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Antinomi Regulations on the Recognition and Enforcement of Ulayat Right from Indigenous Peoples

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ABSTRACT: Ulayat Right is a historical right owned by tribal groups scattered throughout Indonesia that contains the value of local wisdom in the arrangement of control, use, utilization, supply, and maintenance of agrarian resources. The substance of Ulayat Right and the organization of the power of indigenous peoples as the executor of the authority of Ulayat Right became a model in the development of agrarian law Nasional as stated in the Basic Agrarian Law (UUPA). The state has an obligation to recognize in the sense of respect while protecting and fulfilling what is the right of every citizen. One of them is the right of control and ownership of Ulayat Right that until now has not been implemented optimally, as if the mastery and ownership of Ulayat Right by indigenous peoples is not fully accessible from the LAW and other laws and regulations. Based on the background of the above problems, the purpose of this paper is to review the Antinomics of The Ulayat Right Regulation of Indigenous Peoples with public-private and private-dimensional ulayat land and explore and analyze the urgency of protection of Indigenous Peoples' Rights in Indonesia. This paper is normative research, the approach used is a statutory approach (*statute approach*), presented descriptively-perspective and analyzed qualitatively. The conclusion in this paper Is the Authority of the Indigenous Law Community, while the private dimension appears in the manifestation of Ulayat Right as belonging together. So that the scope includes recognition and confirmation, granting of land rights on Ulayat Right, transfer and eradication of indemnity rights and the removal of private Ulayat Right. Therefore, it is necessary to establish a draft law governing the Rights of Indigenous Peoples.

KEYWORDS: Antinomi, Ulayat Right, Customary Law

I. INTRODUCTION

The birth of a nation was the result of the unification of different tribes either on the authoritative basis of certain powers or based on a common commitment, which organski called Primitive Reunification (Organski, 1969, The Stages of Political Development, Alfred A. Knopf, New York). Authoritative power is certain as the basis of the formation of the nation that the nation concerned formed because there is a political act of unification by the dominative power holder and encourage unification. The birth of a nation based on a shared commitment stems from the willingness of tribal groups to live in a national bond because of the similarity of interests, similarity of fate, similar socioeconomic conditions, and similar commitment to fight for fate.

Indonesia is a developing country where the community bersifat plural with various characteristics custom each that has grown long before the establishment of an unity indiversity. Therefore the choice of building model sistem land law andnational keagrariaan become very dynamic or according to Herman Soesangobeng requires retranslation or new interpretation of land law Adat contemporary. The way that must be done is not the substance or content of the formulation of Customary norms but the soul that becomes the philosophy and perspective of the Indonesian nation that has been translated into the principles and teachings of traditional Customary land law. The nature and nature of the relationship of Indonesian human relations born from their respective customs with land resources is fused without the distance of participatory thinking nature Herman Soesangobeng, Philosophy, Principles, Teachings, Theory of Land And Agrarian Law,Mould Pe (Yogyakarta: STPN Press, 2012). *(participeren denken)* where there is a dialogist interaction affects each other in a legal relationship (*rechtsbetrekkingen)* between legal subjects that must be seen as a legal action including legal consequences for humans and their communities in case of violation of the law. Soesangobeng, 205.

One of the customary rights in land law is The Ulayat Right. Ulayat Right is a historical right owned by tribal groups scattered in the territory of Indonesia that contains the value of wisdom in the arrangement of control, use, utilization, supply, and maintenance of agrarian resources including land. The substance of Ulayat Right and the organization of power of indigenous

peoples to be the executor of the authority of Ulayat Right as a model in its contribution to the sustainability of national agrarian law as stated. In the development of national and state life, the placement of Ulayat Right as a model in determining the common rights of the Indonesian nation and the relationship between the state and agrarian resources has been destroyed or forgotten by the modernization of agrarian law including national land law. The Constitution of the Republic of Indonesia of 1945 does not provide the definition of indigenous peoples directly. Nevertheless, there is an article that recognizes the existence of indigenous legal peoples. This has arisen since the second amendment of the Constitution of the Republic of Indonesia in 1945 in 2000, namely the addition of Article 18 and the emergence of a special chapter on Human Rights. Arrangements regarding the existence of indigenous peoples can be found in Article 18B paragraph (2) and Article 28I paragraph (3). Article 18B paragraph (2) is in the Chapter of Local Government, while Article 28I paragraph (3) is in the Chapter on Human Rights.

