

Legal Review of the Existence of Customary Land of the Sakai Tribe in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency Based on the Basic Agrarian Law

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Abstract: *The problem of land ownership in Indonesia in general and in the Kesumbo Ampai Village area has complex problems. Among them, the government takes over land from the people, to be developed in accordance with the plans that have been set to continue economic modernization or the creation of oil palm fields for investors, both inside and outside the State. This land problem shows a conflict of interest between the government, which sees land as capital for national development, and residents who see land as a source of income. Based on the above problems, the formulation of the problem is how is the legal review of the existence of customary land in the Sakai Tribe Village based on the UUPA. The research method uses observation research. The result of the research is that the existence of the Sakai tribe community has been based on the conditions of existence determined by law so that the Sakai tribe is still truly a customary law community, as well as the land or land on which they live is land belonging to their ancestors for generations which is still jointly owned, which in terms of management and control and use of the land still follows the rules of customary law that apply in their environment, supervised by the customary leader they have.*

Keywords: *legal review; customary land; existence; agrarian law*

1. Introduction

The history of land law in Indonesia cannot be separated from the discussion of customary rights. All land parcels that are said to be communal land are in the form of forest land, including forbidden forests that are handed over to the supervision of the village concerned, such as bush forest land, swamps, former cultivation lands that have been abandoned by the cultivators, which are in the village boundary area that does not belong to relatives, individuals, companies and so on (Hadikusuma, 2014, p. 174).

Hak Ulayat as a juridical technical term is a right that is inherent as a unique competence in indigenous peoples, in the form of the authority to manage and regulate the land as well as its inward and outward practices (research report on the integration of *Ulayat* Rights into the jurisdiction of the UUPA, Ministry of Home Affairs, Faculty of Law, Gajah Madah University, 1978). Meanwhile, *Ulayat* means territory, so that *ulayat* land is the territory of certain indigenous peoples. (<http://e-journal.uajy.ac.id/1436/3/2MIH01710.pdf>, 2013)

Ulayat rights are the rights of nana mamiliok haroto nan baampunyo, with the meaning of nan mamiliok rights, namely the kemenakan who manages the land and *haroto baampunyo* is a *ninik mamak* who has a stake in the ownership of the land according to its customs that have been determined from ancient times. *Ninik mamak* who *baampunyo ulayat* is a person who is preceded by a step exalted by the saantiong of the kemenakan's children in charge of protecting the *ulayat* land from pasang nan manyomak kapau nan batondan against the *ulayat*. To be a mediator *kuwuo manjoniokan*, *kusuik manyalosaikan* is this *ninik mamak* (M Syafri, 2011, p. 127).

Regarding customary rights in Indonesia, it is very diverse, each ethnic group has its own culture and customary law, which each other has its own characteristics. Likewise, the Sakai tribe community in Mandau District and Bathin Solapan District, Bengkalis Regency has its own characteristics in customary life.

The problem of land ownership in Indonesia in general and in the area of Kesumbo Ampai Village, Bathin Solapan Subdistrict in particular has complex problems. Among these problems is how the government takes over land from the people, to be developed in accordance with the plans that have been set to continue economic modernization or the creation of oil palm fields for investors, both inside and outside the country. This land issue shows a conflict of interest between the government, which sees land as capital for national development, and residents who see land as a source of income. (Hertina, 2015, p. 69)

The existence of *ulayat* rights shows that *ulayat* rights get a place and recognition from the State if according to reality they still exist. The realization of this arrangement is used as a guideline in the regions to carry out land affairs, especially in relations and issues of customary land rights of indigenous peoples that still exist in the region concerned, as explained in Article 1 paragraph (1) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999.

The Sakai people as a remote community in their daily lives coexist with other communities, they still maintain their ancestral traditions, but have begun to adapt to changes that occur due to modernization. (Sembiring, 2017, p. 149) Seeing from the area where the Sakai people live, they have mingled with other tribes and have advanced and accepted and followed the times, the concern that arises is the absence of awareness and the role and involvement of indigenous peoples in maintaining and utilizing customary land as it should be.

