

## **PATTERNS OF INDIGENOUS LAND TENURE AND UTILIZATION: COMPARISON OF CUSTOMARY LAW IN BALINESE AND ACEHNESE PEOPLE**

### **ABSTRACT**

**Aim:** This study examines and analyzes changes in patterns of tenure and utilization of customary land in line with changes and developments in society in the era of globalization and tourism industry both in Bali and in Aceh. There were lands that were originally customary lands. Customary. Some have changed their function while others are still functioning as customary lands. The purpose of this study is to analyze the causes of changes in patterns of tenure and utilization of customary lands in the Indigenous Peoples of Bali and Aceh. Before the change in orientation related to the use of customary land which still adheres to the communal and religious functions of customary land, but along with economic development and in the era of globalization, the tenure and utilization of customary land has undergone changes that lead to economic orientation. A controversial issue in land is the concept of economic function and social function of land which is the basis for excessive land use. One of the sources of the problem is the construction of tourism facilities, resulting in the economic value of the land being so high.

**Methods:** This study uses mixed methods as legal research, namely between normative and empirical legal research by using field data and secondary data.

**Results:** Found that in anticipating changes in the pattern of tenure and utilization of customary lands in the indigenous peoples of Bali and Aceh, the government and stakeholders need to design and implement various policy models that can maintain the sustainability of culture, environment, and the interests of the indigenous peoples of Bali and Aceh. A policy model that favors indigenous peoples in providing protection for customary lands in Bali and in Aceh. Community involvement and facilitating institutional development within indigenous peoples in decision-making in the ownership and use of customary land.

**Conclusion:** Indigenous Peoples in the era of globalization have an important role in anticipating changes in the pattern of tenure and utilization of customary land in order to maintain cultural values, identity, and community welfare. For this reason, steps need to be taken, including strengthening indigenous peoples through education and self-awareness, strengthening identity and culture, active involvement of indigenous peoples in decision making and the establishment of customary institutions in representing indigenous peoples related to their interests.

*Keywords: Customary Lands, Tenure, Utilization of customary lands*

### **1. INTRODUCTION**

The development of society today is very dynamic, along with the advancement of technology and science in the era of globalization that is so open that it affects social life and things related to the existence of society. Soil is one of the elements of life that is a necessity in carrying out life and life. For Balinese indigenous people who have a magical religious pattern in their lives cannot be separated from the land or often referred to as palemahan.

Land for the Balinese people has communal value or togetherness but there is also an individual value that each can have land rights. Imam Sudiyat stated that in a country where the people desire to implement a socially just democracy, the use of land for the greatest spread of the prosperity of the people is a *contitio sine qua non*.(1)

When looking at the constitution, it is stated that the State recognizes and respects the unity of indigenous peoples and their traditional rights (Article 18B Paragraph (2) of the 1945 Constitution). Such recognition and respect are given without neglect of measures of feasibility for humanity in accordance with the level of development of the nation's existence.(2)

Customary law views the relationship between customary law communities and occupied land as having its own meaning. According to Customary Law, the relationship between customary law communities and occupied land is close and magical religio. As a consequence, customary law communities obtain the right to control the land, use the land, collect the produce from the vegetation that lives on the land, as well as hunt the animals that live there (3).

Customary law views individual life as a life primarily reserved for serving the community. Based on this conception, customary land as a common property right of a customary law community is seen as common land that is a "gift" from a supernatural power, not seen as something obtained by chance or because of the strength of the indigenous community's efforts. So customary rights that become a life-giving environment for indigenous peoples are seen as common land, so that all individual rights are sourced from the common land. (4) Soerojo Wignjodipoero in his book Introduction and Principles of Customary Law states that, land in a customary law community has a very important position because of its nature, which is the only property that despite experiencing circumstances that in any case is still fixed in its state, sometimes even becomes more profitable.(5)

Along with the development of the era and the development of the tourism industry in Bali, customary lands of control and utilization began to shift. Economic factors and pragmatism from indigenous Balinese people influence the shift in control and utilization.

The control of land rights by legal communities is juridically visible as the right to control land by the state and the customary rights of customary law communities. The concrete reality of the land aspect and its problem is that control through the right to control the state and customary rights or control by customary law communities is a necessity that should be seen as a harmonious relationship originating from the state legal system and customary law system.(6)(7) The shift in tenure and utilization patterns related to customary land in Bali has an impact on its function, which was previously more social and religious, to more economic. From this phenomenon, there are values that begin to disappear in the philosophical aspects of the customary land which previously emphasized more on communalitas turning to individuality. For this reason, there is a desire for researchers to examine the phenomena that arises from the shift in control and utilization of customary land which previously highlighted social, communal and religious aspects towards economic, individual and material.

