

## Harmonization of Customary Law National Defense Law Related to Land Ownership in The Framework of National Strategic Projects

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**Abstrak:** *The discussion on the harmonization of customary law with national defense law related to land ownership is becoming an increasingly important issue, especially in the context of implementing national strategic projects. Terminologically, the recognition of customary land rights by indigenous peoples has become a major focus in the context of legal regulation in Indonesia. This recognition, both politically and legally, reflects respect for the traditional rights of indigenous peoples by governments and the international community. This research aims to explore harmonization efforts between customary law and national defense law in the context of land ownership for national strategic projects. This research utilizes a normative juridical approach. Legal recognition of indigenous peoples in Indonesia has evolved through four stages since independence, including recognition in the constitution, laws, and government policies and Harmonization between customary law and national defense law is important to create a sustainable legal system and guarantee indigenous peoples' rights to their land and natural resources. The harmonization formulation of customary law and defense law in Indonesia needs to be strengthened to support the implementation of national strategic projects by taking into account national interests and the traditional rights of indigenous peoples.*

**Keywords:** *Harmonization of Customary Law; Land Ownership; National Strategic Project*

### INTRODUCTION

Infrastructure development in the era of President Joko Widodo's leadership is referred to as connecting infrastructure between regions, ranging from economic areas, industrial areas, plantation tourism, fisheries, to rice fields. The goal is to increase justice, welfare, and prosperity of the people through economic growth, in the medium and long term, in accordance with the second preamble of the 1945 Constitution of the Republic of Indonesia. Based on Article 1 Point 1 of Presidential Decree Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Implementation of National Strategic Projects, the direction of this strategic project is to

improve the welfare of the community through equitable growth and development.<sup>1</sup>

Based on the infrastructure development plan, there are 201 national strategic infrastructure projects, including toll roads, ports, airports, railways, industrial estates, economic zones, housing, dams, irrigation networks, drinking water sector, sanitation, sea wall industry, energy sector, technology industry and education.<sup>2</sup> The implementation of large-scale infrastructure development carried out by the state is guided by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely that the land, water and natural resources of the country are controlled by the State for the greatest prosperity.<sup>3</sup> The people have the right to

<sup>1</sup> Firdausy, Carunia Mulya. *Memajukan logistik Indonesia yang berdaya saing*. Yayasan Pustaka Obor Indonesia, 2021.

<sup>2</sup> Agustin, Imma Widyawati, and Septiana Hariyani. *Pengelolaan Infrastruktur Kota dan Wilayah*. Universitas Brawijaya Press, 2023.

<sup>3</sup> Angela, Krisna, and Anik Setyawati. "Analisis Pelaksanaan Pengadaan Tanah di Atas

regulate land ownership, the relationship between people and land, and the use of land to ensure the welfare of the people according to Article 2 of Law Number 5 of 1960 concerning Agricultural Principles. Furthermore, this national strategic project aims at the public interest of the state and the people, in accordance with the provisions of Article 18 of Law Number 5 of 1960 on the Principles of Agriculture.

The principle of public benefit means that if someone owns land and the land will be used for the public interest. In this case, the government can restore land use rights by providing compensation through deliberation and consensus, as stipulated in Article 36 of Law No. 2/2012 on Land Acquisition for Beneficial Development. Therefore, in implementing this project, the government relies on the principle of state control and public interest, considering that the infrastructure development must be based on a large and extensive area.<sup>4</sup>

This is an obstacle in the implementation of development. This is because the land acquisition objectives of this national strategic project overlap with community agricultural land and gardens, even with community land based on customary law. Based on the 2021 ranking of the Agrarian Reform Association on the topic of evictions nationwide, it was found that this National Strategic Project (NSP) "succeeded" in increasing the area of agricultural land conflicts by 123% compared to 2020. According to KPA Secretary-General Dewi Kartika, the ease of land acquisition and procurement processes that led to the increase in agrarian conflicts was triggered by the goal of accelerating projects that were also protected by government regulations. In addition, there is also a process of eviction carried out with violence by irresponsible parties. police

officers, TNI and civil police units that violate the human rights of indigenous peoples.

