



## Legal Position of Rights to Traditional Land Owned by the Batak Toba Community in North Tapanuli Regency, Reviewed from the Perspective of Indonesian Positive Law

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### ABSTRACT

The Toba Batak hold customary land. Will, but in practice, the range of customary rights has shrunk owing to control and takeover by other parties. The takeover has caused economic challenges for the Toba Batak people, who are unable to use their land and woods to support their daily necessities. This position contradicts Article 3 of the LoGA, which provides that the State expressly acknowledges the existence of ulayat rights and comparable rights derived from the customary law community as long as they exist in fact. The statute is endorsed by the Minister of Agrarian Affairs/Head of BPN Regulation 5 of 1999, which establishes guidelines for the settlement of Ulayat Rights Issues in the Indigenous statute Community. The research technique in this paper is descriptive, with an empirical legal approach. Data was gathered via collecting both primary and secondary data. Primary data was acquired through interviews with informants. Secondary data is gathered from both main and secondary legal documents. Document studies and interviews were utilized as data gathering tools in this study, and the results were examined qualitatively. Thus demonstrating that lands have become commodities that may be traded at any moment, as occurs in metropolitan areas, and that the mystical religious significance of the land has shifted to economic (commercial) value. This also demonstrates that individuals are more prepared to hold land separately from the land (ripe-ripe), allowing the land to be exchanged. BAL emphasizes the need of land registration in order to shift the emphasis of legal certainty via verification of rights in paper to the unwritten character of traditional customary law.

## INTRODUCTION

First proposed by Snouck Hurgronje, the Dutch word "AdatRecht" is translated as "Customary Law." A collection of conventions that are primarily unwritten, uncodified, and coercive in character, customary law has legal ramifications and punishments. Customary land rights, or customary rights and similar rights from communities based on customary law, are recognized and respected by that national land law as long as they actually exist, in line with national and state interests based on national unity, and must not be in conflict with laws and regulations.

There are several kinds of customary land rights under customary land law, including. In the event that the customary legal association is more or less involved in the opening of the land and is also accountable for any cases that occur there that have not been resolved, customary land rights are the village's customary rights and its will to control land within its customary legal environment for the benefit of each member or for the benefit of other people (foreigners) by paying a certain amount of damages.

The ability of members of a customary law organization to gather natural resources like wood, resin, rattan, wild animals, and other items from a specific plot of land inside an association territory is known as individual rights to land.

Communal rights are those that are held, managed, valued, and fostered by a collection of customary law groups in a particular location known as a customary law community.

The rights of communal customary law community units to govern, manage, and/or use and protect their customary area in conformity with relevant customary rules and values are known as customary rights of customary law community units or something similar.

The State of Indonesia is a legal state that upholds the idea of a welfare state, according to the 1945 Constitution. Indonesia is a big nation with many different cultures and customs from different tribes. Accordingly, the 1945 Constitution's (UUD 1945) provisions pertaining to the existence of customary law and positive law in Indonesia are based on the ideas and goals of preserving the diversity of culture and customs.

According to the 1945 Constitution's Article 18 B, paragraph 2, "The state recognizes and respects customary law communities and their traditional rights, as long as they are still alive and in accordance with the development of society." According to Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, "The land, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people, taking this into account, it is very clear that the existence of customary communities is recognized by the constitution." This is the fundamental idea of the Unitary State of the Republic of Indonesia.

Although there are still exceptions or restrictions on the implementation of the recognition and existence of indigenous communities, as mentioned in Article 3 of Law No. 5 of 1960 concerning Basic Agrarian Principles, it is also evident that these elements acknowledge the existence of indigenous communities. It is evident from a review of Law No. 5 of 1960 establishing the

Basic Agrarian Principles that customary law is a national law as it governs the land, sea, and space. According to Soepomo, customary law is a non-statutory law that is mostly based on tradition and a minor portion of Islamic law, with customary law serving as the foundation for land law.

The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency's Regulation No. 3 of 1997 concerning Implementing Provisions of PP 24 of 1997 concerning Land Registration, Government Regulation No. 24 of 1997 concerning the implementation of Law No. 5 of 1960 concerning Agrarian Principles in terms of Land Registration, and Article 19 of Law No. 5 of 1960 concerning Agrarian Principles.

Customary land can be registered for the first time by interpreting the regulation's mechanism and processes and providing proof of rights and certification. This is where the regulation's restrictions lay in demonstrating rights, both in writing and by certification by private or legal institutions.