In Aceh Province there are also changes in the tenure and utilization of customary land, the process of individualization or change of customary land tenure in Aceh from communal to individual tenure is a natural process that cannot be prevented from happening, for that it is necessary to register customary land in Aceh through recognition of rights so that clarity of status can be guaranteed according to procedures and in a relatively short time in each activity, especially in research and announcement of physical data and juridical data.(8)

Acehnese people are a community that is thick with customary regulations. Institutions that live at the local level are customary-based with the application of customary regulations. Unfortunately, existing developments created a change in institutional orientation so that local values began to fade. (Solomon, n.d.) In the article entitled "*changes in socio-cultural changes in Acehnese Society Before and After the Tsunami*" have occurred in community institutions in Aceh such as Regional Regulations into Qanun, the existence of Sharia Courts, Islamic Sharia Services and Wilayatul Hisbah which affect values, attitudes in Acehnese society.

The political, social and cultural structure contained in a Gampong is regulated in the provisions of the Aceh Qanun, reinforced by Islamic customs and religious values. All these political processes give birth to reusam (rules) in a Gampong which all (reusam) must be carried out by all Gampong people headed by keuchik and fully assisted by imeum and tuha peut. The performance of the village apparatus is what determines the success of a Gampong. Based on this thinking, Gampong has a strategic role in community development in Aceh. (10)

From the description that has been stated above, there are several things that will later become the subject of study in this study which will describe and describe related to changes in the pattern of control and utilization of customary land in the indigenous peoples of Bali and Aceh

Based on the background that has been described, there are how many problems can be formulated as follows: What is the policy model in anticipating changes in the pattern of tenure and utilization of customary land in the indigenous peoples of Bali and Aceh that is equitable and based on local wisdom?

## II LITERATURE REVIEW

### Customary Peoples' Land Rights

In customary law, between the legal community as a unit and the land it occupies there is a very close relationship, which is a relationship that originates from a religio-magical view. (11) The Customary Law conception of land tenure rights is formulated as a religious communalistic conception, which allows individual land tenure, with land rights that are private, as well as contain elements of togetherness. (12)

This close and religio-magical relationship makes legal communities obtain the right to control land, use land, collect products from plants that live on the land, as well as hunt animals that live there. The right of legal community tenure over this land is called the right of lordship or customary rights, and in the literature this right by Van Vollenhoven is called *beschikkingsrecht*. This term in Indonesian is a new sense, one way or another because in Indonesian (also in regional languages) all terms used contain the meaning of the environment of power, while *beschikkingsrecht* describes the relationship between the law society and the land itself. Today the term customary rights is commonly used as a translation of *beschikkingsrecht*. (13) In customary law, customary rights are the highest land tenure rights containing two elements that have aspects of civil law and public law. The subjects of customary rights are customary law communities, both territorial (village, clan, nagari, huta) and genealogical or family, as a form of togetherness with their citizens. Customary land is the common land of the people concerned. (13)

*Beschikkingsrecht* or customary rights, lordship rights, apply outward and inward. Applies outwardly, because non-citizens of the legal community in principle may not cultivate the land that is the territory of the alliance concerned, only with the permission of the alliance and after paying the stake, income money (Aceh), *mesi* (Java) and then providing compensation, outsiders who are not citizens of the alliance (legal society) can

have the opportunity to participate in using the land of the alliance territory or legal society. Applies inward, because communion as a communion means that all citizens of the communion together as a whole exercise customary rights means to reap the fruits of the land and all other plants and animals that live on it.

This right of fellowship essentially restricts the freedom of movement of the citizens of the alliance as individuals. This restriction was done in the interest of the fellowship. (14) The objects of Hak Ulayat are land (land), water (rivers, lakes, beaches and their waters), plants that live wildly (fruit trees, trees for carpentry or firewood, and so on, wild animals that live freely in the forest). (15) The way the alliance maintains or defends customary rights, first by trying to put boundaries around its territory, and the second effort is by appointing certain officials specifically in charge of overseeing the territory of the alliance concerned, as well as border patrols. (16)

