

Legal Certainty of Expired Customary Land Ownership Rights in the Indonesian Agrarian Law System

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Artikel	Abstract
<p>Keywords: legal certainty; customary land; expires.</p> <p>Artikel History: Submission: 2023-05-25 Accepted: 2023-04-29 Published: 2023-04-29</p> <p>DOI: 10.30999/jph.v5i2.2637</p>	<p>Disputes or conflicts cannot be avoided in a developing society, conflicts will inevitably occur which will eventually turn into disputes. Disputes regarding the ownership of land rights are certainly not a problem that has just emerged, it has been several decades that have adorned agrarian conflicts in Indonesia since the Basic Agrarian Law was promulgated. Problems then arise in terms of a dispute that creates legal uncertainty against owners of customary land rights which are said to be expired or past time in the agrarian law system in Indonesia. The term expiration of customary land rights is not known in the national agrarian law for acquiring or relinquishing customary land rights. In other words, a principle has arisen that contradicts the provisions of the national agrarian law regulations applied in society. This is what causes legal uncertainty in society which can become a bad precedent in the future regarding the same problem and harm the purpose of the law itself.</p>
Abstrak	
<p>kepastian hukum; tanah ulayat; daluwarsa.</p>	<p>Sengketa atau konflik tidak dapat dihindari dalam suatu masyarakat yang sedang berkembang, konflik pasti akan terjadi yang pada akhirnya akan berubah menjadi sengketa. Sengketa mengenai kepemilikan hak atas tanah tentu bukan masalah yang baru saja muncul, sudah beberapa dekade konflik agraria menghiasi konflik agraria di Indonesia sejak Undang-Undang Pokok Agraria diundangkan. Permasalahan kemudian muncul dalam hal sengketa yang menimbulkan ketidakpastian hukum terhadap pemilik hak atas tanah adat yang dikatakan daluarsa atau lewat waktu dalam sistem hukum agraria di Indonesia. Istilah hapusnya hak atas tanah adat tidak dikenal dalam hukum agraria nasional untuk memperoleh atau melepaskan hak atas tanah adat. Dengan kata lain, timbul suatu asas yang bertentangan dengan ketentuan peraturan hukum agraria nasional yang berlaku di masyarakat. Hal inilah yang menimbulkan ketidakpastian hukum dalam masyarakat yang dapat menjadi preseden buruk di kemudian hari terkait masalah yang sama dan merugikan tujuan hukum itu sendiri.</p>

Introduction

Land holds immense significance for human existence due to its multifaceted functions and contributions across social, economic, political, and cultural aspects.¹ Alongside these dimensions, land is intertwined with legal considerations and disputes. Land rights encompass a range of entitlements, responsibilities, and restrictions bestowed upon individuals or entities regarding their respective land holdings. The scope of authority, obligations, and limitations associated with land control constitutes the defining criteria outlined in Land Law.²

With the right to control from the State as stated in Article 2 paragraph (1) of the UUPA,³ namely:

“On the basis of the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the State as the organization of power of the entire community.”

Based on these provisions, the State is granted the authority to establish land rights for individuals and legal entities that fulfill the specified criteria. This authority is outlined in Article 4, paragraph 1 and paragraph 2 of the UUPA, which state the following: 1) In accordance with the State's right to control as mentioned in Article 2, various types of land rights are defined for the surface of the earth, known as land, which can be granted to and owned by individuals either individually or jointly with others and legal entities; and 2) The land rights mentioned in paragraph (1) of this Article authorize the utilization of the respective land, including the soil, water, and the airspace above it, solely for purposes directly related to land use, within the boundaries specified by this Law and other superior legal regulations.

Land rights essentially entail the authorization to utilize a specific parcel of land to fulfill specific requirements. Fundamentally, the utilization of land is restricted to particular purposes. Firstly, land can be employed for cultivation, such as in agriculture, plantations, fisheries/ponds, or livestock rearing.⁴ Secondly, land can be utilized as a site for construction, including the development of buildings, parking lots, roads, tourism facilities, and other structures. Since all land rights involve the right to use the land, they can be encompassed under the term “Right

¹ Arie Sukanto Hutagalung, *Hukum Pertanahan Di Belanda Dan Indonesia* (Bali: Pustaka Larasan, 2012).

² Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria* (Jakarta: Djambatan, 2003).

³ Ali Imron, “Penyelesaian Konflik Agraria Berbasis Metode Antinomi Nilai Dalam Penegakan Hukum,” *Jurnal Yudisi* 8, no. 2 (2015): 229–49, <https://doi.org/10.29123/JY.V8I2.54.a>.

