



Urgency of Recognizing Dayak Customary Communities and Land Rights in Central Kalimantan

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Abstract: this study found that there is a legal vacuum related to the determination of the Dayak Customary Law Community (MHA) as a legal subject along with legal vagueness related to the object of law, namely customary land based on regional regulation no.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan, so that it does not meet the principle of legal certainty of customary land rights for Dayak Indigenous Peoples. This article aims to explain the urgency of establishing Dayak customary law and customary land rights for Dayak Indigenous people in Central Kalimantan. This study uses normative Research Methods with the approach of legislation, conceptual and historical. Through the results of this study, it is advisable to immediately recognize and establish the Dayak Customary Law community as a subject of law through PERDA No. 2/2024 concerning recognition and protection of Dayak Customary Law communities and establishing Customary Land legal objects based on ATR/BPN regulation no. 14 of 2024 concerning the implementation of Land Administration and Land Registration of Customary Rights.

Keywords: Recognition, Determination, Dayak Customary Law Community, Customary Land, Legal Certainty.

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1. Introduction

Discussing agrarian issues in the context of land in Indonesia is the same as discussing laws, policies, and their implementation related to “land”.¹ The lack of legal certainty over the protection and determination of customary Territories provided by the government of Indonesia up to the provincial/Regency/city level against Indigenous Peoples resulted in customary/Ulayat land or by other names belonging to Indigenous Peoples as living space is often seized by investors, even though Indigenous Peoples have existed with all rights, customary activities and culture that existed before the Unitary State of the Republic of Indonesia was established. This also often triggers agrarian conflicts and land disputes that are prolonged from year to year and from generation to generation between Indigenous Peoples, the government and the private sector.

Domein verklaring or often referred to by terms such as *Domein Beginsel*, *Domein principle*, *Asas*, *Domeinbasis*, *Domein doctrine*, *Domeintheory*, *Domeinconcept* *Domein* or *Domein Declaration* *Domein* is a principle of land ownership that developed during the Dutch colonial period in the Indonesian archipelago.² Although formally the principle of *Domein Verklaring* was first introduced in the agrarian law of 1870, in practice it has been done for a long time even during the VOC (*Vereenigde Oost-Indische Compagnie*). It began when the VOC, through the 'Lords XVII' or seventeen supreme rulers of the VOC, was given power by the Dutch Parliament in the form of authority called the right *octrooi* to explore the archipelago, conduct a monopoly on shipping and trade, declare war, make peace and print money.³ On the basis of *octrooi* rights *octrooi*, the territories of the indigenous population conquered by the VOC with military force were subsequently considered its civil property.

Agrarische Wet was subsequently the basis of all colonial agrarian regulations which then caused many problems for the people of Indonesia, due to the nature of its dualistic and discriminatory treatment.⁴ This law introduced new types of rights such as *eigendom*, *erfpacht*, concession and lease. On the basis of this conception of state ownership of the land, the granting of *erfpacht* rights *erfpacht* for 75 years to estates was carried out. With the implementation of the agrarian law of 1870, the Dutch and other European foreign capital owners own land and manage plantations. Since then, the great advantages of plantation management and export profits enjoyed by the west, on the contrary, the great suffering borne by the people of Indonesia due to colonial exploitation of Labor and land. From that point on legal dualism began to occur between Western agrarian law and customary law.

The new order, which refers to Java, considers all Indigenous peoples to be backward.⁵ Massive agrarian violence when the New Order and Suharto came to power became increasingly prevalent, with the typical military leadership style various pro-capitalist agrarian programs began to be implemented, including the “Green Revolution” program on rice and corn production, mining exploitation and forest exploitation, as well as large plantation businesses by private and state companies. And all policies related to agrarian and natural resources do not recognize the UUPA as one of the legal principles that preceded it, instead they are returned to a clause in the National Constitution where the state has sovereignty over “the national territory and all land and resources therein”. The impact,

¹ M. Nazir Salim, *Reforma Agraria: Kelembagaan Dan Praktik Kebijakan* (STPN Press, 2020).

² Yance Arizona and Noer Fauzi Rachman, eds., *Konstitusionalisme Agraria* (STPN Press, 2014).

³ Ibid. hlm 370

⁴ Hilmar Farid and others, *Sejarah/Geografi Agraria Indonesia* (STPN Press, 2017).

⁵ Tim Riset Sistematis 2010 et al., eds., *Pengembangan Kebijakan Agraria Untuk Keadilan Sosial, Kesejahteraan Masyarakat, Dan Keberlanjutan Ekologis* (STPN Press and Sajogyo Institute, 2010).

among others, can be seen in the ongoing conflicts and land disputes that are massive, multidimensional, have a wide impact, not infrequently even concerning human rights violations that have not been resolved.⁶

In the context of development that is dominated by large investments, especially in the plantation and mining sectors, the existence of indigenous peoples and their customary lands is increasingly urgent. Indigenous lands that form the basis of life and culture are seized in the name of national interests, without adequate compensation or recognition mechanisms. This generates structural agrarian conflicts that do not end, as well as aggravating the marginalization of Indigenous Peoples.