The indigenous people of the Sakai tribe in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency are led by a bathin, namely Datuk M. Yatim. In essence, the bathin is the holder of the reins of government in a tribe as found in the Sakai tribe and is assisted by the Sakai village tetuo as the *ninik mamak* in Kesumbo Ampai village.

The kinship system for the Sakai people is a frame of reference in determining with whom the ego (me) can relate and cooperate in various social,

economic, and family lives. For the Sakai people, kinship groups in their lives are manifested in the activities of cultivating fields, usually a settlement unit is inhabited by one- or two-family groups. The kinship system of the Sakai tribe adheres to matrilineal, which is emphasized according to the mother's / woman's lineage.

Kesumbo Ampai Village is one of the villages in Riau Province, precisely located in Bathin Solapan District, Bengkalis Regency, where the indigenous people still have customary unity and customary territories like customary law communities in general. Kesumbo Ampai Village consists of 17 RTs and 5 RWs, but not the entire village is part of the customary territory, there are only 2 RTs that are included in the boundaries of the customary territory and are populated by indigenous Sakai people. Kesumbo Ampai Village is also only one of the areas where the Sakai community is spread in Bengkalis Regency.

Furthermore, as a result of the increasing population so that the need for land tends to increase as well and is also driven by technological advances and the number of industries, causing customary rights to be increasingly displaced and increasingly lost. The loss of customary land caused by several factors such as misuse and trading by unauthorized and irresponsible parties is also a concern that arises due to the influence of thoughts that have been contaminated by the times and the influence of the greed of some irresponsible parties.

The sale of land at low prices is carried out because forest products are decreasing, while the needs of residents are increasing, even though there is a ban on selling customary land, but because residents are economically pressured, they are easily persuaded. This phenomenon is clearly a land problem that continues to take place in Riau, especially in the Sakai tribe in Bengkalis Regency, where the transfer of land tenure rights from the community to outsiders who are not members of the Sakai tribe community to manage themselves or to entrepreneurs who are given the right to do so. This situation clearly shows that the process of transferring customary land rights to indigenous peoples is still ongoing, which is protected by law.

So based on the above problems, the problem formulation is obtained, namely how is the legal review of the existence of customary land of the Sakai tribe in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency based on the Basic Agrarian Law?

Based on the research problems above, the purpose of this study is to determine the legal review of the existence of customary land of the Sakai tribe in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency based on the Basic Agrarian Law.

2. Method

a. Type and Nature of Research

In terms of its nature, this research is descriptive, which provides a clear and detailed description (Syafrinaldi, 2017, p. 15) of Customary Land in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency.

b. Research Location

Based on the research title above, this research was conducted in Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency. The reason the author chose this research location is because the indigenous people of the Sakai tribe are much more modern and follow the times but are still a unit of indigenous peoples who uphold their ancestral customs and are also one part of the perbatinan eight which can be said to be the place of distribution or residence of the Sakai tribe.

c. Data Source

As a source of data in this study, the authors used two data sources, namely:

1. Primary Data

Primary data, in the form of field data obtained directly within the scope of the research, namely the results of interviews and questionnaires with respondents in connection with the main problem.

2. Secondary Data

Secondary data, in the form of laws and regulations, literature books, and so on as comparative data on data.

d. Data Collection Tools

1. Questionnaire, which is a data collection tool carried out by means of researchers making a list of closed or open questions to respondents or samples. The questionnaire will be given to respondents who have been selected by the researcher to be filled in according to the alternative answers provided.

2. Interview, which is data collection carried out by conducting questions and answers directly with research respondents who have been previously determined by the researcher. (Syafrinaldi, 2017, p. 19) Interviews will be conducted orally to traditional bathin and village elders because the number is not too large and it is still possible to conduct interviews.

e. Data Analysis

Data analysis in this research begins with the collection of primary data in the field and secondary data in the form of written data in the form of books related to this research. Furthermore, the two data are grouped according to the matter under study and analyzed by comparing normative provisions with reality. In the case of the intended comparison is a comparison between primary and secondary data by adding analysis in the form of the author's opinion. After the data is collected, grouped, and analyzed as described above, then conclusions are drawn from this

research deductively, namely drawing conclusions from general matters to specific matters.