This relationship is different from the principle of negara law that is normalized in Article 1 Constitution of the Republic of Indonesia Year 1945 (NRI Constitution 1945) with the institution named Constitutional Court (MK). Article 1 of the 1945 NRI Constitution means that the constitution is a form of delegation of people's sovereignty *(the sovereignity of the people)* to thestate. And through the constitution, the people make a statement of volunteerism to give a handful of their rights to the state. Thus the constitution must be supervised and controlled from violations both committed by state organizers and power holders through a state institution named the Court of Konstitusi.

In Customary Law, the right to land is distinguished between the right of legal alliance (Ulayat Right) and the rights of individuals. The right of legal communion of land with individual rights to land has a very close relationship and influences each other. Ulayat Right is a term that has been agreed upon by legal experts and academics so that indigenous peoples understand the land within its territory, which is called ulayat land and is a *lebensraum* for its citizens all the time. Van Vollenhoven referred to the Ulayat Right as *beschikkingsrecht* or the right of *pertuanan.*Boedi Harsono, Indonesian Agrarian Law (Jakarta: Bridge, 2003), 283.

With this paper the author hopes that the authorities can pay more attention to the needs of the legal umbrella against protectionn rights of indigenous peoples, also stipulate through the Decree on the existence of the Rights of Indigenous Peoples Ulayat, so that later there will be coexistence and adaptation between state law and customary law in establishing the existence of the rights of Ulayat Indigenous Law Peoples or communal land of indigenous peoples as a result of the influence of village law since 1979. Currently, there is expected to be fundamental improvements and changes in the determination of Ulayat Right from Indigenous Legal Peoples or indigenous peoples, so that there is clarity on aspects of legal certainty and protection of indigenous peoples' rights and communal lands of Indigenous peoples throughout Indonesia with various variants.

II. PROBLEM FORMULATION

1. How antinomi regulation on the recognition and determination of the rights of indigenous peoples?
2. What is the concept of the regulation of protection of Ulayat Right Indigenous Peoples law in Indonesia?

III. PURPOSE OF WRITTING

1. Analyzing antinomi regulation on the recognition and determination of the rights of indigenous peoples.
2. Researching the concept of the regulation of protection of Ulayat Right Indigenous Peoples Law in Indonesia.

IV. METHODOLOGY

Research method is basically a series of stages or systematic procedures used to find the truth in a scientific work in this case is journal writing, so as to produce a quality journal that is a journal that meets the requirements of research. This type of research in this(Soemitro, 1990, p. 10) journal is literary or library *research*, meaning a study by studying books or books related to this journal derived from the library (library material). All sources are derived from written materials (printed) related to research problems and other literature (electronic).**Sutrisno Hadi, Methodology Research 1 (Yigtakarta: Gajah Mada, 1980), 3.**

The approaches in the research are divided into two, namely qualitative approach and quantitative approach. In writing this journal the approach used is qualitative approach, which is an approach that in the processing and analysis of data does not use mathematical numbers, symbols and or variables but rather with a deep understanding *(in depth analysis).* In the discussion, researchers used a juridical approach- normative, which is a type of approach using the provisions of legislation applicable to a State or method ofdoctrinal legal approach that is theories of law and opinions of legal scientists, especially related to the issues discussed. The **Ronny Hanitijo Soemitro, Legal Research Method (Jakarta: Ghalia Indonesia, 1985), 24.**juridical-normative approach used in this study is an approach through positive law, namely studying the rules of positive law to find the importance of the establishment of regulations on the Rights of Indigenous Peoples in Indonesia. This article uses secondary data, namely:**Suharsimi Arikunto, Introduction to Legal Research (Jakarta: Rineka Cipta, 2000), 5.**

1. Primary Legal Materials are binding legal materials such as the 1945 Constitution; **Soerjono Soekanto, Introduction to Legal Research (Jakarta: UI Press, 1995), 9.** Law No. 5 of 1960 on Agaria Principal andother legislation.

