

# Incorporation of *Krik Slamet* Values In The Exercise Of Rights Over Customary Land

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## ABSTRAK

Pembadanan nilai dengan metode asli masyarakat adat menampilkan nilai bukan hanya terlihat namun juga terasa yang berbeda dengan pembadanan nilai dengan metode negara yang justru nilai asli mengalami reduksi. Artikel ini bertujuan menganalisis pembadanan nilai 'krik slamat' pada penguasaan hak atas tanah adat. Metode penelitian yang digunakan adalah metode penelitian nondoktrinal dengan pendekatan antropologi hukum dan pendekatan konseptual. Artikel ini menunjukkan 1) Nilai krik slamat merupakan asas hukum berdimensi ketuhanan 'religio magis' menjadi pijakan dasar pembentukan hukum adat (pulung), 2) Pembadanan nilai 'krik slamat' ke dalam hukum adat dilakukan dengan metode 'pera telu' yang wujudnya nilai tersebut tetap tampak dan terasa di dalam asas hukum dan norma hukum adat terkait penguasaan hak atas tanah adat.

**Kata kunci :** Pembadanan, krik slamat. Tanah adat

## ABSTRACT

The integration of values through the original methods of indigenous communities not only presents values that are visibly distinct but also felt differently compared to the integration of values through state methods, which may result in a reduction of the original values. This article aims to analyze the integration of 'krik slamat' values in the exercise of rights over customary land. The research method employed is a non-doctrinal research method with an anthropological legal approach and a conceptual approach. The article demonstrates that 1) 'Krik slamat' values are a legal principle with a dimension of divinity ('religio magis') serving as the foundational basis for the formation of customary law ('pulung'), and 2) The integration of 'krik slamat' values into customary law is carried out through the 'pera telu' method, ensuring that these values remain visible and palpable within the legal principles and norms of customary law related to the exercise of rights over customary land.

**Keywords:** Incorporation, krik slamat, customary land.

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## INTRODUCTION

Indonesia's diverse ethnicities and cultures have led to the emergence of various 'values' and 'laws' within society. Indigenous communities, as entities predating the existence of the

state, have become an integral part of the Indonesian nation. Over time, the legal standing of the 'indigenous communities' as original legal subjects has experienced fluctuations, initially positioned strongly as 'authentic' legal subjects, slowly reducing their 'authenticity' due to various internal and external factors.

The legal status of indigenous communities was established under the Dutch East Indies rule through the *Indland Schee Gemeente Odinan tie* (IGO) 1906 regulation. Later, it was regulated by the *Desa Ordinantie S* in 1941, and during the Japanese occupation, it was governed by *Osamu Seirei No. 7* of 1944, allowing indigenous communities to exercise their original rights without interference. Villages were positioned in a decentralized government structure, enabling indigenous communities to exercise their original rights since the enactment of Law Number 19 of 1965 on Village Administration.

However, after the enactment of Law Number 5 of 1974 on the Basic Principles of Regional Government and Law Number 5 of 1979 on Villages, indigenous community units were standardized into villages, positioning villages as part of the government under sub-districts, limiting the autonomy of indigenous communities. Villages could only use cultural symbols starting from the enactment of Law Number 22 of 1999 and Law Number 32 of 2004 on Regional Government. Currently, villages are divided into administrative villages and customary villages, as regulated by Law Number 6 of 2014 on Villages, where villages are recognized for their original rights.

The ownership of rights over customary land has experienced historical fluctuations. Initially governed by *Agrariasche Wet*, which regulated *domein verklaring* (domain declaration), the current state recognizes the indigenous communities' rights to their ancestral land. In 1870, *Van Vollen Hoven* observed the state's arrogance in land ownership through the concept of *domein verklaring* and proposed an alternative concept called *beschikkingsrecht*. Despite Burn referring to the concept as 'mystical,' after independence, the concept of 'state control rights' emerged, enshrined in the constitution, which acknowledges the existence of customary land with the concept of 'conditional recognition'.

