

## Conference Paper

# The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia

Asmadi Lubis\*, Runtung, Maria Kaban, Edy Ikhsan

Universitas Sumatera Utara, Medan, Indonesia

**ORCID**Asmadi Lubis: <https://orcid.org/0000-0002-3307-5688>**Abstract.**

Indigenous people of Indonesia occasionally experience changes to their customary rights. The Dutch East Indies government has had exclusive jurisdiction over the communities with customary law since the time of Dutch colonial rule. Following Indonesia's independence, Agrarian development saw quite radical transformations, including the establishment of ulayat rights for communities governed by customary law. A groundbreaking law, known as Law No. 5 of 1960 addressing Basic Agrarian Regulations, was created in 1960. Ulayat rights are acknowledged for existing and being put into practice. This essay examines Indonesia's legal community's growing acceptance of customary rights. This kind of research refers to the norms found in statutory rules and is normative in nature because it is based on primary and secondary legal materials. The study's findings demonstrate that for communities governed by customary law or indigenous peoples who have lost their traditional territory, recognition does not always ensure justice. The defense of their customary rights cannot be made based on government rules and legislation.

**Keywords:** recognition, protection, indigenous people, Indonesia

## 1. INTRODUCTION

The government's land rights policy, which does not properly control and defend the rights of indigenous and tribal peoples, has resulted in a growing marginalization of the idea of land ownership based on local wisdom in its growth. That the government, business owners, and locals are in competition over land. Without providing fair compensation, governments and companies may seize community ancestral lands. Communities feel abandoned and deprived of the rights and advantages to property that has been under their ownership for many generations and is now their main source of income.

According to the UUPA, recognition is restricted to customary rights due to the fundamental belief that once Indonesia becomes a country, all of the earth's natural

Corresponding Author: Asmadi

Lubis; email:

[asmadilubis@students.usu.ac.id](mailto:asmadilubis@students.usu.ac.id)

Published 5 January 2024

Publishing services provided by  
Knowledge E

© Asmadi Lubis et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

**OPEN ACCESS**

resources—including its air, water, and land—become the property of the entire Indonesian nation and are no longer the exclusive property of the community whose owners practice customary law. It was not an independent country when Indonesia gained its independence. The UUPA marked the beginning of conditional acknowledgment of the rights of communities governed by customary law during the post-independence and Old Order eras. This practice persisted until the New Order era, which is the current age of regional autonomy..

After the Old Order government ended, the Suharto administration prioritized growth, which meant widening the door for foreign investors to control and manage Indonesia's natural resources. This marked a significant transition in the country's agrarian development. The law governing foreign investment that was in force at the time the New Order was established, Law No. 1 of 1967, reflects this. Sectoral laws were also passed at the same time, excluding the UUPA. Foreign enterprises that had previously been nationalized by the Sukarno administration in 1958 underwent denationalization (privatization) in 1967. However, the dire economic circumstances and deficits left over from the previous administration were what caused this to occur. Sectoral laws were also passed at the same time, excluding the UUPA. Foreign enterprises that had previously been nationalized by the Sukarno administration in 1958 underwent denationalization (privatization) in 1967. The severe economic circumstances and deficits left over from the previous order were the real cause of this, though. In the past, discussions were even made to suggest fresh loans and to reschedule foreign debts.

The New Order government passed a number of rules and laws pertaining to agriculture, as well as some partial laws, such as Law No. 5 of 1967 concerning Basic Provisions, Law No. 11 of 1967 regarding forestry and mining, Law No. 8 of 1971 regarding oil and gas, Law No. 1 of 1974 regarding irrigation, and Law No. 4 of 1982 regarding the environment. The mining law forbids the actions of indigenous peoples who interfere with the mining process, and all of these laws mention the presence of customary law and community customary rights. The rights of indigenous peoples to collect forest products may be suspended under the Organic Regulation (PP No. 21 of 1970) governing forest usufructuary rights and forest product collection rights (the Forestry Law). As a result, the value of Indonesian agricultural law has changed as a result. Although the new order promoted individual interests, particularly corporate interests, the old order gave priority to collective interests.