Looking at the dynamics of land tenure rights policies carried out by the colonial, old order to New Order we can conclude that the land tenure rights granted to Indigenous Peoples have not been well secured, policy making is still based on the interests of capitalism and unilateral economic motives.

In Indonesia, the recognition and protection of Indigenous Peoples and their rights have been recognized and contained in Article 18 B Paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution. Not only the 1945 Constitution has recognized indigenous peoples, but various international conventions, laws and other derivative regulations have provided instructions related to Indigenous Peoples on the rights and obligations of their territories, institutions, traditions, cultures, customs, promotion, empowerment and so on. However, until now there has been no further regulation or implementation that guarantees the rights of Indigenous Peoples with certainty, although some rules explicitly listed on Indigenous Peoples, but it is not enough because it requires a regulation that is the basis for the recognition of the subject of law and the object of customary law that is regulated independently through the until now the bill has not been passed by the House of Representatives.

The conflict of Indigenous peoples related to their own sovereignty is not limited to land disputes but is multifaceted. Agrarian itself refers to the UUPA stating agrarian or agrarian resources as “all the earth, water and space, including the natural resources contained therein”⁷. In the sense of the Earth, in addition to the surface of the Earth, including the body of the earth beneath and under water; in the sense of water including both inland waters and the Indonesian territorial sea; and the meaning of space is the space above the Earth and the water. Agrarian is not just on the ground more than it covers all aspects of the Earth. As a result of its broad meaning, saving also implies many problems that exist in the agrarian scope, both objects and subjects in it.

The object of agrarian problems/conflicts/disputes often occur in sectors related to land rights, land acquisition, licensing and agrarian-based investments are: 1) plantations; 2) Forestry; 3) mining; 4) coastal and small islands; 5) agribusiness; 6) Infrastructure Development; 7) Property; and 8) military facilities.⁸ The subject of agrarian problems/conflicts/disputes also often targets farmers, indigenous peoples, fishermen,

⁶ Maria S. W. Sumardjono, *Regulasi Pertanahan Dan Semangat Keadilan Agraria* (STPN Press, 2018).

⁷ “Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA),” 1960.

⁸ Konsorsium Pembaruan Agraria, *Catatan Akhir Tahun 2021: Penggusuran Skala Nasional (PSN)* (Konsorsium Pembaruan Agraria (KPA), 2022).

rural communities and the urban poor who deal directly with private business groups and the government.

Agrarian conflict itself is also divided into conflicts in the private or public sphere. Agrarian conflicts in the private sphere, namely land disputes and agrarian cases such as individual disputes, inheritance rights disputes, between private groups, or between government agencies/institutions are included in the private sphere, while problems related to agrarian conflicts that are public / structural, namely agrarian conflicts caused by policies or decisions of public officials, involving the number of victims and a massive land area and has a wide impact covering social, economic, political and cultural dimensions.

Land disputes and agrarian conflicts are also spread in several sectors such as plantations, Forestry, Mining to infrastructure conflicts. Agrarian disputes/conflicts in Central Kalimantan are dominated by oil palm plantation companies, especially by private plantation companies, making the people of Central Kalimantan, especially Indigenous People, often involved in conflicts with private companies due to the dynamics that occur in the field, differences in interests and rights to land/customary land that becomes their living space, seized.

One example of criminalization experienced by Indigenous People is Effendi Buhing who is also the chairman of the Laman Kinipan Indigenous people, he was charged with violent theft occurred on Wednesday (26/8/2020) at his residence located in the Kinipan Village area, Batang District, Lamandau regency, Central Kalimantan. Representatives of the Justice Coalition for Kinipan when delivering in the Komnas HAM Ri complaint room, Menteng, Jakarta, Friday (4/9/2020) said he was forcibly arrested even though he had never been called before, there was never a BAP (examination report) as a suspect," he said. Then there was the case of a land dispute on October 7, 2023, still fresh in public memory when one of the farmers, namely Gijik (35 years old) from Bangkal, Seruyan regency, Central Kalimantan, was killed at the hands of security forces during a conflict between residents and PT. Masawit Bangun Persada I (PT. HMBP I), one part of Best Agro Group International.⁹

The KPA noted that the highest conflicts occurred in West Java province as many as 28 conflicts, North Sumatra 24 conflicts, Central Kalimantan 23 conflicts, East Java 21 conflicts, Jambi 16 conflicts, DKI Jakarta 16 conflicts, Riau 14 conflicts, Aceh 12 conflicts, South Sulawesi 12 conflicts and Central Java 11 conflicts.¹⁰ This agrarian conflict itself makes Central Kalimantan the province with the 3rd largest agrarian conflict nationally after West Java ranked first and North Sumatra ranked second according to the 2019 end of year notes data of the Agrarian Reform Consortium.

Conflicts / land disputes in Central Kalimantan, among others, between PT. Kapuas Sawit Sejahtera with residents in Kapuas, PT. Sawit Mandiri Lestari with Laman Kinipan Indigenous people in Lamandau Regency, PT. Work SEPTA peace with residents in East Kotawaringin Regency, PT. Katingan Indah Utama with residents in East Kotawaringin Regency and PT. The expanse of Masawit Bangun Persada is also in East Kotawaringin Regency. In addition, there is also a rubber plantation company, namely PT. Ketapang Subur

⁹ Konsorsium Pembaruan Agraria, Catatan Akhir Tahun 2023: Dekade Krisis Agraria: Warisan Nawacita Dan Masa Depan Reforma Agraria Pasca Perubahan Politik 2024 (Konsorsium Pembaruan Agraria (KPA), 2023).