2. Secondary Hukum materials used in this paper are materials that can help develop primary legal materials that have been used, such as AcademicManuscripts. Draft law, research, or the doctrine of legal experts.
3. The Tersier Legal Materials used in this paper are materials that can help develop primary and secondary legal materials such as dictionaries and encyclopedias.**Zainal Ammiruddin and Asikin, Introduction to Legal Research Methods (Jakarta: Rajagrafindo Persada, 2006), 31–32.**

Other materials that become the object of research are Books and Legislation on Constitutional Law, Legal Politics, Local Government and Regional Autonomy. In addition, to complete the data and information, it is also necessary for the author to interview parties related to the theme of writing this journal.

V. THEORITICAL FRAMEWORK

The Pure Theory of Law is a positive legal theory that seeks to answer the question of what the law should be and how it was made. The Pure Theory of Law stated by Hans Kelsen has freed the science of law from all foreign elements. That theory has directed the understanding of the law only to the law itself and eliminated all that is not the object of that legal understanding. **Hans Kelsen, Introduction to Legal Theory,ed. Siwi Purwandi (Bandung: Nusa Media, 2012), 37.**

Bothlegal problems are faced and resolved as a system problem. Law as a system is a system of legal norms. A norm becomes valid if the substance can be referred to the highest norm as the basis. In discussing the urgency of protecting the rights of indigenous peoples in Indonesia, the author will use The Pure *Theory of Law* as a scalpel to determine factors and indicators of the urgency of protecting rights for all indigenous legal peoples in Indonesia.

VI. RESULT

1. Antinomic regulations on the recognition and determination of the rights of indigenous peoples

Thinking that develops from the reflection of various thoughts that are antinomic philosophical values that develop in the civilization of life on earth. **Jundiani Jundiani, "Actualization of Antinomic Philosophical Values Article 33 of the 1945 Constitution," Journal de Jure 7, no. 2 (2016): 160, https://doi.org/10.18860/j-fsh.v7i2.3522.**This is seen in historically juridical searches about the life of the Indonesian state has been known indigenous peoples in Indonesia often get legal problems. They often get discrimination resulting from unclear rule of law.

Recognition of the existence of Indigenous Peoples (Law) is regulated in accordance with the provisions of the laws and regulations. The area that can be confirmed as Ulayat Right is an area where the Indigenous People (law) and its place take the needs of his life in the form of land, water, and / or water along with natural resources that exist on it with certain boundaries for generations. In addition, there is a customary legal order concerning the control, regulation, management, utilization, and supervision of Ulayat Right, which applies and is adhered to by the citizens of the Adat Community (law). Thus there is a relationship, attachment and dependence concerning customary law with its territory.

The authority to utilize the Ulayat Right Law includes the regulation, management, management, and supervision of the *first* provision, use, supply, and maintenance of The Ulayat Right, the *second* legal relationship between the person and the Ulayat Right, and the *third* legal relationship between the person and the legal action concerning the Ulayat Right.

The legal relationship between indigenous peoples and their territories consists of:

a. Ulayat Right containing public and private elements; Dan
b. Ulayat Right that contain private elements.

Ulayat Right containing public and private elements are Ulayat Right in which there is the authority of the Indigenous Law Community to regulate, manage, manage, and supervise the rights of ulayat as a joint property concerning:

a. provision, use, supply, and maintenance of Ulayat Right;
b. the legal relationship between the person and the Ulayat Right; Dan
c. legal relationship between persons and legal acts concerning the Ulayat Right.

Ulayat Right containing public-private elements are Ulayat Right in which there is the authority of indigenous peoples to use and use ulayat land together. The Local Government strengthens the rights of indigenous peoples (law) that have a dimensional or opinionated or contain a public-private element with the determination in the form of local regulations or decisions of regional heads, depending on the situation of their respective local governments. The confirmation of the existence of Ulayat Right is stated in the basic map of land registration by affixing a cartographic mark describing its boundaries and listing them in the land list. The registration of public-private civil rights land does not need to be issued as a certificate. While the confirmation of the existence of civil rights with dimensional or mustered or containing private elements through land registration in accordance with the laws and regulations. Such land registrations are issued as land certificates.

