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The Right of Management Originating from Indigenous People Ulayat Land: Determinant of Solution

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ABSTRACT
Indonesia has extensive forest areas and a rich diversity of cultures and customs. This is related to Indigenous Legal Communities, which, according to the Constitution, must be recognized and respected. This research aims to examine whether granting the Right of Management over Ulayat Land represents a solution for sustainable land management or whether it could be detrimental to the land rights of Indigenous Communities. This study employs a Normative Juridical approach, utilizing both a Legislative and Conceptual approach. The legal materials used in this research include Primary and Secondary Legal Materials, which are analyzed using a perspective analysis technique. The research findings indicate that granting the Right of Management over Ulayat Land held by Indigenous Legal Communities can positively impact sustainable land management, provided that Regional Regulations and Regional Decrees are in place to recognize and protect Indigenous Legal Communities. Conversely, it could be detrimental to the existence of Indigenous Communities if Regional Regulations and Regional Decrees concerning the recognition and protection of Indigenous Legal Communities are not properly regulated.

Keywords:
Right of Management, Ulayat Rights, Indigenous People

INTRODUCTION

The Republic of Indonesia is a legal state with a vast expanse of forested areas. In addition to its extensive forest areas, Indonesia is characterized by its diverse cultural heritage and customary practices, which are closely related to Indigenous Legal Communities. (Affandi & Marpaung, 2023). The State recognizes and respects Indigenous Legal Communities as stipulated in Article 18B(2) of the 1945 Constitution of the Republic of Indonesia, from now on referred to as the "1945 Constitution": "The State recognizes and respects Indigenous Legal Communities and their traditional rights as long as they are still in existence and accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

Based on the mandate of the Constitution, the Government of Indonesia is obliged to recognize and respect Indigenous Legal Communities by granting them rights of control known as "Ulayat Rights" (Rosmidah Rosmidah, 2010). Furthermore, Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations states: "Taking into account the provisions in Articles 1 and 2, the implementation of Ulayat Rights and similar rights by Indigenous Legal Communities, insofar as they still exist in practice, must be carried out in a manner that aligns with national and state interests based on national unity and must not conflict with higher laws and regulation."

Based on the above, the protection of Ulayat Rights of Indigenous Legal Communities plays a crucial role in the lives of Indigenous peoples in Indonesia, as this right grants Indigenous communities the authority to manage, control, and utilize customary land inherited from their ancestors (Widowati et al., 2014). The right to control land under the Basic Agrarian Law specifies the powers that can be exercised, the obligations that must be fulfilled, and the prohibitions that must be adhered to by

the right holders. Boedi Harsono states that the Basic Agrarian Law outlines a hierarchy or ranking of land control rights as follows: First, the right of the Indonesian nation to land; Second, the State's right to control land; Third, Ulayat Rights of Indigenous Legal Communities; and Fourth, individual land rights, which include land rights, mortgage rights, waqf land, and ownership rights over apartment units (Harsono, 2013).

The highest land control right, which serves as the foundational right for all other land control rights, is the right of the Indonesian nation to land. This right of the Indonesian nation to land reflects a private element, denoting the ownership relationship between the Indonesian nation and the land throughout Indonesia. Additionally, this right encompasses the authority and duty to regulate and manage the land collectively for the greatest benefit of the people, which falls within the realm of public Law (Sodiki, 2013). The exercise of this authority is assigned to the Republic of Indonesia, with the state control over land deriving from the nation's right to land. This represents the delegation of the Indonesian nation's public law duties and authority. Since the Management of all communal land cannot be effectively undertaken solely by the Indonesian nation, implementing this mandate at the highest level is entrusted to the Republic of Indonesia as the governing body representing the entire populace (Sulaiman, 2021).

The Basic Agrarian Law (UUPA), which forms the foundation of agrarian Law in Indonesia, does not regulate the right of Management. According to A.P. Parlindungan, the "right of management" originates from the Dutch term *beheersrecht*, translated as the right of control (Permadi, 2023). In agreement with A.P. Parlindungan, Maria S.W. Sumarjono states that Government Regulation Number 8 of 1953 regulates the Right of Control as a translation of state land control, which refers to the right of control over state lands. The precursor to the Right of Management existed before the enactment of Law Number 5 of 1960, known as the right of control over state lands regulated by Government Regulation Number 8 of 1953. This Right of Control over state lands was later converted into the Right of Management by Ministerial Regulation Number 9 of 1965 concerning the implementation of the conversion of the Right of Control over state lands and subsequent policies.