There was a change in Indonesia's agrarian policy, particularly with regard to the rights of indigenous and tribal peoples, during the time of the end of the New Order era in that country. This will involve considerable adjustments, at least in terms of the constitution,

in the reform era. This shift can be seen in the way that the 1945 Constitution's second amendment, Article 18B, acknowledges the value of local knowledge."

"As long as they are still alive and in accordance with the advancement of the country, society, and the principles of the Unitary State of the Republic of Indonesia, which are governed by law, the state enforces and respects the satatrans of the customary law community and their traditional rights."

The People's Consultative Assembly issued TAP MPR No. IXAIPR/2001 regarding land reform and management of natural resources in order to alter many laws and regulations on land ownership that have been shackled in order to provide life and justice for the people. Agrarian reform is, at its core, a structural adjustment based on the relationships that exist internally among agrarian entities in terms of access (control and utilization) to agrarian objects. Agrarian reform, on the other hand, focuses especially on altering the composition of assets and ensuring that those who use the land and its associated natural resources have certainty of control over it.

The national policy on land affairs was announced by Presidential Decree Number 34 of 2003, which was based on the aforementioned principles and directives for land reform and a paradigm shift in decentralized government by giving autonomy. The following are the ways that the regency or municipal administration governs the land sector: Paragraph 2 Presidential Decree 34 of 2003 states in paragraphs (1) and (2) that: The regency or city government executes a portion of the government's authority in the area of land acquisition. The authorities mentioned in paragraph (1) are as follows: The following processes are involved: a. issuing location permits; b. carrying out land acquisition for development; c. resolving arable land disputes; d. resolving compensation issues and compensation for land for development; e. determining the subject and object of land redistribution as well as the maximum excess land compensation; f. determining the settlement of customary land; g. utilizing and resolving vacant land; and h. issuing permits to open land. Planning for District-City Land Use.

All of these political actions represent the delegation (or "decentralization") of central authority to the regions when seen from the standpoint of the political system in the framework of regional autonomy. The decentralization principle must also be upheld by the authority that controls land concerns.

Unsurprisingly, UUPA is regarded as one of the greatest masterpieces. Political tensions, national political stability, and urgent demands were among the restrictions that eventually succeeded. only issues pertaining to land use. The inconsistent application of the UUPA, which mandates that the term "agrarian" must refer to a broader regulatory

subject, namely everything that involves or is related to the earth, water, space, air, and the natural resources they contain, is frequently seen as a deficiency of the UUPA.

Later developments showed that the UUPA's incompleteness was not owing to an urgent lack of resources; rather, it resulted from practical requirements to support economic expansion. Early in the 1970s, various other fields took over the unfinished business of the UUPA and ultimately abandoned the fundamental principles set forth by the UUPA. Examples of these laws include Law Number 5 of 1967 concerning forestry, as amended by Law No. 41 of 1999; Law No. 1 of 1967 on Mining, as amended by Law No. 4 of 2009 concerning minerals and coal; Law No. 8 of 1971 concerning natural gas, as amended by Law No. 22 of 2001 concerning oil and gas; and Law Number 11 of 1974.

These laws and rules are all meant to uphold the rights of communities that practice customary law, including ulayat and traditional lands. The regulations pertaining to customary land/ulayat rights, it turns out, contain anomalies that give rise to various interpretations that are inconsistent with the intention of safeguarding the state for these rights. Since its application is frequently ambiguous, certain parties take advantage of it to ignore the preservation of indigenous and tribal peoples' rights in the current era of regional autonomy. By utilizing regional policies that uphold the rights of indigenous peoples, this ambiguity should be quickly reduced.

## 2. METHODOLOGY/ MATERIALS

This article examines the relevant laws and rules pertaining to legal matters using a statutory method. Essential Legal Materials The following regulatory rules will serve as the main legal documentation, UUD of 1945 Amendment II, August 18, 2000, Amendment III, November 9, 2001, and Amendment IV-1, August 1, 2002 respecting alteration in Article 18 Articles 8 A and 18 B amendments. UUPA, also known as Law Number 5 of 1960 Concerning Regulations on Agrarian Principles. Secondary legal information associated with this article, namely, journal of Law, a book of legal doctrine, scholarly papers, and other items linked to law.