In line with Progressive Legal Theory, Progressive Law is an idea of legal development developed by Professor Satjipto Rahardjo which argues that law is made for humans and not for humans. The basic idea is that the study of law has now reached a deep ecology that is fundamental to human-centered thinking. Anthropocentric ideologies such as humans are considered to have creative abilities, interests, language, works, and intentions to the extent permitted by Kholiq. Therefore, laws will not make decisions on their own without taking lessons from the environment. The vision of humans as Kholifah fil ardh becomes the basis for God to ennoble His creations with glory and honor. Therefore, man-made laws should not diminish the respect and reverence for what is written in the law. Progressive law understands the concept of justice as a law that truly takes into account new sources of law to achieve justice. Therefore, the fact that women and children are the weakest legal subjects is no longer fundamental.

Constitutionally, Indonesia's recognition of the unity of customary law communities is affirmed in Article 18B of the 1945 Constitution of the Republic of Indonesia: "The State recognizes and respects the unity of customary law communities", customs, and traditional rights as they still exist and exist in customary law communities in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law. Then, in Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "customary cultural and social identities must be respected in accordance with the development of the times and civilization".<sup>5</sup>

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Tanah Ulayat Masyarakat Hukum Adat dalam Rangka Proyek Strategi Nasional (PSN) Demi Kepentingan Umum." *Jurnal Hukum Lex Generalis* 3, no. 3 (2022): 199-216.

<sup>4</sup> Supriyadi, Supriyadi. "Rekonstruksi Kebijakan Pengadaan Tanah dan Kompensasinya Guna Kepentingan Proyek Strategis Nasional." PhD

diss., Universitas Islam Sultan Agung (Indonesia), 2021.

<sup>5</sup> Anindyajati, Titis. "Politik Hukum Tentang Peran Mahkamah Konstitusi Dalam Melindungi Eksistensi Kesatuan Masyarakat Hukum Adat Di Indonesia." *Jurnal Masyarakat dan Budaya* 19, no. 1 (2017): 1-14.

Land in Indonesia is regulated in the Basic Law on Agriculture which contains customary law, especially the recognition of customary rights as stated in Article 5 of the Basic Law on Agriculture which stipulates that the agrarian law that applies to land, water and space is customary law, as long as it does not conflict with national and state interests based on the basis of national unity, with the socialism of the Indonesian Union and with the provisions in this law and other regulations, all things taking into account factors based on religious law.

Community customary law is translated into many laws and regulations. There are a number of regulations governing regulatory communities, including TAP MPR. NO. IX/MPR/2001 on Agrarian Reform and Natural Resource Management, Law No. 39 of 1999 on Human Rights, Law No. 41 of 1999 on Forestry, Law No. 22 of 2001 on Oil and Gas, Law No. 20 of 2003 on the National Education System, Law No. 24 of 2003 on the Constitutional Court, Law No. 27 of 2003 on geothermal energy, Law No. 7 of 2004 on Water Resources, Law No. 18 of 2004 on Plantations, Law No. 31 of 2004 on Fisheries, Law No. June 2014 on Villages.<sup>6</sup>

However, the problem is that some of the above laws and regulations only regulate the recognition of indigenous peoples, which is still one-sided, contradictory and inconsistent. This means that regulations relating to customary law communities are scattered across many laws and regulations and are not in line with each other. For example, in the interpretation of Article 67 paragraph (1) of Law No. Article 41 of 1999 regulates separate elements relating to customary law communities, while Article 63 paragraph (1) letter e of Law No. 32 of 2009 concerning Environmental Protection and Management regulates that the determination of Identification of elements and classification of customary law communities in the environmental scope of Customary Law. authority of the local government. Next, another example of the ambivalent attitude

towards customary law communities is reflected in the UUPA. On the one hand, UUPA firmly affirms that customary law is the source of our national agrarian law. However, on the other hand, the existence of customary law communities, which is the socio-cultural context in which customary law emerges, is constrained by various conditions that sooner or later open up the possibility of community rejection of customary law.

