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The History of Land Law and Its Relevance to the Protection of Land Possession Based on Oral Grants and Physical Possession for More Than Twenty Years

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Abstract

Land has strategic value in the social, economic, and cultural life of Indonesian society. The history of land law demonstrates a continuity between customary law, colonial law, and national law, all of which have influenced patterns of land tenure and control. In practice, oral grants and long-term physical possession remain widely practiced within communities as part of the legacy of customary law, while positive law emphasizes the importance of written evidence and land registration. This difference frequently gives rise to disputes when long-standing possession is contested by formal administrative evidence. This study aims to analyze the historical development of land law in Indonesia and its relevance to the legal protection of land possession originating from oral grants and physical possession exceeding twenty years, particularly in the context of land dispute resolution. In addition, this study seeks to explain the relationship between customary law principles, the regulatory framework of the Basic Agrarian Law (Undang-Undang Pokok Agraria/UUPA), and the application of the principle of *rechtsverwerking* within the national legal system. This research employs an empirical legal research method using sociological-juridical and historical approaches. Data were obtained from primary, secondary, and tertiary legal materials and subsequently analyzed qualitatively through a descriptive-analytical method. Conclusions were drawn deductively by correlating legal norms with the practices of land possession within society. Research Findings. The findings indicate that the historical development of land law provides a normative basis for the protection of land possession derived from oral grants and long-term physical possession. The UUPA recognizes customary law as the foundation of the national agrarian law system, while Article 24 paragraph (2) of Government Regulation Number 24 of 1997 accommodates physical possession for twenty years or more as evidence of land rights. The principle of *rechtsverwerking* further strengthens legal protection for parties who openly and in good faith possess land. Therefore, the historical legal approach underscores the importance of harmonizing customary norms and positive law in realizing justice and legal certainty in land law.

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INTRODUCTION

Land constitutes a resource of strategic importance to the social, economic, and cultural life of Indonesian society. From a historical perspective, the relationship between humans and land is not merely understood as an economic relationship, but also as a social and spiritual bond that shapes the structure of indigenous communities. Therefore, the regulation of land law in Indonesia cannot be separated from the historical development of the legal system underlying it. Legal history demonstrates that the national land law system emerged through a long process involving customary law, colonial law, and the legal policies adopted by the state following independence.[1]

The study of legal history is essential because law does not emerge instantaneously, but rather develops as a result of the social and political dynamics of society. Soerjono Soekanto emphasizes that legal history functions to provide an understanding of the background underlying the formation of a legal system and the reasons for the enactment of particular legal norms.[2] In a similar vein, Satjipto Rahardjo views legal history as the study of the development of law within the context of power and culture, thereby emphasizing that law must be understood as a continuously evolving social product.

A historical approach is necessary to explain why physical control of land and the practice of oral grants continue to exist within society, despite the fact that positive law emphasizes the importance of written evidence and land registration. Prior to the enactment of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (Undang-Undang Pokok Agraria/UUPA), the land law system in Indonesia was characterized by dualism, whereby colonial land law coexisted alongside customary law. This dualistic system created legal uncertainty and inequality in land ownership and control. The UUPA was enacted as an effort to unify the national agrarian law system by recognizing customary law as the foundation of land regulation, insofar as it does not conflict with national interests.[3]

Accordingly, the UUPA constitutes a product of legal history that integrates customary values with the modern state legal system. In social practice, land possession frequently occurs through oral grants and long-term physical possession carried out continuously, openly, and in good faith. This practice represents a legacy of customary law, which emphasizes social recognition and actual control over land. However, under positive law, the transfer of land rights must be evidenced by an authentic deed and formally registered.

The tension between customary norms and positive law gives rise to legal issues, particularly when land possession that has continued for decades is subsequently disputed by another party possessing formal administrative evidence. In fact, Indonesian positive law has provided a legal framework for the protection of long-term land possession. Article 24 paragraph

[1] Sudikno Mertokusumo, *Mengenal Hukum, (Suatu Pengantar),* (Yogyakarta: Liberty 2010), hlm. 87.

[2] Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum,* (Depok: RajaGrafindo Persada 2007), hlm. 102.

[3] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya,* (Jakarta: Djambatan 2008), hlm. 24–26.

