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Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare

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Abstract

The evolution of agrarian law in Indonesia, particularly land law, must adhere to the constitutional mandate of promoting the welfare of the populace. This subject is compelling because existing studies predominantly address the legal-formal dimensions of customary land law without adequately examining its practical implications for public welfare. This research investigates whether the development of Indonesian land law is in accordance with the Agrarian Law and explores how to formulate legal frameworks that mitigate land disputes and conflicts related to the utilisation of Ulayat Land for development purposes. The objective is to present alternative recommendations for resolving national agrarian law issues, often diverging from constitutional directives. Employing a normative research method, this study draws on both legal and non-legal materials through philosophical, legislative, historical, conceptual, comparative, and futuristic lenses. The findings reveal that the current development of national agrarian law does not fully align with the Agrarian Law's mandate to enhance the welfare of the Indonesian people. Therefore, this research offers alternative legislative methods aimed at producing agrarian legal instruments that more effectively promote the prosperity of the Indonesian population.

INTRODUCTION

The goal of Indonesian development is to maximise the prosperity of the people in terms of quantity and quality.[1] Ideally, national development brings about order in Indonesian society without significant differences materially or spiritually. According to the 1945 Constitution of the Republic of Indonesia before the amendment, the true development of Indonesia was Social Welfare Development. In terms of quantity, national development in Indonesia is directed so that as much as possible, national wealth is controlled, owned and distributed evenly among the

[1] Western Civil Law, "Legal Subjects or Persons Are Distinguished between Natural Persons, Namely Human Beings or Natural Like Persons, and Legal Creation Persons Called Recht Persons, Which in Legal Terminology Are Referred to as Legal Entities, Consisting of Public Legal Ent," n.d.

people.[2] According to the 1945 Constitution of the Republic of Indonesia, there was no separation of economic and social development before the amendment. Because of the characteristics of Indonesian people who are Mono-Dualists, both are integrated activities, termed Social Welfare Development, through the utilisation of national wealth, which is called agrarian.

Article 1 of the UUPA[3] determines that land, which consists of earth and water and the natural wealth contained therein, is an asset, not a commodity, has an eternal relationship with the Indonesian people or a religious and magical relationship, and is controlled by the state. The meaning of being controlled does not mean being owned,[4] because the true agrarian owners are the Indonesian people, united as the Indonesian nation. The word "controlled" means that the state is in charge, not the owner or the agrarian owner. However, only power holders at the highest level are "mandatory." Therefore, agrarian matters are placed as national wealth or assets with an eternal relationship with the Indonesian nation.

The development strategy of one country and another is not the same because the paradigm, philosophy, especially legal philosophy, which is the source of development of written national laws (legislative regulations), which are the operational basis for development between one country and another, are also not the same.

Based on the Adat law System,[5] namely Adat law regarding land[6] as the main source for the formation of UUPA[7], the people are those who own agrarian land, based on the concept of ownership, not the concept of ownership as in Western law, which tends to be individualist, liberalist and capitalist, known as the *Eiger* concept consisting of state domain and *eigendom*. This is following the formulation of Article 2, paragraph (1) UUPA, a national wealth. Therefore, construction as a necessity must be distinct from the legal awareness of the people who are members of an association called the nation or an association called the indigenous community.

This concept of ownership is in accordance with Herman Soesangobeng's argument, "Co-ownership is different from 'common property' or 'collective ownership' in the perspective of Dutch law" because joint ownership only gives the group the authority to control it jointly. However, individuals and families enjoy the use and results individually (nuclear family). Thus, shared ownership reflects a collective rather than communal nature. Joint ownership is also prohibited from being transferred to outsiders, outsider organisations, or other legal entities without the consent of all members. The manifestation of joint ownership is expressed in the form of power to control the land in full. In speech and writing, this power is often called 'right'.[8]

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2 in the 1945 Constitution of the Republic of Indonesia, "CHAPTER XIV Social Welfare, Article 33 Was Formulated," n.d.

3 UUPA, "The Formulated of the Article 1," n.d.

4 UUPA, "In accordance with the Basic Principles Mentioned above, the Word 'Controlled' in This Article Does Not Mean 'Owned' but Is the Meaning Which Gives Authority to the state as the Ruling Organization of the Indonesian Nation," n.d.

5 Perksa Hilman Hadikusumah, *"Pokok-Pokok Pengertian Hukum Adat"* (Bandung: Alumni, n.d.).

6 Hadikusumah.

7 UUPA, "It Is Necessary to Have a National Agrarian Law, Which Is Based on Customary Law Regarding Land," n.d.

8 Herman Soesangobeng, *"Filosofi Adat Dalam UUPA,"* (Jakarta, 1998).

In other words, agricultural utilisation must not sacrifice the interests of people's lives. Agrarian utilisation must be based on a concept that originates from the spirit of Adat law, namely communal society (*levensgemeenschap)*[9], with a spirit of mutual cooperation (*gotong royong*), kinship (*kekeluargaan*) and deliberation (*musyawarah mufakat*) to provide benefits based on the "benefited Solution"[10] concept for the government, entrepreneurs and the people/society, whether as individuals, families or associations and is not permitted solely for the sake of developing economic growth based on 'the trickle-down effect theory'[11] which is built on the capitalist paradigm. In reality, Indonesia's development aims to realise the greatest prosperity of the people, not to teach high economic growth, which the people may not necessarily enjoy.

