples, namely the existence of a group of people who still feel bound by their customary legal order as joint citizens of a certain legal alliance, who recognize and apply the provisions of the said alliance in their daily lives;
2. the element of territory, namely the existence of certain communal land which is the living environment for the members of the legal alliance and the place where they take their daily necessities of life; And
3. elements of the relationship between the community and its territory, namely the existence of customary law arrangements regarding the management, control and use of their customary land which is still valid and obeyed by the members of the legal alliance.

This was reiterated by Boedi Harsono, according to whom the customary rights of indigenous peoples still exist if three elements are met, namely:

1. There is still a group of people as members of a certain customary law community, which constitutes a customary law community.
2. There are still areas which are the ulayat of the customary law community, which are recognized as jointly owned land by its citizens as their " *labensraum* ".
3. There are still customary rulers who, in fact, are recognized by the members of the customary law community concerned who carry out their daily activities as executors of customary rights.

Thus to determine whether customary law community rights still exist is the work of the Regional Government by involving customary law experts, customary law communities in the area concerned, Non-Governmental Organizations and agencies that manage natural resources. The existence of customary lands of customary law communities that still exist is stated in the base map of the land registration by affixing a cartographic mark, and if possible, delineating the boundaries and recording them in the land register (Article 5 paragraph (1) and paragraph (2) of the Minister of Agrarian Affairs/Head of BPN No. 5 of 1999 concerning Guidelines for the Settlement of Ulayat Rights of Customary Law Communities). Furthermore, it was emphasized that the implementation of customary law community customary rights could no longer be carried out on land parcels which at the time the Regional Regulation was enacted:

1. already owned by an individual or legal entity with a right to land according to the Basic Agrarian Law;
2. are parcels of land that have been acquired or released by government agencies, legal entities or individuals in accordance with the applicable provisions and procedures.

The description above shows that the determination of the characteristics of community customary rights (*das solen*) over land is very dependent on:

1. Objects, with distinctive signs/characteristics of the existence of communal land (*Voorkeursrecht*), physical control (*Ontginningsrecht*), utilization of land by way of harvesting (*Genon recht*);
2. Subject (*Gemeenschappen*) which consists of the structure of customary law communities based on kinship/hereditary (geneological) relationships, territorial principles and a combination of 1 and 2; And
3. Structure of Customary Law Institutions and Instruments of the Legal Order and Existing Community Members.

Customary law communities in Kalimantan understand customary rights as customary land. the conception of customary land is understood as land that is subject to the provisions of customary law. This customary land consists of three important parts in relation to its control, namely first customary land which is controlled communally by customary law communities, this land is jointly controlled by the community, guarded, maintained and used for common interests, for example customary forest areas which are areas for conservation because they are sources of clean water and customary forests, sacred places which are places where the spirits of the ancestors of the Dayak tribe reside, and so on. Second, customary land that is controlled by a large family, for example tembawang (various fruit gardens). Tembawang has social, cultural, ecological and economic functions. At first, this tembawang was owned by a small family, but over time this small family became a large family that lived in a certain village because they had children and grandchildren . Third, individually owned land, this land will later become the forerunner to private property, in the form of bazaars (former dry land fields), rubber plantations, and so on. The reality of customary land provides an explanation that individual rights are covered by communal rights. And if there is a conflict of interest between communal and individual rights, then individual rights can be set aside. However, this condition is affected by the thinning ability of the customary land. That is, if communal rights strengthen, then individual rights diminish, conversely if individual rights strengthen, then communal rights diminish. The existence of this customary land is in an adat territory called binua (for Dayak Kanayatn, Bidayuh, Iban and Bekati), kampung/laman (for Dayak Tarakng (Mali, Keneles, Pruna and Taba). Each binua area is headed by a binua head called a temenggung, while for a village it is headed by a village head.) and indigenous peoples take preventive measures and action to impose customary sanctions. It is customary law

that protects, regulates the life order of customary law communities, including in terms of maintaining the integrity and security of customary lands so that their existence is maintained..