(2) of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that physical possession of land for twenty consecutive years or more, conducted openly and in good faith, may serve as a basis for proving land rights in the absence of complete written evidence.[4] This provision reflects the adoption of the principle of *rechtsverwerking* within the national legal system, namely the extinguishment of rights due to the inaction of the former rights holder and the emergence of rights for the party who possesses the land in good faith.

Based on the foregoing explanation, it can be understood that the historical development of land law has direct relevance to the protection of land possession originating from oral grants and long-term physical possession. A legal historical approach not only explains the origins of legal norms, but also provides an argumentative foundation for the protection of community rights where individuals have, in practice, possessed and managed land over an extended period of time. Therefore, the study of the history of land law and its relevance to the protection of land possession based on oral grants and physical possession exceeding twenty years is significant, both theoretically and practically, particularly in the resolution of land disputes in regions where customary law practices continue to exert a strong influence.

RESEARCH METHODS

This study employs an empirical legal research method (socio-legal research), namely a legal research approach that examines law not only as written norms (law in books), but also as actual behavior within society (law in action). The approaches applied in this research are the sociological-juridical approach and the historical approach. The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Furthermore, the collected legal materials were analyzed qualitatively using a descriptive-analytical method. Conclusions in this research were drawn through a deductive method.

ANALYSIS AND DISCUSSION

1. The History of Land Law in Indonesia

a. The concept of Legal History According of Experts

According to Soerjono Soekanto, legal history is a branch of legal science that studies the development of law over time in order to understand the background underlying the emergence of a legal system and the laws and regulations that are currently in force.[5] Meanwhile, according to Satjipto Rahardjo, legal history is the study of the development of law within the social and political context of society. Accordingly, law is not understood as a static norm, but rather as the product of a historical process influenced by the dynamics of power and culture.[6]

According to Sudikno Mertokusumo, legal history is a field of study that examines the origins and development of legal norms and legal institutions within a society in order to provide

[4] Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, LN. 1997, No. 59.

[5] Soerjono Soekanto, *Pengantar Penelitian Hukum,* (Jakarta: UI Press, 2010), hlm. 9.

[6] Satjipto Rahardjo, *Ilmu Hukum,* (Bandung: Citra Aditya Bakti, 2006), hlm. 21.

a deeper understanding of the positive law currently in force.[7] According to Soerjono Soekanto, legal history has several functions and benefits, including the following:[8]

1) Legal history can provide a broad perspective for legal scholars and practitioners, as law cannot stand independently since it is continually influenced by evolving aspects of social life.
2) Legal history can reveal the development, replacement, adaptation, reform, and underlying reasons for the implementation of particular legal norms.
3) Legal history is also useful in legal practice for conducting historical interpretation of law.
4) Legal history can disclose the functions and effectiveness of particular legal institutions.

b. Land tenure in customary law

Juridical possession refers to possession based on legal rights that are protected by law and generally grant the rights holder the authority to physically control the land concerned. For example, a landowner may use or derive benefits from the land without transferring such control to another party. However, there are circumstances in which juridical possession, despite granting authority to physically control the land, is not exercised directly by the rights holder in practice. For instance, a person who owns land may choose not to utilize the land personally but instead lease it to another party. In such a case, juridically the land remains under the ownership of the landowner, while physical control over the land is exercised by the tenant.[9]

Boedi Harsono states that land tenure rights consist of a series of authorities, obligations, and prohibitions granted to the rights holder concerning the use and control of the land. The matters that may, must, or are prohibited from being carried out constitute the substance of land tenure rights, which serve as the criterion or benchmark distinguishing the various forms of land tenure rights regulated under Land Law.[10]

From the perspective of customary law, land is not merely regarded as an economic object, but as an integral part of the social, cultural, and spiritual life of indigenous communities. The relationship between humans and land is communal, religio-magical, and oriented toward the sustainability of collective life. The concept of land possession in customary law originates from hereditary land management practices legitimized through recognition by the local customary law community.[11]

According to Ter Haar, land rights under customary law do not originate from grants by the state, but rather arise from the actual cultivation and possession of land recognized by the

[7] Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar),* (Yogyakarta: Liberty, 2010), hlm. 17.

[8] Saefullah, *Buku Ajar Sejarah Hukum,* (Bogor: PT Kaya Ilmu Bermanfaat, 2023), hlm. 3.

[9] Urip Santoso, *Hukum Agraria: Kajian Komprehensif,* (Jakarta: Kencana, 2012), hlm. 77.