Thus, the ebb and flow of the position of indigenous communities and the changing concepts of land tenure in Indonesia affect the integration of values that grow within indigenous communities into customary law and their application in positive law. According to Lahmudin Zuhri, the value of 'krik slamat' has not been accommodated in the management of lar land in

Sumbawa Regency. The model of integrating values, known as crystallization, reconstruction, transplantation, and recognition, is a way for values to manifest themselves in the form of legal norms to be unified and applied through positive law (Azhari & UUD, n.d.). This article analyzes the value of "krik slamat" as the basis for the formation of customary law and examines the integration of the "krik slamat" value in the control of indigenous land rights.

## **METHOD**

This research is a non-doctrinal legal study (Soetandyo & Paradigma, n.d.) that examines how the law is formed and operates in society. The approach used in this study is anthropological and conceptual approaches by analyzing the value of "krik slamat" as the basis for the formation of customary law and examining the integration of the "krik slamat" value in the control of indigenous land rights. Data collection for this research involves intensive interviews with key figures such as traditional leaders and institutional structures in the indigenous community of Pusu, Sumbawa, West Nusa Tenggara.

## **RESULT AND DISCUSSION**

### 1. Nilai Krik Slammat sebagai basis pembentukan hukum adat

Customary law, as a law that grows and develops within the community, originates from the inherent values of the indigenous community itself, naturally emerging without being designed as the heritage of a nation (Freeman, n.d.) The article explores the value of 'krik slamat' as the foundation (Wahid, n.d.) for the formation of customary law in Sumbawa. The '*krik slamat*' value originates from the philosophy of *Tau Samawa*, namely, 'Adat barenti ke syara', syara' barenti ke kitabullah', which Hans Nawiasky positions as *Staatfundamentalnorm*, referred to by Von Savigny as *Volkgeist* (Asshidieqie, n.d.).

This philosophy has become the *elan vital* of the lives of the people of Sumbawa, officially declared as the *grondslag* of the Sultanate of Sumbawa by Sultan Harun Alrasyid I in 1674. It emerged from the convergence of tradition with Islam, placing tradition firmly based on syara' and syara' firmly based on kitabullah. The convergence of tradition as a truth derived from local wisdom and religious truth derived from revelation makes *Volkgeist* difficult to understand rationally but intuitive (Putro & Widodo, n.d.). According to Dianto, customary law in Sumbawa can only be enforced when verified by Islamic law (Dianto, n.d.).

According to Din Syamsudin, 'Barenti' means to hold or grasp, and the strength of its meaning is emphasized by the saying 'man tamassaka bisunnati' (whoever holds fast to my Sunnah). The word used is 'masaka yamsaku,' signifying holding and not merely leaning or relying. Furthermore, Adi Suryo emphasizes, 'This demonstrates the depth of religious knowledge of the people of Sumbawa 348 years ago, choosing the term 'barenti' over merely leaning. In the Qur'an, 'barenti' is also referred to as Manasik or the act of worship itself. Therefore, 'barenti ko syara' is not just a declaration to firmly hold onto the Book of Allah and the Sunnah but also signifies a commitment to performing worship according to the provisions of the Qur'an and Sunnah.

The philosophy of 'Adat barenti ke syara', syara' barenti ke kitabullah' which Hans Nawiasky positions as *staatsfundamentalnorm* equivalent to Pancasila, and the value of 'krik slamat' as *staatsgrundgesetz* equivalent to the constitution, the 1945 Constitution of the Republic of Indonesia views the value of 'krik slamat' as the basis for the formation of customary law very important in interpreting what is meant by 'krik slamat.' In terminology, the term 'krik slamat' consists of two words with different meanings. The term 'krik' means an overflow of blessings, and the term 'slamat' means safety or well-being. The overflow of blessings is equivalent to the term 'blessing' or the increase in goodness, and safety is equivalent to the term 'well-being (Faisal, n.d.).

The meaning of 'krik' implies blessing and contains divine values, so any action must be based on divine values to obtain blessings or an increase in goodness. In relation to the recognition of customary land rights, the process of land tenure must be based on divine values so that the tenure carried out receives blessings. One of the essential divine attributes applied in this recognition is 'justice' because recognition regulates the relationship between one subject and another, in this case, between the state and indigenous communities. Then the meaning of 'slamat' means safety or well-being, and one of the values inherent in it is the value of social justice. Therefore, actions taken must be fair because they relate to the safety or well-being of humanity.

