

The Presence Of The Batak Toba Indigenous Community's Customary Land In Toba Republic

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Abstract

Customary rights reflect the legal relationship between indigenous communities and the land, which is cosmic-religious in nature, where land is seen as an inseparable part of their customary association.. The research data used is sourced from areas where conflicts over customary land are occurring. Legislation is used to test whether the rules meet the values of indigenous communities and whether there are conflicts with indigenous communities in the application of existing rules. The data is then analysed to find solutions to problems related to land conflicts in indigenous legal communities. Based on the research findings, it is explained that there is substantial social, economic, and cultural significance to the Batak Toba indigenous people's customary territory in Toba Regency. Clan organizations typically oversee this common land in the form of traditional or customary villages, and it serves a variety of functions, including social-religious activities, cultivation, and settlements. However, with most of the land being converted without the approval of indigenous populations, modernization and land policy have put customary land in jeopardy. The rights of indigenous populations in Toba Regency are seriously threatened by a number of lawsuits involving customary land conflicts.

Keywords : Presence, Batak Toba, Community's, Customary land, Republic

1) INTRODUCTION

The existence of customary law communities in Indonesia was first formally recognised in Article 18B Paragraph (2) of the 1945 Constitution, which states that "The State recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia." This recognition reflects the importance of indigenous communities in Indonesia's social and cultural structure, as well as in the sustainable management of natural resources [1].

The existence of customary law communities is also supported by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which recognises the rights of ulayat or the collective rights of customary law communities over the land they manage [2]. This law provides a legal basis for indigenous communities to maintain and manage their territories in accordance with local customary law, as long as it does not conflict with national interests. Additionally, Constitutional Court Decision Number 35/PUU-X/2012 affirms that customary forests are part of the customary territory managed by customary law communities, not part of state forests [3].

This decision provides important recognition of the existence of indigenous communities in the management of forest areas, natural resources, and the environment [4]. Protection for indigenous communities in Indonesia is carried out through various legal instruments, both at the national and international levels. This protection aims to safeguard their rights to land, natural resources, and the local wisdom they possess. At the national level, there are several laws that provide guarantees of protection for indigenous peoples, including [5]:

1) Law Number 6 of 2014 Concerning Villages recognises customary villages as a form of local government with the authority to manage their internal affairs in accordance with local customary law. Customary villages have authority over the management of communal land and the resolution of customary disputes.;

2) Law Number 41 of 1999 concerning Forestry also provides protection for indigenous communities, especially in the management of customary forests. Indigenous communities have the right

to manage and preserve forests in their territories in accordance with local wisdom.;

3) Minister of Agrarian and Spatial Planning Regulation Number 10 of 2016 concerning the Determination of Communal Land regulates the procedures for determining communal land by local governments and provides protection for communal land belonging to indigenous legal communities. This regulation also affirms that communal land cannot be converted without the consent of the indigenous community. The protection of indigenous legal communities is also supported by various international instruments. The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises the rights of indigenous peoples to their lands, territories, and natural resources. This declaration affirms that member states, including Indonesia, are obligated to protect the rights of indigenous peoples and ensure their involvement in decision-making related to their customary territories. Additionally, ILO Convention No. 169 concerning Indigenous and Tribal Peoples (1989) guarantees that indigenous peoples have the right to manage the land and natural resources in their territories. One of the biggest challenges is agrarian conflict, particularly regarding overlapping land claims between indigenous communities and companies or the government [6]. This conflict often arises due to ambiguity in recognising customary land boundaries or the lack of implementation of regulations related to customary rights.

2) **METHOD**

The research data used is sourced from areas where conflicts over customary land are occurring. Legislation is used to test whether the rules meet the values of indigenous communities and whether there are conflicts with indigenous communities in the application of existing rules. The data is then analysed to find solutions to problems related to land conflicts in indigenous legal communities.