The terms of regions that stand in the sphere of power, territory or land that is the original territory of customary law communities are: patuan (Ambon), Panyampeto (Kalimantan), nuru (Buru), Wewenkon (Java), prabumian (Bali), pawatasan (Kalimantan), totabuan (Bulang Mangondow), Limpo (South Sulawesi), ulayat (Minangkabau). (17) Customary rights in their basic form are a right of the alliance over the land inhabited, while its implementation is carried out by the alliance itself or by the head of the alliance on behalf of the alliance. Under customary rights are the rights of traditional chiefs and customary elders, who as officers of customary law communities are authorized to manage, regulate and lead the allocation, control, use and maintenance of the common land. The duties of this authority are purely public law aspects. (18)

### **Gampong Aceh Customary Land**

Land ownership under customary law is that land is communal property or legal alliance (beschikkingsrecht). In this case, each member of the alliance can work the land by clearing the land first, and if they work the land continuously, the land can become property individually. So this claim for ownership of property disappears completely when another fellow member wants it and urges him to choose between the two options".

Gampong customary land or often referred to as village cash land which is a village asset certainly has a unique history, village cash land grows based on traditions / customs that develop and live among the community, these developments become a characteristic for village cash land in an area. At the beginning of the existence of village cash land, there were several kinds of allotments of village cash land according to the purpose of using the results. (19)

According to Soerjono, for customary law communities, land has a very important function where customary law community residents live and provide livelihoods for them. Crooked land can be categorized as customary land as it is one of the village's assets and as customary land owned by the village, crooked land itself cannot be traded without the consent of all villagers but can be leased by those who are given the right to manage it. (20)

The existence of customary land in Bali, especially the assessment of the strategic importance of land and economically supporting community life, has a major influence on land, including customary land which is not impossible to change functions and can even change ownership from communal to individual and various other problems that have the potential to eliminate the identity of customary land itself. (21)

The problematic that has become controversial in land problems is the concept of economic function and social function of land which is the basis for excessive land use. One of the sources of the problem is the construction of tourism facilities, resulting in the

economic value of the land is so high. The emergence of tourism facility buildings on P Desa Kd (village reef) land, AyDs (village father) land, Laba Pura Land, identified that there has been a change in the function of customary land, from a socio-religious function that was initially dominant to a more dominant economic function. (21)

The results of research by Wirta Griadhi, et al in 2011 showed facts about the use of customary land in several tourist areas to support the economic activities of Pakraman village. The use of customary land in tourism areas for tourism objects, places of business supporting tourism facilities that are rented or contracted, is fully regulated and managed by all residents through the village part. (22)

Furthermore, Acehnese people are a community that is thick with customary regulations. Institutions that live at the local level are customary-based with the application of customary regulations. However, existing developments created a change in institutional orientation so that local values began to fade. As far as understanding of the agrarian order in the regions, clashes often occur between local interests (communities) and government interests. The battle between the two interests creates its own gap between institutions that deal with agrarian resources. The bridge between the two interests can ideally be through formal or institutional regulations that can accommodate existing interests. On the other hand, the formal regulations that emerge are often too biased towards the central interest. This has led to a shift in the role of local institutions. Another reason that arises is that the weakness of local institutions is also influenced by many modernization factors and changes in the meaning and orientation of agrarian in each direction of the institution. (23)

Referring to Acehnese indigenous culture which is full of Islamic values, basically, in the development of indigenous culture adheres to several principles, including: (16)

- a. Loyal to Islamic aqidah (Hablum Minallah);
- b. It is universal (there is no gap between religions, between nations and between tribes);
- c. Unity and unity (Hablum Minan Nas);
- d. Rambateirata (mutual assistance, please help);
- e. Panut to the priest (leader);
- f. Smart with the science of reading and writing (iqra' and kalam/writing)

L.M. Friedman revealed three components of the legal system. The three components are: (1) structure, (2) substance, and (3) culture or culture. First, the legal system has a structure, that is, a permanent framework of legal systems that keep processes within its boundaries. The structure consists of the number and size of courts, their jurisdiction (the type of cases heard and the procedural law used), including in this structure also regarding the arrangement of the legislature. Second, substance, that is, rules, norms, and patterns of real human behavior that reside in that system. Included in this sense of substance are also the "products" produced by people who are in that legal system, the decisions they issue, the new rules they draft. Third, is legal culture or culture, namely human attitudes towards the law and the legal system of beliefs, values, thoughts, and expectations.

