



The Effectiveness of The Regulation on The Use of Tribal Land in Palakahembi Village, Pandawai District, East Sumba Regency, East Nusa Tenggara Province

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Abstract

Customary land (*tanah ulayat*) of a tribe means an inheritance land and the natural resources on and inside it, passed down from generation to generation, and the rights of customary land belong to customary law community. Customary land/customary land rights (*hak ulayat*) are a joint land, believed to be a gift from supernatural forces or inheritance from ancestors to a group of people, the customary law community, that serves as the main supporting element for the community's life and livelihood all the time. Based on the background of research, the researchers formulated research questions as follow: How is the regulation on the use of tribal land in Palakahembi Village, Pandawai Subdistrict, East Sumba District, East Nusa Tenggara Province; How is the effectiveness of the regulation on the use of tribal land in Palakahembi Village, Pandawai Subdistrict, East Sumba Regency, East Nusa Tenggara Province. This research aims to provide legal comprehension to society concerning the regulation on the use of tribal land and to study and understand legal issues concerning the regulation on the use of tribal land. This is empirical legal research, which reveals facts (the fact approach). Applying this approach, the researchers observed and collected facts in the field methodically, and these facts are used as supporting materials for the research. This research took place in Palakahembi Village, East Sumba District, East Nusa Tenggara Province. The result of this research shows that there is no clear commensurate border of tribal land (a source of horizontal conflict between tribes), no Regional Regulation of East Sumba District that specifically regulates and use tribal land based on its characteristic, and the region's local wisdom. The researchers suggested that it is necessary to draw up a Regional Regulation that serves as a stepping stone in the use of tribal land based on the tribe's local wisdom.

Keywords: customary law community; legal effectiveness; tribal land

INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) of the 1945 Constitution also contains the recognition of customary land rights. It states "The state recognizes and respects entities of the adat (indigenous) law community along with their traditional rights as long as these remain in existence and are in accordance with the development of community and the principles of the Unitary State of the Republic of Indonesia, are regulated by law". Furthermore, Article 3 of Law Number 5 of 1960 on Basic Regulations on Agrarian Principles (Agrarian Law) recognized customary land rights as long as it remains in existence. This recognition has 2 (two) conditions, which concern the existence and the implementation of customary land rights. Article 3 of the Agrarian Law states:

"Observing the provision in Article 1 and 2, the implementation of customary land

rights and similar rights of customary law community, as long as these remain to exist in reality, must be in such a way so that these conform to the national and state interests, based on the national unity and shall not contradict the laws and other higher regulations”.

The management of tribal land by customary law community in Palakahembi Village often triggers conflict or dispute. The causes can be internal or external of the customary law community. The customary law community's lack of awareness, the lack of a clear commensurate border of customary land, and the lack of Regional Regulation that specifically regulates the use of tribal land in East Sumba are some causes of customary land conflict or dispute.