⁴ Setiyo Utomo, “Penerapan Hukum Progresif Dalam Penyelesaian Konflik Agraria,” *Volksgeist* 3, no. 2 (December 1, 2020): 33–43, <https://doi.org/10.24090/volksgeist.v3i2.3998>.

of Use”.⁵ To facilitate clear recognition for diverse purposes, distinct names are assigned to each of these rights, such as Property Rights, Business Use Rights, Building Rights, and Use Rights. Ensuring legal certainty regarding land rights is crucial to establish fairness in land ownership across various entities within a country. The regulation of land rights should prioritize the interests of smaller communities, aiming to foster justice and provide legal assurance concerning community land ownership rights.⁶

The regulation of land rights aims to create justice, certainty of land rights, and simplicity of land rights. The main direction of the regulation is that all land rights must be implemented to achieve social justice and ecological justice. Therefore, the regulation of land rights must contain the content material contained in the Draft Law on land rights by containing provisions on the main points of regulation, principles and objectives, classification of land and types of rights, ways of creating rights, rights and obligations of holders of land rights, time period, registration, transfer, and encumbrance, as well as the abolition of land rights.⁷

The problem then arises, when customary land rights are said to have expired by a Court Decision, whereas customary land rights are not known to have expired. This clearly creates legal uncertainty, especially in the agrarian law system in Indonesia.⁸ And it needs to be the main concern in this research, that in the object of research in casu, it is not subject to and obedient to the rules of *rechtverweking*, because as proven in the examination of the subject matter at the first level trial (*judex factie*), there are differences in land history, however, the parties point to the same location of the object of dispute. The researcher took an example of a case based on the Bandung District Court Decision, Number: 130/Pdt.G/2022/PN.Bdg, in which there was a legal uncertainty of the owner of property rights on customary land, that refers to Article 5 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which determines that the Agrarian Law that applies to the earth, water and space is customary law, as long as it does not conflict with the national and State interests based on national unity, with Indonesian socialism and with the regulations contained in this law and with other laws and regulations, all with due regard to the elements that rely on religious law.

From the background description above, a problem formulation can be proposed, namely how is the legal certainty of expired customary land ownership rights in the Indonesian agrarian law system?

⁵ M. Machfudh Zarqoni, *Hak Atas Tanah: Perolehan, Asal Dan Turunannya, Serta Kaitannya Dengan Jaminan Kepastian Hukum (Legal Guarantee) Maupun Perlindungan Kepemilikannya (Property Right)*, (Jakarta: Prestasi Pustakaraya, 2015).

⁶ Putri Gracia Lempoy, “Kajian Hukum Hak Atas Tanah Tanpa Sertifikat Yang Diduduki Seseorang Menurut Pasal 1963 Kuhperdata,” *Lex Crimen* 6, no. 2 (2017): 99.

⁷ Bernhard Limbong, *Hukum Agraria Nasional* (Jakarta: Margaretha Pustaka, 2012).

⁸ Ahmad Zuber, “KONFLIK AGRARIA DI INDONESIA,” *Jurnal Sosiologi Reflektif* 8, no. 1 (August 30, 2016): 147–58.

Research Methods

The research methodology employed in this study is normative juridical, utilizing a literature review approach. The research involves analyzing secondary and primary data, as well as tertiary legal materials that primarily consist of library resources. Furthermore, the research adopts a statutory approach to explore the legal certainty pertaining to expired customary land rights within the Indonesian legal system. The study also incorporates legal product research and a case approach to provide a comprehensive understanding of the subject matter.

Results and Discussion

Legal Certainty for Expired Customary Land Ownership Rights in the Indonesian Agrarian Law System

Dormiunt aliquando leges, nunquam moriuntur, the law sometimes sleeps, but the law never dies. That is the legal adage that we usually hear, the law sometimes cannot always see the facts but the law will always lead to justice.⁹ Law serves as a safeguard for human interests, ensuring their protection. For human interests to be safeguarded, it is essential to enforce the law. Law enforcement can occur in a normal and peaceful manner, but it can also be triggered by violations of the law.¹⁰ When enforcing the law, three key elements must always be taken into account: legal certainty (*rechtsicherheit*), expediency (*zweckmäßigkeit*), and justice (*gerechtigkeit*).¹¹

The law must be implemented and upheld consistently.¹² In any circumstance, individuals are expected to comply with and adhere to the provisions of the applicable law without deviation, as expressed by the Latin phrase "fiat Justitia et pereat mundus" (let justice be done though the world may perish). This principle underscores the importance of legal certainty.¹³ Legal certainty ensures judicial protection against arbitrary actions, guaranteeing that individuals can expect specific outcomes in certain circumstances. The pursuit of justice within society relies on legal certainty, as it promotes orderliness among the community. The law has the responsibility of establishing legal certainty to foster public order.¹⁴

⁹ Shinta Dewi Rismawati, "Menebarkan Keadilan Sosial Dengan Hukum Progresif Di Era Komodifikasi Hukum," *Risikesdas* 3, no. 1 (2015): 103–11.