[10] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya,* (Jakarta: Djambatan 2008), hlm. 24.

[11] Soerjono Soekanto, *Hukum Adat Indonesia,* (Depok: RajaGrafindo Persada 2007), hlm. 45.

community. Initially, such possession was collective in nature through *hak ulayat* (communal customary rights); however, over time, it also enabled the emergence of individual rights, provided that such rights did not conflict with communal interests.[12] Accordingly, under customary law, land possession possesses a strong social dimension because it is always associated with the function of land in promoting the welfare of the community.

Hak ulayat constitutes the principal manifestation of land possession under customary law. This right grants customary law communities the authority to regulate, utilize, and determine the allocation of land within their customary territories. Nevertheless, the exercise of *hak ulayat* does not eliminate the possibility of individual possession. A person may acquire rights over a parcel of land through land clearing, continuous cultivation, or through customary legal acts such as inheritance and grants.[13]

Grants under customary law are commonly conducted orally and in a simple manner, based on familial relationships and mutual trust (*amanah*). Such grants are not always formalized in written form, but are accompanied by the physical transfer of land and social recognition from members of the customary law community. The validity of such grants is determined by the factual possession and actual management of the land, rather than by administrative formalities.[14] In this context, oral grants are not regarded as defective legal acts, but rather as legitimate practices under customary law, provided that they are carried out openly and recognized within the relevant social environment.

c. Historical background of the enactment of the UUPA and the recognition of customary law

Following Indonesia's independence on 17 August 1945, the text of the Proclamation explicitly declared the sovereignty of the Indonesian nation, which became the fundamental point of reference for the implementation of national legal policy. This principle was subsequently reaffirmed in the fourth paragraph of the Preamble to the 1945 Constitution and in Article 33 paragraph (2) thereof. The founders of the Republic of Indonesia were fully aware that agrarian issues constituted an essential aspect of the existence and identity of a nation.

On 24 September 1960, under the administration of President Sukarno, Law Number 5 of 1960 concerning the Basic Agrarian Principles (Undang-Undang Pokok Agraria/UUPA) was enacted. The enactment of the UUPA aimed to ensure legal certainty for all Indonesian people while still accommodating elements based on religious law, as reflected in its underlying mandate. Furthermore, the law was intended to ensure that the utilization of land, water, and airspace would serve the interests of the Indonesian people. As the philosophical foundation of the UUPA, Law Number 5 of 1960 represents the embodiment of Pancasila.

The UUPA also reflected the political mandate of the Presidential Decree of 5 July 1959, the provisions of Article 33 of the 1945 Constitution, and the Political Manifesto of the Republic

[12] Ter Haar, *Asas-Asas dan Susunan Hukum Adat*, (Jakarta: Pradnya Paramita 2001), hlm. 59.

[13] Bushar Muhammad, *Asas-Asas Hukum Adat: Suatu Pengantar,* (Jakarta: Pradnya Paramita 2006), hlm. 72.

[14] Rayyan Fakhri, et.al., "Kedudukan Akta Hibah Tanah yang Melebihi Batas Maksimal bagi Penerima Hibah Beragama Islam", Jurnal Riset Ilmu Hukum, Sosial, dan Politik, Vol. 3, No. 2, 2026, 43-46, DOI: https://doi.org/10.62383/demokrasi.v3i2.1641

of Indonesia, as reaffirmed in the Presidential Speech of 17 August 1960, which obligated the state to regulate land ownership and direct its utilization. Law Number 5 of 1960 was not formulated solely through legislative institutions, but rather through a State Committee involving various stakeholders.

The formulation of the UUPA underwent a lengthy process spanning approximately twelve years, involving changes in committee membership through five different committees. In 1960, the Agrarian Bill that had been prepared by the fourth committee under the chairmanship of Sunaryo—which was already in a semi-final form—was submitted to President Sukarno. However, the President requested that the bill first be reviewed by higher education institutions. Consequently, the House of Representatives established an *Ad Hoc* Committee to collaborate with Gadjah Mada University. This collaborative team became known as the fifth committee.