A study about the regulation on the use of tribal land have conducted previously by [Salamat \(2016\)](#). [Salamat \(2016\)](#) examined Regulatory of Rights of Adat Law Community Land (Case Study of Recognition of The Dayak Adat Law Community Land in Central Kalimantan). The result of this study showed that Legal Issues and Policies Against the Regulation of Land Rights of Indigenous Peoples Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Law Number 41 of 1999 concerning Forestry on the Implementation of Regional Regulation Number 16 of 2008 concerning Indigenous Dayak Institutions in Central Kalimantan should be based on the principles and enforceability of laws that apply in Indonesia, so that the preparation of regional legal product regulations has a legal force that is tiered according to the hierarchical level of the legislation and can be binding on everyone in implementing and determining rights to customary land that applies in the region, so that it can be implemented according to its use and can avoid or minimize any problems or disputes over customary land or land that have been detrimental to various parties and the local government. Another similar study also conducted by [Herrayani et al. \(2019\)](#) that examined the legalization of agrarian reform assets has met the requirements of ownership and/or physical control of land for the customary community. The result of this study showed that the implementation of Agrarian Reform as outlined in Presidential Regulation No. 86 of 2018 have not been able to solve the problem of land titles owned by the customary community which are characteristic of the subject of communal rights. Regulation of the Head of the Land Agency No. 10 of 2016 is only able to respond to the few demands of customary society as subjects of agrarian reform over a land tenure that occurred in Indonesia. In addition, [Citrawan \(2021\)](#) also conducted a similar study that the concept of land ownership of the Minangkabau indigenous people. The result of this study showed that Minangkabau *ulayat* land in the concept of ownership is included in a narrow sense, namely in the form of assets belonging to high heirlooms that have the power to apply internally or externally, whether they can be used by members of the community or outside the community by giving in the form of *adat diisi limbago dituang* (a gift in the form of money by a third party who manage and control *ulayat* land, to the ruler and/or owner of *ulayat* based on community agreement). The main principle of Minangkabau *ulayat* land is *jua ndak makan bali, gadai ndak makan sando* (*ulayat* land cannot be sold and pawned), but in an urgent situation it can be transferred/transferred temporarily such as *Mait terbujur di tengah rumah* (dead lying in the middle of the house), *Rumah gadang ketirisan* (traditional houses with leaky or damaged roofs), *Gadiah gadang indak balaki* (adult girls who have no husband), or *Bungkik Batang terandam* (enforcing heirloom titles or appointing a penghulu). In order to be able to carry out the transfer/transfer of the *ulayat* land, it must be with the agreement of all the members of the clan concerned. Based on the background and the previous research above, this research aims to find out the regulation on the use of tribal land in Palakahembi Village, Pandawai Subdistrict, East Sumba District, East Nusa Tenggara Province; and to find out the effectiveness of the regulation on the use of tribal land by the community in Palakahembi Village, Pandawai Subdistrict, East Sumba District, East Nusa Tenggara Province.

METHOD

The type of research used to discuss the research questions is the empirical legal approach. This research also applied the statute approach and the fact approach. The data for this research consists of primary, secondary, and tertiary legal data ([Setyosari,](#)

2012:37). The researchers collected these data using the interview technique and the library technique (statute documents) (Hasan, 2002:43). The researchers then conducted quantitative analysis on the legal data and presented the result in the form of descriptive analysis (Deddy, 2006:40).

RESULT AND DISCUSSION

The Essence of Tribal Land in Palakahembi Village

There are 5 native tribes (*Kabissu*) in Palakahembi Village: Lurra, Lebakaruku, Anaburung, Lewa, and Kihi. Each of these tribes has a strategic position in taking care of and maintaining tribal lands entrusted by the maramba (King). The *Lurra* Tribe is appointed as the Defender of the King, or *Watulahanamba Ai Ngarru Pindu* in the local language. The Lebakaruku Tribe is known as the Initiator in requesting the King's willingness from *lewa*, namely *Umbu Rara Meha*, to replace the late King of Pandawai and stay in *Prailiu* or *Mahudu mangu Rukong, ma ndendi mangu nulang* in the local language. The *Ana Mburung* Tribe and the *Kihi* Tribe are appointed as the Defenders of the King, or *Pianda Lu manulang Liku Uru Watu* in the local language. The *Kabissu Lewa* (the *Lewa* Tribe) is known as *Haharu malai Kataka lindi Watu* (Woha, 2008:79). Each of these tribes has a Chief authorized to organize the management and use of the tribal land, both for the members of the tribe and outsiders, while also prioritizing negotiation for consensus.

The *Lurra* Tribe controls the land from *wainggimu* to *ngohung* (which shares a border with *Kotak Kawau* Village), while the *Kabissu Lebakaruku* (the *Lebakaruku* Tribe) controls the land from the *Hakebir* area to the land border in Palakahembi. The land of the *Anaburung* Tribe covers the land from Palakahembi to *Matapahaing/karaki*. The land of the *Lewa* Tribe covers the land from *Maundata* and *Kambaru langga* (which shares a border with *Maubokul* Village), while the land of the *Kihi* Tribe covers the land from *Muara (Ngaru Luku)* to the Palakahembi area.