In fact, the concept of Social Welfare development mandated by the 1945 Constitution of the Republic of Indonesia is based on the principle of equality and does not allow for the concentration of capital, management, labour and freedom of investment. Suppose agrarian land is to be utilised/cultivated. In that case, the profits resulting from such utilisation must also be enjoyed directly, equally and fairly by the government, entrepreneurs and indigenous communities as those who own the assets, and the results (commodities) can also be utilised by other parties based on their rights to enjoy the results.[12]

Suppose social welfare development is linked to Adat law. In that case, it should be based on the principles: 1) Agrarian is an asset belonging to an association of indigenous peoples (Ulayat rights), which is eternal and cannot be separated from the association of indigenous communities, in the UUPA it is called Nation's Rights which are eternal. Therefore, individuals and community organisations only have the right to use land to produce commodities, the highest right that individuals and community organisations can have, namely customary property rights or land ownership rights. According to the UUPA, this right can only be owned by Indonesian citizens; 2) Only members of an indigenous community association can have full connection with assets which constitute the collective wealth of an indigenous community association. The UUPA states that only Indonesian citizens have the right to own ownership rights to land, which provides the strongest and fullest rights; 3) Equal distribution of the proceeds from the use of assets directly to members of the Adat law community association, if Adat law community assets, for example, customary land, are permitted to be utilised by outsiders/non-members of the customary community association, then it must be based on the right to enjoy and is only temporary. The UUPA should not need to adopt Western legal institutions. It is enough to provide one type of right, namely the right to use for a period of time because the names of land rights in Adat law are determined by the fact of what the land is used for.

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9 Soerojo Wignjodipuro, *"Pengantar Dan Asas-Asas Hukum Adat"* (Jakarta: Gunung Agung, 1983).

10 Customary law, "Customary Law Which Has a Communal/Familial, Partner/Partnership, and Magico-religious Perspective, Does Not See Interaction in Society, as Competition between Individuals to Fight over Material/Possessions as Objects," n.d.

11 Dianto Bachriadi and Erfan Faryadi, *"Perubahan Politik, Sengketa, Dan Agenda Pembaruan Agraria Di Indonesia: Reformasi Agraria"* (Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 1997).

12 Law, "Customary Law Which Has a Communal/Familial, Partner/Partnership, and Religious Magical Perspective, Does Not See Interaction in Society, as Competition between Individuals to Fight over Material/Possessions as Objects."

Based on the concept of Social Welfare development, agrarian/land is the national capital, which must be distributed evenly among individual units gathered in the smallest social association institution that forms Indonesian society, namely the 'nuclear family' (*keluarga batih*).[13] The development of national agrarian law, especially land law as the core of agrarian law in a broad sense which is not based on people's legal awareness (Adat law regarding land), will, of course, give rise to various disputes and prolonged conflicts, because in various literature it is stated; "Land law/agrarian law in the narrow sense, is a field of law that is not neutral because it is directly related to society in meeting its living and living needs. Such law is charged with emotions, sentiments, magical values, and sometimes even irrational.[14] " This is in accordance with the general fact that various disputes occur, even open conflicts, when the use of land by outside parties is related to Ulayat Rights as a collective right of Adat law communities recognised by the UUPA.

The development of various legal fields which are included in the scope of agrarian law[15] is not permitted solely to realise high economic growth, provide temporary employment opportunities, and result in the transfer of rights to such large areas of land from the people, resulting in the removal of ownership/control of land from the people. People only become casual/non-permanent workers. *Pancasila*, as well as the motto *Bhinneka Tunggal Ika*, must continue to be explored and translated as material for the formation of written law as the operational basis for national development in accordance with the demands of current developments, in line with the mandate of the Basic Agrarian Law (UUPA), namely meeting legal needs following current developments, to realise the greatest prosperity of the people.

The development of agrarian law, especially Indonesian Land Law, must not sacrifice the welfare of the people, which is the main priority. In relation to the development of national agrarian law in the narrow sense, namely the development of Indonesian Land Law, this research tries to study the development of national agrarian law, especially Indonesian Land Law, been carried out in accordance with its main source, namely Adat law as specified in the UUPA. To excavation, analysis and understanding of Adat law be carried out, the Adat law needs to be a source for the development of National Agrarian Law so that the legal materials from Adat law can be material sources for the formation of national agrarian law and forming the legislation which is expected to be able to minimise land disputes and conflicts related to the use of Ulayat Land for development purposes.

RESEARCH METHODS

Normative studies utilise legal and non-legal materials through philosophical, legislative, legal, historical, conceptual, comparative and futuristic approaches. Processing and analysis of research materials use teleological, grammatical and semiotic interpretation. To gain understanding, build constructions of legal concepts, and conclude, the principle that substance determines method is used based on the deductive method.

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[13] in the 1945 Constitution of the Republic of Indonesia, "Social Welfare Development Can Be Interpreted as a Comprehensive Program That Covers Various Aspects Based on the Perspective of the Indonesian Nation Based on Its Customary Law," n.d.

[14] I Gede AB Wiranata, *"Hukum Adat Di Persimpangan"* (lampung: Universitas Lampung, 2009).

[15] Boedi Harsono, *"Hukum Agraria Indonesia Sejarah PembentukanUdang-Undang Pokok Agraria, Isi Dan Pelaksanaannya", Jilid I, Hukum Tanah Nasional"*, Edisi Revi (Jakarta: Jambatan, 1999).

The formation of research methods is carried out by exploring, analysing and constructing the paradigm, philosophy and legal philosophy contained in Indigenous communities based on aspects of nature,[16] culture[17] and ratios of Indigenous communities which produce immaterial culture, as an element that differentiates Indigenous communities from other sociologically better-known societies. as the "Peculiar Form of Social Life"[18] of indigenous peoples.