¹⁰ Konsorsium Pembaruan Agraria, Catatan Akhir Tahun 2019: Dari Aceh Sampai Papua: Urgensi Penyelesaian Konflik Struktural Dan Jalan Pembaruan Agraria Kedepan (Konsorsium Pembaruan Agraria (KPA), 2019).

Lestari with residents in East Barito Regency. In the mining sector, there was a conflict between residents and PT. Multi Tambang Jaya Utama in South Barito Regency. Meanwhile, conflicts due to land acquisition for the construction of the Kotawaringin market and the construction of the Sampit Circuit color the 2019 infrastructure sector conflict in Central Kalimantan.

There are two factors that cause why the explosions of agrarian conflicts / land disputes are often followed by victims of violence and criminalization, first the repressive approach taken by the police and the military in handling agrarian conflicts and second legal discrimination/positive legal approach (formal legal). This second view often gives rise to accusations of the government to the victim society as a primitive, anti-development and criminal group.

In the context of a justice system that is relatively inaccessible and full of abuses, social inequality in Indonesian society is then easily translated as inequality of capacity to claim one's rights. For some people, especially those who have money, skills and contacts, the legal system is a tool to protect their interests, while for others, those who do not have these three things, the legal system is considered a tool used to violate, damage and deprive rights, hereditary inheritance and all forms of property- the potential belongs to Indigenous Peoples.

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In Central Kalimantan itself, national strategic projects are very easily realized through the mechanism of LHK no.24/2020 on the provision of forest areas for the development of Food Estates. The government began the construction of Food estates or forced cultivation systems in the colonial past in Central Kalimantan. But it is inversely proportional to the allocation and protection of land rights for farmers, tenants and Indigenous Peoples who have been in conflict with forest area claims, the fulfillment of which is made so difficult and complicated. Farmers, indigenous peoples and agrarian communities in rural areas are like still living in the colonial realm when the Colonial agrarian law was enacted. Especially when the government of President Joko Widodo is very open with investors, this condition has provided opportunities for land sales and compensation by investors to carry out land and Forest transfer functions that cause loss of customary land rights of Indigenous Peoples.

Granting business licenses to corporations to carry out mining activities and oil palm expansion in areas/lands that have been inhabited or there are cultural assets thereon belonging to Indigenous Peoples is often done by the government. This makes land disputes

continue to occur because land rights permits continue to be given to large private companies but the community is not given recognition and protection of their customary land authority which makes the land owned by Indigenous People deprived and their living space as a space for interaction and livelihood increasingly narrow.

The political and legal impartiality of the Central Kalimantan government has caused many Dayak Indigenous people to suffer losses in various aspects of life, especially in ensuring the protection of Customary Land Rights where the position of Dayak Indigenous People is always lost in land disputes. Then, the lack of understanding of equitable policy-making and a vision of good leadership towards the existence of Indigenous Peoples in Central Kalimantan, making the Dayak Indigenous people in this case more including their own land socially, culturally and politically, especially the law.

The need for a strong awareness of the state, especially in this case the Government of Central Kalimantan to the concept of development that is more equitable and has a perspective of ensuring legal certainty of Indigenous Land Rights and Human Rights of Indigenous Peoples includes institutions, the use of Natural Resources, the promotion of Culture, State rituals, maintenance of local wisdom/local Indigenous peoples are preserved on an ongoing basis without having to intersect with the economic interests of the state.

In the No. 39/2014 on plantations regulates the plasma system in partnerships, but it is often not done, the company's responsibility is right to have provided jobs for local and Indigenous people / communities to work in the company, but if the land issue is no longer a problem one by one the local/indigenous people are dismissed by being transferred to distant places finally the only thing left is energy security. Investments in Central Kalimantan only impoverish Indigenous Peoples (interview with Mr. Alis, Chairman of WALHI Central Kalimantan, dated April 11, 2018).

Therefore, in conflicts / disputes on customary land, Dayak Indigenous People often find a middle ground in and around plantations, mining and others, cooperation is carried out through a profitable partnership pattern to maintain a balance between the interests of investors and the welfare of Indigenous People, referring to existing laws and regulations. However, looking at the example of this dynamic, the pattern of partnerships carried out remains within the control of the company and company policies are often discriminatory and manipulative towards Indigenous Peoples.

Legal issues in Central Kalimantan related to the regulation of customary land rights are influenced by several factors, among others, are: a. Not yet synergistic customary rights with the UUPA. b. Investors who rely on power. c. Mental rulers who are not in favor of the people and Customs. d. Investors utilize the apparatus. The provisions of the regulations that contain customary rights are influenced by laws and regulations that regulate the concept, form and definition as well as the mechanism of customary land registration, it needs to be synchronized in regional regulations in Central Kalimantan.