Customary law in Samawa, sourced from the value of 'krik slamat,' is dominated by divine values with a religio-magic character. Law that can adapt to every era is law that can 'prevent the extinction of values, customary legal norms, including religion and legal traditions'(W & Yusuf, n.d.). One of the values referred to is the value of 'krik slamat,' which carries the meaning of 'blessing' with a divine dimension as legal legitimacy in the

formation of laws related to the control of indigenous land rights. Historically, the manifestation of religio-magic values in law formation initially occurred in English common law. In English customary law, there was a fusion of religious teachings with customary law, as seen in the institution of the House of Lords, which had a special representation from the church, and the head of the British state originated from the head of the Church. In the next phase, French codification codified canon law, customary law, and Roman law. Religious teachings were accommodated, for example, in provisions restricting divorce and even prohibiting divorce.

The formation of law with the accommodation of divine values is sometimes a prolonged conflict, but it differs in the formation of customary law in Samawa, which considers divine values as the standard for other norms. (Rahardjo, n.d.) Values with a divine dimension in customary law are known as 'religio magis.' The convergence of the truth of 'custom' with the truth of 'religion' gave birth to a character of customary law called 'religio magis,' as described by Otje Salman Soemadiningrat. The formation of customary law is heavily influenced by religio-magic values. In this context, the religio magis referred to are values of divinity and customs, thus showing the relationship between customary law and religious law. When associated with the foundation of the Republic of Indonesia, the religious values or divine values are reflected in the first principle of Pancasila, 'Belief in the One and Only God.' Divine values never fade in indigenous societies as they always occupy space and time. (Sudiyat, n.d.) In the past, religio magis was interpreted and practiced in the form of worshipping objects, trees, rocks, marked by animistic beliefs. As Iman Sudiyat stated, religio-magic is the 'nature or way of thinking, such as pre-logic, animism, taboos, occult knowledge, and others.' With the development and changes in indigenous societies, they began to embrace logic, recognizing their true God while preserving the existence of their divine beliefs (Soemadiningrat, 2011).

The model of divine values controlling the state, according to Dawood Ahmed (Ahmed, n.d.), is the pluralist accommodation model, where the state accommodates religious teachings by placing religion autonomously. Each indigenous community has its own religio-magic, what Von Savigny refers to as Volkgeist. Von Savigny states that the law follows the Volkgeist of the community where the law applies. Volkgeist, which includes language, customs, and traditions, is strongly influenced by religio-magic values. According to Kuntjaraningrat, elements of religio-magic such as belief (Sudiyat, n.d.) in

supernatural beings and mystical powers are influential. Criticism of the law lies in Volkgeist, as the spirit of a nation will always change, affecting its laws, making the state unstable. Imam Sudiyat asserts that 'not all changes in the spirit and structure of society constitute fundamental changes that give birth to a new spirit and structure.

From an anthropological perspective,(Sardjuningsih, 2016) religion, myth, tradition, and magic are seen as knowledge systems about the spiritual realm. It is evident that religion, myth, tradition, and magic are parallel and optional (Haryanto & Semesta, n.d.). Historically, humans initially did not recognize religion, so their option to fulfill their spiritual needs involved believing in the existence of myths and traditions. In the next phase, humans became acquainted with religion, but simultaneously still practiced myths or traditions. As human civilization progressed and fully embraced religion, even if practicing traditions, they were those that did not conflict with their religion.

From a sociological perspective, religion and magic are seen as inseparable parts of the societal system. In this context, religion serves as the source of divine values, blending with magic as the source of myths and customary rituals. In certain societies, the basis of magic is religious values, so the practice of magical values must be based on religious values. In the philosophy of life called "tau samawa," it is mentioned that 'adat barenti ko syara', syara' barenti ko kitabullah', meaning that customs (magic) are based on syara' (religion), and syara' (religion) adheres to the Qur'an.