3) **DISCUSSION**

A. The Structural Position of Customary Law Communities in the Unitary State of the Republic of Indonesia (NKRI).

The position of indigenous law communities in the Republic of Indonesia is a complex topic, involving the interaction between national law, local culture, and public policy. Indigenous legal communities are social groups with strong norms, values, and traditions, and are bound to a specific territory [7]. In the Indonesian context, recognising customary law communities is crucial for protecting their rights to land and natural resources. Here is the structural position of customary law communities in the Unitary Republic of Indonesia:

a) **Communitarian Model**

The communitarian model focusses on the community as the basic unit in society. In the context of customary law societies, this model emphasises the importance of recognising the collective rights of communities, including the right to communal land and the management of natural resources. Recognition in the 1945 Constitution (UUD 1945) acknowledges customary law communities in Article 18B Paragraph (2), which states that "The state recognises and respects the unity of customary law communities and their traditional rights." This reflects a commitment to protecting the collective rights of indigenous peoples.

b) **Model Liberal**

John Rawls, in his famous work *A Theory of Justice* (1971), introduced the idea of justice as fairness. He emphasised that justice should be the fundamental principle governing relationships between individuals in society. Rawls proposed two main principles that serve as the foundation for the liberal model:

a) **Principle of Freedom**

Every individual has the right to equal freedom, including the right to think, speak, and act, as long as that freedom does not harm others.

b) **Differential Principle**

Social and economic inequality is permissible only if it benefits the least fortunate members of society.

c) **Multicultural Model**

Charles Taylor, in his essay *Multiculturalism and the Politics of Recognition* (1994), argues that recognising cultural identity is key to understanding justice in diverse societies. According to him, recognition is a basic need for individuals to develop their identity. Without such recognition, individuals can feel marginalised

and alienated. 226 Taylor emphasised the importance of recognising customary law communities as part of the cultural diversity that exists in Indonesia. In the context of the Republic of Indonesia, this recognition is very important to protect the rights of indigenous communities and maintain the sustainability of their culture.

d) Model Deliberatif

The deliberative model is an approach in democratic theory that emphasises the importance of discussion and the exchange of arguments between individuals or groups in the decision-making process. In this context, deliberation is considered a way to reach a fair and inclusive consensus. Jürgen Habermas, a German philosopher, is one of the leading figures in deliberative theory. In his work *The Structural Transformation of the Public Sphere* (1962), Habermas emphasised the importance of public space as a place for citizens to discuss and form public opinion. According to him, healthy deliberation is a prerequisite for achieving a functional democracy.



Figure 1 Division of Sub-district Areas in Toba Regency Source: Toba Regency Statistics Agency

The majority of the population in Toba Regency relies on the agricultural sector for their livelihood. This can be seen from the area of agricultural land, particularly rice fields [8]. Agriculture is becoming a key sector for Toba Regency in driving the local economy. In 2016, this sector made a significant contribution to the formation of Toba Regency's GDP, accounting for approximately 34.93 percent of the total GDP. Toba Regency is one of the centres for rice and corn production in North Sumatra. Compared to other regencies, rice production in Toba reaches 3.81 percent of the total rice production in North Sumatra and ranks eighth. Besides rice and corn, agricultural products from Toba Regency include chilli, red onions, garlic, green onions, cassava, andaliman, peanuts, vegetables, and so on. In addition, the fruit crops that are quite promising in Toba Regency are mangoes, avocados, durians, bananas, oranges, and pineapples.

B. Customary Law Rights Over Land of the Batak Toba Indigenous Legal Community

Customary law rights over indigenous communities refer to the collective right of indigenous communities to manage, use, and maintain the land and natural resources they have inherited from generation to generation [9]. This is an important part of the cultural identity of indigenous communities and is often regulated through long-standing customary systems. According to Boedi Harsono, customary rights are collective rights over land traditionally controlled by indigenous communities, including the management of the land and the natural resources within it. Customary rights are not only physical, such as land, but also include management rights over forests, rivers, and mountains within the customary territory. Customary rights serve to ensure the survival of indigenous communities and mark the existence of these groups in a specific area. This right is traditionally recognised and managed by the relevant indigenous institutions [9].

Customary rights are specifically regulated in Article 1 paragraph 1 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999, which reads as follows:

"Customary rights and similar rights of Indigenous Legal Communities (ILC) are authorities that, according to customary law, are held by certain Indigenous Legal Communities over specific territories that

are the living environment of their members, for the purpose of benefiting from natural resources, including land, within those territories, for their survival and livelihood."