This paper specifically discusses the protection of Ulayat Right that contain public-private elements *ansich*, and does not intend to enter into the rights of ulayat that are private. Because the arrangement of individual land ha katas (private) is already

regulated by the Law and many regulations. On the contrary, public-private Ulayat Right are still ambiguous and seem to be ignored. The problem of the existence of Ulayat Right is partly due to the absence of certainty of indigenous territories, in this case the absence of accurate indigenous boundary data that causes conflicts in indigenous boundaries. Especially Ulayat Right which directly borders the forest resources controlled by the State. Meanwhile, the indigenous legal community itself must first be confirmed its existence through local regulations. The confirmation can only be done if the indigenous legal community meets 5 conditions, namely: a) the community is still in the form of a community (rechtgemeenschap); b) there is an institutional in the form of a device of its customary rulers; c) there is a clear customary jurisdiction; d) there are legal institutions and devices, especially customary judiciary, that are still adhered to; and e) still conducting forest products collection in the surrounding forest area for the fulfillment of daily living needs.

2. Concept of protection of Indigenous People's Rights in Indonesia

The existence of indigenous peoples with Ulayatnya Rights will be recognized if thefour conditions mentioned above aremet. So in this context, an etymological approach is required, namely through the method of legislation approach (*statute approach*), caseapproach (case*approach*), customary legal approach.Soetandjo Wignjosoebroto, Points of Mind About The Four Conditions of Recognition of The Existence of Indigenous Peoples", In the Inventory and Protection of The Rights of Indigenous Peoples (Yogyakarta: Gajah Mada, 2005), 47.

Agrarian Basic Law (Here in after referred to as UUPA) does not explain rigidly about ulayatrights, but only mentions Ulayat Right are "*beschikkingsrecht"*. Some literature describes that Ulayat Right as legal terms are inherent rights as a typical competency in indigenous legal communities, in the form of authority / power to manage and regulate the entire land with the power of practice inwards and outwards. The indigenous legal community as a unit with the land it occupies has a very close relationship. The relationship is based on a magical religious view. This magical religious relationship caused the legal community to gain the right to control the land, make use of the land, collect the proceeds from the vegetation that lived on the land, as well as hunt against the animals that lived there. The rights of indigenous peoples to the land are called civil rights or Ulayat Right, and in the literature this right by Van Vollenhoven is called *beschikkingsrecht.*Bushar Muhammad, Principles of Customary Law (Jakarta: Pradnya Paramita, 1981), 103.

Regulation of the Minister of Agrarian State / Head of the National Land Agency No. 5 of 1999 (Permenag 5/1999) on Guidelines for Solving the Issue of Indigenous Peoples' Rights dated June 24, 1999 in Article 2 states:**Maria S.W. Sumardjono, Spirit of Constitution and Fair Allocation of Natural Resources (Yogyakarta: Faculty of Law, Gadjah Mada University, 2014), 17–23.**

a. The implementation of Ulayat Right as long as in fact there is still done by the indigenous legal community concerned according to the provisions of local customary law;
b. The rights of indigenous peoples are considered to still exist if:
   1) There is a group of people who are still bound by their customary legal order as citizens with a certain legal alliance, who recognize and apply the provisions of the alliance in their daily lives;
   2) There is a certain ulayat land that becomes the living environment of the citizens of the legal alliance and where it takes its daily necessities; Dan
   3) There is a customary legal order, concerning the management, control and use of ulayat land that occurs and is obeyed by the citizens of the legal alliance.

Article 5 Paragraph (1) states, that the determination and results of research there are still Ulayat Right as stated in Article 2 implemented by the Local Government with the participation of legal experts who focus on the science of customary law, indigenous legal communities located in the relevant areas, NGOs (Non-Governmental Organizations) and institutions / agencies that manage natural resources. The existence of NGOs and institutions / agencies is then poured into the basic map of land registration by adding a sign of cartography and if allowed, describing the limitations and registering in the land registration (Paragraph 2).