¹⁰ Tim Hukum Online, "Teori-Teori Perlindungan Hukum Menurut Para Ahli," Hukum Online.com, 2022, <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc>.

¹¹ Sudikno Mertokusumo dan Pitlo.A, *Bab-Bab Tentang Penemuan Hukum*, 2nd ed. (Bandung: Citra Aditya Bakti, 2013).

¹² Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: PT. Citra Aditya Bakti, 2004).

¹³ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *CREPIDO* 1, no. 1 (2019): 13–22, <https://doi.org/10.14710/crepido.1.1.13-22>.

¹⁴ Arum Sutrisni and Putri, "Praktik Perlindungan Dan Penegakan Hukum Di Indonesia Artikel Ini Telah Tayang Di Kompas.Com Dengan Judul 'Praktik Perlindungan Dan Penegakan Hukum Di Indonesia'," Klik Untuk Baca: [https://www.kompas.com/skola/read/2020/02/20/193200269/praktik-perlindungan,](https://www.kompas.com/skola/read/2020/02/20/193200269/praktik-perlindungan)

In the absence of legal certainty, individuals lack clarity regarding appropriate actions, leading to eventual unrest. However, placing excessive emphasis on legal certainty and strictly adhering to the rule of law can result in inflexibility and a perception of unfairness.¹⁵ Regardless of circumstances, the rules are set and must be followed and enforced. Strict implementation of the law often gives rise to a sense of harshness, as reflected in the well-known legal adage, “*lex dura sed tamen scripta*” (the law is harsh, but that is how it is written).¹⁶ When a law is violated, it becomes the responsibility of the judge to implement and enforce it. The judge cannot and should not suspend or refuse to enforce the law and render a verdict on the grounds that the law is not clear or clear. He is prohibited from refusing to render a verdict on the pretext that the law is not perfect or there is nothing about the law, inevitably he must render a verdict.¹⁷

The author deliberately takes a case approach, namely in the form of Bandung District Court Decision Number 130/Pdt.G/2022/PN.Bdg, because the Judge through his Decision is not correct in considering the law, both in theory and practice. In the case a quo, the Panel of Judges decided this customary land dispute by ruling against the Plaintiffs with the verdict that the Plaintiffs' lawsuit could not be accepted (*niet on van kelijke verklaard*), namely that the Plaintiffs' lawsuit was considered out of time (expired). In addition, land disputes generally occur due to several reasons for differences of opinion regarding the validity of a right, the granting of land rights and the registration of the land itself which needs to carefully explain the history of the land transfer.

This clearly contradicts the existing laws and regulations in Indonesia. The author concurs with the legal scholar Lon Fuller, who argues that it is preferable to avoid inconsistencies within a legal system, or in other words, it is better to prevent contradictions among the laws themselves. This matter is intriguing because it marks the first instance in which a customary land title is said to have expired. This should not be the case, as stipulated in Article 5 of Law No. 5/1960 on the Basic Regulation of Agrarian Principles, which states that the Agrarian Law applies to land, water, and airspace in accordance with customary law, as long as it does not conflict with national and state interests based on national unity, Indonesian socialism, the regulations stated in this law, other laws and regulations, and with consideration given to religious elements.

KOMPAS.com, 2020, <https://www.kompas.com/skola/read/2020/02/20/193200269/praktik-perlindungan-dan-penegakan-hukum-di-indonesia>.

¹⁵ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT RajaGrafindo Persada, 2012).

¹⁶ Darji Darmodiharjo and Shidarta, *Pokok-Pokok Filsafat Hukum, Apa Dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: P.T. Gramedia Pustaka Utama, 1995).

¹⁷ Nafiatul Munawaroh, “Perbuatan Melawan Hukum Oleh Penguasa (Onrechtmatige Overheidsdaad),” HUKUM ONLINE.COM, 2022, <https://www.hukumonline.com/klinik/a/perbuatan-melawan-hukum-oleh-penguasa-ionrechtmatige-overheidsdaad-i-lt4d1cdbcf06b6/>.

That because the dispute in the case a quo is about a land dispute, the provisions of this law which are based on customary law also apply. In customary law, there is no time expiration for acquiring or losing land rights. The problematic point in this issue is that there is a claim from another party who feels that the land also belongs to him, even though there are clear differences in the location of the land and the history of ownership of the land. It is certain that there will be a conclusion stating that one of the parties who claim each other and feel that they own the disputed land has an error in the location and location of the land, due to differences in the Land *Persil* between the parties to the dispute.