## 3. RESULTS AND DISCUSSIONS

### 1. The idea of indigenous peoples' recognition, protection, and development

The understanding of state or government recognition relating to indigenous peoples' claims to land results from the regulation of a government's rights and obligations to provide respect, opportunities, and protection for the development of indigenous

peoples with their traditional rights under the Republic of Indonesia. Indonesia. The act of recognition signifies that the state or government has acknowledged and stated that native peoples have the right to utilise their natural resources and that they must be protected by the government from outside threats or intervention. This acknowledgment is made explicit in state laws that protect indigenous peoples' rights to land and natural resources.

John Austin asserts that the legal system is a fixed, logical, and closed one. What is acceptable is determined by the governing party (ruling party), and superior power coerces people into abiding by laws by using intimidation and swaying their conduct. Laws are coercive mandates that may or may not be wise and just.

John Austin defines law as something that is solely created by a public authority ruling in society, and this demands two things:

a. The law is only the rules or categories of imperatives (musts) that are issued by public authority, and whatever it is, it has been issued as law with a policy towards all of these circumstances; and

b. Adherents of legal positivism who demand a clear distinction between "positive law," "moral rules," and societal policy, and they also demand that these three

Indigenous peoples' customary rights are not properly circumscribed in their recognition. Due to the pluralistic nature of Indonesian culture, customary law—which is a type of law that develops in society—can be used to achieve legitimacy in state law. This has not been put into practice in Indonesia, though, as the country has slowly conformed with all Dutch laws since the Dutch colonial era because at that time, people only knew customary law.

Unless it ran counter to the interests of the Dutch population, the Dutch colonial administration in Indonesia accepted their existence as customary law (Article 131 IS). Then, Section 15AB specifies that a custom may only be referred to be a law if the law specifically permits it. The Dutch government has continued to conditionally recognize Indonesia since Indonesia's independence up until the present. Examples of conditional recognition granted to indigenous peoples and their assets can be found in Articles 3 and 5 of the UUPA.

Protection refers to a guarantee against the effects of the protector. Right refers to possession, membership, power, or the legal right to perform specific tasks. The nature of rights is that they are claims for the community's legal protection based on grievances from the community. Fitzgerald lists the following as the fundamental qualities of legal rights:

- a. The subject of the right, also known as the owner or owner of the right, is the individual who holds the legal ownership of the thing that is the object of the right.
- b. The right is directed at other individuals, specifically at those who possess obligations. There is a causal connection between rights and duties.
- c. The other party is required to do something—or nothing—by virtue of a person's right. These are known as content rights. The object of rights is the subject of this action.
- d. Every legal right has a title, which is an occasion that justifies the right's attachment to its possessor.

State law is more directly correlated with legal protection. Because the government must be able to defend all of its people. In actuality, though, not all state laws are competent to safeguard individual rights. Many laws, rules, and regulations that are supposed to protect people actually serve as tools to revoke their rights.

Different processes are involved in growth and change. Growth is a quantitative development, meaning that anything or an object expands, gets bigger, or gets more of it. For instance, family branches are generated in the social group institution known as the family, which emerges in response to the growth in members. Change, on the other hand, is progress. It is qualitative in character, which means that it varies and changes. There is a mixture of more important factors, such as the accepted value system, roles, interests, and social norms that direct daily life.

Several legal sociologists, like Nonet and Selznick, have outlined the concept of evolutionary development to explain how the law evolved from being repressive to autonomous to responsive. Instead of being a direct outcome of social, economic, or political changes, the evolution of one form of law into another is a product of the internal dynamics of the legal institutions themselves.

## 2. Communities' Ulayat Rights under Customary Law

Indigenous peoples and the land they live on have a very strong relationship, one that is rooted in a belief in magic and religion. As a result, communities under customary law have gained the authority to manage the land, use it, and gather the plants' fruits and other products. Animals that inhabit the earth are also preyed upon by the plants that inhabit it. In the literature, this right by Van Vollenhoven is known as *bechkkingsrecht*, and the rights of communities governed by customary law to this land are referred to as *yertuanan* rights or customary rights.