ANALYSIS AND DISCUSSION

Insufficient Incorporation of Adat Law in Agrarian Legislation: Implications for Land Law and Conflict Dynamics

Theoretically, this is because the formation of various statutory regulations is often based on something other than the system regulated in Adat law, especially adat law as the basis for physical land use. In contrast, community (customary/*Adat*) legal awareness is still strong. Supposedly, the formation of written law/legislation is part of applying the normative aspects of Adat law. Therefore, its formation must comply with legal principles, and written law must be principled, harmonious, systematic, hierarchical, synchronous and consistent.

Final records for 2022 from the Agrarian Reform Consortium (KPA) show 212 agrarian conflicts throughout 2022, an increase of 5 cases compared to 2021 of 207 conflicts. The highest cases of agrarian conflict were in the plantation (99), infrastructure (32), property (26), mining (21), forestry (20), military facilities (6), agriculture/agribusiness (4), and coastal and island sectors, small island (4). There are five provinces with the highest agrarian conflict, namely West Java (25), North Sumatra (22), East Java (13), West Kalimantan (13), and South Sulawesi (12). Meanwhile, North Sumatra has the largest agrarian conflict, reaching 215,404 hectares. Throughout 2022, there will be a drastic increase in the area affected in 33 provinces, reaching 1.03 million hectares and affecting more than 346,000 families. Meanwhile, the agrarian conflict in 2021 will only cover an area of 500,000 hectares.[19]

From a normative juridical perspective, this is an indication that agrarian legislation, especially land legislation, still needs to be fully in line with community legal awareness, which is largely based on Adat law norms, in this case, Adat law. Sociologically, the various disputes and conflicts that occur are a natural indication of the limitations of written law, which must continue to be adjusted and refined to align with society's legal awareness. Politically, it indicates that legislation is basically a political product conditioned on the interests of various parties, groups and interests.

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[16] *Natur*e can be interpreted as a condition, condition, natural situation/environment/environmental order that gives rise to a material source of thought in a particular society to form an order in regulating interactions within that society. In law, *natur*e is the source of the formation of a legal order that applies as positive law in a certain society, a certain place, and a certain time.

[17] *Cultur*e can be interpreted as either material or immaterial, produced by ways of thinking, traditions, ceremonies, myths, etc., that are unique to a society. These become the basis for regulating interactions in society, which will produce material or immaterial culture in accordance with the nature in which the society lives. Therefore, culture is distinctive

[18] Satjipto Rahardjo, *"Hukum Dalam Jagat Ketertiban"* (Jakarta: UKI Press, 2006).

[19] Www.kompas.id, "Konflik-Agraria-Meningkat-Sepanjang-2022-Kemauan-Politik-Jadi-Tumpuan-Pengelesaian," accessed September 12, 2023, https://www.kompas.id/baca/humaniora/2023/01/09/konflik-agraria-meningkat-sepanjang-2022-kemauan-politik-jadi-tumpuan-pengelesaian.

Understanding the Construction of Adat law as a Material Legal Source for the Formation of National Land Regulations

The philosophy of "indigenous communities" is basically born from reflections carried out by several individuals as part of society regarding their existence, relationships between humans, their relationship with nature, society as a whole with nature, and its relationship with nature. The supernatural/God ultimately gives birth to a unique way of thinking as a differentiator or characteristic of a society, differentiating it from other societies.[20]From a sociological point of view, the *Peculiar Form of Social Life* is built based on *Natuur* and *Cultuur* as sources of life values, including sources of legal values adhered to by a society. For the Indonesian people, this 'something unique' is crystallised in the abstract as *Pancasila*[21], as a national insight which is the source of all legal sources for the formation of written law in Indonesia, and *Pancasila* as the basic philosophy of life in the nation and state, including originating from Adat law[22].

More firmly and clearly, based on the Youth Pledge (*Soempah Pemoeda*), 28 October 1928, Adat law can be qualified as the Peculiar Form of Social Life of the Indonesian nation is a mandate from the history of Indonesian legal politics, as the main basis for the formation of the Indonesian legal system.

Before *Pancasila* was crystallised as a national insight, in *Soempah Pemoeda*, it was believed that Indonesia's unity was strengthened by paying attention to the basis of its unity: Desire, Language, History, Adat law, Education and Scouting.[23] This means that Indonesian youth at that time chose and were determined to make Adat law one of the main points that strengthened unity in the Unitary State of the Republic of Indonesia.

Young people at that time believed that Adat law was capable of accommodating national unity and the unity of ethnic groups in Indonesia, which were united as the Indonesian Nation in accordance with the times. This belief is understandable because Adat law is flexible and dynamic.

According to Muhammad Koesnoe, Adat law is traditional, sacred, flexible and dynamic. As a law that originates from the life of a society that is always dynamic, Adat law also always keeps up with the times, reflecting its flexible nature. This is because Adat law is only a manifestation of its principles and not a legal system that details technical matters. With this flexibility, Adat law can adapt to the needs of society without changing its systems and institutions. During its dynamic nature and development, Adat law is in line with societal developments. The dynamic nature of Adat law does not mean that Adat law develops freely

[20] H. Yacob Jasmani, "Hukum Sebagai Alat Rekayasa Sosial Dalam Praktek Berhukum Di Indonesia," *Jurnal Masalah-Masalah Hukum* 40, no. 3 (2011): 372.

[21] Any Farida, "Teori Hukum Pancasila Sebagai Sintesa Konvergensi Teori-Teori Hukum Di Indonesia," *Jurnal PERSPEKTIF* 21, no. 1 (2016): 60.