In this paper, it can be studied about the problem of implementing land acquisition for the public interest on customary land while respecting customary rights. With this, there is a clash of interests between the public interest to improve the economy and the welfare of the people with the interest to always maintain the existence and respect the rights of indigenous peoples. Furthermore, the implementation of land acquisition by starting with the rights of indigenous peoples can refer to a solution and compensation for land. Given that indigenous peoples are part of the nation who have magical ikata with the land they occupy for generations. Based on the background above, the objectives of this research are:

- 1) To analyze the system of recognition of customary land rights based on legislation in Indonesia.
- 2) To analyze the importance of harmonization of customary law and national defense law for the defense legal system in Indonesia.
- 3) To analyze the harmonization of customary law and defense law in Indonesia for the implementation of national strategic projects.

## **RESEARCH METHOD**

The research method employed in this study is a normative juridical approach, which focuses on analyzing the norms, principles, and legal provisions governing the relationship between customary law and national defense law in the context of land ownership for national strategic projects. This study relies on primary legal materials such as constitutional

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<sup>6</sup> Arisaputra, Muhammad Ilham, and M. Kn SH. *Reforma agraria di Indonesia*. Sinar Grafika (Bumi Aksara), 2021.

provisions, statutory regulations, and government policies related to the recognition of customary land rights (hak ulayat) and land management for defense purposes. Secondary legal materials, including scholarly literature, academic journals, and expert opinions, are also utilized to support the analysis. Data were collected through literature review and examination of relevant legal documents, then analyzed qualitatively using legal interpretation, deductive reasoning, and vertical and horizontal synchronization to identify areas of convergence and potential conflicts between the two legal regimes. This approach provides a comprehensive understanding of the need for harmonization between customary law and national defense law to support the implementation of national strategic projects while safeguarding the traditional rights of Indigenous communities.

## RESULT AND DISCUSSION

### *The system of recognition of indigenous land rights based on laws and regulations in Indonesia*

Terminologically, "recognition" means the process, manner, act of recognition or acknowledgment, while the word "recognition" means a declaration of rights. Recognition in the context of international law, such as articles, of the existence of a state or government often brings articles to the provisions of de facto and de jure recognition. The de facto recognition of a particular entity for the effective exercise of power in a region is called recognition by the people and whether or not the government is effective, this makes its position stable or not. If this *deviation* is then maintained and continues to grow, then de *facto* recognition will automatically turn into de jure recognition. De facto recognition is permanent and followed by other legal acts. whereas de jure recognition is recognition by a State of another State followed by certain legal acts, for example the opening of diplomatic relations and the

establishment of an agreement between the two countries.<sup>7</sup>

In his work General Theory of Law and the State, Hans Kelsen describes the term "recognition" in relation to the existence of a State: There are two actions in recognition, namely political action and legal action. The political act of recognizing a State means that the State recognizes its desire to establish political and other relations with the community it recognizes. Whereas legal action is the aforementioned procedure prescribed by international law to determine the veracity of a State (indigenous peoples) in a particular case.<sup>8</sup> Based on the above references, regarding the meaning of recognition and protection of indigenous peoples over land, the recognition of indigenous peoples over land carries the meaning of partial recognition of the state or government both politically and legally, through regulating the rights and obligations of the government in ensuring respect, opportunity and protection for the development of indigenous law and traditional rights within the framework of the Unitary State of the Republic of Indonesia. Such recognition indicates that the state/government has recognized, declared valid or declared that indigenous peoples have rights to their natural resources and demands that the government protect these rights from threats or interventions from other parties. Such recognition is an acknowledgment that is realized in the form of state law regarding the rights of communities based on customary law to land and other natural resources.

National law not only recognizes the rights of indigenous peoples, but also the recognition and support of the international community. There are a number of international treaties, both binding and non-binding, that regulate them. To date, there are at least forms of international support for indigenous peoples through international treaties, including the protection of human rights, the right to assembly, land and territorial rights, freedom of

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<sup>7</sup> Salinding, Marthen B. "Prinsip Hukum Pertambangan Mineral dan Batubara yang Berpihak Kepada Masyarakat Hukum Adat." *Jurnal Konstitusi* 16, no. 1 (2019): 148-169.