In Central Kalimantan factually, there are already rules regarding customary land rights through regional regulation no. 16/2008 Jo. Regulation No. 1/2010 on Dayak customary institutions and PERGUB No. 13/2009 Jo. PERGUB No. 4/2012 on customary land and customary rights on land in Central Kalimantan province, but the concept of the substance of the rule has not been synchronized with higher regulations related to customary law communities and customary land rights at this time aka obsolete so it can not guarantee the

legal certainty of Customary Land Rights which has become a long and very Dayak Indigenous people against land disputes.

In the no.16/2008 Jo. Regulation No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan province there is a lack of legal clarity on the determination of customary land rights, causing legal uncertainty on customary land rights for the Dayak Indigenous people in Central Kalimantan, which makes the local regulations need to be replaced. The Central Kalimantan government has not updated the regulation since 2009 to 2024 which indicates the government's lack of attention to the existence of the Dayak Indigenous People.

There is also a legal vacuum related to the determination of Dayak Indigenous Peoples due to regional Regulation No.16/2008 Jo. Regulation No.1/2010 on Dayak customary institutions only discusses the organization of customary institutions only instead of specifically stipulating "Dayak Indigenous people "as"Dayak Customary Law Society/MHA Dayak". So for now the Dayak Indigenous people have not been confirmed as a subject of law in this case "Dayak Indigenous people" in the Central Kalimantan government system and the logic of state law in accordance with the UUPA and renewable rules related to Indigenous Peoples in the ATR/BPN regulation no.14/2024.

Candy ATR / BPN No. 14 of 2024 states that the process of assigning customary lands involves a series of administrative and substantive verifications, including the submission of historical documents, genealogies, and evidence of the relationship of indigenous peoples with the territory in question. However, the main challenges faced are the weak capacity of indigenous peoples in drafting the document, as well as the lack of assistance from local governments. Regulatory and administrative intervention in favor of Indigenous Peoples is needed through: (1) training for Indigenous and local Tools, (2) formation of integrated participatory mapping teams, and (3) integration of Indigenous mechanisms into ATR/BPN policies and local governments. This opportunity can be maximized if the region has *the political will* and legal support.

In the context of Central Kalimantan province, PERDA No. 16/2008 Jo. Regulation No. 1/2010 and PERGUB No. 13/2009 Jo. PERGUB No. 4/2012 is considered no longer relevant in substance because it does not explicitly include the mechanism for determining the Dayak Customary Law community as a legal subject. The regulation focuses more on the institutional aspects of adat than the juridical recognition of adat community entities and their customary lands. This shows the weakness of the legal basis for Indigenous peoples to obtain recognition as subjects of law as well as the determination of authority over objects of law relating to indigenous lands.

2. Method

The method of approach in the study of this article is a normative legal research approach. Normative legal research is used in order to find legal problems (problem-finding) and provide legal solutions (problem solution)¹¹. Normative research methods with the approach of legislation, conceptual and historical. Normative legal research produces a research in the

¹¹ Zainuddin Ali, Metode Penelitian Hukum (Sinar Grafika, 2021).

form of prescriptive or provide legal arguments that are normative in the form of solutions, recommendations for improvement and change as well as normative settlement of legal issues/issues found.

Normative legal research is used in order to find legal problems (problem-finding), namely the ambiguity of norms and legal vacuum. This study found that there is a legal vacuum related to the determination of the Dayak Customary Law Community (MHA) as a legal subject along with legal vagueness related to the object of law, namely customary land based on regional Regulation No.16/2008 Jo. Regulation No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan, so that it does not meet the principle of legal certainty of customary land rights for Dayak Indigenous Peoples

First, the researcher uses the statute approach to identify and assess the relevant legal regulations to the problem. Second, the researcher applies a conceptual approach to analyze the concepts, theories, and legal principles underlying the issues discussed. Third, the researcher uses the case approach by studying the relevant court decisions as comparison material.

Through the results of this study, it is advisable to immediately recognize and establish the Dayak Customary Law community as a subject of law through PERDA No. 2/2024 on the recognition and protection of Dayak Customary Law communities and establishing Customary Land legal objects based on ATR/BPN regulation no. 14 of 2024 concerning the implementation of Land Administration and Land Registration of Customary Rights.

Urgency Of Dayak Customary Law Community Determination

In some literature "masyarakat adat" is a translation of indigenous peoples, tribal peoples, and native people, as well as forest peoples or in Dutch, inheems.¹² Customary Law Society (MHA) is one of the subjects of state law recognized in the 1945 Constitution Article 18 B (2) and Article 28 I paragraph (3) and various laws and regulations¹³.

Moh. Koesnoe in his book writes, among others, there are four functions related to traditional rights in the Fellowship of rural communities with regard to maintaining harmony between the community and the universe, including: government functions, spirit maintenance functions, religious maintenance functions, customary law development functions.¹⁴ A unity of indigenous peoples to be said to be de facto still alive (actual existence) both territorial, genealogical, and functional at least contain the elements:

The existence of a community whose people have feelings / intentions group (in group feeling).

1. The existence of Indigenous governance institutions.
2. The existence of wealth and / or traditional objects.

¹² Sarjita and Tim STPN Press, eds., *Beberapa Pemikiran Tentang Status Tanah Dan Dinamikanya* (STPN Press, 2020).

