



NATIONAL STRATEGIC PLAN AND CUSTOMARY LAW FOR LAND DISPUTE REGULATIONS

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Abstract: One of the causes of agricultural conflicts that still occur frequently today is customary land. Understanding the background of land customary law is essential to building a treatment model and identifying the underlying issues causing the dispute. This study uses normative jurisprudence research methods; in particular, legal studies that view law as the basis of a normative system are typical. The authority vested in the Minister of Agriculture and Spatial Planning/Director of the Land Agency to recommend spatial adjustments to the location of the National Strategic Project to propose a solution at this time further strengthens the possibility of legally binding changes to the spatial plan. In particular, the study of law, which views law as the structure of a normative system. Conflicts usually arise because governments, the private sector, or the communities have different land-use goals. These customary land disputes often contradict Law No. 5 of 1960 on the basic regulations of the community's cultural norms and agricultural principles. Litigation and non-litigation are two possible approaches to dispute resolution. Conflicts usually arise because governments, the private sector, or the communities have different land-use goals. These customary land disputes often contradict Law No. 5 of 1960 on the basic regulations of the community's cultural norms and agricultural principles. The action to be taken when resolving a dispute can be in the form of litigation and non-litigation.

Keywords: Costumary Law; Indigenous People; Land Dispute; Land Regulation

1. introduction

Article 18B (2) of the Constitution of the Republic of Indonesia of 1945 states: "The State recognizes and respects the unity of indigenous peoples and their customary rights, as long as they are alive and by the principles of social development and cohesion. The Republic of Indonesia, as defined by law, permanently inhabits a specific space, has a historical and mystical relationship with its history, feels and desires outsiders as descendants of a common ancestor, and has its own unique identity and culture that it desires. It must be preserved for the next historical period and not occupied by a dominant position in the existing political structures and systems."

On the other hand, according to the Association of Indigenous Peoples of the Archipelago (AMAN) at its first congress in 1999, a common law community is " a community that lives according to its ancestral origins from generation to generation in a customary area with sovereignty over land and natural resources, sovereignty over socio-cultural life regulated by customary law and customary institutions."¹

¹ Fitrah Akbar Citrawan, "The Concept of Customary Land Ownership of the Minangkabau Indigenous People," *Journal of Law & Development* 50, No. 3 (2021): 586, <https://doi.org/10.21143/jhp.vol50.no3.2766>.



Customary land is one of the causes of agricultural conflicts that still occur frequently today, and a discussion of the history of common law is essential to present a treatment model and examine the roots of the problems that cause conflict so that solutions can emerge in the present era. The existence of customary land for a common law community is a form of fulfillment of customary rights, and the essence of customary rights to land control and management is practically the same: the use of land and the existence of shared ownership for the common welfare of the members of the common law community. The main character of the communal customary land reflects the socio-cultural values rooted in the unity of the peoples who settled in the Indonesian archipelago before the arrival of European powers.²

The Air Bangis community is a dragon with much potential in the Sungai Emas district for many reasons, including its large area and more developed community life. The waters of the Air Bangis Sea show prima donna as a place where people can find life on the beach and the longest beach in the Bay of West Pasa. The people of Air Bangis and some nearby areas, such as Sibolga, come here for their livelihood.

Nagari Air Bangis is a prima donna as a place of search for life because it is so rich in natural products that it is the focus of many people's lives. Whenever they pin their hopes on the outcome in the belly of the sea, the traditional head of Kenagarian Air Bangis, a direct descendant of the king, is the chairman of KAN Air Bangis. With the presence of Pucuk Adat, Nagari Air Bangis is included in the traditional system of Koto Piliang. The function of conventional shooting is to perform the function of inauguration/gaze. If a settlement is submitted in the link mamak's deliberations, the Peak of Adat has the power to decide the outcome of the decision. If a decision is later changed again, it must also be subject to joint deliberation. The following is an overview of the organizational structure of the link mamak/traditional stakeholders of Kenagarian Air Bangis.³

The critical legal issue that is currently being raised arises from Article 20 (3) of the Presidential Decree of the Republic of Indonesia (hereinafter abbreviated as Presidential Decree No. 58 of 2017) about the amendment of Presidential Decree No. 3 of 2016 (hereinafter abbreviated as Presidential Decree No. 58 of 2017) on accelerating the implementation of national strategic projects, which justifies the National Strategic Projects to deviate from spatial planning at the district/city level. Provincial and national.