<sup>8</sup> Lutfi, Khoirur Rizal. "Teori hukum alam dan kepatuhan negara terhadap hukum Internasional." *Jurnal Yuridis* 1, no. 1 (2014): 90-106.

religion, and freedom of religion, intellectual property, customary ownership, recognition of rights and so on.<sup>9</sup>

The legal form of land tenure by indigenous peoples, known as hak ulayat, is very diverse in Indonesia. Hak Adat is a legal and commonly used term, although in practice in each indigenous community association the term is used differently. Purnadi Purbacaraka and Ridwan Halim state that customary land rights in various tribes in Indonesia can be divided into two forms, namely "hak ulayat" and "hak pakai". Customary rights are the right to exploit and collect forest products and the right to hunt. Although hak ulayat is communal in nature, there are also individual rights to control some of the subjects that control the hak ulayat. For the time being, an individual has the right to cultivate and control land for profit, but this does not mean that customary rights to land are abolished. Customary rights continue to overlap or exceed private or individual rights. Customary rights are restored only if the person concerned has relinquished his/her control over the customary land, while easements allow a person to use the land for his/her benefit, usually in paddy fields and rice fields that are continuously cleared and exploited over a long period of time.

Recognition of customary land was also acknowledged in the Indonesian Youth Congress on 28 October 1928 which included respect for customary law. In its development, the Indonesian nation has consciously implemented normative provisions relating to the existence of customary rights of indigenous peoples. Respecting the existence of customary law and customary rights as human rights, as well as the cultural identity and rights of indigenous peoples in accordance with the development and current conditions of civilization. As stated in Article 6 of Law No. 39 of 1999 as follows:

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<sup>9</sup> Tika, Tia Mayang. "Hak Masyarakat adat (Indigenous Peoples) Atas Sumber Daya Air Menurut Hukum Internasional Dan Upaya Pengaturannya Di Indonesia." (2022).

1. In order to respect human rights, the differences and needs of indigenous peoples must be considered and protected by the law, society and government.

2. The cultural identity of indigenous peoples, which includes customary land rights, is protected in accordance with the times. The affirmation of customary law and customary land rights of indigenous peoples as fundamental human rights is an advance in terms of the protection afforded again by the Constitution and regulations thereunder. This advance is expected not only at the level of policy formulation but also at the level of policy implementation.

The legal recognition of indigenous peoples in Indonesia since the year after independence until now has gone through four stages of recognition, the first in the year after Indonesia's independence in 1945, the founding fathers formalized the recognition of indigenous peoples in the state constitution (UUD 1945). The 1945 Constitution stipulates that Indonesia has around 250 regions with original structures (zelfbesturende, volksgemeenschappen), such as clans, villages, hamlets and nagari. This is a form of recognition of the 1945 Constitution that is not possessed by the Constitution contained in the prevailing constitutions in Indonesia, such as the RIS Constitution and UUDS.<sup>10</sup>

Second, legal recognition of customary law communities occurred in 1960 with the enactment of Law No. 1.5 of 1960 concerning the Basic Law on Agriculture (UUPA). Recognition of customary law communities and customary law rights occurs as long as they still exist and are in accordance with national interests and in accordance with the aforementioned laws. The concept of recognition in the UUPA is different from the concept of recognition in the 1945 Constitution because the concept of recognition in the

<sup>10</sup> Simarmata, Rikardo. *Pengakuan hukum terhadap masyarakat adat di Indonesia*. Regional Initiative on Indigenous Peoples' Rights and Development (RIPP), UNDP Regional Centre, 2006.

UUPA is the concept of conditional recognition.

Third, in the early days of the New Order regime, the law was applied in a number of areas closely related to indigenous peoples and their land rights, such as the digital law. 5 May 1967 on Forestry and Law No. November 1966 relating to Mining. Both of these laws provide for the recognition of indigenous peoples' rights as long as those rights still exist. Later in its development, any legislation enacted during the New Order period always required recognition if it met the following conditions: (1) it is still in existence; (2) it does not conflict with national interests; (3) it does not conflict with higher laws and regulations; and (4) it is determined by regional regulations, this concept is called the concept of conditional recognition level. In reality, to be recognized, the existence of an indigenous community must meet social, political, legal, and procedural normative requirements (determined by regional regulations). Therefore, legal recognition does not bring freedom to indigenous peoples but only restrictions determined by regional regulations, this concept is called the concept of conditional recognition according to each group. In fact, to be recognized the existence of indigenous peoples must meet social requirements, political requirements, legal and procedural normative requirements (determined by regional regulations). Therefore, legal recognition does not bring freedom to indigenous peoples but only restrictions.