In essence, the members of the relevant community under customary law are the owners of *ulayah* rights. While certain areas of customary land are shared by all members, others are under the jurisdiction of specific members and used exclusively for their

requirements. Individuals do not represent the community of customary law; rather, all of its members who enjoy customary rights do. These ulayat rights comprise civil rights and duties, including those relating to joint ownership rights to the land, and are of a broad nature, specifically in the form of obligations to manage, regulate, and take the lead in the division, control, use, and upkeep of it. The term “beschikkingsrecht” refers to customary rights in the library of customary law.

There being no regulations in the BAL is the criterion for whether or not customary law community customary rights still exist. Maria S.W. Sumardjono explained three criteria for assessing whether or not customary rights exist, namely:

- a. Communities with customary law that meet the criteria for having rights protected by customary law exist.
- b. Lebensratm, the subject of customary rights, is the existence of land or territory with specific bounds.
- c. The existence of indigenous peoples’ legal right to conduct particular activities

Certain actions referred to in letter c above Maria S. W. Sumardjono further explained, namely:

1. Regulate and organize land use (settlement, farming, etc.), provision (creation of new residential areas, etc.), and maintenance of land);
2. Regulate and determine the legal relationship between people and land (granting certain rights to certain subjects);
3. Regulate and determine the legal relationship between people and legal actions related to land (buying and selling, inheritance, etc.).

Ulayat rights cannot be dissociated from communities governed by customary law through efforts to renounce and transfer land rights in accordance with federally applicable laws and regulations. Land rights that are part of customary rights and are required by the government or a business for very important development activities must be carried out in accordance with the rules and be subject to the environmental procedures. local. When a reasonably lengthy use of the land, such as mining or plantations, is over, the land must be returned to the community governed by customary law.

1. Indonesia’s recognition and defense of indigenous peoples’ rights

As long as it did not clash with the interests of the Dutch people, the Dutch colonial authority in Indonesia recognized the existence of customary law (Article 131 IS). According to Article 15 AB, custom can only be referred to as law if it is specifically mentioned in the law. Since Indonesia gained independence, the Dutch government has continued to recognize it on a conditional basis. Examples of the conditional acknowledgement of

indigenous peoples and their wealth can be found in Articles 3 and 5 of the UUPA. The 1945 Constitution's Article 18B paragraph (2), which states that the state recognizes and respects customary law community units and their traditional rights so long as they are still alive and in accordance with social development and the principles of a unitary state, also defines recognition as a fundamental human right. Article 28 paragraph (3) of the UUD (1945), which governs the Republic of Indonesia, states that traditional cultural and social identities must be protected in keeping with the times and civilization. paragraph (1), stipulating that the state promotes Indonesian culture in the midst of world civilization by guaranteeing the freedom of the people in maintaining and developing their cultural values.

The implementation requirement phrase above might be used to interpret this to suggest that in Indonesia, customary law is applied in accordance with State legislation. According to Griffiths, there is a "weak plurality of law" because customary law can only be enforced if it is acknowledged by state law. Because customary law truly controls what may occur in the Unitary State of the Republic of Indonesia, including whether customary law even exists, Satjipto Rahardjo refers to this as arrogant (state) law.

When customary law is applied to state law, it demonstrates that the state is more powerful or superior to customary law. The existence of customary law in Indonesia depends on the benevolence of the law (state law), according to Achmad Sodiki, who indicated that if the choice of law recognizes customary law in accordance with the law's terms. Therefore, features that contradict the standards of national law cannot be included in the formation of customary law. Consequently, it is believed that national law is preferable than customary law. In addition to the UUPA, laws and regulations passed after it also conditionally recognize the presence of indigenous and tribal peoples, particularly in industries like forestry, mining, and water resources.

## 2. Establishment of Arrangements for Indonesian Indigenous Peoples' Rights Recognition and Protection

### a. Dutch Colonial Period

There existed a division of customary law, acknowledgment of customary law, and establishment of a customary law alliance all during the rule of the Dutch East Indies. It can be characterized by these three components and is governed by a different law. Since 1848, customary law has been acknowledged formally. Article 11 of the Algemene Bepalingen van Wetgeving (AB) of 1848, which states the initial recognition, states:

"Except in cases where native persons or equivalent persons (foreigners) voluntarily comply with European civil law and commercial law regulations, or in cases where such laws and regulations apply to them, or in cases where laws and regulations otherwise,



the applicable law is applied by indigenous judges and the customs of the community, as long as it does not conflict with the general principles of justice used by the public.”