Beyond the principle of recognition and protection of land ownership in Law No. 5 of 1960 (UUPA), the possibility of changing the spatial plan has also been strengthened by empowering the Minister of Agriculture and Spatial Planning/Director General of the Land Agency to make recommendations for the adjustment of the site space of the National Wandering Project concerning the level of land ownership stipulated in Presidential Decree No. 58 of 2017 (Article 21 (paragraph 5)).

² M Sofyan Pulungan, "Research the Past and Managing the Future: The History of Customary Land Law and the Model of Handling Social Conflicts," *Law: Law Journals* 6, No. 1 (2023): 235–67, <https://doi.org/10.22437/ujh.6.1.235-267>.

³ Nur Hidayat, *Thesis: History of Nagari Air Bangis 1950-2018* (West Sumatra: Andalas University, 2021).

This provision applies the principle of a kind of 'right of preferential refusal 2 or right of preemption' 3 to the party who is to acquire the land, which reduces the power of the land owner, which is contrary to the principle of deliberation, which is the principle of regulation of land acquisition stipulated in Law No. 2 of 2012.⁴

2. Research Methods

This study uses the normative legal research method, that is, legal research that considers law as the construction of a normative system. The normative system concerns principles, norms, rules of law and regulation, consensus, and doctrine (teaching) that answer your legal questions. This researcher analyzes the provisions of Law No. 5 of 1960 on the Basic Rules of Agriculture and other laws and regulations related to the National Strategic Project Plan of Presidential Decree No. 109 of 2020. The statute approach, which examines all laws and regulations that are relevant to the legal issues being studied, and the conceptual approach, which uses the views and theories of jurisprudence, aim to see the law in its true sense and examine how it works in society

3. Discussion

Agricultural Disputes

Suppose you look at what's happening today. In that case, there are still many land disputes between governments and communities, communities and entrepreneurs, and communities and communities because the land is an essential element in civilization. From an economic point of view, land certainly has a productive value that brings profit and welfare. Second, politically, land can determine the individual's position in making community decisions. Thirdly, in terms of culture, land can determine the high and low social status of the owner; for example, in some areas, the price of land is very high, so people call it an elite residential area, so when someone buys land, the social status increases.⁵ The four lands are sacred because they deal with heritage and transcendental issues, and there are still many customary lands in Indonesia with magical and holy values that have been occupied by the community since long before Indonesia gained independence. The concept contained in Article 33(3) of the Constitution of the Republic of Indonesia of 1945, mentioned above, is that the State, as a governing body, has the right to regulate land, people-to-land relations, and land use to achieve the prosperity of the people⁶

Article 33(3) of the 1945 Constitution stipulates that "the land, water and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people." This means that the state has a responsibility to fulfill its responsibility for the

⁴ Suparjo Sujadi, "A Study on the National Strategic Project (PSN) and the Advancement of Social Justice (Pancasila Legal Perspective)," *Indonesian Journal of Environmental Law* 4, No. 2 (2018): 1–24, <https://doi.org/10.38011/jhli.v4i2.68>.

⁵ Ratnah Rahman, "Community Conflict with Government (Case Study of Customary Land Dispute)," *Socio-religious* 2, No. 1 (2017): 41–48.

⁶ Mustika Prabaningrum Kusumawati, "A Legal Review of Land Acquisition Issues and Challenges in the Framework of a National Strategic Project (PSN)," 2012, 102–10.

prosperity of its citizens by fairly exploiting and managing them. However, it does not appear that the order has been carried out as the Indonesian people had hoped for.