The following table shows the number of members each tribe had.

Table 1
The number of householders in each tribe in Palakahembi Village

Number	Tribe	Number of householders
1	Lurra	28
2	Lebakaruku	35
3	Anaburung	40
4	Lewa	20
5	Kihi	30
	Total	546

Source: Palakahembi Village, processed in 2021

This table shows that the total number of householders in each tribe in Palakahembi Village is 546 householders. The *Anaburung* Tribe has the most householders, while the *Lewa* Tribe has the fewest. Each of these tribes has a Chief authorized to organize the management and use of the tribal land, both for the members of the tribe and outsiders, while also prioritizing negotiation for consensus. The *Lurra* Tribe controls the land from *wainggimu* to *ngohung* (which shares a border with *Kotak Kawau* Village), while the *Kabissu Lebakaruku* (the *Lebakaruku* Tribe) controls the land from the *Hakebir* area to the land border in Palakahembi. The land of the *Anaburung* Tribe covers the land from Palakahembi to *Matapahaing/karaki*. The land of of the *Lewa* Tribe covers the land from *Maundata* and *Kambaru langga* (which shares a border with *Maubokul* Village), while the land of the *Kihi* Tribe covers the land from *Muara (Ngaru Luku)* to the Palakahembi area. The following table shows the total area of the tribes' lands.

Table 2

The tenure of tribal lands in Palakahembi Village

Number of Householders	Land area/ha
546	35.000

Source: Palakahembi Village, processed in 2021.

The vast area of the tribal lands is inversely proportional to the number of the tribes' members. As a result, only the land near water sources such as a river, which can be used for agriculture, and the people of Palakahembi Village call it the Mondu land. The rest of the lands become abandoned land (according to an interview with Arif Maramba Djawa, the head of development, on Thursday, November 12, 2020).

As time passed, with the increase of population due to an internal factor in the tribe or marriages to outsiders (migrants), the abandoned land is managed, used, and controlled from generation to generation and the people eventually obtains the ownership rights of the land (according to an interview with Mr. Gerolfus Nggaba Karangga Limu (the *Amabokul* of Kabissu Kihi), on Friday, November 13, 2020). The interview reveals that the management and use of tribal land still exist in Palakahembi Village, led by a Tribal Chief (*Ama Mbokul*) for both the members of the customary law community or outsiders who have been living in the village for a long time.

The Importance of Tribal Land for the Welfare of the People of Palakahembi Village

In the constitution, the recognition of customary land rights is seen in Article 18B paragraph (2) of the 1945 Constitution. It states:

The state recognizes and respects entities of the custom (indigenous) law community along with their traditional rights as long as these remain in existence and are in accordance with the development of community and the principles of the Unitary State of the Republic of Indonesia, are regulated by law. Furthermore, the Unitary Republic of Indonesia is given the rights over the earth, water, and other natural resources contained therein, the rights to manage and organize the use, allotment, supply, and maintenance of these resources for the greatest prosperity of all people (Article 33 paragraph (3) of the 1945 Constitution). Then, as an elaboration of the provision in Article 33 paragraph (3) of the 1945 Constitution, Law Number 5 of 1960 on Basic Regulations on Agrarian Principles (Agrarian Law) is enacted. The establishment of the Agrarian Law is based on customary law (Article 5), and Article 3 of the Agrarian Law recognizes the existence of customary land (tribal land) and similar entities as long as these remain to exist in reality. It means that establishing new customary land is prohibited (Susila, 2014:107).

Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 on Guidelines for Solving Problems of Customary Land Rights of Customary Law Community. The provision in Article 5 states that the research and establishment of the existence of customary land rights as referred to in Article 2 are carried out by the regional government, along with experts on customary law, members of customary law community in the concerned area, non-governmental organizations, and agencies that manage natural resources. Thus, researching the existence of tribal land today is very appropriate concerning the implementation of regional autonomy. Each party (the customary law community alliance, the government, and investor) will benefit if all interests are accommodated in the use of the alliance's land (the tribal land) to support the development for the welfare of the people.

For the people of Palakahembi Village, the tribal land has a religious and magical value due to its strong relation to the system of value, belief, kinship structure, and territory of the people. Furthermore, the control of the land has been passed down from generation to generation, based on the prevailing habits and customs in Palakahembi Village. The ownership and control of tribal land are not recorded (in written form), but are based on the history of each tribe and has been recognized by the King (*Maramba*) (according to an interview with Mr. Dominggus Bara Kilimandu (the Chairman of Commission C of the Regional People's Representative Assembly of East Sumba District), on Thursday, October

22, 2020).

The interview result above reveals that the recognition of tribal land in East Nusa Tenggara Province, from the aspect of legality, has not provided legal certainty. It is evident in the differences in perspective on the existence of tribal land.

Challenges on the Regulation of Tribal Land in Palakahembi Village

The root of the conflict between the parties who believe they are the owner of communal rights over the customary land and outsiders (the government or entrepreneurs or the combination of the government and entrepreneurs) is the weak, or purposely weakened, the legal standing of the customary law community and customary land in the existing law (according to an interview with Ferdianto Holo, WALHI Coordinator for East Sumba District, on Tuesday, November 10, 2020).

Law Number 5 of 1960 on Agrarian Principles or Law Number 11 of 1967 on the Use of Land Resources, Law Number 17 of 2019 on the Use of Water, Law Number 41 of 1999 on the Use of Forest Resources, Law Number 5 of 1990 on the Use of Earth and Air Resources do not explicitly address customary law community or customary land rights. The Agrarian Law does recognize the existence of customary land rights, but on some conditions, one of which is "as long as these remain to exist in reality". The other condition, according to the Agrarian Law, is that "the implementation of customary land rights . . . must be in such a way so that these conform to the national and state interests . . . and shall not contradict the laws and other higher regulations". It is clear that customary land rights are not managed autonomously according to the people's will, but still submit to the state's power. Law Number 26 of 2007 on Spatial Planning and Law Number 3 of 2020 on Forestry and Mineral and Coal Mining also address customary law community and customary land rights as legal subjects that must be regarded to avoid conflicts, without explicit elaboration concerning the people's rights in the management of resources, and must submit to the interests of the nation and the state.

From the interview result, it is evident that the tribes in Palakahembi Village are experiencing difficulty in obtaining information or reference about the history of land tenure by one tribe or a combination of multiple tribes due to the dominance of oral culture. Today, customary figures or people who have complete knowledge about the history of tribal land in Palakahembi Village are extremely rare, so the stories that remain may contain many subjective elements. Furthermore, the commensurate border of customary land/tribal land is not clear (horizontal conflict).

Supporting Elements of the Use of Tribal Land in Palakahembi Village

Customary land is the right over the oldest land that exists on earth, as customary land has been existing even before the birth of the Indonesian nation as an independent state. Based on its terminology, the term customary land comes from the term *beschikingsrechten* by Van Vollenhoven. In Indonesian legal terminology, the term is translated as customary land (*tanah ulayat*). The term customary land has different names in each region in Indonesia. In Ambon, customary land is known as *patuanan*. In Kalimantan, it is *panyampeto*. In Bali, it is *prabumian* and *panjar*, while in Java, it is *wewengkon* (Saragih, 1984:75). Thus, internally, the customary law community in Palakahembi Village has controlled and used customary land/tribal land in supporting the fulfillment of the community's necessities, accompanied by inherent rights that serve as unique competence of the customary law community in the form of the authority/power to regulate and take care of the land and its resources. The customary law community has the authority to:

Regulate and organize land use (for settlement or cultivation), land supply (establishing new settlement or rice field), and land maintenance.