Fourth, after the reformation of the 1945 Constitution, the second amendment in 2000 introduced provisions on the recognition of customary law communities and their rights. Based on the provisions of Article 18B paragraph (2) of the Second Amendment of the 1945 Constitution, Article 41 of Tap. MPR Number XVII/MPR/1998 on Human Rights II. The Charter of Human Rights, Article 6 of Law No. Resolution No. 39/1999 on Human Rights and other relevant legal provisions can be drawn from one common theme: the

recognition of indigenous peoples and their traditional rights during the reform era has always applied the same model of recognition as the New Order, especially at various levels of conditional recognition.

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These customary rights have three basic values and are the source of natural resource management rights owned by indigenous peoples. The provisions of Article 3 of the UUPA related to regulations arise from the recognition of ulayat rights that apparently exist in the legal community concerned. For example, by granting land rights (e.g. business use rights) to a previously relevant indigenous community, its opinion will be heard and it will be recognized as the holder of customary rights.<sup>11</sup>

When viewed from their rights, customary law communities are also recognized as a unit as a supporting element of the nation that has a cultural identity. This is related to the recognition of the existence of 4,444 customary law communities. This can be seen in the regulations governing Human Rights in the 1945 Constitution, there is an article in Article 28 I paragraph (3), which specifically contains the contents of cultural identity and community rights. in line with the development of the times and civilization. Thus, based on the constitution, the customary law rights of the community have been guaranteed and must be respected by all elements of the state, especially the government. This is directly correlated with all implementation provisions and policy formulation related to issues related to indigenous peoples and their traditional rights, including customary rights. Practical actions to recognize and protect customary law communities should be formulated in various harmonious regulations, which always prioritize the mandate of the Constitution.

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<sup>11</sup> Andari, Dwi Wulan Titik, and Slamet Muryono. "Eksistensi Masyarakat Hukum Adat Kasepuhan (Kasus Kampung Kasepuhan Sinar

Resmi, Di Desa Sirnaresmi, Kecamatan Cisolok, Kabupaten Sukabumi, Provinsi Jawa Barat)." (2019): 74-90.

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Its legal provisions must fulfill the intent of Article 18B paragraph 2 and Article 28 I paragraph 3 of the 1945 Constitution, furthermore, the ulayat rights concerned over land and natural resources are very sensitive matters considering various matters relating to land, in and on the land or containing many documents, which of course will be subject to different regulations in accordance with the industries involved can ignore the provisions of the Article on the recognition of indigenous peoples. The provision of customary rights in the UUPA is regulated based on Article 3 of the UUPA specifically by containing the provisions of Article 1 and Article 2.<sup>12</sup> The implementation of similar rights of customary law contract communities provided that they in accordance with the articles continue to exist, must be in accordance with national interests and the interests of the state on the basis of national unity and must not conflict with higher laws and regulations.

Research on the regulation of indigenous peoples' rights, including land, first goes through the concept of land rights in both state law and customary law. In relation to Indonesia's mainstream theory that the state is the embodiment of all the people, the relationship with land in the form of a commune is expressed abstractly in rights called national rights. These national rights are then handed over although legally this land is based on local regulations, but the recognition of ownership and existence is not accompanied by black and white evidence in the form of proof of rights, so that in the future under these conditions there is no legal guarantee. guarantees for indigenous peoples will be very weak into the hands of the State for administration, which is called by the State the right to control land, which has a purely public aspect. In addition to the state managing land (the ruler), there are also subjects managing individual land, which we call subjective rights.

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<sup>12</sup> Mustofa, M. Zainul. "Jaminan Atas Kesehatan Bagi Masyarakat Adat Yang Terkendala Pada Fasilitas Transportasi." In *Seminar Nasional-Kota Ramah Hak Asasi Manusia*, vol. 1, pp. 584-593. 2021.

