Status for Land Rights Ulayat After The Enactment of The Agrarian Constitution

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Abstract
The right of ulayat is the right of the legal alliance to freely use lands that are still forests within its territory, for the benefit of the legal alliance itself and its members, or for the benefit of outsiders (immigrants, foreigners) but with its permission and always with the payment of recognition of recognition, in which the legal alliance continues to intervene, hard or not, also on the land that has been cultivated by people who are located in the environment of his territory. The right of ulayat as the right of indigenous peoples to land, recognized its position by uupa, as stated in Article 3, which stipulates that ulayat rights and similar rights of indigenous law communities can still be implemented by the indigenous law community concerned as long as the ulayat rights in reality still exist. Based on the discussion, it can be concluded that the status of the land of ulayat rights after the enactment of the Agrarian Basic Law is related to whether or not the ulayat rights themselves exist. Against the right of ulayat which in reality still exists, the status of the land of the ulayat rights is still as it was before the enactment of the Agrarian Principal Law, that is for the purposes of legal federation, for the purposes of members of the legal federation, and for non-members of the legal federation, the latter on condition of paying the recognition money. Against ulayat rights which in reality no longer exist, the status of land rights is changed to the purposes of the nation and the State, under the authority to govern by the State, in this case the Government of the Republic of Indonesia and is run by the Regional Government.

Keywords: Status Reserved, Land of Ulayat Rights, Agrarian Rights Law.

How to cite:

A. Introduction
Agrarian law in Indonesia was originally two-day, in addition to the enactment of Customary Agrarian Law also applies West Agrarian Law (Civil). What is meant by customary law is customary customs that have legal consequences and consist of unwritten regulations, while western law (civil) consists of written legal regulations. This dualism of agrarian law is a relic of the Dutch East Indies era, which at that time the Indonesian people were in order to become groups: European, Eastern Foreign Chinese, Non-Chinese Foreign East and the original Indonesian group. Against these population groups, two types of laws are applied, namely customary law and western law (civil). This situation continues even until Indonesia is free. This dualism of agrarian law ended after the enactment of Law No. 5 of 1960 on the Basic Rules of Agrarian Principals commonly called the Agrarian Principal Law and abbreviated as UUPA, on September 24, 1960.

In relation to customary law, between indigenous law communities as a union with the land they occupy, there is a very close relationship, namely a relationship that is sourced from a religio-magical view. This close and religio-magical relationship, causing indigenous peoples to gain the right to control the land, to use the land, to collect the proceeds from the plants that live on the land, and to hunt for the animals that live wild there. Therefore, land rights according to customary law are divided into two parts, namely the common rights of indigenous peoples or commonly called ulayat rights and individual rights.

According to Boedi Harsono (1997: 177) in customary law the highest land tenure rights are ulayat rights, which contain two elements that contain civil law and public law. From this ulayat right, either directly or indirectly, will give birth to the rights to land controlled by the citizens of the indigenous law community concerned. According to R. Roestandi Ardiwilaga (1960:25), the right of ulayat is the right of the legal alliance to freely use lands that are still the forests within its territory, for the benefit of the legal alliance itself and its members, or for the benefit of outsiders (immigrants, foreigners) but with its
permission and always with the payment of recognition of recognition of recognition, in which the legal alliance continues to intervene, hard or not, also on the land that has been cultivated by people who are located in the environment of his territory.

Thus it can be said that the right of ulayat is a set of rights and obligations, for: (1) the communion of its own laws; (2) its own members; and (3) outsiders. These three parties are at the same time the subject of ulayat rights. Meanwhile, the right of ulayat itself includes (object of ulayat rights): (1) land (land); (2) water (such waters as for example: times, lakes, beaches and their waters); (3) wildly viable plants (fruit trees, trees for carpentry or firewood, and so on); (4) Wild animals that live freely in the forest. Then the above has been explained that since September 24, 1960 came into force the Agrarian Basic Law, abbreviated as UUPA.

Based on the description and associated with the current conditions that are so widespread the need for land in Indonesia, both for state and individual purposes, the question arises how is the status of land rights after the enactment of the Agrarian Basic Law?