Regulate and decide legal relation between a person and the land (granting specific rights to a particular subject).

Regulate and decide legal relation between a person and a legal action concerning land (Nurlinda, 2009:72).

Based on the Discussion in Chapter IV above, the legal theory used to analyze this issue is the legal system theory, which covers the legal structure, legal substance, and legal culture.

The Scope of the Use of Tribal Land in Palakahembi Village

The basis for the establishment of customary law community shows that the customary law community alliance in East Nusa Tenggara, specifically in Palakahembi Village, is formed on 3 dimensions: (Wignjodipuro, 1982:197)

The same lineage. This alliance is known as the genealogical customary law alliance.

Mixed (The same lineage and area of residence). This alliance is known as the genealogical-territorial customary law alliance.

The same area of residence. This alliance is known as the territorial customary law alliance.

Not only is the customary law community alliance in East Nusa Tenggara Province determined by the implementation of authority presented above, but also by several criteria as follow: (Karoba, 2007:85)

The members of customary law community alliance realize the occurring bond is born from the same precursor (the ancestors) (genealogy) that shares the same fate and suffering (territorial and mixed);

Having the same area as a place to earn a living, which must be maintained and defended from the interference of other parties; this element is followed by all alliance of customary law community, regardless of the establishment background.

Members of the customary law community alliance believe they are bound and compliant to the same customary law, which is used as guidelines in daily life;

Members of the customary law community alliance recognize and obey the leader of the alliance (customary elder) and every decision made;

Using the same language;

The feeling of sharing the same fate manifests in various activities such as the customary ritual welcoming the planting or harvest season, the opening of new land, weddings, death ceremonies, etc;

Having a village as a unity forum for all members of the alliance;

Having a traditional home and all its features, based on its characteristics and following local characteristics, serves as a place for negotiation and conducting customary rituals related to the interests of the alliance members. Even though the existence of a legal community alliance, as presented above, is reflected in the customary law community alliance in East Nusa Tenggara, the bond established in the customary law community alliance is experiencing a value shift as a result of the dynamics of modernization and globalization.

So, based on the interview result above, customary land rights are a series of authorities and obligations of customary law community concerning the land in their territory. Customary rights have 2 (two) elements: the ownership element, which is an aspect of civil law, and the authority element to manage and lead the control of joint land, which is an aspect of public law. The implementation of this public authority is assigned to the Customary Chief himself or done together with the elders of the customary law community concerned (Harsono, 2003:174). In general, the term customary land rights are not known in East Nusa Tenggara, but in Sumba, this term is known as the Kabissu land (Patty, 1984:18). It has identical meaning and content with customary land. However, the term tribal land (customary land rights) is more popular.

The Effectiveness of the Regulation on the Use of Tribal Land

In general, among the people of East Nusa Tenggara, specifically East Sumba, the grouping of customary law area is based on several criteria: (Vollenhoven, 1987:100) language, territory, genealogy, and a combination of the language, genealogy, and territory

criteria used by many psychologists. These criteria are viewed to have universal characteristics and become the basis of assessment for the system of customary law in various places. This identification then generates hypotheses about the area of customary law community.

Article 3 of the Agrarian Law states, "Observing the provision in Article 1 and 2, the implementation of customary land rights and similar rights of customary law community, as long as these remain to exist in reality, must be in such a way so that these conform to the national and state interests, based on the national unity and shall not contradict the laws and other higher regulations". It can be concluded from this provision that the national land law recognizes the existence of customary rights (tribal land) and similar rights if these remain to exist in reality, which means, if these do not exist in reality, customary land rights (tribal land) and other similar rights will not be revived and new customary rights will not be established. Thus, based on the discussion in Chapter V, the legal theory used in the analysis is the theory of legal effectiveness. Legal effectiveness in legal action or reality is known if a person states that the rule of law succeeds or fails to achieve its goal, and one can know based on that if its effect successfully regulates particular actions or behavior, if it fits the goal or not. In the effort to make the people abide by the rule of law, sanctions are usually included. These sanctions can be negative or positive sanctions, intended to give stimulation to humans to avoid reprehensible actions.