In this regulation, customary rights are the collective rights of indigenous legal communities over land and natural resources in their territory [10]. In this context, customary rights encompass the management, use, and regulation of these resources for the benefit of all members of the indigenous community. This indicates that customary rights are not individual rights, but rather communal rights jointly owned by a specific indigenous community [11].

This regulation also emphasises that customary rights must be recognised as long as they exist in reality and as long as such recognition does not conflict with national interests and development. Therefore, the recognition of customary rights must consider various factors such as the sustainability of customary law and the balance between traditional rights and state interests. PMNA/Ka BPN No. 5 of 1999 provides guidance on when customary rights can be recognised and legally acknowledged. According to these regulations, customary rights can be recognised if: a) The indigenous community in question still exists and is functional in daily life. b) The area in question is still used by the indigenous community in accordance with their customary law. c) The applicable customary law does not conflict with national laws and regulations.

With these criteria, the government provides space for the legal recognition of customary law and the communal rights of indigenous communities, but still with certain limitations. According to this regulation, the recognition of customary rights is carried out through a verification process by the National Land Agency (BPN) involving local government. This process is important to ensure that claims to customary land truly align with the customary law prevailing in the community [12]. Furthermore, customary rights that have been recognised by the government can still be used by indigenous communities for activities such as farming, gathering wood, or other traditional ritual activities. However, customary rights cannot be sold to third parties because of their communal nature and because they are inherited from generation to generation.

Customary rights are not only an important part of the cultural identity of indigenous communities, but also have significant legal consequences [13]. Customary land that has been recognised by the government has the same legal protection as individually owned land. Therefore, such land cannot be taken over by the government or private parties without a legitimate legal process and in accordance with applicable regulations. Ling R. Sodikh distinguishes customary rights into two important elements: civil and public [14]. These two elements illustrate how customary rights are regulated and managed within the context of customary law communities:

a) Civil Elements

Civil elements relate to individual rights within the indigenous community, which remain subject to communal rules. Although customary rights are collective, individuals within indigenous communities have the right to utilise the land, both for farming and building homes. In this system, although the land is collectively owned, individual rights are still recognised within the communal framework. This is similar to civil rights in modern law, but in the context of customary rights, land use is subject to customary systems and collective principles.

b) Public Element

The public element includes the rights of indigenous communities to manage, protect, and use communal land for the common good. This means that indigenous legal communities have a shared responsibility to safeguard their customary territories, prevent external encroachment, and ensure the land is utilised for the well-being of future generations. This concept recognises the role of custom as the holder of rights to manage communal land.

c) Elements of Customary Law Society

Customary rights exist in indigenous legal communities that are still functioning and organised according to customary law recognised in their territory. This customary law community has a structure that governs how ulayat rights are exercised and applied by its members. PMATR/Ka BPN Number 10 of 2016 emphasises that customary rights only apply if indigenous legal communities still exist and are active, with members who adhere to the same customary rules in managing customary land.

d) Customary Institutions

The structure of customary institutions is an important factor in the implementation of ulayat rights. Indigenous communities must have traditional institutional structures that are still functioning, such as the presence of traditional leaders or tribal councils responsible for managing communal land and resolving potential disputes related to its use. This institution plays a key role in ensuring that these land rights can be managed and maintained communally by the community.

e) Regional Elements

The element of territory in customary law indicates that indigenous legal communities have a clear area where customary law applies. This area typically includes land that has been used for generations by indigenous communities for their livelihoods, such as agriculture, settlements, and other land considered part of their ancestral heritage. This land ownership is not only for individual needs, but for the common good of the members of the customary law community.

f) Public Relations and Land

Customary land rights reflect the relationship between indigenous legal communities and land as an integral part of their social and economic lives. This relationship is not only economic but also has spiritual and cultural aspects. Customary law communities consider communal land as ancestral heritage that must be protected and preserved for future generations, and they have a responsibility to protect the land from exploitation by outsiders.