[22] Www.google.com, "Pancasial Bersumber Dari Hukum Adat," n.d., https://www.google.com/search?q=Pancasial+bersumber+dari+hukum+adat&rlz=1C1CHBF_idID1077ID1077&oq=Pancasial+bersumber+dari+hukum+adat&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIJCAEQIRgKGKABMgkIAhAhGAoYoAEyCQgDECEYChigATIJCAQQIRgKGKABMgkIBRAhGAoYoAHSAQkyMDA5MGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8#ip=1.

[23] Kaltim.tribunnews.com, "Poetoesan Congres Pemoeda-Poemoeda Indonesia," n.d.

without paying attention to existing principles and ignoring everything from the past. The development of Adat law is always carried out with wisdom and caution.[24]

Thus, the meaning of *Bhinneka Tunggal Ika*, in teleological semiotic terms, is Diversity united as a Nation (based on its common elements), with only one organisation (*Ika*); there is no other forum, namely the Unitary State of the Republic of Indonesia, as an organisation of all Indonesian people who come from ethnic groups that have unique characteristics and uphold a unitary language; namely Indonesian.

In the formation of laws (legislative regulations), the same elements from various Adat law systems must be the main source for the formation of National Law. The local elements of the Adat law system will be the particularities of each region or the content of regional legislation, and the unification of unique national laws is appropriate.

In various theoretical descriptions of Adat law, as well as agrarian law, there is at least agreement that what is meant by Adat law as a source of national law formation is a complex of norms that originates from the community's sense of justice (legal awareness), and includes the rules of human behaviour in Daily life in society, mostly unwritten, is always obeyed and respected by the people, because it has legal consequences (sanctions)...., deeply rooted in traditional culture, lives because Adat law embodies the real legal feelings of the people.[25]

Based on the phrase "*everyday life in society..., Adat law embodies the real feeling of people's law*", it can be interpreted that Adat law, which is a material source for the development of national law, is Adat law which actually lives among society at the grassroots level, not law that sourced from the power elite, such as the laws that were the basis for the government of kingdoms, or regulations issued by the self-government that once existed in Indonesia, better known as feudal law.

In other words, Adat law, which is the source of material law for the formation of national law, is the law that applies. It lives on in the majority of communities gathered in customary community associations spread throughout Indonesia. Adat socio-anthropological law still exists and has never been expressly abolished; only the customary government was abolished.

Legal values, legal concepts, institutions, and processes that produce customary legal systems can only be understood and studied by understanding the holistic concept of thinking of Adat law communities. Therefore, understanding the various relationships that take place customarily is the starting point that must be done, which can be classified as follows: 1. The existence of the individual; 2. Individual relationships with others/society; 3. Individual relationship with nature/macro cosmos; 4. The individual's relationship with the supernatural/God; 5. Society's relationship with nature/macro cosmos, 6. Society's relationship with the supernatural/God, and 7. The micro and macro cosmos are related to the supernatural/God realm.

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[24] Nasional.kompas.com, "Sifat-Sifat Hukum Adat," n.d., https://nasional.kompas.com/read/2022/06/19/02150061/sifat-sifat-hukum-adat?page = all, diakses 23 Desember 2023.

[25] Surojo Wignjodipuro, *"Pengantar Dan Asas-Asas Hukum Adat"* (Jakarta: Gunung Agung, 1983).

However, we need to be reminded that this mapping effort must remain on a pure logical path[26], namely, trying to assemble a frame of thinking and methods based on the growing flow of information/information obtained from efforts to understand the object of study (in this case, the association of Indigenous peoples and their perspective of thinking). Not with a certain mindset/thinking method that has been prepared or attached to the researcher, and not from the perspective of other societies, for example, western society (the Netherlands, etc.), whose legal thinking methods are commonly used by various legal experts to understand/map Adat law, which is often used incorrectly, that is, it does not match the words used with the meaning contained therein which is understood by the community concerned, thus giving rise to confusion in the legal thinking system being constructed.

In summary, this study is based on a corridor of efforts to explore paradigms, philosophy, legal philosophy, values, principles, institutions and processes based on the perspective of indigenous peoples with the principle of thinking. Substance determines the method or method that follows the substance. Understanding the life cycle of indigenous community associations is a must to obtain basic concepts that can be used as material sources for forming Indonesian Land Law.

Almost all Indigenous community associations in the archipelago adhere to the Holistic, Magical, and Religious Participatory Relationship Paradigm in addressing the relationship between the Macro and Microcosmos. The aim is to create a harmonious and balanced relationship between the Macro and micro cosmos in order to create peace.

The holistic paradigm is the perspective/way of thinking of the Adat law community, which holds that everything participates and is interconnected as a whole, both elements that exist in the real world and elements in the unseen world.[27] All elements play a role in creating a religiously magical system of life balance between the micro and macro cosmos. The lives of humans, animals, plants, and other objects are interconnected, interdependent, complementary, and controlled by God/the unseen world.

Peace will be achieved if everyone participates correctly and well, creating a harmonious relationship between the unseen and real worlds, as the cosmos. In the context of the relationship, as described, all elements in the macro cosmos are not independent and unlimited. However, the main obligation of these natural elements is to emphasise their role in creating a balanced relationship so that harmony leads to peace.