In its journey, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 5 of 1999 concerning Guidelines for the Settlement of Customary Rights Issues of Customary Law Communities has been stipulated, in Article 6, which in essence states that the existence of customary law communities is stipulated by Regional Regulations. Several articles contained in this Regulation concern the existence of customary law communities.

The Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, as well as the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, regulate and recognize indigenous peoples' customary rights and land rights.

To ensure legal certainty over indigenous peoples' customary rights, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency issued Regulation No. 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Rights of Indigenous Peoples, as a form of recognition and respect for indigenous peoples' customary rights that are in line with legal developments and community needs. As a result, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency issued regulations.

It is envisaged that Number 14 of 2024 would serve as a legal covering, providing hope and protection for indigenous peoples' traditional rights. In his book, Satjipto Raharjo stated that legal protection is the protection of human rights that have been violated by others, and that this protection is provided to the community so that they can enjoy all of the rights afforded by law. Furthermore, legal protection is an endeavor to preserve a person's interests by giving him the authority to act in his own best interests.

Most Indonesians live in their customary lands or rely on gardening and farming for a living, therefore they maintain customary land ideally and consistently. That is what happened in North Tapanuli Regency, which is still rich in customs, particularly customary land rights passed down through

generations. However, seeing the current problems, it is not uncommon for problems to arise on customary land, but the government is still normative in paying attention to customary communities, still far from seeing the existing social life (legal pluralism) of the community, and of course, they still use land management and utilization patterns using customary law that is inherited from generation.

According to the 1945 Constitution, the State of Indonesia is a law-abiding welfare state. As a welfare state, the state's job and obligation are not limited to maintaining and enforcing the law for the sake of order and security, but also to increase the wellbeing of society.

North Tapanuli Regency, with Tarutung District as its center, is a regency in North Sumatra Province, Indonesia, founded on October 5, 1945. The Toba Batak ethnic group makes up the vast bulk of its people. According to Central Statistics Agency statistics, the population of North Tapanuli Regency will be 318,424 between 2020 and 2022. Many customary lands in North Tapanuli Regency have yet to be certified, and ownership of the land is obtained through hereditary inheritance of the customary land, so it is necessary to investigate the legal position of the rights to Toba Batak customary land inherited from generation to generation in North Tapanuli Regency.

Based on the matters stated above, the author chose to conduct this research in order to further examine the legal protection of the communal rights of customary law communities with the title: "Legal Position of Rights to Customary Land Owned by the Toba Batak Indigenous Community in North Tapanuli Regency Reviewed from the Perspective of Indonesian Positive Law".

That the legal status of Batak customary land in North Tapanuli Regency must receive legal protection for the local Indigenous Community's customary rights by first examining the legal status of the Community's land rights by examining positive Indonesian law that regulates customary land rights (customary rights) of indigenous communities. However, before beginning the investigation, the author defines the vocabulary used in indigenous legal cultures. The term indigenous legal communities appears in a variety of literatures. Some refer to it simply as indigenous peoples or traditional communities, whereas the 1989 ILO convention refers to it as indigenous and tribal peoples. However, all of these phrases have the same meaning, and it is believed that there would be no misunderstanding when discrepancies.

## **THEORETICAL REVIEW**

The author uses the progressive legal theory according to Satjipto Rahardjo, the pure theory of law according to Hans Kelsen and the theory of legal pluralism as analytical weapons in this study. The theoretical basis used as a reference in this study is as follows:

### **1) Progressive Legal Theory as a Grand Theory**

Satjipto Rahardjo is of the opinion that law should not only be seen using the provisions of statutory regulations, but should also be seen as a whole through

## 2) Theory of Development Law as Applied Theory

Muchtar Kusumaatmaja argues that law is not limited to maintaining security and order, but can also play a major role in the progress of development. Through the theory of development law, Muchtar Kusumaatmaja develops the concept of "law as a tool of social engineering" other scientific approaches, such as the sociological approach, anthropological approach, psychological approach and economic approach.

## METHODOLOGY

The research method used is a qualitative normative legal literature method, comparative law and legal history, namely legal research that uses secondary data, starting with an analysis of legal problems that come from literature and laws and regulations related to customary land (ulayat). Normative legal research is research that refers to legal norms contained in laws and regulations, international conventions and court decisions. This research method is used by remembering that the problems studied revolve around laws and regulations, namely the relationship between one regulation and another and its relationship to implementation in practice. The normative legal method is also called doctrinal research, which is a research that refers to legal analysis (law as it is written in the book and law as it is decided by judge through judicial process).