¹³ Ditto Nathaniel, "Urgensi Pengaturan Penetapan Hak Atas Tanah Adat Bagi Masyarakat Adat Dayak Di Kalimantan Tengah," unpublished manuscript, 2024.

¹⁴ I. Nur Rahman et al., "Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat Dalam Proses Pengujian Undang-Undang Di Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 5 (2016): 770, <https://doi.org/10.31078/jk856>.

3. The existence of customary law norms.
4. There is a certain territory.¹⁵

Indigenous peoples or also called indigenous peoples are groups of people who have a traditional legal system that is applied for generations and recognized by the state. Indigenous peoples have rules that govern their social, cultural, and economic activities. Of the many categories of rights related to indigenous peoples, there are at least 4 (Four) rights of indigenous peoples that are most often voiced, including:

- a) The right to own & manage land and natural resources in its customary territory;
- b) The right to self-regulation in accordance with customary law;
- c) The right to take care of themselves based on the customary management/institutional system;
- d) Right to identity, culture, belief system, knowledge system (local genius) and native language.

In Central Kalimantan the subject of Customary Law Society has not been established, allowing Customary Law Society to be a legal subject that cannot have authority and over all objects and a legal relationship. So when in an agrarian conflict or land dispute makes MHA always in a weak position.

Customary Law Society (MHA) is one of the subjects of state law recognized in the 1945 Constitution Article 18 B (2) and Article 28 I paragraph (3) and various laws and regulations. But in the hierarchy of MHA legislation is still only limited to the bill. If a futuristic interpretation is made that explains the current legislation (IUs constitutum) through PERDA No.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan currently there is legal uncertainty related to the determination of Customary Land Rights and legal vacuum related to the determination of the subject of Dayak Customary Law community can be revised through the establishment of renewable local regulations based on the provisions of the legislation that will come orcitakan (IUs constituendum) is in the Indigenous Peoples Law bill, which is a regulation that is still in the process of legislation or the draft law. Formers of local regulations can use this futuristic interpretation with a belief that the bill will be promulgated soon.

When revisions are made to Regulation No.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan, new arrangements are made through a new regional regulation, so it is necessary to prepare a comprehensive arrangement of the cultural space of the Dayak Indigenous people in Central Kalimantan which must include:

- 1) Philosophy / Principle
It must contain the philosophy / principles of Dayak Customs and the wealth of local geniuses of ancestors with sacred, magical-religious nuances, containing the teachings of the Kaharingan rule book.
- 2) Purpose

¹⁵ Irfan Nur Rahman and others, *Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat Dalam Proses Pengujian Undang-Undang Di Mahkamah Konstitusi* (Pusat Penelitian dan Pengkajian, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2011).

The main purpose of the establishment of the New PERDA Adat is to establish MHA Dayak as a subject of law as part of the regulation of the determination of customary land rights for Dayak Indigenous people in Central Kalimantan which contains the determination of customary land as an object of law and the legal relationship of the subject and the object in the Central Kalimantan provincial government system.

3) Legal Status

MHA Dayak and groups that are verified as part of the Dayak customary groups as legal subjects as well as customary land, customary villages, customary forests or the like as legal objects in the legal system of Central Kalimantan provincial government.

4) Registration System

Each member of MHA Dayak as a subject of law and customary land, customary forests and customary villages as objects of law contained in the registration system and the legal administration system.

5) Codification Of Customary Law

Regulating the codification of customary law related to singer-singer substances / customary sanctions relating to customary basic sanctions, customary fines and customary judicial procedures.

6) Layout

Set the types of spatial MHA, mapping and so on. Concretely, the use of the layout is for : 1) magical-religious areas, including: pahewan and or tajahan (sacred places, places of worship); pasah raung (old burial place/house); plot rutas (Forbidden Forest, unlucky Land); 2) residential areas: Hamlet, Hamlet, lewu (residential units); kaleka (former settlements and orchards); 3) forest areas: himba buang (virgin forest); himba baliang (former Old fields); bahulakau (former fields that have not been too long); plot eka malan manana satiar (rice fields, vegetable gardens, fruit-material, and some other cash-producing crops); kabun waris/sagarabat or other local terms.¹⁶ Regulating the preservation, utilization and research related to customary land / Old Village or kaleka belonging to the Dayak Customary Law Community of the past.

7) Indigenous Governance

To regulate the government structurally, functionally, and the division of work locations of three customary elements, namely Kedamangan, Dayak customary Council and Dayak indigenous defense line as well as the role of stakeholders//other public groups.

8) Custom Institutions

MHA Dayak regional regulation of Central Kalimantan must regulate indigenous institutions outside Kedamangan, Dayak customary Council and the defense line of Dayak Indigenous People. Especially institutions in the field of adat-tradition, the original spiritual religion of Dayak ancestors, namely Kaharingan, art and culture in the form of studios, local wisdom, traditional education, traditional sports, traditional health, security in the form of Dayak troops trained in traditional kuntaw self-defense, the economy of the Indigenous Law Community and the social-welfare of the Indigenous Law Community. The New customary institution must accommodate all ages and interests such as Indigenous youth institutions, wives and the elderly and so on. Indigenous groups such as Hamputan should be the object of regulation in it.