In Article 4 paragraph (1) states, that the possession of ulayat land can be done:

a. "By the citizens of the indigenous legal community concerned with the right of control according to the provisions of the applicable customary law, which if desired by the rights holder can be registered as the right to land in accordance with the LAW;
b. By government agencies, legal entities or individuals are not citizens of the indigenous legal community concerned with the right to land according to the provisions of the Constitution based on the granting of the State after the land is released by the indigenous legal community or by its citizens in accordance with the provisions and procedures of applicable customary law."

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The provisions that have been described above, can be interpreted that there is a possibility for "foreigners" with the understanding that people outside the indigenous legal community to have Ulayat Right, with the provision to relinquish the rights of the indigenous legal community first by the party concerned. So it seems to tarnish the nature of the right ulayat itself that has the power explicitly and implicitly. Supposedly, if desired, the land can be owned by "foreigners" should the indigenous legal community itself determine. It can be concluded, that this regulation is less reflective of protection and is a more subtle effort than previous efforts to emphasize the scope of the national interest and ignore the interests of indigenous peoples.

In addition, it is also mentioned, that the existence of Ulayat Right is recognized, provided that it is not contrary to the national interest, but in practice is often abused. Such as, in addition to the content of the national interest is filled with personal interests or groups also ignore the primary interests in the lives of indigenous peoples with national tertiary interests, so that there should be a provision of recognitie to the indigenous legal community peacefully for the replacement of the land ulayatnya, not the provision of compensation by force.

One of the conditions of recognition of Ulayat Right according to Permenag 5/1999 is that there must be an attachment of citizens to the customary legal order, on the other hand giving the possibility of "foreigners" owning parts of ulayat land even through release according to customary law.**Agung Basuki Prasetyo, "ULAYAT RIGHT AS CONSTITUTIONAL RIGHTS (An Empirical Juridical Study)," Legal Issues 39, no. 2 (2010): 141, https://doi.org/10.14710/mmh.39.2.2010.147-152.**

According to Van den Berg with the theory *receptio in complexu* states, that the customary law of a society follows the laws of religion that it adheres to. Consequently, the regulation of the right to control over ulayat land will also be regulated or at least have something to do with the religious law of the community concerned. Therefore "foreigners" who are allowed to own different parts of the land ulayat religion certainly can not implement the customary rules of the community in utilizing the land. As in the indigenous legal community in Bali, where religion and customs have been integrated in the daily life of the community in the container of The Village of Adat or Pakraman Village is even difficult to separate, can only be distinguished. For example, the attachment of "ayahan" to the land of Ulayat is communalistic religio.**Ter Haar, Principles And System of Adatrecht,ed. Subekti Poesnoto (Jakarta: Pradnya Paramita, 1974), 28.**

Permenag 5/1999 can be said plagiarization with Article 3 uupa which still recognizesthe rights of ulayat masyarakat customary law, because in Article 4 Permenag mentioned, that ulayat land can be registered, while in Article 3 Permenag 5/1999 this determines, that the field of ulayat land that has been listed can no longer be enforced Ulayat Right provisions. If true like this can occur the tug of law norms, in which to guarantee the value of legal certainty of land rights required registration, while the excesses of registration is not to re-enact the provisions of the right of ulayat. Finally, automatic Ulayat Right will not be recognized if it has been registered according to the UUPA. Thus the registration of Ulayat lands according to the UUPA will be able to result in the loss of ulayat land status, especially leading to individualization in the ownership system. Finally, these former Ulayat lands are no longer subject to customary law.

Another thought that can be conveyed, that not all "registration" of Ulayat Right has excesses, that Ulayat Right do notapply anymore the provisions of customary law, but the registration caused a change to the "status" of ulayat land that is communal in the bond of Ulayat Right into a full individual land. If the status of the Ulayat Right is released or revoked by the indigenous legal community itself and on the land thenburden the rights to the land according to the Basic Agrarian Law. Thus it can be concluded that not because of his registrant, but because of the act of exile to the status of his land.