In agricultural countries, land is a basic need. However, it turns out that there are still many structures of inequality surrounding land ownership, and inequality around land ownership often causes land problems in all countries. Agricultural countries, especially Indonesia, are among the countries with many agrarian conflicts. Inequalities surrounding land ownership remain very complex, especially in terms of development. Population growth is speedy, and the growing demand is not proportional to the land area, which has never increased. In addition, inequalities in the structures of control, ownership, utilization, and utilization of land and the struggle for customary land, which is still ongoing today, are causing agricultural conflicts.⁷

3. 1 Customary Land Disputes

Land disputes are complex issues that involve common law communities that have owned land for generations, such as customary land. Conflicts usually arise because the community, the private sector, or even the government has its own land-use goals. These customary land disputes often violate the Basic Regulations on Agricultural Principles and Law No. 5 of 1960 on regulating the Culture of the Community Itself. When it comes to resolving customary land disputes, the Indonesian people have their own rules and ways of dealing with culture and customs that have been applied from generation to generation from the ancestors of the community until now.

Adhering to Minangkabau customs, West Sumatra is frequently involved in agricultural conflicts, including the Air Bangis Plantation and Nagari Air Bangis, the Sungai Beremas district, the Regency, and the claim to land in the national forest area of West Pasaman. The conflict that arose was land management between the Bangis Water Plantation and the government's management of the State Forest Area. In this long-running land dispute, 159 independent farmer families and 71 families with plasma members of up to 1000 households The Bangis Water plantation owners' solidarity fought to defend their farmland, contradicting the government's claim to the forest area. On March 7, 2022, Amir Bangis Water Growers Solidarity said there were several problems with the conflict.

First, community plantation land is "deemed" by the government to be in a production forest area. *Second*, the government has tried to ask local communities to hand over their plantation land to the government because most of the farmland is in productive forests. *Third*, the incident caused concern and anxiety in the community. *Fourth*, the land used as plantations by the Nagari Air Bangis community is inherited from generation to generation, the common law community of the Nagari Air Bangis, featuring customary evidence such as ancestral burial pandas, old mosque foundations, and old rice mill foundations. Plantation land is planted in the community with oil palms, corn, bananas, and cassava.

Fifthly, information was found in a statement submitted to the police; information was found that showed the alleged involvement of police agency employees in intimidating or coercing the

⁷ Rahman, "Community Conflict with the Government (Case Studies of Customary Land Disputes)."

residents of Air Bangis. Forced local oil palm plantations in production forest areas to hand over to the government. When the Police Department gets involved in patrolling plantation land without any basic knowledge, the community is understandably anxious about the activity because it carries out its purpose and objectives for the community in which it *is located*. *Sixth*, government policy on the forestry sector requires that those who are 'deemed' to be settled in productive forest areas obtain a 'solution' through the 'Social Forestry Policy Plan of Resident Plantation Forests'. *Seventh*, the government has issued a People's Plantation Forest (HTR) permit for a portion of the communal land in Nagari Air Bangis.

Eighth, the People's Plantation Forest (HTR) permit issued by the government is for public health land, community plasma plantation land previously constructed by PT BTN, and/or community plantation land that is granted an HTR permit without the knowledge of the community owned by the gay owner. *Information* about how people fear being criminalized (imprisoned) because their livelihoods are threatened by being considered illegal in forest areas causes distress and economic hardship, especially in the current challenging financial situation, *especially in meeting the needs of their families*. Finally, information that the community is prohibited from selling farm produce by unscrupulous police members.⁸ The above land dispute was again experienced by the residents of Airbangis from 2020 to 2023. It was greatly affected by calls from people gardening in the context of the investigation by the Western Saman Police and the West Sumatran Police on suspicion of gardening. Forest Area According to Law No. 18 of 2013, people often have serious problems, even those who plan to leave their gardens and residences.

