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Legal Protection of the Pebatinan Air Suluh di Laut Indigenous Community Against Land Issues with PT. Gandaerah Hendana in Kerumutan District

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Abstract:

The presence of indigenous communities has long been a social reality. Its existence has been around for hundreds of years, characterized by various human groups with living arrangements in a certain territory. Recognition and protection of indigenous peoples, until now there has been a long debate regarding the pattern of recognition and protection. Legal protection is a development of the concept of recognition and protection of Human Rights (HAM). Meanwhile, the direction of the concept of recognition and protection of human rights is the existence of restrictions and placing obligations on society and the government. The main problem in this research is, how is the legal protection of the Pebatinan Air Suluh di laut Indigenous Community against land problems with PT. Gandaerah Hendana in Kerumutan sub-district and what are the factors causing the land problems of the Pebatinan Air Suluh di laut indigenous community with PT. Gandaerah Hendana. The research method used is sociological juridical with direct primary data collection in the field. The method used is a descriptive research method carried out by interviewing predetermined respondents. From the research results, it can be concluded: that recognition and protection of legal communities is carried out through three stages, the first is identification of customary legal communities, verification and validation of traditional legal communities, but it is necessary to know that the position of traditional institutions in Pelalawan Regency, especially customary law communities in Kerumutan District, has not been strengthened. with Regional Regulations so that it is necessary to form Regional Regulations which regulate specifically the legal recognition and protection of customary law communities on ulayat land. What causes the

land problems of the Pebatinan Air Suluh di laut customary law community, is the disorganized administration in the past, unclear control and ownership, claims/indications that the rights of one of the parties are not fulfilled. Therefore, it is necessary to handle and resolve conflicts which aim to provide legal certainty regarding control, ownership, use and utilization of the Pebatinan Air Suluh dilaut customary land.

Keywords: *Culture; legal protection; customary land.*

I. Introduction

The presence of indigenous communities has long been a social reality. Its existence has existed for hundreds of years, The presence of indigenous communities has long been a social reality. Its existence has been around for hundreds of years, characterized by various human groups with living arrangements in a certain territory. As during the Pelalawan kingdom, Pebatinan Kuang Oso Tigo Puluah received formal approval from the government, and obtained the right to own and use 29 tribal-based territorial areas, which is known as “utan-tanah Pebatinan Kuang Oso Tigo Puluah” (the forest-land “Pebatinan Kurang Satu Tiga Puluh”). Each region is ruled by an inner person (traditional leader).

When Indonesia became independent in 1945, the last Sultan of Pelalawan formally resigned and declared that his

sultanate was under the authority of the Republic of Indonesia under the government of the Pelalawan sultanate, gaining recognition of rights to forest areas (forest land of Pebatinan Less One Thirty) or 29 pebatinan, which were led by the Batin. In indigenous communities there are 29 batinans in Pelalawan Regency, namely Batin Monti Raja, Batin Muncak Rantau, Batin Putih, Batin Hitam, Batin Pematian, Batin Tuan Apuh, Batin Mudo Genduang, Batin Sengiri Komang, Batin Bunut, Batin Telayap, Batin Sungai Buluh, Inner Tomo Payung, Inner Badu Ondo, Batin Penghulu Setia Diraja, Batin Air Suluh di Laut, Batin Panduk, Batin Tanah Air, Batin Tuk Ajo Bilang Bungsu, Batin Pelabi, Batin Mudo Langkat, Batin Antan-Antan Diajo, Batin Genggeng, Batin Gasip, Batin Rantau Baru, Batin Mudo, Batin Baru (Bau), Batin Penghulu Besar, Batin Delik, dan Batin Kerinci. One of these 29 minds, there is Batin Air Suluh di

Laut, where this mind is located in Kerumutan District.

According to oral tradition, the origins of Pebatinan Air Suluh di Laut, at that time there was no sub-district head and village head in the Kerumutan area, transportation in ancient times could only be by water, if you wanted to travel along the Kampar River by using a boat with a light device called "Suluh". This suluh comes from meranti bark and anchor bark which is made like a torch.

Batin Air Suluh di Laut includes the Petalangan people who are also often referred to as talang people which means "bamboo people". This name comes from the habit of their ancestors who took river water using Reed Talang. So then they were called "talang people". And the whole tribe is called "petalangan people". Although the Petalangan people use this term as a specific self-description, they also consider themselves as Malays, as native ethnic Malays. Meanwhile, the coastal Malay people call them "land people" because they live far away on land (inland). According to this story, the Pebatinan Air Suluh di Laut is divided into tribes, namely: the Pilliang tribe, the Maneling tribe, the Modang tribe and the Pelabi tribe. According to history, the

origin of the Pebatinan Air Suluh di Laut tribe is from the Modang tribe. Until now, the only people who can become Batin Air Suluh di Laut are those from that tribe because it was regulated in ancient times, if they are not from that tribe, there are difficulties in the community area of Pebatinan Air Suluh di Laut, these difficulties include farming such as planting rice.