The outcome of the committee's work was subsequently submitted to the President and became widely known as the *Sadjarwo Draft*. After receiving presidential approval, the draft was submitted to the House of Representatives for deliberation, the final result of which was enacted on 24 September 1960. Based on the philosophical foundation referred to as the "mono-dualistic" concept, Law Number 5 of 1960 was intended not merely to achieve legal certainty or legal unification, but fundamentally to transform the structure of society from one inherited from feudalistic and colonial systems into a just and prosperous society.[15]

The enactment of Law Number 5 of 1960 concerning the Basic Agrarian Principles (Undang-Undang Pokok Agraria/UUPA) cannot be separated from the historical context of Indonesia's legal politics in the post-independence era. Prior to the implementation of the UUPA, the land law system in Indonesia was characterized by dualism, namely the coexistence of colonial land law derived from the Burgerlijk Wetboek and the Agrarische Wet of 1870 alongside customary law that continued to exist within society. This dualistic system created legal uncertainty and inequality in land ownership and control, particularly between indigenous people and colonial interests.[16]

Customary law is regarded as the primary source of national agrarian law because it reflects the historical relationship between the Indonesian people and their land.[17] This principle is explicitly affirmed in Article 5 of the UUPA, which stipulates that the agrarian law applicable to land, water, and airspace is customary law, insofar as it does not conflict with national and state interests, national unity, Indonesian socialism, and prevailing statutory regulations. This provision demonstrates that the lawmakers recognized customary law as the normative foundation for land regulation, while simultaneously adapting it to the needs of a modern state.

Recognition of customary law within the UUPA is also reflected in the concept of *hak ulayat*. Article 3 of the UUPA provides that the implementation of *hak ulayat* and similar rights

[15] Muhammad Abdussalam Rafie, "Sejarah Perkembangan Hukum Agraria di Indonesia Sebelum Dibentuknya Undang-Undang No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria ("UUPA") dan Dampaknya Bagi Keadilan di Masyarakat", Jurnal Sains Student Research, Vol. 2, No. 5, 2024, 342-350, DOI: https://doi.org/10.61722/jssr.v2i5.2677

[16] Darwin Ginting, "Politik Hukum Agraria Terhadap Hak Ulayat Masyarakat Hukum Adat di Indonesia", Jurnal Hukum & Pembangunan, Vol. 42, No. 1, 29-53, https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=3595&context=jhp

[17] Hafizh Naufalian, et.al., "Pengaruh Hukum Adat Terhadap Kebijakan Reformasi Agraria di Indonesia", Jurnal Hukum Indonesia, Vol. 2, No. 3, 2025, 34-42, DOI: https://doi.org/10.62383/majelis.v2i2.630

of customary law communities, insofar as such rights still exist in reality, must be exercised in a manner consistent with national and state interests. This formulation demonstrates a conditional recognition of the existence of *hak ulayat*, while simultaneously creating space for the integration of customary law and state law.

d. The principle of rechtsverwerking in legal history

The principle of rechtsverwerking originates from the Continental European legal tradition (civil law), particularly Dutch law, and refers to the extinguishment of a person's rights due to prolonged silence or inaction, thereby giving rise to a legitimate expectation on the part of another party that such rights will no longer be exercised. This principle differs from prescription (verjaring) because it does not solely depend on the passage of time, but also involves the elements of good faith and reasonableness on the part of the party exercising control over the object of the right.[18]

Historically, rechtsverwerking developed as a corrective mechanism against the overly formalistic application of law. In civil law doctrine, this principle is applied to protect parties who, in practice and in good faith, have possessed or utilized a legal object, while the original rights holder remained passive and failed to exercise his or her rights. Accordingly, rechtsverwerking represents a concrete manifestation of the principles of justice and legal certainty within judicial practice.[19]

Within the context of Indonesian legal history, the principle of rechtsverwerking was introduced through the Dutch colonial legal system and was subsequently adopted into national judicial practice following independence. Although this principle is not explicitly regulated by statutory law, it is recognized as part of the general principles of law that continue to exist within jurisprudential practice. In various decisions, the Supreme Court of Indonesia has held that a person may lose rights over land due to prolonged inaction, particularly where another party has continuously, openly, and in good faith possessed the land.

Recognition of the principle of rechtsverwerking also bears historical relevance to customary law. Under customary law, a person who abandons land for an extended period without exercising actual control may lose social legitimacy over the land, as such conduct is considered inconsistent with the social function of land. This principle is consistent with the notion that land must be cultivated and utilized for the collective welfare of the community. Therefore, rechtsverwerking may be regarded as a bridge between the Western legal tradition and the values of customary law, both of which emphasize actual possession and the social function of land.