This legal culture is also interpreted as the social mood of mind and social forces that determine how the law is used, avoided, or abused. (24) In Aceh itself has been regulated in Article 213 paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh, that: "The Government of Aceh and / or the district / city government is authorized to regulate and manage the allocation, utilization and legal relations regarding land rights by recognizing, respecting, and protecting existing rights including customary rights in accordance with norms, nationally applicable standards and procedures".

In reality, there is still no common understanding and interpretation (multi-interpretation) of these requirements, even various statutory provisions still place customary rights in

different and conflicting positions. Differences in the placement of customary rights in statutory provisions and different interpretations of customary rights by various interested parties have caused conflicts in customary land control.

The above phenomenon certainly results in not being able to use the land optimally, besides that it can also cause disharmony in relations between communities, entrepreneurs and rulers which in turn can cause social insecurity.

Customary Land Ownership Rights According to Customary Law in Southwest Aceh District

In Southwest Aceh District, as in many areas of Aceh, customary land tenure has distinctive features that are governed by customary law norms and may also be influenced by the national legal system. However, keep in mind that since the enactment of Law Number 6 of 2014 on Villages, several aspects of customary law in Aceh and throughout Indonesia have been regulated within the national legal framework.

However, some general principles of customary land tenure under customary law in Aceh, including the Southwest Aceh District, may include:

**Collective Rights:** Customary land is held collectively by indigenous peoples in the area. Land ownership and tenure rights are considered cultural heritage and the rights of indigenous groups.

**Customary Leadership System:** Customary leadership systems such as ulèë balang or indigenous leaders have a role in regulating and managing customary land tenure. They often have the authority to allocate land and resolve disputes.

**Traditions and Customs:** The determination of customary land tenure can be influenced by traditions, customs, and social norms prevailing in indigenous communities. For example, land can be passed down from generation to generation or allocated based on specific needs and functions.

**Environmental Conservation:** Indigenous peoples often have traditional knowledge of natural resource and environmental management. Tenure of customary land can be related to the obligation to maintain ecosystem balance and sustainability of natural resources.

**Community Participation: Decisions** related to customary land tenure generally involve the participation and deliberation of indigenous peoples. Decisions are collective and based on consensus.

**Relationship with Religion:** In Aceh, Islam plays an important role in the governance and tenure of customary lands. Islamic values can influence customary land-related norms and practices.

Thus to understand that the implementation and interpretation of customary law varies in different regions and communities in Aceh. Since the enactment of the national law governing villages and land tenure governance, several aspects of customary land tenure have been integrated with the national legal framework. However, the recognition and protection of indigenous peoples' rights continues to be a concern in order to ensure cultural and environmental sustainability.

### **The Existence of Customary Land Ownership Rights According to Customary Law in Southwest Aceh District**

In terms of its existence, customary rights are recognized as long as they still exist. In areas where customary rights no longer exist, they will not be revived, and areas where customary rights never existed will not be granted new customary rights. In terms of

implementation, customary rights must not conflict with national and state interests and other higher laws and regulations. With the right for alliance members to utilize customary land, customary rights are attached to individual rights, which are rights given to alliance members over customary land. The most important individual rights are property rights, voting rights, rights to enjoy results, rights to use, rights to remuneration of position and rights to purchase. (25)

In customary land law, property rights are in principle different from *eigendom* or *bezet* (property rights according to western civil law) which is a person's ownership or possession of land or other objects. Roben Van Niel stated that "bezet" property rights over land focus on patterns of tenure (position) and ownership (ownership) while individual ownership of customary land is a use that receives certain rewards. (26)

So according to customary law, people are known three types of ownership rights, namely individual, family and village or tribal ownership. This is found in communities in Southwest Aceh Regency that divide joint ownership and private ownership. The classification of ownership rights in the three parts is adjusted to the type of objects or goods owned, for example movable objects or transferable objects, namely objects that are worked on alone are individual property, while those that are fixed objects or immovable objects include land, and hamlets are joint ownership between one village community. Individual property includes only all the things a person has accumulated throughout his life, either alone or in the immediate family for themselves. The objects are in the form of bion skin, noken, bows and arrows, including jewelry in the house and worn on certain parts of the body.

### **III METHODS**

This research uses the type of normative legal research and empirical legal research. Normative legal research is used because of the possibility of norm conflicts, inconsistencies and disharmonization of existing norms in arrangements related to customary lands both from philosophical aspects and from juridical and even sociological aspects. In addition, empirical law research is also used because there are gaps in utilization and control related to customary land, besides that there is a disorientation with the philosophical basis of control and utilization of customary land with the concept of customary law.