The imbalance in religious magic resulting from implementing inappropriate roles must be restored to restore balance through various efforts such as traditional ceremonies, traditional

[26] This line of thinking in philosophy is better known as "Heuristics", which builds understanding and methods out of existing methods because methods are born from specialised science by returning to general philosophical ways of thinking. This way of thinking is adopted because science and its specialised methods cannot provide satisfactory answers to the problems to be solved. This can be proven by the inability of scientific methods (including legal science methods) to answer life's problems/problems satisfactorily in law. This can take the form of injustice that seriously injures humanity, for example, the inability of the criminal law system to realise the preventive role of criminal law in preventing the occurrence of criminal acts related to supernatural matters such as Witchcraft, Teluh, Seven, and some of them which some Indonesians still believe are a means of committing crimes, even though in reality many criminal acts occur because the victim has committed acts of Witchcraft, Teluh, or Seven. However, in fact, customary law has provided preventive means as a preventive institution that resolves this, for example, with the "Pocong Oath/*sumpah pocong*" institution.

[27] "Concept of Participation in Customary Law Emerges," n.d.

sanctions, and other traditional efforts. Magico-religious balance is a condition for achieving peace. Therefore, in Adat law, the term sanction is not known but is more understood as an effort to restore the magical religious balance to create peace. However, it is difficult for rationalists to understand the sentence, "sanctions in Adat law are peace (an effort to restore the magico-religious balance) which is disturbed". However, there are also efforts to restore the balance of religious magic, which can be categorised as sanctions or suffering.

Below, it will explain the existence and role, as well as the relationship of various elements of the micro cosmos with the macro cosmos, as well as the supernatural/God realm, in maintaining the balance of the micro cosmos with the macro cosmos, which functions to maintain the balance of religious magic to bring peace.

Individual Existence

As an individual, his or her position is recognised as a member of a customary community, with various rights to utilise the commonwealth of an association of indigenous communities, namely using land, utilising forest products, the right to hunt, and the right to own land with customary ownership rights, as long as the individual continues to maintain it (maintaining a reciprocal relationship with nature/land) well, maintaining its fertility and being involved in various traditional and social activities with permission, coordination and supervision of traditional authorities.

Individual Relationships with Others

Basically, only individuals from the Indigenous community association concerned can become members of the Indigenous community association. In this position, the individual is part of society. Individuals are role implementers in their obligations to participate in social life, especially their participation in creating a magico-religious balance.

Individual Relationship with Nature

The relationship between individuals and society in Adat law, with the perspective of participatory magico-religious holistic thinking, in order to create a harmonious relationship (magico-religious balance), between the macro cosmos and the micro cosmos is as a mono dualist creature, as an individual with rights that are limited by collective rights/rights of Adat law community associations.

In other words, the typical relationship between individuals and society in Adat law cannot be classified based on the concepts of individualism or socialism. As described previously, the mono-dualist relationship is a typical relationship between individuals and society within the framework of Indigenous community associations in Indonesia.

However, there is a similarity throughout almost the entire archipelago that outsiders (people who come from outside the relevant indigenous community association) cannot become members of the indigenous community association. As a result, outsiders can have different rights than members of the customary community association to utilise the commonwealth of the Adat law community association (because they need a basis for establishing a magico-religious relationship). Outsiders can only be permitted to obtain the right to enjoy the proceeds from the assets/wealth of the Indigenous community association.

Based on the perspective above, Adat law can be referred to as a closed system of law for non-members of Adat law community associations that regulate the relationship between humans and assets. However, this is not the case with the relationship between humans and commodities, which is interpreted as a result of the use/management of assets. Adat law adheres to an open legal system (Open System of Law).

The relationship between society and nature

Suppose it is analogous to the state aspect. In that case, it can be analogised that members of the Adat law community are Indonesian citizens whose existence exists because of a magico-religious relationship with their homeland (Adat rights), thus creating an eternal relationship, namely Nation Rights, whether because of birth/descent, territory, or a combination of the two, therefore only members of the traditional community association (Indonesian Citizens) can have a full relationship with Adat rights (Nation Rights) up to the right to own land with customary property rights status (Property Rights according to UUPA) which is the highest right that can be owned by individuals as members of Adat law communities (Indonesian Citizens).

Outsiders, organisations of outsiders, namely foreign citizens, including Indonesian legal entities, as well as foreign legal entities, cannot fully relate to Adat rights, for example, customary property rights (*Hak Milik* according to UUP), because it does not have a socio-anthropological basis, namely birth/descent, regionalism/regionality, or a combination of both. In fact, in fact, Adat law does not recognise the concept of a legal entity but rather recognises the concept of an organisation of people as an allied *natuurlijke perso*n because the concept of Adat law is concrete in nature.

Apart from determining whether or not there is a relationship between assets (customary/land rights) and legal subjects, the description above also shows that Indigenous community associations are familiar with the concept of differentiating between objects, namely, the concept of assets and the concept of commodities. The concept of assets is a concept of the relationship between humans and objects based on the concept of magico-religious relationships. So, it is not merely an economic relationship/as a commodity but also a relationship between a subject and an object. Relationships occur because, according to I Gede AB Wiranata, land has multiple values[28], not just economic value. The concept of material relations as assets is built based on descent/blood, territory/region or a combination of both, which is the basis for forming indigenous community associations. In other words, the asset concept is built on complex relationships.

Based on Adat law, the concept of commodities describes the relationship between individuals/society and the results of the use of assets, so that objects that can generally be categorised as commodities are objects that have economic value as a result of processing, utilisation of assets, such as garden products, processing land, and so on. Thus, legal subjects who can own assets and commodities at the same time from an Adat law perspective are only members of customary community associations, while outsiders only have rights to commodities if they are permitted/allowed to use assets, for example, the land is permitted to

[28] Wiranata, *"Hukum Adat Di Persimpangan."*

be used for plantation business activities, mining, etc., provided that they fulfil certain obligations determined by Adat law communities/customary authorities.