CONCLUSION

Based on the review presented in this paper, it can be concluded that the use of tribal land has not been effective yet because the regulation on customary land rights still refers to a general law, without being followed by the establishment of Regional Regulation of East Sumba District, which specifically regulates the use of tribal land according to local characteristics and local wisdom, and a formal customary institutional structure has not been established yet. Based on the conclusion above, the researchers provide two suggestions. First, it is necessary to establish Regional Regulation of East Sumba District that serves as a stepping stone in the use of existing tribal land according to the tribes' local wisdom. Second, the establishment of a formal customary institutional structure is necessary to provide legal certainty in the use and management of tribal land in Palakahembi Village.

REFERENCES

- Citrawan, F. A. (2021). Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau. *Jurnal Hukum & Pembangunan*, 50(3), 586. doi:10.21143/jhp.vol50.no3.2766
- Deddy, M. (2006). *Metode Penelitian Kualitatif*. Bandung: PT Remaja Rosdakarya.
- Harsono, B. (2003). *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya Jilid 1, Hukum Tanah Nasional* (Ed. Revisi). Jakarta: Djambatan.
- Hasan, M. I. (2002). *Pokok-Pokok Materi Metode Penelitian dan Aplikasinya*. Jakarta: Ghalia Indonesia.
- Herrayani, D. G., Soraya, L. F., & Moechtar, O. (2019). Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Kebijakan Penataan Aset Reforma Agraria. *Jurnal Kertha Patrika*, 41(3), 289. Retrieved from <https://ojs.unud.ac.id/index.php/kerthapatrika/article/view/54723>
- Karoba, S. (2007). *Hak Asasi Masyarakat Adat: United Nations Declarations on The Rights of Indigenous Peoples*. Yogyakarta: Galang Press.
- Nurlinda, I. (2009). *Prinsip-Prinsip Pembaharuan Agraria Perspektif Hukum*. Jakarta: Rajawali Pers.
- Patty, D. (1984). *Macam-Macam Hak Atas Tanah di Dalam Undang-Undang Pokok Agraria*. Kupang: CV Kasih Indah.
- Salamat, Y. (2016). Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah). *Jurnal Legislasi Indonesia*, 13(04), 411–420. doi:<https://doi.org/10.54629/jli.v13i4.88>
- Saragih, D. (1984). *Pengantar Hukum Adat Indonesia*. Bandung: Tarsito.
- Setyosari, H. P. (2012). *Metode Penelitian Pendidikan dan Pengembangan*. Jakarta: Prenada Media Group.
- Susila, I. G. (2014). *Kejahatan Sertifikat Tanah Ganda*. Malang: Universitas Brawijaya Press.

- Vollenhoven, C. Van. (1987). *Penentuan Hukum Adat*. Jakarta: Djambatan.
- Wignjodipuro, S. (1982). *Pengantar dan Asas-Asas Hukum Adat* (4th Ed.). Jakarta: Gunung Agung.
- Woha, U. P. (2008). *Sejarah, Musyawarah Dan Adat-Istiadat Sumba Timur*. Jakarta: Cipta Sarana Jaya.
- UUD 1945.
- KUH Perdata Indonesia.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan Antara Pemerintah Provinsi dan Pemerintah Kabupaten/Kota.
- Peraturan Mahkamah Agung Republik Indonesia Nomor 10 Tahun 2016 tentang Tata Cara Pelaksanaan Hak Komunal atas Tanah Masyarakat dan Masyarakat Hukum Adat di Kawasan Tertentu.
- Peraturan Daerah Provinsi Nusa Tenggara Timur Nomor 8 Tahun 1974 tentang Penegasan Pelaksanaan Hak Atas Tanah.