## RESEARCH RESULTS AND DISCUSSION

The Toba Batak Customary Land in North Tapanuli Regency is the subject of this study, which specifically examines the Legal Position of Toba Batak Customary Land Rights in North Tapanuli Regency by reviewing and focusing on their existence in Indonesian positive law. Toba Batak customary law refers to the customary rights area or environment as golat. This study focuses on Toba Batak traditions because they constitute the majority of the people in North Tapanuli Regency. In this situation, data is required from the Customary Institution in North Tapanuli Regency and the National Land Agency to identify the number of customary areas and customary lands, as well as the land status and location of customary land.

The Batak Customary Law Community in Garoga District, North Tapanuli Regency, North Sumatra Province, maintains strong customary traditions or laws, including the maintenance of communal customary land rights. The Batak customary association in Garoga District is very dependent on customary land because land is a necessity where every community lives from farming, so the Batak customary law community always tries to have land, both individual land and group land (marga). In a legal perspective, the relationship between humans and land, namely, in addition to individual rights, also discusses customary rights, which are the rights of the people or the natural rights.

In the Toba Batak traditional community in Garoga, North Sumatra, to own a piece of land, one must have recognition from the traditional group or what is often called in the Batak language "Natua-tua ni huta" because in the land

ownership system in Garoga, North Tapanuli or in the Batak tribe, land ownership is usually divided into three parts, namely: *bius*, *horja* or *lumban* and, *huta*, if interpreted in the sense of the form of regional government, *bius* is a sub-district.

For the Batak traditional community, each clan typically controls the three parts, or something similar for the Garoga customary law community of North Sumatra. For instance, the Pasaribu clan controls the village of Garoga Sibargot in North Tapanuli, North Sumatra province, because they were the first to occupy the area and are the customary king there. This applies to all residents, including newcomers, and the process of acquiring a plot of land requires approval from both the local and customary communities.

The Sioma-oma hamlet customary law community is still growing and thriving today, but its efforts to have its customary forests or land recognized have not been carried out correctly. Nevertheless, the community's existence is still carried out correctly and continues to engage in activities that are within their customary rights. The community cannot completely regulate its customary forest, though, because the government still does not recognize it or provide it with protection in the form of rules and regulations controlling its existence. The Sioma-Oma hamlet customary law community in Garoga District, North Tapanuli, is working to maintain its customary land and mediate with the government.

The Batak Toba community has essentially established its existence, which may be referred to as a type of structure and/or unity of customary law society, according to the study that was done. Having a framework of social units known as *huta*, *golat*, and *bius*. This is evident from the long-standing spatial planning, which includes:

Forest regions are referred to as *juru* or *rabi* for young woods and *tano rimba* and *harangan* for mature forests. *Tano na jadi hea niula* or *tano tarulang* are terms used to describe terrain that has never been cleared. A portion of land that has been cleared and left unoccupied is referred to as *gasgas*, *tano na niulang*, or other phrases that are comparable to these;

Residential neighborhood: The *parhutaan*, or residential area, is situated on a piece of ground that is bounded by the *parik bulu dun* and *suraton* walls. *Pagopago*, which is often a big stone or tree, or other names that are comparable to this phrase, is used to denote the four corners;

Agricultural regions: *Saoa* or *hauma* refers to rice farms. We refer the rice cultivation fields as *hauma tur*. *Tano dipaombal* is a section of land that has remained fallow for a little amount of time, say two years, with the intention of rotating crops. *Talun* is the term for land used for the same purpose that is kept fallow for an extended length of time. A field used for cultivating crops other than rice is called a *porlak*, or similar words;

Grazing area: *Jampalan*, or similar terms, refers to a tethered grazing area for cows, goats, or horses, whereas *Jalangan* is a pasture for unsupervised animal grazing. In this sense, the nation's constitution requires that the Toba Batak customary law community be recognized and protected.