Regerings Regiement (RR) 1854, article 75 (old), particularly paragraphs (3) and (6) This regulation states that every native and foreign person who does not submit voluntarily or to whom the Governor General does not apply European civil law, judges, and uses religious laws, institutions, and customs as long as they do not conflict with the generally acknowledged principles of decency and fairness. In accordance with Indische Staatregeling (IS), which exempts Indigenous and Eastern Foreigners from applying all of European civil law, or in the case of voluntary submission, legislators must respect customary law as long as it does not conflict with generally accepted principles of justice.

By using the term *adatrecht* in place of religious rules (*godsdiënige wetten*) or institutional norms (*vollrsintellingen en geburiken*), Article 134 paragraph (2) IS carried on the tradition of recognizing customary law. Both Article 130 IS and Article 3 Ind. Staatsblad 1932 Number 80 mention the acceptance of customary justice (*inheemse rechtspraak*). The customary courts outside of Java and Madura are governed by this regulation. The Adat Court, which is part of the traditional judiciary, is permitted to exist. This native court has the power to investigate and render decisions in both criminal and civil situations in accordance with customary law.

The De Inlandsche Gemeente Ordonantie (IGO), which was enacted in 1906 by Stbl. 1960 No. 83, specifies that associations of customary law exist. This Ordinance, which is applicable to Java and Madura, governs the management and household affairs of rural settlements under the direct control of the Dutch East Indies government. The Dutch East Indies administration believed it knew Java villages better than villages outside of Java and Madura, which in actuality were increasingly characterized as territorial alliances as the nature of genealogical links eroded. As a result, the IGO did not apply to villages outside of Java and Madura. IGO, however, used the Dutch East Indies government's desire to resemble a village as a benchmark for all contractual arrangements. Village data gathering and accountability, material organizational affairs, the state.

IGO has changed villages from merely being a social existence to becoming a recognized legal body. The village has legal obligations and rights as a separate entity. Villages are acknowledged as owners of particular assets for owners of common property. The village also has administrators and members because it is a legitimate association with rights. It comes out that the regulations still wish to acquire village land for the advantage of the Dutch East Indies government despite the fact that they

acknowledge the existence of a legal alliance. Article 12 of the IGO specifically provides that a right surrender can only be transferred to the state in this regard. When land rights are given up to the state (the government of the Dutch East Indies), the state then grants those same rights to whomever it pleases.

Agrarische Wet, which was founded by the Dutch government in 1870, placed emphasis on 2 (two) ha1 in the following ways: allowing for private plantation firms and acknowledging the presence of indigenous lands for their customary rights. Later on, the Agrarian Wet of 1870 was incorporated into Article 51 of the Constitution of the Netherlands Indies. Article 1 of this rule states that, with the exception of lands covered by clauses 5 and 6 of Article 51 of the Dutch East Indies Constitution, all land whose ownership rights cannot be proven will be deemed to be State land. This rule is based on Article 51 of the Dutch East Indies Constitution for the regions of Java and Madura.

The parliament voted to add erfpacht rights to Article 62 RR, which ultimately became Article 51 Izdische Staatsregeling, for a period of 75 years in 1870. The Donzein Verklaring regulation, which states that all land whose ownership rights (eigendom) cannot be demonstrated is state land, further regulates these restrictions. Article 1 of Agrarisch Besluit regulates state-domain assertions in a manner similar to that of BW. It is said that there is always an owner for every parcel of land, as can be observed in Articles 519 and 520 BW. If it is not owned by a person or a company, the state will take ownership. The only thing the state domain statement on the in question land accomplishes is underline that the state and the land have a full tenure relationship. There was also a relationship between land and people, which was provided in accordance with western law, as well as a relationship between land and the indigenous peoples, in addition to the relationship between the state (at that time) and the land, which was placed in a domain relationship.