If the asset perspective/concept is adopted, then in the development of national agrarian/land law, outsiders, organisations of outsiders, and other legal subjects (in the Western legal perspective, for example, Civil Law Entities), if they relate to the land of traditional community associations can only be given the right to enjoy the results, based on the right to use the land, and must be based on permission from the traditional authority, as a representative of the traditional community association. Regarding the UUPA, this right is a right that is used within a certain period. After the permission to enjoy the assets/Adat rights expires, the assets will automatically/cash return to the full Adat rights of the customary community association.

Adat law cannot provide stronger rights, for example, material rights (such as HGU, HGB, etc., as regulated in the UUPA, which actually originate from Western/Dutch legal concepts), but only the right to enjoy based on the concept of licensing, with the concept of using (Use Rights). Because, apart from the meaning of Adat rights as rights that exist because of a magical religious relationship so that they are eternal, assets are also more interpreted as joint rights, joint ownership (not joint ownership as found in Western legal concepts) so that they cannot be separated, or transferred to other parties which have no basis in magico-religious connection.

The term cash related to permission to use land by non-members of an Indigenous community association also means that the rights granted are solely the right to enjoy the results obtained by using the land only, not including the right to exploit the economic value of the land, such as transferring it to another person, or guarantee it to obtain credit.

The Individual's Relationship with the Supernatural/God

Every individual in Indonesian society is a godly creature, or at least believes that there is a supernatural power, an immense power that regulates life in the micro and macro cosmos and maintains balance.

The cosmos will provide peace if balance is maintained. Every element that forms the microcosmos, including humans as individuals, must carry out its obligations. Thus, from the perspective of Adat law, all elements in the microcosmos are not independent or unlimitedly free but are full of limitations. God or supernatural powers have determined the role of all the micro elements of the cosmos.

All elements of the microcosmos, including humans as individuals, maintain a balance between the microcosmos and macrocosms, bring about peace, and restore that balance through various traditional ceremonies, customary sanctions, and other traditional efforts.

The community's relationship with God/the Unseen is their obligation to maintain a magical religious balance and restore it if a violation occurs, often called a violation of custom. Here, the war between traditional law community organisations/customary authorities, such as Puyang, Pasirah, Kerio, etc., has an important role in carrying out traditional ceremonies, customary sanctions, and other efforts as a traditional reaction to restore the disturbed balance of religious magic so that peace returns to Indigenous communities.

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perspective of Adat law, all elements in the microcosmos are not independent or unlimitedly free but are full of limitations. God or supernatural powers have determined the role of all the micro elements of the cosmos.

The role of all elements of the microcosmos, including humans as individuals, is to maintain a balance between the elements of the microcosmos and macrocosms, to bring about peace, and to restore that balance through various traditional ceremonies, customary sanctions, and other traditional efforts.

The Relationship Between Society and The Supernatural/God

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The relationship between the micro cosmos and macro cosmos with the supernatural/God

Indigenous people believe that God/the Unseen Nature regulates all the roles of the elements contained in the micro and macro cosmos, and all their relationships are participatory. Thus, they create a magical balance that brings peace.

Adat Law Materials as a Source for the Formation of Indonesian Agrarian Law

The relationship between individuals and Adat law community associations with Adat rights is based on a two-way relationship of ownership as described previously, not ownership, as in the concept of *eigendom* in Western civil law, which describes a one-way relationship, humans as subjects and land as objects.

In Adat law, the relationship between humans and land is seen as a reciprocal or two-way relationship between two natural elements/creatures. Therefore, traditional ceremonies will first be carried out when humans, individuals, or groups open forests, for example, for gardens.[29] as a form of unilateral agreement, it is followed by the obligation to maintain these relationships and maintain the continuity of efforts to maintain relationships between members of Adat law communities and the assets they control. For example, landowners must maintain it, mandate it well, and maintain the fertility of the land they cultivate, on an ongoing basis.

The more intensive the efforts of members of the Adat law community to maintain this relationship, the stronger the relationship will be, and in the end, the community will recognise that over time and continuous effort, the community member will be recognised as the owner of the land.

However, if later a member of the Indigenous community abandons the land that has belonged to him, and the land returns to the way it was before it was cultivated, then his ownership rights will slowly be erased. Eventually, it will return to being an asset/customary

[29] Muhammad Bakri and Fitarah Akbar Wirawan, "'Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau,'" *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 594.

right of the Indigenous community association again. In Adat law, such a relationship is known as a relationship that has the character of "*mengembung mengempis atau mulur mengkeret*/swelling and shrinking"[30] as a mechanism for maintaining the preservation/immortality of the relationship between customary community associations and Adat rights.

The description above shows that Ulayat land as a joint property right of an Adat law community is seen as common land. Shared land is a 'gift' from a supernatural power, not seen as something obtained by chance or because of the strength of the indigenous people's efforts. Because Adat rights provide a life-giving environment for Indigenous communities, which are seen as common land, all individual rights originate from this land.

Herman Soesangobeng said that the association's authority in managing relations between community members and all its agrarian elements is generally summarised in the land control and use rules. The basic idea in this law is that land, including space and the natural resources contained therein, is the collective property of all members of the association or community. Joint ownership is different from 'common property' or 'collective ownership' in a western/Dutch legal perspective. Because joint ownership only gives the group authority to control it, the use and results are enjoyed individually, whether in the form of an individual or a nuclear family.[31]

Thus, shared ownership reflects the nature of togetherness or collectiveness rather than commonality. Joint ownership is also prohibited from being transferred to outsiders, outsider organisations, or other legal entities without the consent of all members. The embodiment of joint ownership is expressed in the power to fully control the land. In narrative and writing, this power is often called 'right'.[32]

Therefore, based on Herman Soesangobeng's opinion, Ulayat actually describes the relationship of controlling authority at the highest level of society over land within the association's jurisdiction.