The definition of the Right of Management can be rigidly found in Article 2, paragraph (3), letter f of the Law on the Acquisition of Land and Building Rights (UU BPHTB): "The Right of Management is the State's right of control, part of which is delegated to the right holder. This includes, among other things, the planning of land use and allocation, the use of land for carrying out its duties, the transfer of portions of the land to third parties, and cooperation with third parties".

Further, under Indonesian positive Law, Government Regulation Number 18 of 2021 concerning the Rights of Management, Land Rights, Apartment Units, and Land Registration also defines the Right of Management as stated in Article 1, number 3 of PP 18/2021: "The right of control by the state, part of which is delegated to the holder." According to Government Regulation Number 18 of 2021, the Right of Management can be imposed on Ulayat Land, as Article 4 of PP 18/2021 indicates: "The Right of Management may originate from state land and Ulayat land."

This provision raises several issues concerning the principles of the Ulayat Rights of Indigenous Legal Communities. Among these issues is the status of Ulayat Rights ownership, which is neither a legal person (*Person*) nor a juridical person (*Recht Person*), but rather the ownership of customary land belongs to the Indigenous

Legal Community itself. Another issue is the legal protection related to granting the Right of Management over Ulayat Land, where imposing the Right of Management on customary land may invalidate the traditional rights of the Indigenous Legal Community. Bagir Manan provides a concrete example of traditional rights, such as Ulayat Rights, and the rights to benefit from or enjoy the surrounding area's land, water, or forest products(Safa'at & Yono, 2017).

Therefore, this study aims to examine whether the grant of the Right of Management over Ulayat Land constitutes a solution for sustainable land management or whether it becomes a detriment to the land rights of Indigenous Communities. This study will be discussed and divided into two sections: First, the Concept of the Right of Management over Ulayat Land held by Indigenous Legal Communities; and Second, the legal consequences of issuing the Right of Management (HPL) over Ulayat Land of Indigenous Legal Communities.

METHOD

The research method to be used in this study is normative legal research. Normative legal research is a form of legal research that focuses on the examination of statutes and legal doctrines to gain an understanding of the applicable legal principles (Marzuki, 2019). Based on the type of research employed in this study, the research is descriptive, aiming to detail and categorize the phenomena to be explained by the researcher. Maximum effort is made to achieve precision concerning the structure of the issues in this study. The approach used in this research includes the Statute Approach and the Conceptual Approach. The Statute Approach involves reviewing and examining all relevant statutes and regulations that fall within the legal issues addressed in this study. The Conceptual Approach provides a perspective on analyzing problem-solving by examining regulations in relation to the concepts employed.

The legal materials in this research are divided into: First, Primary Legal Materials, which consist of collections of legal norms that have authority or are binding. This includes statutes, official records or minutes related to the enactment of laws, and judicial decisions. Examples include the Basic Agrarian Law (UUPA), Government Regulation Number 18 of 2021 concerning the Right of Management, Land Rights, Apartment Units, and Land Registration (PP 18/2021), Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 18 of 2021 on Procedures for Determining the Right of Management and Land Rights (Permen ATR/BPN 18/2021), and Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 14 of 2024 on the Administration and Registration of Ulayat Rights of Indigenous Legal Communities (Permen ATR/BPN 14/2024). Second, Secondary Legal Materials, which consist of publications relevant to the Primary Legal Materials, particularly concerning Ulayat Rights and the Right of Management. Both types of legal materials will be analyzed using perspective analysis, which includes: First, systematic interpretation and historical interpretation, as they relate to the issue addressed by the author regarding whether collaborating on the Right of Management with third parties on Ulayat land represents a detriment or a solution for sustainable land management.

RESULTS AND DISCUSSION

1. Right of Management

Substantially, the Management of state land granted to regional governments or autonomous regions can be developed by these local governments and subsequently granted to third parties with specific rights for utilization and placement, known as land control. The right of control over state land is then converted into the Right of Management (Ramadhan et al., 2021). The Right of Management over land is a reasonable outcome of the rapidly evolving times. Empirical evidence indicates that the current increasing demand for land is not matched by the availability of land. In other words, the significant annual increase in land demand is hindered by the limitation of available land. This situation has the potential to trigger conflicts or issues within society (Syekh Yusuf et al., 2020).