### **IV RESULTS AND DISCUSSION**

#### **POLICY MODEL IN EFFORTS TO PREVENT CHANGES IN CUSTOMARY LAND TENURE IN BALI**

In anticipation of changes in the pattern of tenure and utilization of customary land in the Balinese Indigenous people, the government and stakeholders need to design and implement various policy models that can maintain the sustainability of the culture, environment, and interests of the Indigenous Balinese people. Some policy models that can be put forward include:

**Legal Recognition and Protection of Customary Land:** Make laws or policies that expressly recognize and protect the customary land rights of the Indigenous peoples of Bali. This includes identifying customary land boundaries, securing customary land tenure and use rights, and providing legal protection against threats of changing tenure patterns.

**Community Participation in Management:** Encourage the active participation of Indigenous Balinese communities in the management of their customary lands. This model can involve the establishment of institutions or groups that involve stakeholders in decision-making related to the tenure and use of customary lands.

**Sustainable Utilization Model Development:** Designing a sustainable and environmentally friendly customary land utilization model. This can include organic farming practices, sustainable forest management, and wise use of natural resources.

**Education and Cultural Preservation:** Integrate education and cultural preservation in customary land related policies. This can be done through the development of local educational programs that promote Balinese Indigenous cultural values and awareness of the importance of safeguarding customary lands.

**Culture-Based Economic Development:** Encourage local cultural-based economic development, such as cultural tourism and traditional handicrafts. This can help Bali's Indigenous people derive economic benefits from their customary lands without sacrificing cultural and environmental values.

**Integrated Spatial Planning:** Integrating aspects of customary land in broader spatial planning. This will help avoid land use conflicts that could harm Bali's Indigenous peoples and the environment.

**Environmental Conservation and Restoration Program:** Develop environmental conservation and restoration programs to restore ecosystems affected by changing patterns of tenure and use of customary lands.

**Community Empowerment:** Encourage the empowerment of Bali's Indigenous peoples through training, education, and technical support in the management of customary lands and natural resources.

**Collaboration Between Stakeholders:** Encourage collaboration between the government, indigenous Balinese communities, non-governmental organizations, and the private sector in designing and implementing policies related to customary lands.

Thus, the active involvement of Balinese Indigenous peoples in the planning and decision-making process related to this policy. In addition, regular monitoring and evaluation of policy implementation is also important to ensure that cultural and environmental preservation goals are achieved.

## **COMPARISON OF TENURE PATTERNS AND UTILIZATION OF CUSTOMARY LAND IN BALI AND IN ACEH INDIGENOUS PEOPLES**

The pattern of tenure and utilization of customary land in Bali and the indigenous peoples of Aceh can have differences and similarities because they are influenced by cultural, historical, customary law, and socio-economic context factors of each region. There are several comparisons that can be put forward including;

**Cultural Aspects and Customs:** Bali is known for its strong Hindu culture and has a customary system that regulates various aspects of life, including the control and utilization of customary land. The land in Bali has an important role in religious ceremonies and cultural traditions. While Aceh has a deeper culture with Islamic teachings and sharia law. Nevertheless, customary systems still have a strong influence on the tenure and utilization of customary lands in Aceh.

**Aspects of Customary Law:** Indigenous peoples in Bali, there is a customary system that regulates the procedures for tenure and utilization of customary land. This customary law system is linked to Hindu traditions and is governed by complex customary regulations. Similarly, in Aceh, indigenous peoples also have a customary law system that regulates customary land and other matters. However, this regulation may have more to do with Islamic and sharia values.

## **V CONCLUSION**

From the discussion described earlier, it can be concluded that the problems raised are as follows:

In anticipation of changes in the pattern of tenure and utilization of customary lands in the indigenous peoples of Bali and Aceh, the government and stakeholders need to design and implement various policy models that can maintain the sustainability of culture, environment, and the interests of the indigenous peoples of Bali and Aceh. A policy model that favors indigenous peoples in providing protection for customary lands in Bali and in Aceh. Community involvement and facilitating institutional development in indigenous peoples in decision making in the tenure and use of customary land.

Indigenous Peoples in the era of globalization have an important role in anticipating changes in the pattern of tenure and utilization of customary lands in order to maintain cultural values, identity, and community welfare. For this reason, steps are needed, including strengthening in indigenous peoples through education and self-awareness, strengthening identity and culture, active involvement of indigenous peoples in decision-making and the formation of customary institutions in representing indigenous peoples related to their interests

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