This condition needs to be emphasized, to avoid the assumption that Ulayat Right in the form of Pura Profit such as in Pakraman Village in Bali that have been registered to obtain a certificate is no longer enforced Ulayat Right provisions that are ultimately not recognized by the state. Meanwhile, the vision of the Decree of the Minister of Home Affairs No. SK.556/DJA/1986 is toachieve legal certainty through the registration of Laba Pura as a Ulayat Right. In fact, there are now many lands of Laba Pura registered to obtain a certificate of property rights (on behalf of the Temple), so that the legal function as a means of social change (a tool of social engineering) in this case can be declared effective. It is different if the land of Laba Pura as part of Ulayat Right is registered in the name of a person to obtain SHM, so that after being asserted through a certificate, then the land can no longer be declared as Ulayat Right, but has been changed into a full individual right.

According to Article 3 Permenag 5/1999 on the other hand stated, that against ulayat lands that have been owned by individuals or legal entities with a right to land according to the LAW can no longer be enforced Ulayat Right of indigenous peoples. Therefore Permenag 5/1999 is not appropriate as a reference material, because it is not appropriate to translate Article 3 uupa that still recognizes the existence of the Ulayat Right, also does not respect the right of origin of the region as referred to in the explanation of Article 18 of the 1945 Constitution jo the intent of the provisions of Article 18 B (2) amendments (amendments) to the four NRI Constitutions of 1945.

Since Permenag 5/1999 was enacted until then revoked with Agrarian Candy and Spatial No. 5 Year 2015 that has been revoked again with Agrarian Candy and Spatial No. 6 Year 2016 (Permen ATR 10/2016) on the Determination of Communal Rights on The Land of Indigenous Peoples In Certain Areas, it can be observed that the existence of Ulayat Right of indigenous legal peoples has never been established in a Basic Map of Registration through the Decree of the Head of The Region both in the Province and in the District / City. Although for recognition and protection has been arranged registration model but there is no

real form, so the indigenous legal community fights itself when it wants to defend the Ulayatnya Rights when there are claims from other parties. Therefore, there is no denying that dispute of Ulayat Right indigenous law community with other parties both vertical and horizontal escalation is still high, as in the case of Masuji in Lampung, Salim Kancil in East Java, Lembeng Gianyar Bali, Amungme Tribe in Papua.

In the national dimension of recognition of the existence of Ulayat Right can also be found in several laws and regulations, such as:

a. NRI Constitution 1945 4th Amendment

"Article18B Paragraph (2): The State recognizes and respects the unity of the indigenous legal community and its traditional rights as long as it is alive and in accordance with the development of society and the Principles of the Unitary State of the Republic of Indonesia stipulated in the law. ***Republic of Indonesia, "Constitution of the Republic of Indonesia year 1945" (1945), sec. Article 18B Paragraph (2.****"*

"Article 28 I Paragraph (3): Cultural identity and the rights of traditional peoples are respected in line with the development of times and civilizations". Republic of Indonesia, sec. Article 28 I Paragraph (3).

"Article 33"(*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 1945, sec. Pasal 33)

3) The earth, water and natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people.

5) Further provisions regarding the implementation of this article are stipulated in the law".

b. MPR Decree No. IX/MPR/2001 dated November 9, 2001 concerning Agrarian Reform and Natural Resource Management

"Article 2: Agrarian reform includes an ongoing process with regard to reorganization of control, ownership, use and utilization of agrarian resources, implemented in order to achieve certainty and protection of law and justice and prosperity for all Indonesians.

Article 4: Agrarian reform and natural resource management must be implemented in accordance with the principles, among others:

letter j: Recognizing, respecting, and protecting the rights of indigenous peoples and the diversity of the nation's culture over agrarian resources/ natural resources;

Article 4 letter k: seeks to balance the rights and obligations of the state, government (central, provincial, district/ city, and village or equivalent), community, individual;

Article 4 letter j: Agrarian renewal and management of natural resources must be implemented in accordance with the principles: recognizing, respecting, and protecting the rights of indigenous peoples and the diversity of the nation's culture over agrarian resources / natural resources.