The border area of Pebatinan Air Suluh di Laut is in the eastern part from Kuala Kampar to Pangkalan Panduk, while in the western area from Indragiri Hulu to Kerumutan, this area is still within the scope of Pebatinan Air Suluh di Laut. In their social life, the indigenous people of Pebatinan Air Suluh di Laut occupy a separate territory. These areas are usually called ulayat. In traditional customs there are known regulations regarding utilization related to the environment.

For the Pebatinan Air Suluh di Laut customary community, land is a very valuable asset. Not only is it a place to carry out routine daily life, land is also a symbol and prestige that shows the existence of a tribe or people in Kerumutan. If we put it as an example, the relationship between land and the existence of a tribe or people is

like two sides of a coin that cannot be separated from each other.

In the Pebatinan Air Suluh di laut, the community has assets in the form of communal land. Land that is included in customary land, according to sociological history, is hereditary land owned by the Kerumutan community. PT Gandaerah Hendana provided approximately 750 ha of oil palm land for approximately 370 families in RT 11 RW 03 Air Kuning Hamlet based on a letter from the Mawar Berduri Palm Oil Farmers' Cooperative Number 28/BH/KPK.1/VII/2001 dated 27 May 2001. Therefore, the community asked for the handover of approximately 750 hectares of land which had been mutually agreed upon between the community and PT Gandaerah Hendana in 2001 to be returned to the community in the form of cooperative management of oil palm plantations using the KKPA pattern. As customary rights, as rights inherent in customary law communities, are constitutionally recognized and respected in the 1945 Constitution of the Republic of Indonesia, article 18B paragraph (2), which clearly states that the state recognizes and respects customary law community units

and their rights. traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law. Then, article 28I paragraph (3) also states that the cultural identity and rights of traditional communities are respected in line with developments in time and civilization.¹

If we look at the provisions of the 1945 Constitution of the Republic of Indonesia above, the state recognizes the existence of customary law communities along with the rights attached to them. However, this recognition must meet certain requirements, namely: as long as you are still alive; in accordance with community development; in accordance with the principles of the Unitary State of the Republic of Indonesia; and regulated in law.

In the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) it is stated that "Everyone has the right to recognition, guarantees, protection and fair legal certainty

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945., <https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45 ASLI.pdf>.

as well as equal treatment before the law"²

Recognition of customary law communities can help maintain the existence of customary law communities. The use of natural resources by indigenous peoples and forest management are examples of recognition by the state of indigenous peoples. This is a direct consequence of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which regulates the state's position as a legal entity responsible for managing natural resources.

James Bryce defines a constitution as a legal system that forms a political society or state. In other words, the law requires the existence of permanent institutions with defined functions and rights. In addition, a constitution can be defined as a set of rules that regulate government powers, the rights of the governed (the people), and the relationship between the two. The existence of a constitution as a binding basic law is based on the principle of supreme power or state sovereignty. The people are

² Rezeki Aldila Rajab, Bambang Eko Turisno, and Anggita Doramia Lumbanraja, "Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah," *NOTARIUS* 13, no. 2 (August 12, 2020): 642–54, <https://doi.org/10.14710/nts.v13i2.31085>.

the source of legitimacy of the state constitution which adheres to the ideology of popular sovereignty.³ The phenomenon of control and use of land or land with its various problems requires understanding the context of the problems related to the concept of control of forest/land resources adopted by Indonesia, with reference to the 1945 Constitution.⁴

Guidelines for the Recognition and Protection of Customary Law Communities, regulated in Minister of Home Affairs Regulation Number 52 of 2014 article 1 paragraph (1) "customary law communities are Indonesian citizens who have unique characteristics, live in groups in harmony according to their customary law, have ties to ancestral origins and/or the same place of residence, there is a strong relationship strong connection to the land and environment, as well as the existence of a value system that determines economic, political, social, cultural, legal institutions

³ Yusri Munaf, *Konstitusi Dan Kelembagaan Negara* (Pekanbaru: Marpoyan Tujuh Publishing, 2014), [http://repository.uir.ac.id/89/1/konstitusi dan kelembagaan negara yusri.pdf](http://repository.uir.ac.id/89/1/konstitusi%20dan%20kelembagaan%20negara%20yusri.pdf).