Furthermore, the right to enjoyment is born in processing and cultivating the land. Only after the Right to Enjoy lasts long enough and the land is close is it continuously cultivated the Right to Use. Finally, after the control continues for a very long time, inheritance occurs to the next generation and the use rights change into ownership rights.[33]

In its development, scholars then simplified the types of land rights in Adat law into Ownership Rights and Use Rights. If simplification is carried out, the differentiation of Land Tenure Rights according to Adat law consists of the following:

1. Ulayat rights are held by all Indigenous Community Associations, whose authority has a private aspect (the authority to control civilly from members of the Indigenous Community Association over parts of customary land;

[30] Arina Novizas Shebubakar and Marie Remfan Raniah, "'Hukum Tanah Adat/Ulayat,'" *Jurnal Hukum Dan Kesejahteraan* 4, no. 1 (2019): 15.
[31] Soesangobeng, *"Filosofi Adat Dalam UUPA,."*
[32] Soesangobeng.
[33] S. Hendratiningsih, A. Budiartha, and Andi Hernandi, "'Masyarakat Dan Tanah Adat Di Bali,'" *Jurnal Sosioteknologi* 15, no. 7 (2008): 8.

2. The rights of traditional elders held by traditional leaders and traditional elders, which contain public authority to regulate the control and use of customary territories for the continuity of the Adat law community itself;
3. Individual Rights to Customary Land (as a process of individualising Adat rights), which consists of:
    a. Property Rights (rights of members of Indigenous community associations that are obtained from generation to generation);
    b. Rights of Use (rights of members of a customary community association obtained by cultivating part of their customary territory).

Land tenure rights contain a series of authorities, obligations and prohibitions for the right holder to do anything with the land they own. Something permissible, obligatory, or prohibited is the implementation in cash and concrete form of the nature of Adat law as a distinction between various land tenure rights regulated in the Adat law.

As explained previously, outsiders, organisations of outsiders, and legal entities cannot have rights to land based on Adat law because the basis for ownership of land rights as an asset can only be owned by members of a traditional community association based on a religious or religious relationship due to birth/heredity, region/territoriality, or a combination of both.

However, there are licensing institutions and rights to enjoy the results that can be used as an entry point for utilising customary land rights for business activities carried out by outsiders within the Adat law community, as long as these rights are granted on a limited basis, meaning they are not related to the rights to the land (because is an asset, which can only be built based on a magical religious relationship), but only solely the right to obtain results/the right to enjoy the results in the form of commodities by utilising part of the customary land

Bridging Between Adat Rights and the Rights Regulated in the UUPA

As explained previously, various types of land rights based on Adat law are sourced from Ulayat Rights, which members of the customary community association jointly own. Therefore, the cycle of growth of rights based on Adat law must be the guideline in determining the mechanism for their utilisation for business activities in any field.

In communities where Adat law is still strong, the principle that must be guided by is that, as long as the right to customary land has not yet become one of the rights as regulated in the UUPA, then whatever rights to customary land that members of the customary community already have will be used for Business activities outside the use of land by members of Adat law communities must be coordinated with traditional authorities as the party who holds the authority to regulate the control and use of customary areas/ulayat rights for the sake of preserving Adat law rights, because as long as the rights held by members of Adat law communities have not become wrongful a right regulated in the UUPA, then the right held is still part of the customary asset/land. However, for land belonging to members of indigenous communities, which has become one of the rights according to the UUPA, which is marked by a certificate of land rights, you can contact the landowner directly.

Legal construction and legal institutions must be built to provide legal protection to Indigenous community associations in relation to the utilisation of Adat land for outsiders/development activities based on UUPA so that beneficiary relationships are created

for Indigenous community associations, the government and mining entrepreneurs. Normatively, the UUPA has provided an operational basis for indigenous community associations to obtain proof of ownership of their Adat rights, as regulated in Article 2 Paragraph (4) of Law no. 5 of 1960, which was formulated, "*The exercise of the right of control from the State above can be empowered to Swatantra areas and Adat law communities, as long as it is necessary and does not conflict with national interests, according to the provisions of Government Regulations*".

In the context of orderly land law, equal distribution of income, equal distribution of assets, and clarity in the history of land rights, it is time for the government to form and implement regulations that enable the granting of management rights for Adat rights that are owned and are assets of Indigenous community associations as a form of respect for human rights. , while still respecting the institutional form of ownership of Ulayat land as a communal right so that its use can be further regulated for various purposes, including for business activities other than those carried out by members of adat law communities, by providing the right to enjoy the results/right to collect the results, as a special right limited to the use of land, excluding the use of land rights.

Facing the conceptual differences between Western law and adat law relating to material rights to land, if the land rights are to be guaranteed, the time for guaranteeing them should be limited, that is, to the time of the rights granted, without considering the extension. In this way, the integrity of the customary land will remain guaranteed. It can be utilised by members of the customary community association in the future because, legally, after the permit period to use the land expires, the land will automatically return in full to the customary right, guaranteed and can be reused by members of adat law community associations.