Article 5 (1) letter b: The direction of agrarian renewal policy is: Implementing the reorganization of land tenure, ownership, use, and utilization of land (land reform) that is fair by paying attention to land ownership for the people. "

c. Decision of the Constitutional Court of the Republic of Indonesia Number 3/PUU-VIII/2010

*"Declaring Article 1 number 18, Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23 paragraph (4) and paragraph (5), Article 50, Article 51, Article 60 paragraph (1), Article 71 and Article 75 of Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands (Statute Book of the Republic of Indonesia of 2007 Number 84, Supplement to Statute Book no. 4739) has no binding*power. "

From the various laws and regulations that have been published, it appears that the new statement on the recognition, respect, and protection of the existence of Ulayat Right indigenous peoples. Similarly, the enactment of the Regulation of the Minister of Agrarian and Spatial Affairs / Head of BPN RI No. 10 of 2016 on The Procedure of Determining Communal Rights to Land of Indigenous Peoples and Peoples Located in Certain Areas seems to bring new hope because it is normatively intended to provide a model of registration of communal Rights as a development that was once controlled according to Ulayat Right in certain areas. This provision has not provided legal compliance according to state law against the Ulayat Right of indigenous peoples, especially dealing with outsiders such as investors or other parties who want to take advantage of the Ulayat Right of indigenous peoples.

The enactment of the Decree of the Minister of Agrarian and Spatial Affairs /Head of BPN RI No. 276/KEP-19.2/X/2017 concerning the Appointment of Pakraman Village in Bali Province as the Subject of Joint Ownership (Communal) on Land indicates that Tanah Ulayat Right Desa Pakraman as a Customary Legal Community in Bali is given another opportunity by state law to be registered according to the UuPA which is then referred to or given the Title of Common Right (Communal). The implication is that there is a change to the Ulayat Right to a Communal Right to land.

In connection with the PTSL program oriented to the target "number of certificate" in each District / City, the Head of Office with the existing legal structures work with the target, not work properly and correctly in an effort to provide protection, recognition and respect for the Rights of Indigenous Peoples. Even Tanah Ulayat Right also becomes the object of "target registration" so that the lands of Ulayat Right Adat Law People are registered as Land with Common Rights (Communal), not maintained as Ulayat Right Land that is confirmed or stipulated in the Basic Map of Land Registration.

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The presence of the Draft Law on the Rights of Indigenous Peoples is expected to provide recognition, respect, protection and at the same time a form of recognition according to state law through the affirmation of rights through the Basic Map of Registration of Rights to the Territory of Ulayat Right of each indigenous legal community by the Local Government.

To avoid the existence of a registration model that equalizes between the Right to Land Ulayat with the Right to Communal Land (Joint) either controlled by indigenous peoples or people in the area, it is necessary a Draft Law - Law on the Rights of Indigenous Peoples ulayat to provide certainty and protection of its control according to state law so that in registration or affirmation of its rights are adjusted to the type or model of Land Rights and subjects who control.

The model of assertion of rights or registration is not only intended to guarantee the existence of legal certainty, but also to provide protection against the status of land rights that are not weakened or even lost afterbeing registered under the laws of theState, but on the contrary can strengthen its existence in the framework of adaptation or coexistence between state law and Customary law.

VII. CLOSING

1. Conclusion

a. Antinomy regarding the rights of indigenous peoples arises as a result of sectorization of agrarian arrangements and the absence of comprehensive arrangements in one Law that can be a legal basis that provides legal certainty in the implementation of indigenous people's rights. The current legislation still only regulates partial and has not described specifically the comprehensive arrangements related to the rights of indigenous peoples.

b. The arrangement of the rights of indigenous peoples in some technical regulations does not see elements of complex Ulayat Right so that in the end gives rise to a misconception in the arrangement of the rights of indigenous peoples. This misconception ultimately gave rise to the wrong settings as well so it had to be corrected.

2. Advice

a. By piling up and spreading the existing laws and regulations in Indonesia and the Plurality of Indigenous Legal Peoples in Indonesia, it raises antinomy among academics and the public who get a direct impact from the regulation. it is necessary to uniformity of regulations at the level of the Law to be able to guarantee the recognition and confirmation, control of land rights of the Indigenous Legal Community.

b. To obtain a more actual source of data on the Rights of Indigenous Peoples, discussion on the Urgency of the Establishment of a Draft Law on the Rights of Indigenous Peoples should involve the wider community, especially experts and community leaders and indigenous legal communities themselves.

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