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Land Legal Policy Registration of Customary Rights: Islamic Land Law Perspective

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ABSTRACT

Article 28H paragraph (4) of the 1945 Constitution of Indonesia guarantees citizens the right to private property, including land, which cannot be taken arbitrarily. This study aims to: (1) describe current land titling policies; and (2) explain the policy on registering customary land rights. The research uses a normative, qualitative doctrinal approach. In Islamic land law, land is considered the property of Allah SWT, with humans granted authority to manage it in accordance with sharia. Thus, land management should adhere to divine, not human, laws. Indonesia's current land certification policy is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 12 of 2017, which governs the Acceleration of Complete Systematic Land Registration (PTSL). This program targets certification of 126 million land parcels by 2025. Land registration contributes to community welfare by offering legal certainty and protecting property rights. However, Government Regulation No. 27/1999 does not recognize customary (ulayat) land as eligible for certification, despite the constitutional mandate and the Basic Agrarian Law (UUPA) to protect such lands. To resolve this, the government can issue Customary Land Certificates through Regional Regulations as part of the Customary Land Registration process, ensuring legal recognition and protection of customary community land rights.

Keywords: Land Registration, Customary Rights Land

INTRODUCTION

Indonesia in its land law system rests on the Basic Agrarian Law which is the law on land. In terms of land ownership, the Basic Agrarian Law emphasizes more on the aspect of

individual land ownership. This is important to make the status of land tenure clear when there is a transfer of land rights (Arie, 2005). The mandate stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia contains the basis and at the same time directives for the political development of land law and other natural resources, including the Basic Agrarian Law. The elaboration into the Basic Agrarian Law is still at the level of legal principles that must be developed into various more concrete implementing regulations so that they can be more operational to increase the prosperity of all Indonesian people (Ismail, 2012). In an effort to improve services in the land sector and in the context of providing certainty of rights, the government has made a policy of accelerating land certification through mass certification activities in the National Agrarian Operations Project (Arifin, 2008). After Prona, the National Agrarian Reform Program (PPAN) was born through MPR Decree Number: IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management which mandates the need for agrarian reform and natural resource management based on the principles of national unity, supremacy law, democracy, justice, respect for customary law rights, balance rights and obligations between the state, government and people.

The election of Jokowi as President of the Republic of Indonesia gives hope to the problems of agrarian development and also the problem of inequality in land ownership in Indonesia. One of the Nawacita programs issued by Jokowi-Jk during the campaign was the distribution of land to the community, the campaign program was then translated into a government program called agrarian reform, which was born on the translation of the nine development priorities by Jokowi-Jk in which agrarian reform is one of the priorities. in this development (Sianturi, 2018) by encouraging land reform and land ownership programs covering an area of 9 million hectares (Kompas, 2014). The existence of a program from the central government in 2017 related to the land sector regarding the granting of certificates to the community by means of systematic land registration in which the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 12 of 2017 concerning Acceleration of Complete Systematic Land Registration was issued. guidelines in the implementation of nawacita until 2025.

Indonesia with an area of 850 million hectares, consisting of 191 million hectares of land and 649 million hectares of sea. Of the land area, about 124.19 million hectares (64.93%) are still in the form of forests such as dense forests, similar forests, and shrub forests. The remaining 67.08 million hectares (35.07%) have been cultivated with various activities. The

Ministry of Agrarian and Spatial Planning (ATR)/National Land Agency (BPN) in the Strategic Plan of the Ministry of Agrarian Affairs and Spatial Planning/National Defense Agency for 2015-2019 shows that 5,006,897 parcels of land have been legalized in 2010-2014. Based on data from the 2015 land data and information center, it shows that land registration in Indonesia has reached ± 54 (fifty four) million plots of ± 85 (eighty five) million land parcels, because since 1981 the first mass land registration was carried out in 1981. issuance of land rights certificates as proof of rights which is a strong means of proof, through strategic programs such as Prona (Ruslan, 2017).