Land is one of the most important elements in human survival, therefore land should be cultivated to achieve the greatest prosperity of the people. In customary law, land issues are very important because humans and land have a very close relationship where land becomes a place for humans to take shelter and run their lives. During the reign of the Dutch East Indies, land settlement was not easy because of the dualism of land law that influenced it. The existence of this legal dualism resulted in contradicting the purpose of the law itself. With this, the Indonesian government formed a legislation that regulates land, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or what is often referred to as UUPA. This law is held as a unification of national land law.<sup>13</sup>

After the enactment of the Basic Agrarian Law or UUPA, matters related to customary land such as customary rights, buying and selling land, and so on have changed slightly. Prior to the enactment of the UUPA, customary rights were still the rights of local customary law communities that had been owned since the time of their ancestors. And after the enactment of the UUPA, customary rights are still recognized with the provisions stipulated in Article 3 of the UUPA which reads, "By remembering the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as according to reality they still exist, must be in such a way that it is in accordance with national and state interests, which are based on national unity and must not conflict with other laws and regulations that are higher."

According to the above article, it can be interpreted that ulayat rights and other similar

<sup>13</sup> Darmayanti, Kadek Novi, Dewa Gede Sudika Mangku, And Ni Putu Rai Yuliantini. "Peran Hukum Adat Dalam Perkembangan Hukum Agraria Di Indonesia." *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, No. 3 (2020): 230-238.

rights of indigenous peoples are still recognized as long as in the reality of society they still exist so there is no need for the creation of new ulayat rights. However, due to the height of individualism, this ulayat right is often urged and asked for special recognition of individual rights. This individualism has resulted in the depletion of ulayat rights. An example of the difference between customary land law before and after the enactment of the UUPA is in the sale of land, where before the enactment of the UUPA, sales could only be made orally, but then at the time of the enactment of the UUPA, the sale and purchase of land was carried out through a deed of sale and purchase and a sale and purchase contract between the two parties.

Law No. 5/1960 on Basic Agricultural Regulations (UUPA) is one of the sources of agricultural law in Indonesia. UUPA brings together 4,444 national land laws that regulate land in Indonesia. UUPA is the basis for developing policies related to land issues. The basis for the establishment of UUPA is Article 33 paragraph (3) of the 1945 Constitution, which aims to realize social justice for all people in the collection and utilization of natural resources, especially land. The inclusion of letter a in the UUPA shows that in the Unitary State of the Republic of Indonesia the order of social life, including the economy in particular, still relies on agriculture, land, water, space, as a gift from God Almighty has a very important meaning. An important function in building a just and prosperous society. Since the enactment of the UUPA on September 24, 1960, the UUPA has never been amended. The birth of the UUPA is a solution to the duality of land law, as well as land law in Indonesia.

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Republic of Indonesia the order of social life, including the economy in particular, still relies on agriculture, land, water, space, as a gift from God Almighty has a very important meaning. An important function in building a just and prosperous society. Since the enactment of the UUPA on September 24, 1960, the UUPA has never been amended. The birth of the UUPA is a solution to the duality of land law, as well as land law in Indonesia of a national character. UUPA emerged because the prevailing agricultural law in Indonesia is dualistic, namely customary law that applies side by side with agricultural law based on Western law.

Customary law is the primordial law of indigenous peoples, which is unwritten law and contains primitive tribal elements of community and kinship, based on balance and surrounded by a religious atmosphere.<sup>3</sup> Article 5 of the UUPA states: "The agricultural law applicable to the earth, water, and airspace is adat law, as long as it does not conflict with the interests of the nation and state based on national unity, with Indonesian socialism, and with the provisions in the law." This law and other legal provisions all take into account factors based on religious law teachers". Customary law is the original law of indigenous groups, namely law that exists in unwritten form, contains elements of indigenous tribes, especially social characteristics, kinship relations, based on equality and surrounded by a religious atmosphere.<sup>3</sup> Based on Article 5 of Law No. UUPA states that: "The agricultural law applicable to land, water, and airspace is customary law, insofar as it does not conflict with national and state interests, based on national unity, with Indonesian socialism, and with the requirements in the law: "This law, as well as other laws and regulations, shall all take into account the elements that form the basis of religious law".