In the development of national land law, the principle of rechtsverwerking has been further reinforced through provisions recognizing long-term physical possession of land as a basis for the acknowledgment of rights. This is reflected in Article 24 paragraph (2) of

[18][18] Sari Sania Tampubolon et.al., "Penemuan Hukum dan Penalaran Hukum Sebagai Dasar Pembentukan Putusan Hakim yang Berkeadilan", Jurnal Al-Zayn, Vol. 4, No. 1, 2026, 1605-1612, DOI: https://doi.org/10.61104/alz.v4i1.3321

[19] Satjipto Rahardjo, "Hukum Progresif: Hukum yang Membebaskan", Jurnal Hukum Progresif, Vol. 1, No. 1, 2005, 1-24, DOI: https://doi.org/10.14710/hp.1.1.1-24

Government Regulation Number 24 of 1997 concerning Land Registration, which provides the possibility of proving land rights through physical possession for twenty consecutive years or more, exercised in good faith and without dispute. This provision demonstrates that Indonesian positive law accommodates the principle of rechtsverwerking in a normative form.[20]

The principle of good faith signifies that a person who acquires a right in good faith shall remain the lawful holder of that right under the law. Indonesian positive law does not provide a firm and explicit definition of good faith.[21] Based on the foregoing views, the limits of the principle of good faith are grounded in propriety and justice. A party acting in good faith is one who acts honestly and does not prejudice the interests of other parties.

2. The Relevance of Legal History to Land Dispute Cases in Siak Regency

a. Oral grants from the persperctive of legal history

The transfer of land rights may be understood through two legal events, namely "transfer by operation of law" (beralih) and "transfer by legal act" (dialihkan).

- *Beralih* refers to the transfer of land rights that occurs automatically or by operation of law, whereby rights pass to another person without requiring a specific legal act.
- *Dialihkan* or transfer of rights refers to the transfer of rights or authority that occurs intentionally and is carried out by a person through a legal act. Such transfer may occur through exchange, sale and purchase, grants, transfer according to customary law, contribution into a company (inbreng), or testamentary grants (legaat)."[22]

At present, numerous legal issues concerning land disputes arise within society, particularly those related to grants (*hibah*). The absence of formal requirements for grants, such as a deed of grant, frequently gives rise to disputes between the relatives of the grantor and those of the grantee. Such disputes constitute one of the most common forms of disputes encountered within society.

In Roman law, the concept of *donatio* was recognized as a valid voluntary transfer, provided that there was an intention to give and acceptance by the recipient. In its early development, *donatio* did not always require written form, but could be sufficiently established through a declaration of intent and the delivery of the object concerned. However, with the development of the state and legal administration, grants were subsequently positivized into

[20] Muhammad Irfan dan Nia Kurniati, "Kepastian Hukum Hak Atas Tanah dan Eksistensi Lembaga *Rechsverwerking* Dalam Perspektif Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah", Jurnal Acta Diurnal, Vol. 1, No. 2, 2018, 163-174, https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/166

[21] Anggi Boy dan Sulistio Adiwinarto, "Aspek Hukum Penguasaan Fisik Bidang Tanah Sebagai Dasar Penerbitan Hak Milik Atas Tanah pada Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Ditinjau Berdasarkan Prinsip Kepastian Hukum", Indonesian Journal of Law and Justice, Vol. 3, No. 1, 2025, DOI: https://doi.org/10.47134/ijlj.v3i1.4655

[22] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial,* (Jakarta: Kencana Prenada Media Group 2010), hlm. 134.

written form for evidentiary purposes.[23] This demonstrates that oral grants constituted the earliest form of grant practices, which were later formalized within modern legal systems.

From a juridical perspective, grants must be evidenced by valid legal documents, such as a notarial deed. As stipulated in Article 1682 of the Indonesian Civil Code ("Kitab Undang-Undang Hukum Perdata/KUH Perdata"), "no grant, except those referred to in Article 1687 of the Civil Code, shall, under penalty of nullity, be made other than by a notarial deed, the original of which shall be kept by the notary." However, Article 1682 of the Civil Code differs from the principles recognized under Islamic law, according to which a grant is considered valid once it has been declared and accepted by the recipient. Consequently, based on the author's observations, many members of society, particularly those whose majority adhere to Islam, continue to apply the system recognized under Islamic law in practice.