CONCLUSION

Based on the discussion that has been presented, several conclusions can be put forward, namely that the development of agrarian law, especially Indonesian Land Law, has not been fully implemented in accordance with its main source, namely customary land law as regulated in the UUPA, this is proven by referring to the development of the agrarian law sector which is increasingly developing sectoral, which relies on a legal system outside customary land law, without considering and harmonising it with customary law which is flexible and dynamic, so that the government often presents new legal concepts that are not yet known based on customary law, UUPA, even the Constitution of the Republic of Indonesia. Indonesia in 1945 resulted in overlapping regulations, conflicts, and disputes, giving rise to legal uncertainty and clashes between systems, which also resulted in legal uncertainty. The formation of legislative regulations which are expected to be able to minimise conflict and land disputes to realise the greatest prosperity of the people should be carried out consistently in carrying out the mandate of political and legal history as outlined in the *soempah pemoeda* which essentially believes in the unity of Indonesia which is framed as the unity of Indonesia - strengthened by paying attention to the foundations of unity: will, language, history, customary law, education and scouting.

REFERENCES

Bachriadi, Dianto, and Erfan Faryadi. *"Perubahan Politik, Sengketa, Dan Agenda Pembaruan Agraria Di Indonesia: Reformasi Agraria."* Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 1997.

Bakri, Muhammad, and Fitarah Akbar Wirawan. "'Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau.'" *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 594.

"Concept of Participation in Customary Law Emerges," n.d.

Farida, Any. "Teori Hukum Pancasila Sebagai Sintesa Konvergensi Teori-Teori Hukum Di Indonesia." *Jurnal PERSPEKTIF* 21, no. 1 (2016): 60.

Hadikusumah, Perksa Hilman. *"Pokok-Pokok Pengertian Hukum Adat."* Bandung: Alumni, n.d.

Harsono, Boedi. *"Hukum Agraria Indonesia Sejarah PembentukanUdang-Undang Pokok Agraria, Isi Dan Pelaksanaannya", Jilid I, Hukum Tanah Nasional"*. Edisi Revi. Jakarta: Jambatan, 1999.

Hendratiningsih, S., A. Budiartha, and Andi Hernandi. "'Masyarakat Dan Tanah Adat Di Bali.'" *Jurnal Sosioteknologi* 15, no. 7 (2008): 8.

Indonesia, in the 1945 Constitution of the Republic of. "CHAPTER XIV Social Welfare, Article 33 Was Formulated," n.d.

———. "Social Welfare Development Can Be Interpreted as a Comprehensive Program That Covers Various Aspects Based on the Perspective of the Indonesian Nation Based on Its Customary Law," n.d.

Jasmani, H. Yacob. "'Hukum Sebagai Alat Rekayasa Sosial Dalam Praktek Berhukum Di Indonesia,.'" *Jurnal Masalah-Masalah Hukum* 40, no. 3 (2011): 372.

Kaltim.tribunnews.com. "Poetoesan Congres Pemoeda-Poemoeda Indonesia," n.d.

Law, Customary. "Customary Law Which Has a Communal/Familial, Partner/Partnership, and Religious Magical Perspective, Does Not See Interaction in Society, as Competition between Individuals to Fight over Material/Possessions as Objects," n.d.

Law, Western Civil. "Legal Subjects or Persons Are Distinguished between Natural Persons, Namely Human Beings or Natural Like Persons, and Legal Creation Persons Called Recht Persons, Which in Legal Terminology Are Referred to as Legal Entities, Consisting of Public Legal Ent," n.d.

Nasional.kompas.com. "Sifat-Sifat Hukum Adat," n.d. https://nasional.kompas.com/read/2022/06/19/02150061/sifat-sifat-hukum-adat?page = all, diakses 23 Desember 2023.

Rahardjo, Satjipto. *"Hukum Dalam Jagat Ketertiban."* Jakarta: UKI Press, 2006.

Shebubakar, Arina Novizas, and Marie Remfan Raniah. "'Hukum Tanah Adat/Ulayat.'" *Jurnal Hukum Dan Kesejahteraan* 4, no. 1 (2019): 15.

Soesangobeng, Herman. *"Filosofi Adat Dalam UUPA,."* Jakarta, 1998.

UUPA. "In Accordance with the Basic Principles Mentioned above, the Word 'Controlled' in This Article Does Not Mean 'Owned', but Is the Meaning, Which Gives Authority to the state, as the Ruling Organization of the Indonesian Nation," n.d.

———. “It Is Necessary to Have a National Agrarian Law, Which Is Based on Customary Law Regarding Land,” n.d.

———. “The Formulated of the Article 1,” n.d.

Wignjodipuro, Soerojo. *“Pengantar Dan Asas-Asas Hukum Adat.”* Jakarta: Gunung Agung, 1983.

Wignjodipuro, Surojo. *“Pengantar Dan Asas-Asas Hukum Adat.”* Jakarta: Gunung Agung, 1983.

Wiranata, I Gede AB. *“Hukum Adat Di Persimpangan.”* lampung: Universitas Lampung, 2009.

Www.google.com. “Pancasial Bersumber Dari Hukum Adat,” n.d. https://www.google.com/search?q=Pancasial+bersumber+dari+hukum+adat&rlz=1C1CHBF_idID1077ID1077&oq=Pancasial+bersumber+dari+hukum+adat&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIJCAEQIRgKGKABMgkIAhAhGAoYoAEyCQgDECEYChigATIJCAQQIRgKGKABMgkIBRAhGAoYoAHSAQkyMDA5MGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8#ip=1.

Www.kompas.id. “Konflik-Agraria-Meningkat-Sepanjang-2022-Kemauan-Politik-Jadi-Tumpuan-Pengelesaian.” Accessed September 12, 2023. https://www.kompas.id/baca/humaniora/2023/01/09/konflik-agraria-meningkat-sepanjang-2022-kemauan-politik-jadi-tumpuan-pengelesaian.