Observing the development of land issues in the 59 years since the enactment of Law No. 5 of 1960, land issues have become a cross-sectoral problem involving all aspects of life. In this context, land is multidimensional, namely physical, chemical, biological, social, economic, political and religious dimensions, each of which has the potential to provide welfare for mankind (Muljono, 2016). This potential does not necessarily run well, because it is prone to land conflicts. In general, the motives and backgrounds for the emergence of various land conflicts include (1) the lack of order in land administration in the past, (2) the condition of the community being increasingly aware and understanding of their interests and rights, (3) a climate of openness as one of the policies outlined by the government. , (4) there are still many lands that do not have certificates, (5) land that is controlled by someone does not necessarily belong to the person who occupies it, (6) the process of land inheritance is not determined through legal mechanisms, (7) there is still land that is communal control which at any time can cause conflict, and (8) there are parties who use the opportunity to seek material gains unreasonably (Windari, 2014). In an effort to minimize land conflicts, especially for customary land rights, it is necessary to have good faith from the government to provide legal guarantees and protection for these customary lands through the mechanism or policy currently being rolled out, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 12 of 2017 concerning Acceleration of Complete Systematic Land Registration.

In relation to land registration, ulayat land is not a right that can be registered if it refers to Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration which explains that the objects of land registration include: 1). Plots of land owned with property

rights, cultivation rights, building rights and use rights; 2). Land management rights; 3). waqf land; 4). Ownership rights to the apartment unit; 5). Mortgage right; 6) State Land.

According to this Government Regulation No. 24/1997, ulayat rights cannot be registered because ulayat rights are not included in the object of land registration. registered rights, so that they can easily prove themselves as holders of the rights in question. For this reason, the right holder is given a certificate as a proof.

In fact, the guarantee of legal certainty in the land sector to the community with written, complete and clear legal instruments that are implemented consistently is needed to provide legal certainty in the agrarian sector, including ulayat land. In this case, what is no less important is the implementation of legal certainty for the indigenous peoples who own the land so that there is a guarantee of legal certainty for the rights to the land. Based on this phenomenon, the researchers then tried to adopt in this research to review the legal certainty guarantee of customary land rights and review in the sociological aspect the need for legal certainty of customary land through land registration.

RESEARCH METHOD

This research is a normative legal research conducted by examining library materials or secondary data. This research is descriptive. Descriptive research is research which is a problem solving procedure investigated by describing the current state of the subject or object of research based on visible facts. In legal research, the research approach can be used a statutory approach. The statutory approach is an approach taken to various legal rules relating to the registration of customary land related to the object of research.

RESULTS & DISCUSSION

Islamic Land Law

Islamic land law can be defined as the body of Islamic legal principles concerning land in relation to ownership rights (*milkiyah*), management (*tasharruf*), and distribution (*tauzi'*) of land. In Islamic legal studies, land law is commonly referred to as *Ahkam Al-Aradhi*. Generally, Muslim jurists (*fuqaha*) discuss land law within the broader discourse on state management of wealth and property (*al-amwal*). According to Islamic teachings, everything in the heavens and the earth—including land—belongs solely to Allah SWT. As stated in the Qur'an: “To Allah belongs the dominion of the heavens and the earth, and to Allah all things return.” (Qur’an, An-

Nur [24]: 42). Another verse affirms: “To Him belongs the dominion of the heavens and the earth. He gives life and causes death, and He has power over all things.” (Qur’an, Al-Hadid [57]: 2).

These verses emphasize that the true and absolute owner of all things, including land, is Allah SWT alone. As the absolute owner, Allah grants stewardship (*istikhlaf*) to humankind to manage His possessions in accordance with His laws. The Qur’an states: “And spend from that which He has made you trustees over.” (Qur’an, Al-Hadid [57]: 7). Interpreting this verse, Imam Al-Qurthubi explains, “This verse is proof that the origin of ownership lies with Allah SWT, and that humans possess no right except to use (*tasharruf*) what has been entrusted to them, in ways that are pleasing to Allah SWT.”

Hence, Islam explicitly outlines the philosophy of land ownership. This philosophy rests on two main principles. First, the true and absolute owner of land is Allah SWT. Second, Allah, as the true owner, has delegated authority to humans to manage land based on His divine laws. As a result, this philosophy entails that no law other than Allah’s laws (i.e., the Islamic Sharia) is permitted to regulate land affairs. To legislate land matters using man-made laws, instead of divine law, is considered impermissible. This is supported by the Qur’anic declaration: “He [Allah] does not share His legislation with anyone.” (Qur’an, Al-Kahf [18]: 26).