Based on the prevailing legal provisions, the evidentiary strength of a deed of grant lies in its nature as an authentic deed, as principally regulated under Articles 1682, 1867, and 1868 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUH Perdata*). Based on the author's observations, grants conducted within rural communities are rarely formalized through deeds of grant, as communities tend to prioritize the principle of togetherness, whereby grants are considered sufficiently valid when carried out orally. The author further observed that many members of society perceive the preparation of a deed of grant as involving relatively high costs, lengthy procedures, and complicated administrative processes. Such conditions may ultimately give rise to disputes concerning land rights that constitute the object of the grant.

Disputes relating to ownership rights over objects granted orally are frequently resolved through litigation before the courts. In terms of evidentiary strength, parties possessing notarial deeds are often those who prevail in disputes concerning oral grants. Recipients of oral grants frequently experience defeat due to the absence of authentic evidence proving that the grant had actually occurred.

The explanation of the validity of the transfer of land rights through oral gifts from these three perspectives is as follows: "According to the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUH Perdata), an oral grant is considered valid provided that the prescribed legal requirements have been fulfilled. A grant constitutes a form of agreement; therefore, its implementation is subject to Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUH Perdata*) concerning the validity requirements of agreements. Essentially, Article 1320 of the Civil Code explains the subjects and objects of a grant. The subjects of a grant consist of the grantor and the grantee, who may be either individuals or legal entities. Article 1676 of the Civil Code principally provides that both men and women are entitled to receive and to give grants.

According to Article 1682 of the Civil Code, the implementation of a grant must, in principle, be accompanied by a deed of grant. A grant executed without a deed of grant is considered null and void. Furthermore, Article 1683 of the Civil Code essentially stipulates that a grant becomes binding upon the grantor, or produces legal consequences, from the date the grant is made and expressly accepted by the grantee, or by a person authorized through a power

[23] J.H. Nieuwenhuis, *Pokok-Pokok Hukum Perikatan,* (Surabaya: Penerbit Universitas Airlangga, 1985), hlm. 43.

of attorney to accept the grant on behalf of the grantee, whether the grant has already been given or will be granted at a later time. The form of authority required for the attorney-in-fact is a special power of attorney. A special power of attorney refers to an authorization specifically granted for the transfer of property.[24]

If such acceptance is carried out without using a personal deed of grant, it may only be validly effected through an authentic deed, a copy of which must be retained by the notary. Therefore, from the perspective of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUH Perdata), the transfer of land rights through an oral grant is considered invalid, since land constitutes immovable property whose transfer requires a notarial deed or must otherwise be conducted in written form.

b. Under the UUPA

The validity of the transfer of land rights through oral grants under the UUPA is essentially similar to that under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUH Perdata). Article 19 of the UUPA principally stipulates that land ownership rights held by an individual must first be registered. Furthermore, Article 26 of the UUPA provides that grants, insofar as they involve the transfer of ownership rights over land, shall be implemented and supervised in accordance with Government Regulations.

Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration essentially stipulates that the transfer of land rights must be evidenced by a deed executed before a notary or another authorized official recognized under the prevailing positive law. Accordingly, the transfer of land rights through oral grants is deemed invalid under the UUPA. The UUPA requires that any transfer of land rights be carried out through land registration, whereby the documentary evidence of such transfer is a deed of grant executed before a notary.

From the perspective of legal history, such tension may be understood as part of the transition from a legal system based on custom to one grounded in state administration. Oral grants represent a legacy of the traditional legal system, which emphasizes the substantive nature of legal relationships, whereas written grants are products of the modern legal system that prioritizes formalities. Therefore, in assessing oral grants, a historical approach should be employed so that they are not evaluated solely according to the standards of contemporary positive law, but also with due consideration to their social and historical context.[25]

According to I Nyoman Nurjaya, recognition of customary legal practices, including oral grants, constitutes a form of respect for legal pluralism in Indonesia. The state cannot disregard legal practices that have long existed within society, as such practices form part of the legal consciousness of the people. Accordingly, oral grants occupy an important position within Indonesian legal history as a manifestation of legal relationships that have developed from the social needs of society.

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[24] Muhammad Arba, *Hukum Agraria Indonesia,* (Jakarta: Sinar Grafika 2015), hlm. 7-8.