3. 2 Land acquisition plan for national strategic project

The Minangkabau custom has heritage status in most areas, ranging from customary land, unused land, and most unrecognized forest lands under the control of village councils, most of which have been cultivated over generations and become heritage. Wealth, especially landforms according to the Minangkabau customary tradition, can be classified into hard to pusako (inheritance), rajo land, and customary land. All the tribes of one tribe own Harato Fusako; It has been passed down through generations. According to Datuk Rajo Maleilo, if the conflicts in Nagari Air Bangis are clever, they can be divided into horizontal and vertical categories.

The first category relates to conflicts of customary rights of the Nagari internal communities, such as border disputes and various conflicts over the land of the Nagari communities. The second category relates to customary rights disputes involving the Nagari community and the government or owners of capital. National Strategic Project Plan Before proposing the development of PSN to the Minister of Maritime Affairs and Investment, I asked about the community's aspirations. Protecting human rights and ensuring they do not focus only on profits is necessary. From the outset, by the provisions of Article 12 (2) and (3) of Presidential Decree No. 71 of 2012, the notification of the development plan is submitted to the community to plan the development site in the public interest.

⁸ Annisa Putri and Lince Magriasti, "Nagari Government's Efforts in Resolving Land Disputes in Nagari Air Bangis, West Pasaman Regency," *Publicity: Journal of Public Administration Studies* 2, No. 2 (2023): 216–24, <https://doi.org/10.24036/publicness.v2i2.94>.

Socialization, face-to-face and/or directly through notification letters or indirect notification through print or electronic media. The head of the readiness team will sign the notice of the development plan, and the community will be notified within three business days of the preparation team's formation.

The public consultation specified in Law No. 2 of 2012 explains that it is a dialogical communication or deliberative process between interested parties to reach an understanding and agreement on a land acquisition plan for development in the public interest. In public consultations, the community engages in activities to determine procurement locations to develop the public good. The government communicated its plans to the local community to determine the project's location for the public good, along with several reasons.

By the provisions of Article 29 (4) of Presidential Decree No. 71 of 2012, a public hearing on the development plan will be held to obtain agreement on the location of the development plan from the parties who have rights to the communities affected by the land acquisition. This public consultation activity will be conducted within 60 days of signing the Tentative List of Development Plan Locations in the Agreement Minutes. In the event of any objections or disagreements from the affected communities at the public consultation, the public consultation will be held again with the objecting party within 30 working days from the date of the contractual minutes, as stipulated in the provisions of Article 34 (1), (2), (3) and (4) of Presidential Decree No. 71 of 2012.⁹

3.3 Dispute Resolution Procedures

In Indonesian land all the land in Indonesia is a gift from Almighty God for the entire Indonesian people. Therefore, all land within the territory of the unitary state of the Republic of Indonesia (NKRI) is the common land of all Indonesian nationals. According to Article 1 of the UUPA, the nature of civil rights encompasses the entire territory of Indonesia; the theme of civil rights is that the whole of the Indonesian people is eternal and that civil rights include two elements: the element of ownership and the power to regulate and direct the control and use of public land belonging to the people. State-owned land is commonly referred to as state land. State land has no rights to state land, such as property rights, business use rights, building use rights, and use rights, as mentioned in the UUPA.

Regarding rights, the Indonesian state is granted a special right called the Customary Rights of Customary Law Communities. The rights that the tribe of the village federation, or the village itself in general, possesses to control all the land within its territory are called customary rights. The UUPA recognizes customary rights, specified in Article 3 and further regulated in the Regulation of the Minister of Agriculture / Head of the Land Agency No. 5 of 1999 on Guidelines for the Resolution of Customary Rights Issues in Common Law Communities.¹⁰ On the environmental side, resolving the problems can be done through or

⁹ Mana Han Tua Siringo, *Dissertation: Legal Analysis of Land Acquisition for National Strategic Projects in Community-Controlled Protected Forest Areas (A Study on the Development of Asahan Hydroelectric Power Plant Plant 3)* (Medan: Medan University Region, 2022).