From the above, it can be concluded that customary rights in the context of customary law communities are a form of communal ownership exercised by indigenous peoples based on applicable customary law, even if it is not written [15]. The government's recognition and protection of customary rights, through regulations such as PMATR/Head of BPN Number 10 of 2016, provides a strong legal basis for indigenous communities to continue defending their land. Land and indigenous legal communities have a close and integral relationship. In the customary law system, land is not only seen as an economic resource, but also as an important component of the social, cultural, and spiritual identity of indigenous communities. This relationship creates a collective right, known as customary land rights, where land is collectively owned by indigenous communities and managed according to local customary rules. Customary land rights grant indigenous communities the authority to utilise land to meet their needs, whether for daily purposes like agriculture or for cultural and spiritual interests.

The selected sub-districts represent various geographical and social conditions in Toba Regency. Ajibata District is located around the strategic area of Lake Toba, which is often a centre for development and tourism. Habinsaran District has an inland area where indigenous community activities are more predominantly agrarian-based. This diversity allows research to gain a comprehensive perspective on the dynamics of customary rights in various conditions.

The existence of Batak Toba customary law within the framework of legal pluralism provides rich insights into how local legal systems can coexist with national law. Legal pluralism recognises that within a country, various legal systems, including customary law, national law, and international law, can coexist and complement each other. In the Batak Toba customary law community, legal pluralism plays an important role in understanding how local traditions remain relevant amidst the dynamics of modernisation. The ripe-ripe system in Batak Toba customary law society is one form of honouring local traditions rooted in the concept of communality. This system regulates the division and management of land based on lineage (ompu-ompu) or clans. Land is considered ancestral heritage that must be preserved for the sustainability of the community, not just as an individual asset.

The ripe-ripe principle not only ensures fairness in land distribution but also strengthens the sense of collective ownership among community members. This system reflects the values of local wisdom, such as togetherness, solidarity, and sustainability, which are at the core of Batak Toba customary law. Additionally, ripe-ripe also provides the community with a clear customary legal basis regarding their rights and obligations over communal land, enabling them to manage the land with a high sense of responsibility. However, challenges arise when this customary law must be recognised within the national legal framework. Often, the lack of formal documentation about customary law, such as ripe-ripe, leads to the system being considered irrelevant or difficult to apply in the context of modern law.

National law, particularly through the Basic Agrarian Law (UUPA) Number 5 of 1960 and its derivative regulations such as the 2024 Agrarian Regulation, aims to integrate customary law into the modern legal

framework. Article 3 of the UUPA explicitly recognises the existence of customary law rights of indigenous communities as long as those rights are still alive and in accordance with national interests. However, in practice, the implementation of national law often ignores the local context, including the values and traditions inherent in customary law. Centralised national policies sometimes prioritise economic development or corporate interests over the interests of indigenous communities. This led to prolonged agrarian conflict, where indigenous communities felt their rights were ignored or even seized without a fair process.

In Batak Toba society, the ripe-ripe system is often considered to be in conflict with the concept of individual ownership in national law. Communal land, which is managed collectively, is difficult to register or formally recognise within the national land administration system. As a result, customary lands often become targets for conversion for investment purposes or government projects, such as infrastructure development or large-scale plantations.

4) CONCLUSION

The existence of customary land belonging to the Batak Toba indigenous people in Toba Regency holds significant social, economic, and cultural value. This communal land is generally managed by clan groups in the form of traditional villages or customary villages and is used for various purposes, such as agriculture, settlements, and social-religious activities. However, modernisation and land policies have threatened the existence of customary land, with much of the land being converted without the consent of indigenous communities. Several cases of customary land conflict in Toba Regency reflect a real threat to the rights of indigenous communities, including: a) Sigapiton Customary Land (920 hectares), part of which has been converted for the Toba Caldera Resort tourism project. b) Customary Land in Lumban Sitorus Village (32 hectares), which is now the location of the PT Toba Pulp Lestari (TPL) factory. c) Lumbanrau Barat Customary Land (800 hectares), part of which is managed by PTPN IV but is now in an unclear legal status. d) Horja Gurgur Aek Raja communal land (55 hectares), part of which has been converted into ASN plantation land without community consent.

Although Toba Regency Regional Regulation No. 1 of 2020 has been issued to protect customary land, its implementation is still weak. Conflict with companies and the government indicates a lack of indigenous community involvement in decision-making processes related to the management of customary land.

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