3. Results and Discussion

The development of the ulayat problem ultimately cannot be separated from as our ethnic groups began to enter the archipelago for the first time, so they have a community alliance and have a legal environment by experiencing a process of human growth that takes centuries so that a miraculous growth process occurs where the community arises in an orderly manner.

From the results of interviews with the batin Sakai also explained that customary rights are the joint rights of a people on land that is jointly owned. Ulayat rights are a series of powers and obligations of an indigenous community, which relate to land located within its territory, whether it has been controlled by someone or not.

Batin also explained that the *sakai* tribe still has customary land and forests that are still utilized by the community. "The land and forests of *the sakai totap ado*, are used to become *kobun* and are plotted on the basis of who manages them". It is said that even if the village has become metropolitan, the land is still there, what runs out are forests and water, polluted water, and deforested forests.

The difference between the Malay community and the Sakai community in clearing land is that if the Malay community clears the forest to become a Negeri or an area planted with various kinds of plants such as areca nut, palm oil, rubber, and others, if the Sakai community clears land only to open small groups and does not cut down the forest and still utilizes part of it for gardening.

The forest and customary land of the Sakai tribe in Kesumbo Ampai village, Bathin Solapan sub-district, Bengkalis district or also called batin sobanga + 53,000 hectares which is still recognized by custom but not written in the state. The forests and lands of the Sakai tribe can be said to be from Balai Makam (the banks of the Rokan River) to Minas (Perawang, Siak) and if measured by the sea border, it borders the land of Datuk Laksamana Bukit Batu, if from the west it borders Tanah Putih (Rokan hilir) from the east it borders Kunto Darussalam (Rokan Hulu).

The Indonesian state, which was formed from the unification of customary law communities (*adatrecht gemeenschap*) into customary law territories (*adat recht kringen*), can be viewed as a legal community as well, so that the state's right over the entire territory of the country, which is now referred to as "state control rights", can be referred to as the state's *ulayat* rights and all land within the territory of Indonesia is referred to as state *ulayat* land. The content of the ulayat rights of customary law communities as described above is identical to the content of the right to control the state as contained in Article 2 paragraph (2) of the UUPA.

When viewed from the results of field research, the weakness or loss of customary rights in the Sakai tribe since the time of Indonesian independence and the opening of an artificial highway connecting Pekanbaru and Dumai, which then continued with the opening of oil fields accompanied by new settlements, both by companies and by newcomers, was also caused by the policies and actions of the authorities, to obtain land which is customary land according to the Sakai community for various development purposes, both by the government and the private sector. In addition, it is also caused by the weak protection of the authority given to the development of the Sakai community in Riau, including their customary land.

Government Simplifies Terms of Ownership of Customary Rights for Indigenous Peoples, the overall procedure for establishing customary law communities and their customary land rights is now implemented in accordance with the Minister of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities ("Permendagri 52/2014").

Ulayat land is the common land of the members of the indigenous law community concerned. The right to control the land of indigenous law communities is known as Ulayat Rights. Ulayat rights are a series of powers and obligations of an indigenous law community, which relate to land located within its territory. Law No. 5 of 1960 or the Basic Agrarian Law (UUPA) recognizes the existence of Ulayat Rights. The recognition is accompanied by 2 (two) conditions, namely regarding its existence and regarding its implementation. Based on Article 3 of the UUPA, ulayat rights are recognized "as long as in reality they still exist".

Several cases that occurred between the sakai community, the government and companies are examples of the many cases related to the transfer of customary land of indigenous peoples. Land disputes in the sakai tribe are a mirror of the State's failure to protect the rights of local communities. Meanwhile, investors only see from the point of view of profit and loss, of course reluctant to really empower the Sakai community.

Responsibility for customary land remains the responsibility of the commune. The alliance is obliged to maintain and defend customary land. Each alliance will make its own territorial boundaries to maintain and safeguard its territory.

to maintain and protect its territory.