¹⁰ Maria S.W Sumardjono, "Unfinished Agenda: Reflections on Various Land Policies," Research and Publication Unit, School of Law, UGM, 2020.

outside the courts. Especially when it comes to dispute resolution through the courts, it still refers to the three-tool approach of administrative law, civil law, and criminal law, which are the primary tools of environmental law enforcement.¹¹ On the other hand, the National Strategic Project (PSN) should have some challenges. To anticipate this, several principles must be taken into account when acquiring land for the development of the public good, and their implementation can achieve the goal of the greatest prosperity of the people.

Each region is almost always in dispute, and each party involved with the authorities resolves the disagreement in various ways. The most common ways to resolve conflicts are through court (litigation) and out-of-court dispute resolution (non-litigation). In light of the legal dimension that requires the protection of land ownership and land ownership, there must be legal protection of citizens' rights to land ownership and fair treatment of land ownership. The disgruntled parties may be harmed if a land dispute is protracted and there is no adequate solution. The area has been the subject of frequent land disputes over land ownership and control in recent years. It is a civil dispute involving land issues between citizens regarding land ownership and control. These disputes arise from the subject matter of customary rights, land, or customary rights.

The provisions of Article 1, paragraph 4 of the UUPA state that a land dispute is a dispute/conflict between individuals, groups, groups of organizations, legal entities, or institutions that tend to have a tremendous political impact or a broad impact. The mechanism for resolving customary rights issues is contained in Regulation No. 5 of 1999 by the Minister of Agriculture/Commissioner of Lands on Guidelines for the Resolution of Common Rights Issues in Common Law Communities.

The first way to resolve a dispute is to fix it peacefully through non-litigation or alternative means or to find a win-win solution. This settlement benefits both parties because neither side wins or loses the dispute. Both sides are on the same page. Unlike dispute resolution through the courts, where there is no other choice, the parties to the dispute have only two options: win or lose. In alternative dispute resolution, some of the steps of resolution include: The process of resolving land disputes through non-litigation or alternative means is generally divided into three phases.

- 1) Deliberation Phase In this stage, there are three processes that the parties involved must go through.
- 2) Implementation phase of the outcome of the deliberation At this stage, the parties voluntarily carry out the agreements reached in the deliberations, so the cost of implementation is relatively low.
- 3) Once an agreement is reached, the authorities conclude the deliberations, usually led by the deliberative leader, for this purpose.

In addition, the settlement is the filing of a lawsuit through a legal channel, that is, in the state's administrative court, to obtain certainty and legal protection for the parties to the dispute. Resolving customary rights disputes requires cooperation between the government and indigenous peoples, which can provide indigenous peoples with a sense of justice.

¹¹ Supriadi, *Indonesian Environmental Law* (Jakarta: Sinar Grafika, 2008).

Mechanisms for resolving disputes over customary land rights through deliberation or the courts must be implemented by the common law and the procedural law applicable in Indonesia.¹²

4. conclusion

Based on the above descriptions and explanations, we can conclude that there are still many very complex agricultural conflicts in the UUPA regulations that the rules of the UUPA have not resolved and that overlap with the provisions of the National Strategic Project Plan. In addition, all customary land disputes are often caused by the desire to control land resources. In addition, some parties do not pay attention to the community's interests and seek to use the land for specific interests and their benefit. In this way, conflicts over farmland and land are intensifying. Even farmland conflicts are getting bigger and bigger, and large-scale land acquisition for the benefit of government development projects and private enterprise projects in pursuit of economic growth is becoming increasingly prominent, but this does not pay attention to the consent of the local community. In the end, agricultural land conflicts and customary land disputes are always a resource at the expense of the people. A form of community resistance is to take gradual actions to fight for interests and communities, as the people at Air Bangis have done, that is, to hold demonstrations at the West Sumatra governor's office in the form of a rejection of the proposed national strategic project and to discuss solutions to the settlement of land disputes. In addition, dispute resolution can be through litigation and non-litigation.

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¹² Adonia Ivonne Latourette, "Settlement of Indigenous Peoples' Land Rights Disputes," *Strabismus Journal* 22, no. 2 (2016).

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