Customary law, to which most Indonesians adhere, occupies a special place in national land law policy. The drafting of national agricultural law aims to achieve a unified law. In the context of legal unification, customary law is the foundation for the development of national agricultural law. In the UUPA there are several references to

customary law that underlie the formation of national agricultural laws, namely:

- 1) Precautions on the word "notice"
- 2) General explanation in point III (1).
- 3) Article 5 and its elucidation.
- 4) Elucidation of Article 16.
- 5) Article 56.
- 6) Article 58 (indirectly)

Before the establishment of the national land institution, customary law, laws, regulated the community. The formation of national agricultural law has a role, specifically customary law is the main foundation of national agricultural law and customary law is a complement so that there is no legal gap when the current written law is considered incomplete and incomplete. By taking customary law as the foundation of national agricultural law, it can be concluded that customary law recognizes its existence in the process of developing national agricultural law. Customary law plays a very important role in the development of Indonesian law, especially Defense Basic Law No. 5 of 1960.

Customary law is simple community law, limited in scope to individuals and regions. National land law is considered the law of modern society, which has its own scope of application throughout the territory of the Unitary State of the Republic of Indonesia. Therefore, it is necessary to improve adat law by adjusting the interests of the community to the context of a modern state and the international world. Provisions of the UUPA that regulate the position of customary law, in addition to the legal provisions mentioned above, can be found in other sections as follows: a) Consideration Section Opinion:

- a. "That in view of what is mentioned in the above considerations, it is necessary to have a national Agrarian law, based on customary law concerning land, which is simple and guarantees certainty.
- b. Article 2 paragraph (4) "The implementation of state control over can

be controlled by regions and autonomous communities through customary law, only to the extent necessary and not contrary to the national interest."

- c. Article 3 "With due regard to the provisions of Articles 1 and 2, the implementation of the rights of ulayat communities and similar rights of customary law communities as long as they still exist in reality must be in accordance with the provisions of the Article, in harmony with national and state interests, based on national unity and not contrary to other higher laws and regulations."
- d. Article 22 paragraph (1) "The existence of property rights under customary law shall be regulated by Government Regulation".
- e. Elucidation of Article 5. For the affirmation of adat law as the basis of the New Agricultural Law, see general interpretation (III point 1).
- f. The interpretation of paragraph III of the UUPA confirms that "the customary law referred to in the UUPA is "customary law which is perfected and adapted according to the interests of society in a modern State and in its relations with the international community and adapted to Indonesian socialism".

Therefore, customary law is the main source of national land law by using the principles and structure of customary law in Indonesia. Based on the legal provisions mentioned above, the UUPA offers a position as a basic position. Therefore, customary law applies under the UUPA as an integral part of the UUPA In other words, the provisions of the UUPA are the crystallization of the principles of customary law so that the UUPA is the embodiment of customary law.<sup>14</sup>

## CONCLUSION

The customary law mentioned in the UUPA as the basis of national land law is not actual customary law but customary law that

<sup>14</sup> Mandey, Dandy. "Perlindungan Hukum Hak Atas Tanah Terhadap Masyarakat Adat Minahasa Dalam Pengadaan Tanah Bagi

Pembangunan Untuk Kepentingan Umum (Studi Kasus Gugatan No. 117/Pdt. G/2012/Pn. Btg)." *LEX ADMINISTRATUM* 10, no. 6 (2022).

has been purified of elements that contradict the Constitution and the spirit of Indonesian socialism. The UUPA's statement that national land law is law suggests that there is a functional relationship between customary law and national land law in this UUPA case. Legal dualism before the formation of the UUPA in Indonesia caused problems and uncertainty of legal guarantees for the community, so that laws were created to regulate these problems, but there are still provisions in Indonesian customary law such as laws that are currently in force and are developing in Indonesia. population. eternal. This means that customary law has an important role in the development of national agricultural law, especially the Basic Law on Agriculture (UUPA) which is the basis and guidance in regulations relating to agricultural practices.

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