¹⁶ Destano Anugrahnu, "Politik Hukum Pengelolaan Hutan Adat (Hak Masyarakat Adat Dayak Dengan Menetapkan Lewu Sebagai Desa Adat)," *Jurnal Kebijakan Pembangunan* 18 (2023): 31, <https://doi.org/10.47441/jkp.v18i1.297>.

- 9) **The Wealth Of The Dayak Customary Law Community**
 Managing MHA's wealth includes all assets owned by traditional villages both immaterial and material. Immaterial wealth referred to in the form of belief systems, traditional values, customs, art and culture, as well as local wisdom imbued with Kaharingan spirituality. Material wealth is either assets, Natural Resources, Land, customary village areas, customary forests, buildings, facilities, sacred areas of the Kaharingan people, heirlooms, magical ritual/religious objects and so on. In this aspect, it also regulates customary community-owned enterprises together and institutional funding mechanisms based on APBD and third parties.
- 10) **Cooperation relationship between Dayak Customary Law community both among MHA Dayak groups, MHA Dayak with Indigenous villages, MHA Dayak indigenous villages with MHA Dayak villages, MHA Dayak with the government, MHA Dayak with private parties/companies, MHA Dayak with Non-Governmental organizations, MHA Dayak with other third parties. Dayak Customary Law Community Empowerment**
- 11) **MHA empowerment is directed to the realization of:**
 - a. Development of MHA quality of life based on the teachings and values of Dayak customs, beliefs, traditions, culture and local wisdom;
 - b. Preservation of Dayak culture that is able to selectively filter out foreign cultural influences;
 - c. Create conditions that can encourage the improvement of the role and function of MHA in an effort to improve the dignity and identity of MHA;
 - d. MHA's active participation in the implementation of development in all fields; and
 - e. Participate in maintaining the purity, preservation and harmony of the nature of Central Kalimantan on an ongoing basis.
- 12) **Desa Adat**
 Formation of Traditional Villages, as well as villages that have switched status.
- 13) **Tanah Adat**
 Regulate mapping, types of Indigenous lands, rights that surround, regulate the boundaries of Indigenous peoples' living space.
- 14) **Indigenous Forest**
 To regulate the mapping, determination, types of customary forests, rights that surround and so on related to customary forests.
- 15) **Dayak Customary Law Community Rights**
 Regulate the rights related to MHA Dayak to the types of rights related to customary land and rights in other regulatory objects.
- 16) **Culture**
 To regulate and strengthen the scope of MHA Dayak culture by coordinating with relevant agencies of the provincial, city, district and Ministry of culture of the Republic of Indonesia.
- 17) **Customary Land Certification**
 Regulating the territory of Adat power through Kedamangan which has the force of law through local regulations with legally valid customary land certificates in the autonomous system of Central Kalimantan provincial government.

After the aspects of Legal Regulation related to the cultural scope of the Dayak Indigenous People contained have been improved through 17 spectra that researchers suggest through systematic interpretation, of course, the regulation of Dayak customary law regulations in the future must have a linkage/refer to the main rules thereon starting from:

The Constitution of the Republic of Indonesia year 1945 Article 18 B paragraph (2), Article 28 C paragraph (1), Article 28 paragraph (2), Article 28 D, Article 28 E paragraph (2), Article 28 I paragraph (3) and Article 32.

Law No. 5 of 1960 on basic agrarian regulation Article 2 Paragraph (4), Article 3 D and Article 14 paragraph (1) letter c.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/head of the National Land Agency Number 14 of 2024 concerning the implementation of Land Administration and Land Registration of Customary Law Community customary rights.

Code of Civil Law.

However, after the author made this article, Central Kalimantan provincial regulation No. 2 of 2024 concerning the recognition and protection of Dayak Customary Law communities which of course automatically replaces regional regulation no.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan. We should appreciate the efforts of the Central Kalimantan provincial government. But there are some things that are highlighted is how the mechanism of determination of Dayak Indigenous people in Central Kalimantan.

The regulation in Article 4 the scope of regulation in this regional regulation includes: a. existence, position and territory of MHAD-KT; b. Confessions of MHAD-KT; c. Mhad-KT protection; d. rights and obligations of MHAD-KT; e. law and Justice; f. the village; g. Mhad-KT empowerment; h. local government responsibilities; i. dispute resolution; and j. funding. This means that the scope is not as wide as the author describes, especially the customary land, but we still appreciate it well.

Just how we set the MHA Adat through existing mechanisms.

First, the governor formed the MHA Committee (Article 10).

Second, the legal recognition process.

Identification (Article 11) Includes

- a. history of MHAD-KT;
- b. indigenous territories;
- c. customary law;
- d. wealth and / or possessions; and
- e. institutions or systems of government.

Verification and validation.

Third, the determination of MHAD-KT through the Governor's decision (Article 7).

However, this regulation is quite interesting because there is a clause that says the inauguration of MHAD-KT is stipulated in accordance with the provisions of laws and Regulations (Article 13 paragraph 1) and the verification process as referred to in Article 11 paragraph (2) letter A is carried out by the province in accordance with the provisions of laws and regulations. The question is, which provisions of the laws and regulations, the

resulting regional regulations should prioritize progressive laws based on the authority of regional autonomy without the need for sounds that imply it, so that this seems to amputate the regulation itself. However, the mechanism of recognition and determination of the legal subject of the Dayak Customary Law community must be realized immediately based on the regional regulation.