## **CONCLUSIONS AND RECOMMENDATIONS**

One of the most important steps in guaranteeing the survival of the indigenous communities' traditional rights and way of life in North Tapanuli is the process of acknowledging their rights. Their rights to land, natural resources, and a regular means of subsistence are acknowledged and respected by this acknowledgment. In North Tapanuli, identifying indigenous groups and creating indigenous woods entail difficult obstacles and efforts. Formal recognition is frequently thwarted for Indigenous communities by a number of factors, including complex administrative processes, a lack of government support and understanding, and conflicts with competing interests. In North Tapanuli, the indigenous communities benefit from the establishment of indigenous woods and the acknowledgment of their existence. Restoring indigenous communities' rights, increasing their involvement in natural resource management decision-making, bolstering their identity and culture, and boosting their economic well-being are all part of this. To improve the identification of indigenous communities and the construction of indigenous forests in North Tapanuli, a number of policy proposals must be made. Enhancing coordination between local governments and indigenous communities, providing sustainable monitoring and evaluation of the implementation of policies for the identification and establishment of indigenous forests, and increasing access to and support for indigenous communities in the administrative process are some of these recommendations.

## **FURTHER STUDY**

To provide deeper insights and wider applications, more study is invited to explore this area further, addressing any potential limits and broadening the scope of analysis.

## REFERENCES

### Buku-buku

Hans Kelsen, *Pure Theory Of Law*. Translation from the Second (Revised and Enlarged) German Edition. Translated by: Max Knight. University Of California Press, 1967.

Muchtar Kusumaatmaja, "Konsep-Konsep Hukum dalam Pembangunan: Kumpulan Karya Tulis", Bandung: Penerbit Alumni, 2002, hlm. 14.

Ronald Dworkin, "*Legal Research*", (Daedalus: Sping, 1973), hlm. 250.

Ronald Dworkin, ed., *The Philosophy of Law* (Oxford University Press, 1977) hlm.17-22.

Satjipto Rahardjo, *Ilmu Hukum*. Penerbit Alumni, Bandung, 1986. hlm. 124-125.

Satjipto Rahardjo (II), 2006. *Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia, Mengapa Hukum Progresif Indonesia*, (Semarang: Pustaka Pelajar). Hlm. 6.

Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Penerbit Radjawali, 1985), hlm.14.

Soepomo, *Bab-bab Tentang Hukum Adat*, Penerbit Pradnya Paramita, Jakarta, 2000), hlm. 7.

### Peraturan

Undang-Undang Dasar Tahun 1945,

Undang-Undang Nomor 5 Tahun 1960 Tentang Undang-Undang Pokok Agraria,

Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah,

Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah,

Peraturan Menteri Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan dari PP 24 tahun 1997 tentang Pendaftaran Tanah,

Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Nomor 18 Tahun 2021 tentang Tata Cara Penetapan Hak Pengelolaan dan Hak Atas Tanah,

Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Nomor 14 Tahun 2024 tentang Penyelenggaraan Administrasi Pertanahan dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat.

**Sumber Lain/Makalah/Publikasi**

Eka Susylawati. 2009. Jurnal. Eksistensi Hukum Adat Dalam Sistem Hukum Di Indonesia. Al-Ihkam. Vol. 4 No. 1.

Maharidiawan Putra, "Keberadaan Tanah Adat dan Tanah Negara Bagi Kepentingan Masyarakat", Jurnal Morality, Vol.2 No.2, 2015, hlm.3.

Nunuk Sulisrudatin, "Keberadaan Hukum Tanah Adat Dalam Implementasi Hukum Agraria", Jurnal Ilmiah Hukum Dirgantara, Vol.4 No.2, 2014, hlm.37.

Magister Hukum Program Pascasarjana Universitas HKBP Nommensen, Jurnal Volume 03 Nomor 01 Januari 2022 Halaman. 01-15, Pengakuan dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba. <http://ejournal.uhn.ac.id/index.php/opinion>. diakses pada tanggal 01 Oktober 2024.

Satjipto Raharjo, 2003, Sisi-sisi Lain dari Hukum di Indonesia, Kompas, Jakarta, hlm.121.

Zaaken: Journal of Civil and Business Law hlm.249, <http://online-journal.unja.ac.id/zaaken>. diakses pada tanggal 01 Oktober 2024.

Simanjuntak

**Interner/Kamus**

Badan Pusat Statistik Kabupaten Tapanuli Utara jumlah penduduk total (Jiwa)

2020-2022      <https://tapanuliutarakab.bps.go.id/indicator/12/73/1/jumlah-penduduk-total.html>, diakses tanggal 6 Juli 2024.