The Right of Management has undergone specific changes, both in terms of regulation and practice. There are differing perspectives on Management in various regulations; under the Basic Agrarian Law (UUPA), Management is defined as authority, whereas in Ministerial Regulations, Management is defined as a land right. The implementation of the Right of Management often leads to confusion, where the holder of the Right of Management frequently delegates their obligations to third parties, despite not having the authority to act as the landowner (Rahmi, 2010). With the principle of agreements based on good faith and the principle of balance, it is crucial to clearly define the rights and obligations of the holder of the Right of Management and third parties. Legally, third parties can only be considered as temporary holders of land rights, as they are merely occupying the land on a provisional basis (Rongiyati, 2014).

According to positive Law, Article 1, number 3 of Government Regulation Number 18 of 2021 in conjunction with Ministerial Regulation ATR/BPN Number 18 of 2021 regulates the Right of Management: "The Right of Management is the right of control by the state, part of which is delegated to the right holder." Thus, it can be concluded that the Right of Management is a state right of control, with part of the authority delegated to the right holder. However, it is not a direct land right but rather a form of state control over land granted to individuals or specific entities (Parlindungan, 1994).

2. Ulayat Rights Indigenous People

In the literature on customary Law, as stated by Van Vollenhoven, Ulayat Rights are described as "*beschikkingrecht*" which reflects the relationship between Indigenous Legal Communities and their customary land. This definition indicates that Indigenous Legal Communities have the right to regulate, manage, and utilize their customary land according to their needs and traditions. This right encompasses the use of the land, the Management of natural resources found on it, and decision-making regarding land use in the context of the social, economic, and cultural life of the Indigenous communities surrounding the customary land (Thontowi et al., 2012).

In their daily lives, Indigenous communities consider Ulayat land as their "motherland" due to its vital role as both a living environment and a source of livelihood for the community. There are customary legal rules that govern the Management, control, and use of Ulayat land, which are recognized and adhered to by the local community (Maulana et al., 2024). This is because "the authority of Indigenous Legal Communities to manage land, water, and resources according to their needs is based on a system of knowledge and tools that embody principles of justice and adequacy

within customary rules concerning the extraction of natural resources, which are accompanied by rules and prohibitions" (Sinay et al., 2022). Most Indigenous communities maintain a profound connection imbued with emotional, sentimental, religious-magical, and sometimes irrational values, rendering this relationship eternal and irreplaceable. Disregarding land is tantamount to dishonoring them and is considered a taboo that could bring misfortune, bad luck, or karma, as Indigenous communities are deeply concerned with their land. The land must be preserved and cultivated properly to benefit themselves and their families (Indira Pratiwi et al., 2024).

Referring to Article 1, number 23 of Law No. 17/2017 on Water Resources, it stipulates: "the communal rights held by certain Indigenous Communities over specific territories that constitute the living environment of their members, including the rights to utilize land, forests, and water along with their contents in accordance with statutory regulations." Based on this definition of Ulayat Rights, the government should provide protection for the existence of these Indigenous Communities.

3. The Concept of the Right of Management over Indigenous Legal Community Lands

The Right of Management originating from or over Ulayat land is a new development. Historically, as observed in recent years prior to the enactment of Government Regulation No. 18 of 2021, the Right of Management existed; however, this right was granted over state land, not over Ulayat land (Zamil, 2017). State land, or land directly controlled by the State, refers to land that is not owned under any land rights. In contrast, Ulayat land is land within the domain of Indigenous Legal Communities, which, in practice, still exists and is not encumbered by any land rights.

Based on the opinions of experts outlined in the previous subsection, the Right of Management is a derivative of the State's right to control. Therefore, the three authorities granted by the Right of Management to third parties also apply to the right holder. Further, the authorities of the Right of Management holder are regulated in Article 7, Paragraph (1) of Government Regulation No. 18 of 2021, which includes:

a. Preparing plans for land designation, use, and utilization in accordance with spatial planning;
b. Utilizing all or part of the management land either for their own use or in collaboration with others;
c. Setting fees and/or mandatory annual payments from third parties in accordance with the agreement.

Based on this, the Right of Management may also be granted over Ulayat land to preserve the existence of Indigenous Legal Communities (Cahyaningrum, 2022).