This research is a normative legal research using a research method in the form of library research, namely research on written documents as data sourced from secondary data including primary legal materials, secondary legal materials and tertiary legal materials (Rahmat Ramadhani, 2021:859). Primary legal materials are legal materials that bind or make the public understandable, including legal products that are subject to study and legal products as tools to form critical law. Secondary legal materials include explanations of primary legal materials in the form of expert doctrine found in books, journals and websites (Soerjono Soekanto dan Sri Mamudji, 2001:23-24). The procedure used to collect data in this study is in the form of documentation, namely guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online (Taufik Hidayat Lubis dan Rahmat Ramadhani, 2021:151). Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion (Rahmat Ramadhani dan Ummi Salamah Lubis, 2021:138), through a statutory approach (Rahmat Ramadhani, 2020: 258).

B. Discussion

In indigenous law societies there is a very close relationship between human and land alliance, where human fellowship is located. The land is where people dwell, where people seek a source of livelihood, a place where people are buried after death and a land for primitive people as a place to grow trees where the creatures protect their fellowship. This relationship in Indonesian society has three basic kinds, namely: inner conversion, society and economy (Muller in R. Roestandi Ardiwilaga, 1960:26).

The basis of inner realization or better known as magical-religious, namely the belief in the supernatural such as the way people are devoted in a primitive society, for example when going to open or work the land together, first held a ritual ceremony.

The basis of society, namely human communion as a whole has a sense of responsibility for the crimes that occur in the environment of the territory. The basis of the economy, namely the rule of law that all members can use the common property contained in the environment of their territory. These strong relationships eventually became the right of legal alliance over land in the neighborhood area, referred to as The Ulayat Right. In customary law the highest land tenure according to Boedi Harsono (1997:177) is the right of ulayat. Ulayat rights are very old rights, in line with the development and growth of Indonesian society itself. During the reign of the kings before the entry of the Dutch to Indonesia, this ulayat right already existed in the community. Furthermore, from this ulayat rights are born the rights of individuals to land.

In this ulayat rights literature by Cornelis van Vollenhoven it is called beschikkingsrecht (Cornelis van Vollenchoven in Muhammad's Bushar, 1985:103). According to R. Wiradiputra (1951:51) This right-beschikking belongs to an area or entity, such as a village, clan or tribe, to open and use land located in a certain environment freely, while people from other regions to do it must get permission first, and must pay. Then Boedi Harsono (1997: 179) mentioned that ulayat rights are one-thirds of the authority and obligations of an indigenous law community, which relates to land located within its territory. Such authorities and obligations include the field of civil law, which relates to the right to jointly owned land. While that includes public law, in the form of the task of authority to manage, regulate and lead the mastery, maintenance, allotment and use.
The task of authority to manage, organize and lead the control, maintenance, allotment and control of the common land is given to the Head of Customary or Customary Ruler on behalf of the local indigenous law community. According to Boedi Harsono (1997: 180) the indigenous people, as the incarnation of all its members, who have ulayat rights, not one person. The right of ulayat itself includes land (land), water (waters such as: times, lakes, and beaches and their waters), plants that live wildly (fruit trees, trees for carpentry or firewood and so on), and animals that live wild (R. Roestandi Ardiwilaga, 1960:34; Surojo Wignjodipuro, 1983:199; Bushar Muhammad, 1985:105).

Each member of a legal alliance or indigenous law society will know his own environmental area, within the boundaries of nature or the boundary sign he founded, which is determined because the part of one nation that stands alone and occupies a certain area, meets the other part. The right of ulayat as the right of indigenous peoples to land, recognized its position by uupa, as stated in Article 3, which stipulates that ulayat rights and similar rights of indigenous law communities can still be implemented by the indigenous law community concerned as long as the ulayat rights in reality still exist. Recognition of the existence of ulayat rights by UUPA is a natural thing, because according to Maria S.W. Sumardjono (1993) the right of ulayat and indigenous peoples had existed before the establishment of the Republic of Indonesia on August 17, 1945.

But UUPA does not provide criteria regarding the existence of ulayat rights. According to Maria S.W. Sumardjono (1993) the determining criteria still exist or not ulayat rights, must be seen in three things cumulatively, namely: (a) the existence of indigenous peoples who meet certain characteristics as subjects of ulayat rights; (b) the existence of land or territory with certain boundaries as lebensraum which is the object of ulayat rights; (c) the authority of indigenous peoples to: regulate and organize the use, supply and maintenance of land; regulate and determine the legal relationship between persons and land (granting certain rights to a particular subject); regulate and establish the legal relationship between people and legal acts relating to land (buying and selling, inheritance etc.).