Staatblad No. 97, published by the government in 1874, established that the land under the village's jurisdiction was to be used for communal grazing, continuous farming by the populace, and public use. With the exception of certain lands, any use of them requires prior authorization from the government. This Staatsblad actually raises a number of contradictions. With this conflict, the government at last acknowledged indigenous rights to property ownership resulting from the processing or harvesting of forest products in a manner that was acknowledged and authorized by neighbors, the village chief, and the resident. Since then, the conflict of interest relating to privately owned lands and customary rights between communities under customary law and the government has grown stronger.

According to the justification given above, it is evident that there were restrictions placed on both the legal acceptance of customary law and the establishment of customary law partnerships during the rule of the Dutch East Indies. According to Articles 75 RR and 131 IS, it is not against generally accepted standards of decency and justice for courts to decide cases and for lawmakers to create rules using customary relationships, institutions, and conventions. In the opposite sense, it might be claimed that lawmakers are free to depart from customary law if it is in disagreement with widely accepted moral and legal standards. Arrogantly, it is assumed that European civil law incorporates the universally accepted standards of decency and fairness. As a result, every judge is required to apply the general principles of European civil law when deciding a case whose rules do not correspond to Indonesian religious laws, organizations, or customs.

Because customary land is not conferred eigendom rights, the application of the domain valuation principle has reduced indigenous peoples' rights in administering those rights over time. In order to achieve conditional recognition of communities governed by customary law during the Dutch East Indies government, the Dutch East Indies government was given special consideration.

b. The period of independence, 1945–UUPA

After Indonesian independence was declared in 1945, there were numerous requests for the government to create a new national agricultural law product with a responsive nature. The result of agricultural legislation took a very long time to create during this time, and it wasn't finished until after a governmental transition or the subsequent time. The products of agrarian law throughout the colonial era were exploitative, dualistic, and feudalistic. It runs directly counter to legal understanding and a sense of fairness in society, especially given the existence of the principle of domain verklaring that follows it. Consequently, there is a need for the agricultural law to modify right away.

The statutory regulations passed down by the Dutch colonial power up until this point can still be enforced as long as the government has not produced new legal products that are adequate in spirit and independence, according to the provisions of Article II of the transitional regulations of the 1945 Constitution, which states that "all state agencies and existing regulations are still in effect immediately until the new ones are regulated according to law." Accordingly, they continue to exist in Indonesia, including the state land administration, foreign plantations, kingdoms, communities, institutions, and people, all of whom are founded on a variety of rights, both Western and indigenous rights.

The government's response during this time came in two forms: first, it released a number of laws that partially addressed the agrarian sector and repealed some harsh elements of the colonial legacy's agrarian code.

Second, the National Agrarian Law was created by multiple drafting committees to replace Agrarische Wet (AW) 1870. Based on Decree of the President of the Republic of Indonesia Number 16, dated May 21, 1948, efforts to draft the Agrarian Law started in 1948. Since gaining independence, a commission or committee has been established that is entrusted with developing the fundamentals of a new agrarian law. This is done within the context of drafting a national and unanimous (comprehensive) model law to replace the inherited colonial agrarian law. . In the end, the draft law was successfully drafted, but its promulgation was only enacted in the next period. In general, legal products and government responses to agrarian problems in this period were responsive legal products and actions

The draft Law on National Agrarian Affairs, which was successfully drafted in the 1945-1959 period, was subsequently adjusted to the constitution and the new political configuration, namely Law No. 5 of 1960 concerning Basic Agrarian Principles, commonly abbreviated as UUPA.

Fundamental changes occurred with the enactment of the UUPA on Agrarian Law in Indonesia, especially on Land Law, which is commonly known as Agrarian Law in government circles. Changes that are fundamental, both regarding the structure of the legal instruments and regarding the underlying conception or contents, which are stated in the "Opposition" section of the UUPA, must be in accordance with the interests of the Indonesian people and also meet their needs according to the demands of the times.