Furthermore, Islamic land law plays a vital role in shaping a just and equitable socio-economic order. Land, being one of the most essential economic resources, must be distributed and utilized in a manner that reflects divine justice and ensures social welfare. The Islamic legal framework on land discourages monopolization, speculative hoarding, and neglect of productive use. Land that remains uncultivated without valid reason may be subject to reclamation and redistribution to others who are willing and able to develop it, as exemplified in the practice of *ihya’ al-mawat* (revival of dead land). The state, acting as a guardian (*wali*) of public interests, is mandated to ensure that land benefits the broader community, rather than being concentrated in the hands of a few. This principle reflects the broader Islamic ethos of balance (*mizan*), justice (*adl*), and communal responsibility. Thus, Islamic land law is not merely a set of legal rules, but a comprehensive ethical system rooted in divine guidance, aiming to harmonize individual rights with collective good in the stewardship of earthly resources. (Saena, 2018).

Juridical Overview of Land Registration of Indigenous Peoples

Indonesia in the laws and regulations concerning natural resources produced by the State, has set the conditions for the recognition and respect for Indigenous Law Communities. The most recent regulation is the second amendment to the 1945 Constitution of the Republic of Indonesia, specifically the provisions of Article 18 B Paragraph 2 that "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society. and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". Regulations concerning Indigenous Law Communities are placed as part of the regulations concerning Regional Government. The term used in the Article is "Indigenous Law Community units". Before the term Customary Law Community was included in the Amendment to the 1945 Constitution of the Republic of Indonesia, various laws and regulations had already mentioned it. For example, in Law Number 5 of 1960 concerning Basic Agrarian Regulations, specifically in Article 2 (4) which stipulates that "The above implementation rights of the State can be delegated to autonomous regions and customary law communities, only necessary and does not conflict with national interests, according to the provisions of Government Regulations". Then also in Law No. 41 of 1999 concerning Forestry, Article 4 Paragraph (3) which stipulates that "State control of forests shall continue to pay attention to the rights of customary law communities, as long as they exist and are recognized for their existence, and do not conflict with national interests" (Sabardi, 2014).

The consequence of state recognition of the existence of indigenous peoples in all aspects of their lives, including in the land aspect is the constitutional mandate and laws that must be protected. However, in reality until now there are still perceived injustices such as cases related to communal land due to administrative weaknesses in land ownership status which is not certified by the community because it is considered legally owned as the rights of indigenous peoples, such as the case of the seizure of customary land in Klungkung and in Kintamani Bangli with the castle claiming ownership of the land based on a certificate of ownership (Windari, 2014). In fact, the recognition of customary lands of indigenous peoples can be known if their whereabouts can still be found by means of ongoing traditional ceremonies, customary sanctions that are still being enforced, and their existing customary lands. The status of their own ulayat land is evidenced by the existence of a tombo or book containing their history, territorial boundaries and customary management, legally they do not have written evidence in the form of a certificate but the existing circumstances can be used to explain the status of their ulayat land ownership (Pratiwi, 2007). 2015).

The current condition of customary land in Indonesia is based on the customary land law, the status of ownership is unclear because there is no land registration and recognition of property rights. This is compounded by a weak law due to the absence of land ownership rights to prove ownership of land rights as regulated in the UUPA, which causes it to be easily transferred by various parties (Rombot, 2015). Ownership of land rights is a basic and important thing in human life, therefore it is necessary to hold land registration to clarify the status of the land, in this case the ulayat land of the customary law community. In Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) it has been determined that lands throughout the territory of the Republic of Indonesia must be inventoried in such a way that they really help efforts to improve people's welfare in the context of realizing social justice.

The affirmation of the application of customary law can be seen in Article 5 of the UUPA which reads "Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with regulations. the regulations contained in this law and with other laws and regulations, everything by taking into account the elements that rely on religious law". Although in terms of land registration, customary land is not included in the object of land registration when referring to Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration, the government can issue a Customary Land Certificate (SKTA) through a Regional Regulation as a manifestation of Article 16 of the UUPA that the right to - Land rights originate from customary law with the permission of indigenous peoples and land that has been cultivated continuously and even for generations can be recognized as property rights.

Sociological Overview of Indigenous Law Community Land Registration

Land rights certificates according to the official view of the bureaucracy (BPN) are evidence and securities that guarantee legal certainty regarding the status of land ownership and control. On the other hand, people view land rights certificates as more than passports, travel documents that will convey entry into a world that is so formal and will get many conveniences (Soehendra, 2010). The official website of the Land Agency of the Republic of Indonesia (www.bpn.go.id) explains that there are at least seven goals of agrarian reform, namely reducing inequality in land tenure and ownership, creating sources of prosperity and community welfare, improving and maintaining environmental quality, increasing food security, resolving agrarian

conflicts, improve community access to economic resources and to reduce poverty and create jobs (ATR BPN). The goal of reducing poverty and creating jobs is a manifestation of the concept of a welfare state as an ideal model of development focused on improving welfare through giving the state a more important role in providing universal and comprehensive social services to its citizens (Suharto, 2008). . Empowerment that is carried out is not only focused individually but also collectively and all of that must be part of the actualization and co-actualization of human existence and humanity (Indra, 2017). The state is not present in the form of state domination but has a mandate to carry out its obligations in fulfilling the rights of citizens.