[25] Fira Nurulnisa, dan Dwi Aryanti Ramadhani, "Analisis Pemberian Hibah Kepada Anak di Bawah Umur Melalui Proses Handlichting Berdasarkan Hukum Perdata", Jurnal Ius Constituendum, Vol. 2, No. 3, 436-449, DOI: 10.26623/jic.v8i3.7803

c. Physical possession of land for more than twenty years

Long-term physical possession of land holds an important position within the history and system of Indonesian land law. Since the era of customary law, actual possession of land through cultivation and utilization has served as the basis for the emergence of individual rights. A person who continuously opens, cultivates, and manages land in good faith obtains social recognition as the holder of rights over such land. This concept was subsequently adopted into national law through the recognition of customary law as the foundation of the national agrarian law system.

Law Number 5 of 1960 concerning the Basic Agrarian Principles (*Undang-Undang Pokok Agraria/UUPA*) affirms that the national agrarian law system is founded upon customary law, insofar as it does not conflict with national interests and prevailing statutory regulations.[26] This provision demonstrates that patterns of land possession based on physical facts and social recognition continue to be acknowledged within the national legal system. Accordingly, physical possession of land cannot be separated from the historical construction of customary law, which places cultivation and actual control as the basis for the legitimacy of rights.

Explicit recognition of physical possession of land for a certain period is provided under Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, which states:

> "In the event that written evidence is unavailable or no longer completely available, the registration of rights may be carried out based on the factual physical possession of the relevant parcel of land for twenty (20) consecutive years or more by the applicant and his or her predecessors, provided that such possession has been exercised in good faith and openly by the party concerned as the person entitled to the land, and is supported by the testimony of trustworthy witnesses."[27]

The aforementioned provision contains three principal elements, namely:

- physical possession for twenty years or more;
- possession carried out continuously and openly; and
- possession exercised in good faith and without dispute.

This norm demonstrates that Indonesian positive law accords strong evidentiary value to the factual possession of land, particularly in circumstances where complete written evidence is unavailable.

Furthermore, Article 24 paragraph (2) of Government Regulation Number 24 of 1997 constitutes a codification of the historical principle that legal relations over land may arise from actual possession. Maria S.W. Sumardjono explains that long-term physical possession serves as one of the means of recognizing rights, aimed at providing legal protection to communities that have factually managed their land but lack formal evidence due to administrative limitations in the past.[28] This is particularly relevant in rural areas that were previously governed under customary law systems.

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[26] Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, (Yogyakarta: Alumni, 1979), hlm. 87.

[27] Adinda Aulia, "Kajian Yuridis Politik Hukum Konservasi Sumber Daya Alam di Indonesia", Vol. 2, No. 6, 2024, 234-242, DOI: https://doi.org/10.572349/kultura.v2i6.1566

[28] Irwan kurniawan Soetijono et.al., "Pengakuan Konstitusional Hak Masyarakat Adat Atas Sumber Daya Alam di Indonesia", Journal of Multidisciplinary Research, Vol. 2, No. 1, 2025, 75-93, https://ejournal.mediakunkun.com/index.php/kunkun/article/view/259

In addition, long-term physical possession is closely related to the principle of the social function of land rights as stipulated in Article 6 of the UUPA, which provides that all land rights carry a social function.[29] This principle implies that land must be utilized and should not be neglected. Therefore, a person who actively possesses and manages land over a prolonged period is deemed to have fulfilled the social function of land and, consequently, deserves legal protection.

The strengthening of long-term physical possession may also be observed in Government Regulation Number 20 of 2021 concerning the Control of Abandoned Areas and Land, which provides that land rights may be designated as abandoned land where the land is not utilized in accordance with its intended purpose.[30] This provision implicitly demonstrates that parties who neither possess nor utilize land for an extended period may lose their legal legitimacy, while parties who actively possess and manage the land acquire a stronger legal position.

In jurisprudence, the Supreme Court of Indonesia has also recognized that long-term physical possession of land may give rise to legal consequences in the form of the extinguishment of the original rights holder's claim due to prolonged inaction (*rechtsverwerking*). Supreme Court Decision Number 123 K/Sip/1970 held that a person may lose his or her rights over land where the land has been left under the control of another party for a prolonged period without objection.