Conclusion

In conclusion, the existence of customary law community's rights (Hak Ulayat) over land in Kalimantan is a vital aspect of the indigenous communities' cultural identity and heritage. The indigenous people of Kalimantan have developed a profound relationship with their ancestral lands, viewing them not only as a source of livelihood but also as sacred territories to be protected and respected. Mythical narratives and traditional practices have played a significant role in shaping their attitudes and behaviors towards the land, reinforcing the interconnectedness between humans and nature. The concept of Hak Ulayat embodies the communal ownership and governance over the land, emphasizing the importance of preserving communal living and unity within the clans. Despite the challenges posed by modernization and resource exploitation, recognizing and safeguarding Hak Ulayat becomes essential in upholding the rights of indigenous communities and promoting sustainable development that respects their cultural heritage and the environment.

The preservation and recognition of Hak Ulayat require collaborative efforts between the government, indigenous law experts, community representatives, non-governmental organizations, and resource management agencies. By acknowledging the cultural significance and historical ties of indigenous communities with their ancestral lands, Kalimantan can strike a balance between economic development and cultural preservation. The protection of Hak Ulayat not only ensures the continuity of traditional customs and practices but also contributes to maintaining ecological balance and fostering sustainable land use practices. Upholding the rights of indigenous communities over their ancestral lands in Kalimantan is a testament to the nation's commitment to human rights and cultural diversity, strengthening the bond between the people and their land for generations to come.

Acknowledge

This research article was successfully carried out thanks to the assistance of various parties; therefore, the researchers extend their utmost gratitude to several lecturers at Law Faculty, Universitas Tanjungpura, Pontianak.

References

- Austin, dalam Otje Salman Soemadiningrat 2002. "Rekonseptualisasi Hukum Adat Kontemporer", Alumni, Bandung.
- Boedi Harsono, 2002. Menuju Penyempurnaan Hukum Tanah Nasional dalam Hubungannya dengan TAP MPR RI IX/MPR/2001, Universitas Trisakti, 2002, Jakarta.
- , 2008. Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Djambatan, Jakarta.
- C.A. van Peursen, 1976. Strategi Kebudayaan, Yogyakarta : Kanisius.
- Departemen Pendidikan Nasional, 2005. Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta.
- Fridolin Ukur, 2005. "Makna Religi dari Alam Sekitar dalam Kebudayaan Dayak", dalam Paulus Florus, dkk (ed.), Kebudayaan Dayak : Aktualisasi dan Transformasi, Pontianak : Institut Dayakologi.
- Hans Kelsen, dalam Husen Alting, 2011. Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Adat atas Tanah, LaksBang, Yogyakarta.
- Hendra Nurtjahjo dan Fokky Fuad, 2010. Legal Standing Kesatuan Masyarakat Hukum Adat dalam Berperkara di Mahkamah Konstitusi , Salemba Humanika, 2010, Jakarta.
- Husein Alting, 2011. Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah (Masa Lalu, Kini dan Masa Mendatang), LaksBang, Yogyakarta.

- John M. Echols & Hassan Shadily, 2005. Kamus Inggris-Indonesia : An English-Indonesian Dictionary, Gramedia, Jakarta.
- Maria S.W. Sumardjono, 2008. Tanah : Dalam Perspektif Hak Ekonomi Sosial dan Budaya, Kompas, Jakarta.
- Moh. Nazir, 2005. Metode Penelitian, Ghalia Indonesia, Jakarta.
- Nico Andasputra(eds), 2001. Pelajaran dari Masyarakat Dayak, Institut Dayakologi, Pontianak.
- Pusat Penelitian dan Pengembangan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, 2014. Penelitian Keberadaan Hak Ulayat Masyarakat Hukum Adat Atas Tanah di Kalimantan, BPN-RI, Jakarta.