The existence of the Sakai tribe is based on the conditions of existence that have been determined by law so that the Sakai tribe is still truly a customary law community, this right is evident from the fact that there are still groups of customary law communities, in the Bengkalis Regency area, precisely in Kesumbo Ampai Village, Bathin Solapan District, which in their daily lives are still bound by the customary law that applies in their area.

Likewise, the land or land on which they live is the land of their ancestors for generations which is still jointly owned, as well as in terms of management and control and use of the land they still follow the rules of customary law that apply in their environment, supervised by the tribal chief or customary leader they have.

The Chairman of the Sakai Bathin Sobanga Customary Community, Kesumbo Ampai Village, Bathin Solapan District, Bengkalis Regency, Muhammad Yatim, said that the Sakai customary community has been fighting for customary forests since ancient times. Tok Yatim said, the forest is a place to live and a place to live for the Sakai people for generations since the time of their ancestors. However, because development continues to increase, forests are increasingly extinct. "Forests are for feeding, medicine and a place of life, but with regard to this development, the forests of the Sakai tribe's customary land are increasingly extinct,"

Bathin also said that the Sakai Tribe lives from nature so that the Sakai Tribe Indigenous People think that since decades ago they have been struggling to defend the forest so that it does not run out to be used for regional development. Because they are afraid of trapping regulations, starting from the superiors to the village government agreed to protect the customary forest in the Bathin Sobanga area of 17,000 hectares and protect the forest from illegal land and illegal timber extraction.

Yatim explained that the forest cannot be separated from the Sakai people and the forest is also a common property and an interest for the creatures of God who live in it. That is the reason the Sakai tribe desperately defends the customary forest in order to get recognition of Indonesia's customary forests, so that it cannot be sued again by certain parties.

4. Conclusion

The existence of Customary Land of the Sakai Tribe in Kesumbo Ampai Village When viewed from the results of field research, the weakness or loss of customary rights in the Sakai tribe community since the time of Indonesian independence and the opening of an artificial highway connecting Pekanbaru and Dumai, which then continued with the opening of oil fields accompanied by new settlements, both by companies and by newcomers, was also caused by the policies and actions of the authorities, to obtain land which is customary land according to the Sakai community for various development purposes, both by the government and the private sector. In addition, it is also caused by the weak protection of the authority given to the development of the Sakai community in Riau, including their customary land.

Bibliography

Andora, H. (2010). Registration of Customary Land (Juridical Review of the Enactment of West Sumatra Province Regional Regulation No. 6 of

2008 concerning Customary Land and its Utilization). *Court Journal*, 64.

Arifin Bur & Desi Apriani. (2017). Certificates as Strong Evidence in Relation to the Land Registration Publication System. *UIR LAW Review, Volume 01 No 02, 01, 127*.

Hertina. (2015). *Customary Land in Kampar Regency Study of Conflict Resolution Analysis of Limo Koto Kampar Region*. Pekanbaru: Suska Press.

Laksanto utomo. (2016). *Customary Law ed-1*. Jakarta: Rajawali Pers.

M Syafri, e. a. (2011). *Genealogy (Otok Cacao) of Ninik Mamak in Indigenous Peoples*. Kampar: Government of Kampar Regency, Tourism and Culture Office of Kampar Regency.

Rosnidar Smbiring. (2017). *Indigenous Land Law*, Rajawali Pers, Depok.

Sarkawi. (2014). *The Law of Land Acquisition of Adat Owned Land for Public Interest Development*. Mataram: Graha Ilmu.

Soerojo Wignjodipoero, (1967), *Introduction and principles of customary law*, PT Toko Gunung Agung, Jakarta.

Constitution of the Republic of Indonesia Year 1945 Law No. 5 of 1960 on Agrarian Principles.

Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 Concerning Guidelines for the Settlement of Customary Land Rights of Indigenous Peoples.

Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 9 of 2015 on the Procedures for Implementing Communal Rights to Land of Customary Law Communities and Communities Located in Certain Areas.