The value of 'krik slamat' as staatsgroundgesetz becomes the foundation for the birth of 'pulung' in customary law or formell gesetz, referring to the philosophy 'Adat barenti ke syara', syara' barenti ke kitabullah' as staatfundamentalnorn. For example, in 'pulung,' the indigenous community is not allowed to disturb or take someone else's land that has been marked by customary signs. Customary signs serve as the boundaries of land rights, such as gatek, marked trees, or stone markers. 'Pulung' contains the value of 'krik slamat,' implying that for the land under control to be blessed, it must not be taken from the rights of others as indicated by customary boundaries.

## 2. Incoorporation of the Value of "Krik Slamet" in the Control of Indigenous Land Rights

Legal Integration is the way legal norms manifest themselves. (Winter, n.d.) In the context of 'values,' it is how values manifest themselves in legal principles and norms. Conceptually, the integration of values is often done through crystallization, reconstruction, transplantation, recognition, and even objectification. The concept of value integration differs from the one practiced by indigenous communities in Sumbawa. According to Dianto, "Krik Slamet" has values based on religion, democracy, and justice, which can be seen in the process of forming customary law in the Pusu indigenous community, referred to as "pulung" as a norm of customary law (Dianto et al., n.d.).

The integration of values practiced by the indigenous community of Pusu, Sumbawa, is known as 'pera telu.' The term "pera telu" consists of two words, "Pera," meaning "to squeeze," and "telu," meaning "three." Therefore, when combined, it can be interpreted as "squeezing three times," similar to Hans Nawiasky's theory of *stufenlehre* (the pyramid of law) (Asshidieqie, n.d.). This term is often encountered in the "rpulung" process of the Pusu indigenous community or the "padering" of the Pekasa indigenous community in Sumbawa. The results of "rpulung" or "padering" must be based on "parenti sai," which is values, "parenti dua," which is principles, and "parenti telu," which is customary law norms (pulung). If we organize the norms in customary law in Sumbawa, they can be seen below:

- 1) Adat barenti ke syara', syara' barenti ke kitabullah as parenti sai (Staatfundamentalnorm)
- 2) Krik slamat as parenti dua (staatsgroundgesetz)
- 3) Customary law norms (pulung) as parenti telu (formell gesetz)

The meaning of "pera telu" is that customary values are not only attached but also well internalized into the principles and norms of customary law. The indigenous community likens it to squeezing coconut milk three times, ensuring that every squeeze retains the essence, much like the formation of norms being squeezed from values into principles and further into norms while the values are still felt within the principles and norms, even though they may appear less visible but are internalized (felt) within the principles and norms.

The application of the "pera telu" method in integrating the value of "krik slamat" into customary law regarding the control of indigenous land rights in Sumbawa can be seen

in the concept of land ownership in Sumbawa, namely the concept of "tumpan aeng-aeng tu tumpan nan baeng" (Aze, 2019). The term 'tumpan aeng-aeng tu tumpan nan baeng' consists of two core words, namely 'tumpan' and 'baeng.' ([https://Kbbi.Lektur.Id/Menjumpai Diakses Pada Tanggal](https://Kbbi.Lektur.Id/Menjumpai-Diakses-Pada-Tanggal), n.d.) The word 'tumpan' means 'encounter,' finding something, in this context, finding a piece of land. According to the Big Indonesian Dictionary (KBBI), in terminology, the meaning of encountering is to find. Another meaning of encountering is deliberately intending to meet something. The word 'baeng' means 'ownership,' signifying having inherent and absolute rights to something, in this case, having absolute rights to a piece of land. According to KBBI, ownership means having rights. When combined, 'tumpan aeng-aeng tu tumpan nan baeng' means whoever encounters something first is its owner.

Historically, the concept of land ownership with 'tumpan aeng-aeng tu tumpan nan baeng' is rooted in the vast expanse of the Sumbawa region, which is disproportionate to the very small population. This concept has been in place since the settlement of the people in Sumbawa, a time when they still believed in animism. It continued when the people of Sumbawa embraced Islam around 1032 or the year 1623 AD, marked by the agreement between the Sumbawa kingdom and the Goa kingdom, Makassar, where the King of Sumbawa embraced Islam with the condition that customs and open areas were not disturbed or damaged. This concept ceased to apply with the commencement of land ownership certification in 1960 and the designation of forest areas in 1999 (Manca, 1984).