All three criteria must be met cumulatively, meaning that all three must exist simultaneously. If one of the determining criteria still exists or not the right of ulayat no longer exists, then the right of ulayat indigenous law people in the place concerned is considered no longer there and by itself the right of ulayat indigenous law people is raised into the right of ulayat state.

Furthermore, the Right of Ulayat State is controlled by the State with the Right to Control from the State. The right to control of the State (Abdul Hamid Usman, 2011b:131-132), namely: ulayat rights appointed at the very top level, namely at the level concerning the entire territory of the State, which authorizes the State, which in this case is exercised by the Government of the Republic of Indonesia, to: (1) organize and organize the purpose, use, supply and maintenance of the earth, water and space; (2) determine and regulate the legal relations between peoples and earth, water and space; and (3) determine and regulate the legal relations between people and the deeds of the law concerning the earth, water and space.

In relation to ulayat rights, their use may be reserved for the benefit of the legal alliance itself, members of the legal fellowship and outsiders not members of the legal fellowship. Meanwhile, the authority to regulate the purpose and legal relationship of ulayat rights is in the hands of indigenous rulers, in the name of legal alliances. The main obligation of the customary ruler who is sourced from the ulayat rights is to maintain the welfare and interests of members of his legal community, keep the dispute should not arise about the ownership and use of land and in the event of a dispute the customary ruler is obliged to resolve it.

In relation to his responsibility regarding the welfare of his legal community, according to Boedi Harsono (1997: 180) basically indigenous rulers are not allowed to alienate all or part of his territory to anyone. In addition, indigenous authorities also have the authority to designate certain forests as reserve forests, which should not be opened by anyone. The customary authorities also designate certain lands for use for general purposes / common purposes, for example for mosques, meeting halls, schools, markets, grazing grounds, gathering places or for other activities, cemeteries, and others.

Then to open the land ulayat rights required notification to the customary ruler, which is done directly by the concerned himself. Sometimes before telling the customary ruler, first a statement is needed from fellow members of the legal fellowship about the land area to be opened. All this was necessary to avoid overlapping the control of one acreage of land by more than one member of the legal alliance. Once declared qualified, among them the land concerned is not in the control of other members.
of the legal alliance, then the customary ruler will approve the wishes of the members of the legal alliance.

Meanwhile, the use of ulayat land rights by outsiders not members of legal alliances is carried out by means; The person concerned asks permission in advance to the customary ruler where the land to be opened is located. If the land desired by an outsider is not a member of the legal alliance is not in the control of others, then the customary ruler will give his permission and to outsiders not members of the legal federation is required to pay money recognisi (recognition) which is determined by the customary authorities themselves taking into account the benefits and allocation of the land. The use of ulayat land rights by outsiders not members of the legal alliance is usually for one harvest only.

Then the above has been explained that if the criteria still exist or not the ulayat rights are not fulfilled anymore, then the right of ulayat of the indigenous people concerned becomes removed and appointed as the right of state ulayat. Therefore, the arrangement and implementation of the allocation, use, supply and maintenance of land ex ulayat rights becomes the authority of the State, in this case carried out by the Government of the Republic of Indonesia. Against ex ulayat land that has been used for the public benefit of indigenous law communities, will continue the implementation of its purpose and use by the Government. While against ex-ulayat land on which there are no individual rights, will be continued by the Government for wider development purposes, in order to achieve a just and prosperous society. Meanwhile, based on the Provisions of Uupa Conversion, for ex ulayat land on which there are already individual rights according to customary law, it is recognized its existence with an obligation for its holder to convert the rights to the land into land rights as stipulated in Article 16 of the UUPA.

C. Conclusion

Based on the description in the discussion section above, it can be concluded that the status of land for ulayat rights after the enactment of the Agrarian Basic Law is related to the still existing or not of the ulayat rights themselves. Against the right of ulayat which in reality still exists, the status of the land of the ulayat rights is still as it was before the enactment of the Agrarian Principal Law, that is for the purposes of legal federation, for the purposes of members of the legal federation, and for non-members of the legal federation, the latter on condition of paying the recognition money. Against ulayat rights which in reality no longer exist, the status of land rights is changed to the purposes of the nation and the State, under the authority to govern by the State, in this case the Government of the Republic of Indonesia and is run by the Regional Government.

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