The concept of the Right of Management over Ulayat land is regulated in Article 3 of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 18 of 2021, which stipulates: In addition to State land, land rights, and/or State forest areas, applications for the Right of Management may also originate from Ulayat land. Based on this, the concept of the Right of Management over Ulayat land should be registered by the Indigenous Legal Communities themselves, provided that the Management of Ulayat land has been regulated by Regional Regulations (PERDA) and/or decrees from the regional government concerning Ulayat land (Wulan et al., 2022). Indigenous Legal Communities can become legal subjects holding the Right of Management if they are recognized as legal subjects through the establishment of a PERDA and/or a Decree from the Regional Government.

4. Legal Consequences of Issuing the Right of Management Over Indigenous Legal Community's Ulayat Land

The issuance of the Right of Management over Indigenous Legal Community's Ulayat land may be granted as long as the Indigenous Legal Community is recognized as a legal entity based on Regional Regulations (PERDA) and/or decrees from the regional government at both the provincial and district levels concerning the recognition and protection of Ulayat land (Wulan et al., 2022). Based on this, if we examine the definition of legal consequences, which is "the result of an action undertaken to achieve a desired effect by the actor and regulated by law, such an action is termed a legal act," then, in other words, legal consequences are the outcomes of a legal act (Soeroso, 2011). Based on this, the legal consequences can be classified and analyzed into the following forms:

a. The emergence, change, or extinction of a legal status: Regarding management rights derived from customary land, if the customary land is regulated by Regional Regulations (PERDA) and/or decrees from local government authorities, its existence can be assured. This is because when the management rights expire, the land will revert to its status as customary land. However, if management rights are granted over customary land that is not regulated by PERDA and/or decrees from local government authorities, the customary land may be extinguished or become state land after the management rights are removed (Wulan et al., 2022).
b. The emergence, change, or extinction of a legal relationship between two or more legal subjects, where the rights and obligations of one party correspond to the rights and obligations of the other party: When management rights over customary land are registered, the indigenous community is obligated to pay taxes on those management rights. Not only does this involve taxation, but the rights to the land granted subsequent to the issuance of the management rights also create rights and obligations for the legal subject holding the management rights towards other parties (Rongiyati, 2014).
c. The imposition of sanctions for unlawful actions: According to the Indonesian Dictionary (KBBI), sanctions are obligations (such as actions, punishments, etc.) imposed to compel individuals to adhere to agreements or comply with legal provisions (such as constitutions, associations, etc.). Consequently, the burden of issuing management rights will revert to the indigenous community, allowing them to determine the allocation, use, and Management of customary land once the management rights have been issued (Cahyaningrum, 2022).

Thus, from the explanation above, legal consequences are defined as the effects of a legal act, where a legal act is any action by a legal subject that creates rights and obligations, marked by a declaration of intent. Conversely, a non-legal act is an action whose consequences are not intended by the actor (Zamil, 2017).

Discussion

Based on the research findings presented, although the concepts of management rights and customary land rights differ, the objective of management rights is beneficial for the sustainability of the existence of certain indigenous communities over specific territories. However, it must be emphasized that customary land rights of indigenous communities should take precedence, as these rights are fundamental and must be guaranteed and protected by existing laws. This is because

their rights are explicitly and clearly regulated in the Constitution of the Republic of Indonesia (Tyson, 2010).

Regarding management rights derived from customary land, there are actually two consequences that affect the sustainability of the existence of indigenous communities. On the one hand, these management rights can lead to solutions that support the continued existence of indigenous communities. On the other hand, they can result in adverse outcomes for customary land if the issuance of management rights over such land is not preceded by the recognition and protection of customary law communities, as regulated by Regional Regulations and/or decrees issued by provincial or district/local government authorities.

CONCLUSION

The concept of granting Management Rights over customary land is inherently contradictory to the definition of Management Rights itself. This is because Management Rights involve the delegation of certain authorities from the State's Control Rights over land, whereby the holder of Management Rights receives a portion of the State's Control Rights derived from state land. However, when it comes to customary land, this conflicts with the concept of Management Rights, as customary land remains bound by the Indigenous Community's customary rights.

Referring to the positive norms concerning Management Rights derived from customary land, these are clearly and explicitly regulated under Article 4 of Government Regulation No. 18 of 2021. The holders of Management Rights over customary land are the indigenous communities themselves. However, the granting of these Management Rights presents two potential outcomes for the sustainability of the land and the existence of the indigenous communities' customary rights. These outcomes include either a solution for their own existence or a disaster for them, depending on whether or not the local government issues Regional Regulations and/or decrees at the provincial or district level.

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