⁴ Suparto, *Negara Hukum, Demokrasi Dan Kekuasaan Kehakiman Di Indonesia* (Jakarta: Bina Karya, 2024), 104. [https://repository.uir.ac.id/23128/1/Negara Hukum%2C Demokrasi dan Kekuasaan Kehakiman.pdf](https://repository.uir.ac.id/23128/1/Negara%20Hukum%2C%20Demokrasi%20dan%20Kekuasaan%20Kehakiman.pdf).

and the use of a particular area from generation to generation". And article 1 paragraph (2) customary territory is customary land in the form of land, water and/or waters along with the natural resources thereon within certain boundaries, owned, utilized and preserved from generation to generation and in a sustainable manner to meet the community's living needs. obtained through inheritance from their ancestors or ownership claims in the form of communal land or customary forests.

Recognition and protection of indigenous peoples, until now there has been a long debate regarding the pattern of recognition and protection. Yance Arizona stated: the formulation of recognition in these provisions provides limitations or requirements so that a customary law community is recognized as a customary law community, if as long as it is still alive, in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.⁵

PT Gandaerah Hendana is an affiliate company of the

GAMA Group which has oil palm plantations in 2 districts, namely Pelalawan District (Ukui II Village, Ukui District and Kerumutan Village, Kerumutan District) and Indragiri Hulu Regency (Banjar Balam Village and Redang Seko Village, Lirik District). Dengan kehadiran perusahaan tersebut Legalitas Hak Guna Usaha perkebunan With the presence of this company, the Legality of the Cultivation Rights for the PT Gandaerah Hendana plantation in the Kerumutan area, Pelalawan Regency, the company has controlled land beyond the Cultivation Rights. As stated by the community, for 22 years the Air Kuning farming community has been demanding the handover of 750 hectares of land from PT Gandaerah Hendana, but until now this has not been realized by the people of Kerumutan Village. Previously, based on data from the Special Committee (Pansus) for Land Monitoring and Licensing of the Riau DPRD, PT. Gandaerah Hendana works on forests outside of the Cultivation Rights permits they have as well as forest release permits from the Indonesian Minister of Forestry, namely an area of approximately 1000 hectares. At that time, a member of the Riau DPRD Land Licensing and Monitoring Special

⁵ Jasardi Gunawan, "Implementasi Permendagri N0 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat," Jurnal IUS Kajian Hukum Dan Keadilan 6, no. 1 (April 28, 2018): 156, <https://doi.org/10.29303/ius.v6i1.536>.

Committee, Sugianto, recommended the findings to be evaluated by related parties. The oil palm plantation company is considered to have violated the rules and attempted to violate the permits granted.⁶

From the various explanations above, state regulation of Customary Law Communities has been contained starting from the constitution, various legal regulations at the national level and also at the regional level. The state's declarative recognition of customary law communities has been stated in these laws and regulations with various specific terms and conditions. This shows that the state has placed customary law communities as an important subject in state life. At the same time, it is a fact that talking about customary law communities is still an endless study with various existing perspectives, especially regarding the environment and the natural resources it has. In fact, in various realities, talk about customary law communities often goes hand in

hand with community problems with various parties, starting with the government, between communities, even with outside parties.⁷

One real solution could be to use the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities in Certain Areas. What is meant by certain areas in this regulation are forest and plantation areas (article 1 paragraph 2). Granting communal rights to customary law communities is carried out after various requirements are met. These requirements include that the community physically controls the land for at least 10 consecutive years and that they still depend directly on agricultural products in the area to fulfill their daily needs, so that the land in question becomes the main source of life and livelihood for the community. Another requirement is that social and economic activities are still

⁶ Sabar Nainggolan, "Garap Hutan Diluar Izin HGU, Legalitas HGU PT Gandaerah Hendana Di Kerumutan Kabupaten Pelalawan Riau," Cyber88, 2023, <https://www.cyber88.co.id/berita/37312/garap-hutan-diluar-izin-hgu-legalitas-hgu-pt-gandaerah-hendana-di-kerumutan-kabupaten-pelalawan-riau-dipertanyakan.html>.

⁷ Idris, Z., Apriani, D., & Erlina, "Towards Legitimate Indigenous People And Problematical In Indonesia" 3, No. June (2019): 165–74.

ongoing that are integrated with community life.⁸

1.1 Problem Identification

The problems in this research are; First, what is the legal protection for the Pebatinan Air Suluh Indigenous Community di Laut against land issues with PT. Gan, Hendana area in Kerumutan sub-district? Second, what are the factors causing the land problems of the Pebatinan Air Suluh indigenous community di Laut with PT. Gandana area.

1.2 Research Objectives

The aim of this research is to find legal protection for the Pebatinan Air Suluh Indigenous Community di Laut against Land Issues with PT. Gandaerah Hendana, in order to provide legal certainty regarding control, ownership, use and utilization of the Pebatinan Air Suluh di laut customary land.