When viewed from the explanatory memory of the UUPA, eight philosophical principles can be found in the UUPA, namely:

a. The principle of the unity of agrarian law for the entire territory of the country  
With this principle, it has been stated that we have released the existence of dualism in agrarian law in Indonesia, which was once in effect during the colonial era, and similarly, we have released pluralism in the implementation of customary rights in Indonesia (especially regarding agrarian affairs). Thus, only one law that regulates agrarian affairs applies in our homeland, and for this reason it has been entrusted to the UUPA, which will later elaborate on it in its implementing regulations. The principle of the unity of agrarian law has the same value as the idea put forward by Wawasm Nusantara.

b. Deletion of the domain statement This has been disclosed before: our reasons for abolishing the domain principle and implementing the State's Controlling rights, as

confirmed by Article 33, paragraph 3, of the 1945 Constitution, will later be discussed in Articles 1 and 2 of the UUPA.

c. The social function of land rights is the answer and clarity of agrarian rights in Indonesia, not the application that owning something is something that is 'sacred' (sacred) as a basic human right and everyone must be 'hands off' of this right. -other people's rights in that he exercises his agrarian rights and he can defend those rights against anyone or against the government itself. Everyone must respect this right. In this concept of social function, there is a very deep meaning, knowing that each person's rights are contained in the rights of society.

d. Recognition of National Agrarian law based on customary law and recognition of the existence of customary rights This statement clarifies the return of Indonesia's customary laws and customary rights and makes adjustments to developments in economic progress and trade traffic. Customary law must be able to meet the challenges of modern law.

e. The principle of the unity of agrarian law for the entire territory of the country With this principle, it has been stated that we have released the existence of dualism in agrarian law in Indonesia, which was once in effect during the colonial era, and similarly, we have released pluralism in the implementation of customary rights in Indonesia (especially regarding agrarian affairs). Thus, only one law that regulates agrarian affairs applies in our homeland, and for this reason it has been entrusted to the UUPA, which will later elaborate on it in its implementing regulations. The principle of the unity of agrarian law has the same value as the idea put forward by our archipelagic outlook.

g. Deletion of the domain statement This has been disclosed before: our reasons for abolishing the domain principle and implementing the State's Controlling rights, as confirmed by Article 33, paragraph 3, of the 1945 Constitution, will later be discussed in Articles 1 and 2 of the UUPA.

j. The social function of land rights is the answer and clarity of agrarian rights in Indonesia, not the application that owning something is something that is 'sacred' (sacred) as a basic human right and everyone must be 'hands off' of this right. -other people's rights in that he exercises his agrarian rights and he can defend those rights against anyone or against the government itself. Everyone must respect this right. In this concept of social function, there is a very deep meaning, knowing that each person's rights are contained in the rights of society.

k. Recognition of National Agrarian law based on customary law and recognition of the existence of customary rights This statement clarifies the return of Indonesia's customary laws and customary rights and makes adjustments to developments in

economic progress and trade traffic. Customary law must be able to meet the challenges of modern law.

c. New Order Era

During the New Order government, many laws and regulations related to the agrarian sector were issued, and several laws that were partial to the agrarian sector were enacted, such as Law Number 5 of 1967 concerning Basic Forestry Provisions, Law Number 11 of 1967 concerning Mining, Law Number 8 of 1971 concerning Oil and Natural Gas, Law Number 11 of 1974 concerning Irrigation, and Law Number 4 of 1982 concerning the Environment. However, the problems faced by the government continue to grow.

The root of the problem is the fact that the area of land has never increased while humans as its inhabitants will continue to increase, and societal development with its various industrial activities always requires land, as does every human addition. This kind of thing often creates social problems that can be identified as land disputes. The problem faced by the government during the New Order era was not how to change the UUPA but how to implement the UUPA so that it could accommodate the problems that were now emerging. Regulating the recognition and protection of customary law community customary rights in Law Number 5 of 1967 concerning Basic Provisions of Forestry and Law Number 11 of 1967 concerning Basic Mining Provisions of the New Order Era

## 4. CONCLUSION AND RECOMMENDATION

The development of community customary rights in terms of regulation is as follows:

1. In the Dutch Colonial era, there was a separation between the recognition of customary law, the recognition of justice customs, and the existence of customary law alliances. The existence of the association is regulated in the De Inlandsche Gemeente Ordonantie (IGO), enacted in 1906 through stbl. 1960 No. 83; however, the Dutch East Indies government's recognition of customary alliances does not apply to the recognition of their customary rights because there is the principle of Domein Verklaring.