In relation to the PTSL program, Lawrence M Friedman said that for successful law enforcement to pay attention to legal substance (legal substance), legal structure (legal structure), legal culture (legal culture) and legal impact (Christiawan, 2018). Substantially, PTSL is here to improve the legal substance related to asset legalization so that it is able to accelerate development as a conscious effort to achieve a better life to fulfill human welfare.

The enactment of the Local Regulation (Perda) on Customary Land will have both positive and negative impacts. The positive impact is indicated by (strengthening) the recognition of various parties to SKTA as the basis for rights or initial evidence, the Government plays a dominant role in the welfare of its citizens. The position of the state must be strengthened within the framework of realizing prosperity (Absori, 2022). This can be seen by paying attention to four events, namely: 1). Land acquisition by way of compensation; 2). Borrow and use customary land; 3). Making a deed of transfer of land rights; and 4). Application for Cultivation Rights. In addition, the acknowledgment is based on the fact that customary law communities carry out cultivation and utilization. Creating a legal relationship between the subject and the object, namely in the form of physical control over the land (utilization and cultivation), this is the main consideration in processing the application for rights. SKTA is a reinforcement for this physical mastery (Simarmata, 2015). This will at the same time legitimize the nature of ulayat land in which ulayat land has an outward and inward nature. The inward nature means that it allows members of the customary law alliance to take advantage of the land and everything that grows and lives on it (managing the land, establishing residences, herding livestock, gathering food and hunting and fishing). This right is limited only to the interests of the family itself. The nature of the exit means a prohibition on outsiders or foreigners to take

advantage of the land unless there is prior permission from the customary heads and are required to pay recognition money or recognition money (Yarsina, 2018).

The negative impact is indicated by the uncertainty of the status of land rights, the main cause of which is the emergence of multiple claims. as described earlier, the granting of SKTA brings certainty of tenure rights for indigenous peoples. However, because the practice of granting SKTA has developed in such a way, the granting of SKTA actually creates uncertainty about the rights of other parties. Overlapping claims and recurring claims to land are the two main factors that cause this uncertainty. Overlapping of claims occurs if the control or ownership of one or several parcels of land is claimed by more than one person or party using the same or different types of base or proof of rights. Meanwhile, recurring claims are claims of ownership of land more than once by different people to be used as the basis for claiming compensation. Apart from overlapping and repeated claims, the uncertainty of rights can also occur due to the actions of the security functionaries who oblige through a circular letter for indigenous people in their territory to take care of SKTA without exception.

CONCLUSION

Islamic land law regulates the ownership, management, and distribution of land based on sharia. Land belongs to Allah SWT, and humans are only given the power to manage it according to His law. Therefore, land management must follow Allah's law, not man-made law. Review of ulayat land registration, that ulayat land is not a right that can be registered if it refers to Article 9 of Regulation - Government Number 24 of 1997 concerning Land Registration. However, as a form of providing guarantees and legal protection for ulayat land which is the mandate of the 1945 Constitution of the Republic of Indonesia and the UUPA. Then the government can issue a Certificate of Customary Land through a Regional Regulation as the output of the Customary Land Registration.

For customary law communities, the issuance of a certificate of ulayat land through the enactment of a Regional Regulation will have both positive and negative impacts. The positive impact is indicated by (strengthening) the recognition of various parties to SKTA as the basis for rights or initial evidence. The negative impact is indicated by the uncertainty of the status of land rights, the main cause of which is the emergence of multiple claims

REFERENCES

Absori, A., Nurhayati, N., Bangsawan, M., Budiono, A., Achmadi, A., & Nugroho, H. S. W. (2020). Green and Health Constitution of Green Open Space and Its Implementation in Surakarta. Journal of Global Pharma Technology, 12(9), 70-74.

Absori, A., Wardiono, K., Yuspin, W., Bangsawan, M. I., Budiono, A., & Fairuzzaman, F. (2022). Sosialisasi Kebijakan Pengadaan Tanah Bagi Pembangunan Dalam Perspektif Reformasi Agraria. Madani: Indonesian Journal of Civil Society, 4(1), 26-32.