The concept of land ownership with 'tumpan aeng-aeng tu tumpan nan baeng' is a form of implementation of the principle of 'self-determination,' which is the right to determine one's own fate, such as the right to autonomy, the right to land, and the right to culture. The first form of self-determination is 'the right of internal self-determination.' Internal self-determination (Anaya, 1990) is applied to states to gain recognition politically, economically, and culturally so that the state has sovereignty over it. The regulation related to the concept of self-determination is governed by Article 55 of the United Nations Charter (Saputra, 2020).

Self-determination is legally restricted to the process of decolonization. Categories of the right to self-determination include: 1) not forming a new state, 2) a different entity, 3) victims of colonization. Indigenous communities qualify for the right to self-determination as they are not a new state but a collective unit, a distinct entity, and victims

of colonization. The form of internal recognition is determined by the constitution of the respective state, such as Mexico, which accommodates the right to self-determination, including autonomy and land rights, in its constitution.

With this concept, land ownership allows for individual ownership while involving indigenous institutions, described by Budi Harsono as "privately-owned rights that include elements of collaboration," commonly referred to as land ownership with a communalistic and religious character (Bijoy et al., 2010). Communalistic and religious aspects are emphasized because customary land has a strong relationship (Harsono, 1995) with the indigenous community and exhibits a communal nature among its members. The customary land of the Pusu indigenous community in Sumbawa is divided into three types: tana' tue ria, tana' balo tolo, and tana' jompang. Wawancara Dengan Bapak Suparman Sebagai Ine Adat Masyarakat Adat Pusu, Wawancara Pada Tanggal 27 Juli 2019," n.d. Pusu's customary land has undergone participatory mapping to determine its boundaries and extent, with the aim of presenting this map to the state for recognition of the existence of customary land. **Ståle Angen Rye, Nanang Indra Kurniawan, Claiming Indigenous Rights through Participatory Mapping and the Making of Citizenship, Political Geography, Volume 61, 2017, Pages 148-159, ISSN 0962-6298, <https://doi.org/10.1016/j.polgeo.2017.08.008>..(Mattulada, 1980)**

In terms of customary law, normatively, land ownership under this concept does not automatically make someone the owner of a piece of land; rather, wisdom must be adhered to. For instance, the land should not have been given ownership signs by others, such as natural signs that have become a consensus, like the wood 'gruse, mark, distance, bunse'. Additionally, both individuals and communities must not determine the extent of their land beyond their capacity, such as the ability to cultivate fields or gardens. The community's ability to manage the land can be measured by looking at the number of community members; if there are many members, the land is large, and vice versa. In this concept of land ownership, indigenous communities are not greedy in determining the size of their land. If indigenous communities violate or take others' property rights, there are social sanctions in place, justified by the violated community as 'tau nonda ila'. This justification becomes a topic of discussion within the indigenous community. 'Ila' for the

Sumbawan people means shame, dignity, and honor, known as 'siri' siri' in the Bugis Makassar language, which means shame (Muis & dkk, 2011).

Norms of customary law related to the ownership of customary land under the concept of 'tumpan aeng-aeng tu tumpan nan baeng,' after implementing 'pera telu' based on the value of 'krik slamat,' without altering existing norms, can be summarized as follows:

- 1) Customary land can be owned if there are no existing customary ownership signs.
- 2) The extent of land ownership corresponds to the ability to manage it.
- 3) Violations of customary legal norms are subject to the sanction 'tau nonda ila.'
- 4) Every indigenous individual or community pays rent (tax) in the form of agricultural produce after harvesting.

## **CONCLUSION**

The value of "krik slamat" serves as the foundation for the formation of customary law, hierarchically positioned as parenti dua (second-level norm) in customary law, originating from the philosophy 'adat barenti ko syara', syara barenti ko kitabullah. The value of "krik slamat" is interpreted as the value of blessings that becomes the basis for the formation of customary law related to the ownership of customary land. The internalization of the value of "krik slamat" in customary law regarding the ownership of customary land addresses acts of greed and exploitation within the indigenous community.

The incorporation of the value of 'krik slamat' into customary law is carried out through the method of 'pera telu,' where the essence of this value remains visible and palpable within the principles and norms of customary law related to the ownership of rights over customary land.

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