2. During the independence period and the UUPA, revolutionary regulations were implemented.

by the old order government by making regulations that are national, abolishing the principle of domain verklaring, and introducing state control rights regulated in Article 33 of the 1945 Constitution and Article 2 UUPA. Ulayat rights are regulated in Article 3 and Article 5 of the UUPA and are limited in their existence and implementation; customary rights get conditional recognition in the UUPA.

3. In the New Order era, customary rights received less attention; in fact, more often, customary rights became the right to control the state in the name of development for the national interest, so that customary rights regulated in sectoral regulations such as Law No. 5 of 1967 on the Principles of Forestry were meaningless because customary rights were only recognized but not protected. Bahkan in Law No. 11 In 1967, there were no Mining Fundamentals at all alluding to the customary rights of indigenous peoples.

4. The development of customary law and community customary rights cannot be separated from the land politics in Indonesia that occurred from the Dutch colonial era to the era of regional autonomy. The customary rights of indigenous peoples acknowledge the communalistic value, but in the development arrangements of customary law communities in Indonesia, there is an effort by the government to change the communal values into individualistic values. This happens in every law and regulation that is made by the government, especially in sectoral laws and regulations.

Development of the recognition and protection of the customary rights of the legal community custom from time to time there are so many legal dynamics, so there needs to be an evaluation carried out by the government and don't do it past mistakes.

## References

- [1] Abdul AH. Negara HzlInrm Dan Demokrasi Di Indoensia, Pustaka Pelajar, Yogyakarta, 2011.
- [2] Achmad A. Menguak Tabir Htrktrm: Sebtrah Kajian Filosofis Dan Sosiologis, Toko Agung, Jakarta, 2002
- [3] Parlindungan AP. Komenta Atas Undang-Undang Agraria, Mandar Maju, Bandung, 1991
- [4] Arie Sukanti Hutagalung dm, Markus Gunawan, Kewenangan Pemerintah di Bidang Pertanahan, Rajawali Press, Jakarta, 2008
- [5] Boedi Harsono. Hukum Agraria Indonesia, Sejarah Pembentukan Undang- Undang Pokok Agraria, Isi dan Pelaksanaannya, Djambatan, Jakarta, 2007
- [6] Bushar M. Pokok-Pokok Hukum Adat, Pradnya Pararnita, Jakarta, 2006
- [7] Husen A. Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah, Laksbang Pressindo, Yogyakarta, 2011
- [8] Ida N. Prinsip-PrinsQ Pembaruan Agraria Perspektif Huktlm, Rajawali Pers, Jakarta, 2009
- [9] Maria SW. Sumardjono, Tanah Dalam Perspektif Hak Ekonomi, Sosial Dan Budaya, Kompas, Jakarta, 2008

- [10] Moh. Mahfud MD, Politik Hukum di Indonesia, Pustaka LP3S Indonesia, 1998
- [11] Nurhasan I. Perkembangan Hukum Pertanahan Pendekatan Ekonomi Politik, HUma, Jakarta, 2007
- [12] Nurhasan Ismail, Perkembangan Hukum Pertanahan Pendekatan Ekonomi Politik, HUma, Jakarta, 2007
- [13] Rikardo S. Kapitalisme Perkebunan: Dinamika Konsep Pemilikan Tanah oleh Negara, Insist Press&Pustaka Pelajar, Yogyakarta, 2002
- [14] Rikardo S. Pengakuan Terhadap Masyarakat Hukum Adat Di Indonesia, UNDP, Jakarta, 2006
- [15] Soetandyo W. Desentralisasi Dalam Pemerintahan Hindia Belanda, Bayurnedia Publishing, Jakarta, 2004
- [16] Winahyu E. Hak Menguasai Negara Atas Tanah, Total MediqYogyakarta, 2009
- [17] Kar JP. Sengketa Agraria; Pengusaha Perkebunan Melawan Petani, Pustaka Sinar Harapan, Jakarta,1991.