Arifin, F. S. (2008). Pembaruan Agraria Nasional (PAN) dengan Program Sertipikasi Tanah Melalui Prona Guna Menyukseskan Tertib Administrasi Pertanahan di Kabupaten Pemalang (Doctoral dissertation, Program Pasca Sarjana Universitas Diponegoro).

Bangsawan, M. (2017). Pemberdayaan Ekonomi Kreatif di Kota Surakarta Melalui Instrumen Hukum Perizinan Industri Kreatif. Prosiding Seminar Nasional "Perizinan sebagai Instrumen Peningkatan Kesejahteraan Masyarakat di Era Industrialisasi (Citizen Friendly)".

Chomzah dalam Windari, R. A. (2014). Keberpihakan Regulasi Pertanahan terhadap Hak Masyarakat Adat (Studi Kasus Sengketa Tanah Adat di Desa Kubutambahan, Kecamatan Kubutambahan, Kabupaten Buleleng). Jurnal Ilmu Sosial dan Humaniora, 3(1).

Christiawan, R. (2018). Urgensi Pendaftaran Tanah Lengkap (PTSL) di Kecamatan Sukajaya Kapupaten Bogor. BERDIKARI, 1(2).

Haris, A. (2005). Pengaruh penatagunaan tanah terhadap keberhasilan pembangunan infrastruktur dan ekonomi. Perencanaan Pembangunan, 52-62.

Ismail, N. (2012). Arah politik hukum pertanahan dan perlindungan kepemilikan tanah masyarakat. Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, 1(1), 33-51.

Kompas, 2014, "Nawa Cita" 9 (Sembilan) Agenda Prioritas Jokowi – Jusuf Kalla, (Online), (https://nasional.kompas.com/read/2014/05/21/0754454/.Nawa.Cita.9.Agenda.Prioritas.Jokowi-JK, di akses pada tanggal 1 Mei 2024).

Muljono, B. E. (2016). Pendaftaran Tanah Pertama Kali Secara Sporadik Melalui Pengakuan Hak. Jurnal Independent, 4(1), 20-27.

Murad dalam Rombot, D. A. E. (2015). Pendaftaran tanah adat dan pembangunan masyarakat Minahasa di Indonesia (Doctoral dissertation, Universiti Sains Malaysia).

Pratiwi, S. I. (2015). Penyelesaian Sengketa Tanah Ulayat Antara Masyarakat Hukum Adat Dengan Taman Nasional Tessonilo. Kumpulan Jurnal Mahasiswa Fakultas Hukum.

Ruslan, R., & Djauhari, D. (2017). Implementation of Acceleration Systematic Land Registration Full In Humbang Hasundutan District. The 2nd Proceeding "Indonesia Clean of Corruption in 2020".

Sabardi, L. (2014). Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat. Jurnal Hukum & Pembangunan, 44(2).

Saena, H. G. (2018). Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (PTSL) Di Kabupaten Sleman Berdasarkan Peraturan Menteri Agraria/Badan Pertanahan Nasional Nomor 1 Tahun 2017.

Sianturi, R. E. Y. (2018). Politik Pembangunan Agraria Rejim Jokowi-Jusuf Kalla (Kebijakan Tanah Objek Reforma Agraria dan Perhutanan Sosial).

Simarmata, R. (2015). Kedudukan hukum dan peluang pengakuan surat keterangan tanah adat. Kemitraan bagi Pembaruan Tata Pemerintahan.

Soehendra, D. (2010). Sertifikat tanah dan orang miskin: pelaksanaan proyek ajudikasi di Kampung Rawa, Jakarta. HuMA-Jakarta, Van Vollenhoven Institute, KITLV Jakarta.

Suharto, E. (2008). Islam dan negara kesejahteraan. Makalah pada Perkaderan Darul Arqam Paripurna (DAP) Ikatan Mahasiswa Muhammadiyah (IMM), Jakarta, 18.

Windari, R. A. (2014). Keberpihakan Regulasi Pertanahan terhadap Hak Masyarakat Adat (Studi Kasus Sengketa Tanah Adat di Desa Kubutambahan, Kecamatan Kubutambahan, Kabupaten Buleleng). Jurnal Ilmu Sosial dan Humaniora, 3(1).

Yarsina, N. (2018). Perlindungan Hukum Terhadap Tanah Ulayat Yang Telah Bersertifikat Di Kota Bukittinggi. JCH (Jurnal Cendekia Hukum), 3(2).