4. Mechanism For The Determination Of Customary Land Rights

There are many options in protecting indigenous territories, through the establishment of indigenous forests, indigenous villages and of course Indigenous lands. After the subject of Customary Law Society has been established, then how to establish the object of law as its rights, especially in customary land rights.

The right to customary land was previously regulated in PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan through SKTA legal products from Damang Kepala Adat but there is legal ambiguity due to limited time to conduct an inventory of customary land, so that up to 6 (six) years from the promulgation of the Governor's regulation, customary sanctions are imposed in the form of non-recognition of ownership and the use of customary land.

In Governor Regulation No. 13 of 2009 concerning customary land and customary rights on land in Central Kalimantan province Article 4 very clearly regulates the authority of customary institutions in regulating land rights, but if you look at Article 5 letter d regarding the authority of Kedamangan functionaries, if viewed through teleological/sociological interpretation of all Authority it becomes clear in Article 5 letter d, so that this regional regulation is currently experiencing legal ambiguity and cause this regional regulation is no longer useful, because the diction *konsiderans* "form of non-recognition of customary ownership, if it turns out that the customary land or customary rights on the land are not inventoried and even abandoned successively for 6 (six) years commencing from the entry into force of this governor Regulation" which came into force in 2008, if calculated 6 (six) years ahead of 2008 then the rules of investment and issuance of skta Adat is no longer valid since 2014.

Of course, this is a very fatal legal ambiguity that causes legal uncertainty for Dayak Indigenous people on their customary land rights because the regulation expressly mentions the non-recognition of customary ownership. In fact, in conducting investments and so on related to customary land rights is a continuous activity rather than periodic, especially in these technical activities require experts and adequate technology and Information Facilities which at that time were still limited not like now.

In Governor Regulation No. 13 of 2009 on customary land and customary rights on land in Central Kalimantan province Article 14¹⁷, if viewed through teleological/sociological interpretation, this regional regulation is currently experiencing legal ambiguity and causes this regional regulation can no longer fulfill its purpose to bring legal certainty to customary land rights for the Dayak Indigenous people and the basic purpose of protecting the rights of the Dayak Indigenous people to their customary land, due to the diction of consideration in paragraph (3) "actions in the form of not making consecutive inventory efforts for up to 6 (six) years starting from the promulgation of this governor's regulation, customary sanctions are

¹⁷ "Peraturan Gubernur Provinsi Kalimantan Tengah Nomor 13 Tahun 2009 Tentang Tanah Adat Dan Hak-Hak Adat Di Atas Tanah," 2009.

imposed in the form of non-recognition control and utilization of customary land and additional sanctions in accordance with customary law in force”.

Of course this is a very fatal legal ambiguity that causes legal uncertainty for the Dayak Indigenous people on their customary land rights because the PERGUB expressly mentions the non-recognition of customary ownership if it is not inventoried with a time limit of 6 years since the promulgation of the PERGUB. Not only that, the rule also made the Dayak Indigenous community hampered from registering their customary land by a time limit due to lack of access to information at that time. Added If the Dayak Indigenous people want to register their customary land, it cannot be done because the inventory activities have been completed so that the legal product in the form of SKTA cannot be issued which is the basis for customary land ownership rights.

Through systematic interpretation, as a whole PERDA No.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan does not have synchronization with the above legal framework related to definitions and conceptual arrangements related to the determination of customary land rights through the UUPA and PERMEN ATR/BPN No. 14/2024 on Land Administration and Land Registration customary law related to customary land, law no. 6/2014 on villages related to traditional villages, Article 247 PP No.23/2021 concerning the implementation of Forestry that has been determined through the Indonesian Ministry of Forestry Regulation No.9/2021 concerning Social Forestry Management, the Customary Law Community Bill related to the grammatical naming of legal subjects, namely ‘Customary Law communities’ and other related rules, makes the PERDA and PERGUB no longer actual to the concept of protecting customary territories and presenting legal certainty of customary land rights for Dayak Indigenous People.

Through teleological/progressive interpretation, overall PERDA No.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan can no longer fulfill its basic/main purpose of providing legal certainty of customary land rights for Dayak Indigenous people in Central Kalimantan, so the urgency of setting the determination of customary land rights for Dayak Indigenous People must be done immediately.

However, after the author made this article, Central Kalimantan provincial regulation No. 2 of 2024 concerning the recognition and protection of Dayak Customary Law communities which of course automatically replaces regional regulation no.16/2008 Jo. PERDA No.1/2010 on Dayak customary institutions and PERGUB No.13/2009 Jo. PERGUB No.4/2012 on customary land and customary rights on land in Central Kalimantan. Through the Central Kalimantan provincial regulation Number 2 of 2024 concerning the recognition and protection of Dayak Customary Law communities, the provisions of customary land in Article 20 are again contained, but the regulations are only generally spelled out and need further regulation.