This principle demonstrates that Indonesian law not only protects formal ownership, but also takes into account the realities of land possession and utilization. Accordingly, physical possession of land for more than twenty years possesses a historical foundation in customary law, obtains normative legitimacy under the UUPA, and is expressly institutionalized in Article 24 paragraph (2) of Government Regulation Number 24 of 1997. This concept reflects a paradigm shift from formal ownership toward substantive possession based on good faith and the social function of land. In the context of land disputes, long-term physical possession serves as an important instrument for bridging the historical development of land law with the contemporary need for legal certainty.

d. Conflict between customary norms and positive law

Conflict between customary norms and positive law arises when the rules that live and are practiced within customary law communities are not fully aligned with the written provisions contained in statutory regulations. In the context of land law, customary law recognizes land possession based on land clearing, oral grants, and continuous physical possession that is socially acknowledged by the local community. In contrast, positive law emphasizes the importance of written evidence and land registration as the basis for legal certainty. These differing perspectives frequently give rise to disputes, particularly when land possessed under customary law is subsequently claimed by another party holding formal administrative evidence.[31]

The Basic Agrarian Law (*Undang-Undang Pokok Agraria/UUPA*) indeed recognizes the existence of customary law as the foundation of the national agrarian law system, insofar as it

[29] Basic Agrarian Law (Law No 5 of 1960) art 5.

[30] Government Regulation No 24 of 1997 on Land Registration, art 24(2).

[31] Wulanmas Anna P.G. Frederik, "Pendaftaran Hak Atas Tanah dalam Perspektif Kepastian Hukum", Vol. 32, No. 1, 2024, https://journal.unhas.ac.id/index.php/agjl/article/view/35063

does not conflict with national interests and prevailing statutory regulations. However, in practice, the dominance of positive law often results in the marginalization of customary norms, particularly where customary law communities do not possess formally recognized written evidence. This situation gives rise to tension between social justice as understood under customary law and legal certainty as enforced by the state.[32] Accordingly, this normative conflict is not merely a legal conflict, but also a conflict of values between the state legal system and the living law that exists within society.

Legal scholars argue that customary law should continue to be afforded space within the national legal system because it reflects the community's sense of justice. Satjipto Rahardjo emphasizes that law cannot be separated from its social context; therefore, the application of positive law must take into account the local values that continue to exist within society.[33] Accordingly, the resolution of conflicts between customary norms and positive law should ideally be pursued through a harmonization approach, namely by interpreting positive law progressively so that it is capable of accommodating social realities in the form of customary land possession, including oral grants and long-term physical possession.[34]

CONCLUSION

The history of land law in Indonesia demonstrates a continuity between customary law, colonial law, and national law, all of which have shaped the current construction of Indonesian land law. Legal scholars regard legal history as a means of understanding the background underlying the emergence of legal norms as well as the socio-political dynamics influencing their development. In the context of land law, customary law places physical possession, actual management, and social recognition as the basis for the legitimacy of land rights, including through oral grants and long-term possession. This principle was subsequently accommodated within national law through the UUPA, which recognizes customary law as the foundation of national agrarian law insofar as it does not conflict with national interests.

The enactment of the UUPA represented an effort to unify the legal system in order to eliminate colonial dualism and realize social justice, while simultaneously integrating customary law values, such as *hak ulayat* and the social function of land. Furthermore, the principle of rechtsverwerking demonstrates that legal history has also contributed to shaping the principle of substantive justice within positive law. This principle is normatively affirmed through Article 24 paragraph (2) of Government Regulation Number 24 of 1997, which recognizes physical possession for twenty years or more as a basis for proving land rights.

In practice, conflicts between customary norms and positive law frequently arise due to differing orientations between social recognition and administrative formalities. Nevertheless, both historically and normatively, Indonesian land law provides room for harmonization through an approach that prioritizes actual possession, good faith, and the social function of land. Accordingly, legal history provides an argumentative foundation that oral grants accompanied

[32] Basic Agrarian Law (Law No 5 of 1960) art 6.

[33] Government Regulation No 20 of 2021 on the Control of Abandoned Areas and Land, arts 1(6) and 7.

[34] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA: Isi dan Pelaksanaannya,* (Jakarta: Djambatan 2008), hlm. 47–49.

by long-term physical possession possess substantial value in terms of justice and strong relevance in the resolution of land disputes, including in the context of cases in Siak Regency, as they reflect the intersection between historical legitimacy, social recognition, and the protection afforded under national law.

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