However, the Panel of Judges took into account other factors based on their knowledge and beliefs. In this particular case, the Panel of Judges favored the party that possessed a Certificate of Ownership, which clearly indicated a different history of land ownership compared to the owner of the customary land. The panel of judges made an error by considering the implementing regulations regarding Land Registration, specifically Article 32, paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. This article states that if a certificate has been lawfully issued in the name of an individual or legal entity who acquired the land in good faith and is in actual possession of it, another party who believes they have a right to the land cannot demand the exercise of that right if they have not submitted a written objection to the certificate holder and the relevant Land Office Head, or if they have not filed a lawsuit within 5 (five) years of the certificate's issuance. This approach is flawed because customary land rights do not acknowledge the expiration of time for acquiring or forfeiting rights to customary land.

The panel of judges considered which basically stated:¹⁸

“as in the argument of his lawsuit the Plaintiff argues that the object of dispute in the case a quo is part of the land belonging to the Plaintiffs that has been controlled/owned by Defendant I and Defendant II, these lands are currently contained in Certificate of Title No. 11620, Cisaranten Kulon Village, Arcamanik District, Bandung City covering an area of 630 M2 registered in the name of Ir.Zulkipli Usman (Defendant I) which originated from the Conversion of Persil 87 S.IV Cohir No.2536. and Defendant II which has a Certificate of Title No.656, Cisaranten Kulon Village, Arcamanik Subdistrict, Bandung City covering an area of 590 M2 registered in the name of E.Sunangsib alias E.Sunengsib (Defendant II) which originated from the Conversion of Persil 87 S.IV Kohir 1437”;

the Panel of Judges also concluded in its legal considerations that:¹⁹

¹⁸ Putusan Pengadilan Negeri Bandung Nomor:130/Pdt.G/2022/PN.Bdg, tanggal 29 November 2022.

¹⁹ Putusan Pengadilan Negeri Bandung Nomor:130/Pdt.G/2022/PN.Bdg, tanggal 29 November 2022.

“Considering, that on the basis of the facts mentioned above, then based on the provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration as quoted above, it is the opinion of the Panel that the Plaintiff can no longer claim his rights to the disputed land a quo because it has expired, so it is legally reasonable for the panel to grant the exception of Defendant I, Defendant II and Co-Defendant I.”

In this case, the party with the customary land rights (i.e. the Plaintiffs) obtained these rights because the customary land rights were transferred to the Plaintiffs by inheritance from their parents in accordance with Article 20 paragraph 2 of the Basic Agrarian Law, whereby the inherited land had never been sold or bought before, either by the heirs or the heirs (i.e. the Plaintiffs). Then came the Defendants (the parties with the certificates who claimed and claimed the land belonging to the Plaintiffs), which based on the history of the land certification was a conversion of *Persil* 87 Cohir No.2536 and *Persil* 87 Cohir No.1437, while the Plaintiffs' customary land rights were based on Leter C No.190 *Persil* 89. Which when concluded, coherently has nothing to do with the customary land of the plaintiffs, or in other words it is clear that the location of the land owned by the Defendants is different from the location of the object of the Plaintiffs' customary land.

Whereas it is very clear, the object of the dispute is based on the Village *Persil* Map Evidence and based on the results of the Local Inspection (*descente*), is *Persil* 89 as stated in the ownership of the customary land rights (d.h. the Plaintiffs) in the form of Village Leter C with Cohir Number 190 *Persil* 89, as recorded in the Leter C Book in the relevant Village. This is an obvious contradiction because there are differences in the land *Persil* of the parties to the dispute, even if they have the same land history, but in the National Agrarian Law system there is no expiry in the ownership of customary land. Such problems can set a bad precedent for communities that still have ownership rights over customary land because it can lead to legal uncertainty because the rights of justice-seeking communities can be taken away by the application of rules that are very contradictory to the main rules that are more certain.

Conclusion

Legal certainty against expired customary land ownership rights should not be possible, because the national agrarian law system does not recognize the expiration of time (*daluwarsa*) in the ownership of land owned by customary rights as stipulated in Article 5 of the Basic Agrarian Law, if you see this problem there will be legal uncertainty and bad precedents for justice-seeking communities who have land owned by customary rights, because the purpose of the law itself cannot be achieved, even though it is clear that the Indonesian state is a state based on law. It is appropriate for the parties directly involved in the components of the national agrarian law system to implement the rules as objectively as possible.

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