However, for the determination of customary land can be through the mechanism of regulation of the Minister of Agrarian Affairs and Spatial Planning/head of the National Land Agency Number 14 of 2024 concerning the implementation of Land Administration and Land Registration of customary rights of Customary Law communities, the determination of customary land rights belonging to Dayak Customary Law communities in Central Kalimantan occurs in Central Kalimantan. Of course, the determination of customary land rights through the candy can be strengthened by Central Kalimantan provincial regulation

Number 2 of 2024 concerning the recognition and protection of Dayak Customary Law communities contained in the provisions of customary land in Article 20.

The determination of Customary Land Rights in Central Kalimantan can currently follow the mechanism of the regulation of the Minister of Agrarian Affairs and Spatial Planning/head of the National Land Agency Number 14 of 2024 on the implementation of Land Administration and Land Registration of customary land rights, which of course must be preceded by establishing the subject of Dayak customary law in the form of local regulations.

5. Conclusion

Recognition of customary land rights for Dayak Indigenous Peoples in Central Kalimantan is an urgency in order to ensure legal certainty and Agrarian Justice. Legal vagueness of regional Regulation No. 16 of 2008 Jo. Regional Regulation No. 1 year 2010 on Dayak customary institutions and PERGUB No. 13 year 2009 Jo. Regulation No. 4 of 2012 on customary land and customary rights on land in Central Kalimantan is at the root of various land disputes that occur which cause legal uncertainty over customary land rights for Dayak Indigenous people in Central Kalimantan. This study concludes that legal reform is needed through a new regulation that is more comprehensive and responsive to the needs of Dayak Indigenous Peoples in the legal certainty of Customary Land Rights and integrated with national regulations such as PERMEN ATR/BPN No. 14 of 2024. In addition, it is necessary to strengthen the legal subject of Indigenous Peoples through the determination of Dayak Indigenous Peoples to become Dayak Indigenous peoples within the scope of regional autonomy so that the interests of indigenous peoples can be optimally and sustainably protected through Central Kalimantan provincial regulation No. 2 of 2024 concerning the recognition and protection of Dayak Indigenous Peoples.

The Central Kalimantan provincial government is advised to immediately draft, ratify and implement regional regulations that establish Dayak Customary Law communities as legal subjects through Central Kalimantan provincial regulation Number 2 of 2024 concerning the recognition and protection of Dayak Customary Law communities and the determination of customary land rights through the mechanism of ATR/BPN regulation no.14/2024 on the implementation of Land Administration and Land Registration of customary rights of Indigenous Peoples in order to bring legal certainty on customary land rights for Dayak Indigenous Peoples in Central Kalimantan.

References

- Ali, Zainuddin. *Metode Penelitian Hukum*. Sinar Grafika, 2021.
- Anugrahnu, Destano. "Politik Hukum Pengelolaan Hutan Adat (Hak Masyarakat Adat Dayak Dengan Menetapkan Lewu Sebagai Desa Adat)." *Jurnal Kebijakan Pembangunan* 18 (2023): 31. <https://doi.org/10.47441/jkp.v18i1.297>.
- Arizona, Yance, and Noer Fauzi Rachman, eds. *Konstitusionalisme Agraria*. STPN Press, 2014.
- Farid, Hilmar and others. *Sejarah/Geografi Agraria Indonesia*. STPN Press, 2017.
- Konsorsium Pembaruan Agraria. *Catatan Akhir Tahun 2019: Dari Aceh Sampai Papua: Urgensi Penyelesaian Konflik Struktural Dan Jalan Pembaruan Agraria Kedepan*. Konsorsium Pembaruan Agraria (KPA), 2019.

- Konsorsium Pembaruan Agraria. *Catatan Akhir Tahun 2021: Penggusuran Skala Nasional (PSN)*. Konsorsium Pembaruan Agraria (KPA), 2022.
- Konsorsium Pembaruan Agraria. *Catatan Akhir Tahun 2023: Dekade Krisis Agraria: Warisan Nawacita Dan Masa Depan Reforma Agraria Pasca Perubahan Politik 2024*. Konsorsium Pembaruan Agraria (KPA), 2023.
- Rahman, I. Nur, A. Triningsih, A. Harumdani W, and N. Kurniawan. "Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat Dalam Proses Pengujian Undang-Undang Di Mahkamah Konstitusi." *Jurnal Konstitusi* 8, no. 5 (2016): 770. <https://doi.org/10.31078/jk856>.
- Rahman, Irfan Nur and others. *Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat Dalam Proses Pengujian Undang-Undang Di Mahkamah Konstitusi*. Pusat Penelitian dan Pengkajian, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2011.
- Salim, M. Nazir. *Reforma Agraria: Kelembagaan Dan Praktik Kebijakan*. STPN Press, 2020.
- Sarjita, and Tim STPN Press, eds. *Beberapa Pemikiran Tentang Status Tanah Dan Dinamikanya*. STPN Press, 2020.
- Sistematis 2010, Tim Riset, Laksmi A. Savitri, and others, eds. *Pengembangan Kebijakan Agraria Untuk Keadilan Sosial, Kesejahteraan Masyarakat, Dan Keberlanjutan Ekologis*. STPN Press and Sajogyo Institute, 2010.
- Sumardjono, Maria S. W. *Regulasi Pertanahan Dan Semangat Keadilan Agraria*. STPN Press, 2018.