II. Legal Materials and Methods

Primary data is data obtained directly from the field or directly from informants through interviews. The author conducted interviews with respondents or

samples. This data comes from the Chair of the Air Kuning Mandiri Kerumutan Cooperative, Pebatinan Air Suluh di Laut Kerumutan District and the Head of the National Land Agency Office, Pelalawan Regency. Secondary legal materials. Secondary data is data obtained from statutory regulations, literature books that support the main problem being discussed. Secondary data besides books can also be in the form of theses, theses, dissertations, journals, newspapers, seminar papers and others.

Judging from its type, this research is Sociological (Empirical) Legal research, namely a data collection technique, where the researcher makes direct observations of the research object. Meanwhile, in terms of its nature, this research is descriptive analytical in nature.⁹ This type of legal research is known as empirical sociological, in this case in the Pebatinan Air Suluh di laut Traditional Law Community in Kerumutan District.

III. Result and Discussion

A. Legal Protection of the Pebatinan Air Suluh di Laut Indigenous

⁸ Wibowo L.R. et al., *Penyelesaian Tenurial Perkebunan Kelapa Sawit Di Kawasan Hutan Untuk Kepastian Investasi Dan Keadilan* (Center for International Forestry Research (CIFOR), 2019), <https://doi.org/10.17528/cifor/007337>.

⁹ Mukti Fajar dan Yulianto Ahmad, *Dualisme Penelitian Hukum: Normative Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010), 155.

Community Against Land Issues with PT. Gandaerah Hendana in Kerumutan District

Land is a very valuable asset for customary law communities, not only as a place to carry out daily life routines, land is also a symbol and prestige that shows the existence of a tribe or people, especially in the customary law community of Pebatinan Air Suluh di Laut. Based on the results of interviews with the Chairman of the Air Kuning Mandiri Cooperative, representatives of the community, the land being sued is land left by their ancestors or what is usually called customary land. This customary land belongs to the customary law community which has been controlled for a long time. On May 17, 2001, a joint agreement was made between the community and the company PT Gandaerah Hendana, the area of oil palm land that had been agreed in writing was recorded in the joint agreement as approximately 750 hectares but certainly 541 hectares. There are approximately 370 community families who are demanding their rights to be handed over land in the form of oil palm plantations using the KKPA pattern. However, until now the handover of oil palm land has not been realized.

The presence of oil palm plantations on customary land creates many problems that need to be addressed. According to the community, the business given to investors does not

mean they are selling customary land to investors. In contrast, land for plasma plantations managed through partnerships between communities and investors is considered a form of compensation received by the community because investors manage their customary land for plantation businesses. If the HGU validity period has expired or the investor no longer uses the land, the land will return to them and not to the state. This causes ongoing disputes between the community and investors. Disputes cause social conflict between members of society; this has social impacts. Apart from that, the customary land will remain the same as long as the dispute lasts.¹⁰

Philosophically, the form of recognition and respect for customary law communities attached to them must also be supported by the State by recognizing and respecting them with evidence of the inclusion of customary law communities in statutory regulations. Indonesian customary law that applies, lives, grows and develops is flexible, flexible and in accordance with the values of Pancasila. The national legal system consists of elements of written law, unwritten law (also known as customary law), and religious law. The 1945 Constitution is part of the culture of

¹⁰ Setia Putra, "Penyelesaian Sengketa Tanah Ulayat Menurut Hukum Adat Di Kecamatan Benai Kabupaten Kuantan Singingi," *Jurnal Ilmu Hukum* 6, no. 1 (April 11, 2017): 147, <https://doi.org/10.30652/jih.v6i1.4039>.

the Indonesian people, customary law reflects the personality of the Indonesian people and nation.

Furthermore, the Constitutional Court's decision emphasized that customary forests are not state forests, but forests that are within customary territories owned by customary law communities. The Constitutional Court also emphasized that customary law communities have rights to customary forest areas. According to the Constitutional Court, the recognition of regional regulations regarding the existence of customary law communities remains relevant and is not unconstitutional as long as there is no customary law community law.¹¹

On 15 February 2022 at 13.30 WIB, a meeting was held to discuss the demands of the community of Kerumutan sub-district, Kerumutan sub-district regarding the handover of management of approximately 750 hectares of oil palm land by PT Gandaerah Hendana as stated in the minutes of the joint agreement dated 17 May 2001 which was agreed upon by both parties, the chairman of the cooperative Air Kuning Mandiri explains the chronology of the collective

agreement.¹² Based on the minutes of the trial/meeting discussing the demands of the people of Kerumutan Village, Kerumutan District regarding the handover of management of approximately 750 hectares of oil palm land by PT Gandaerah Hendana as stated in the minutes of the joint agreement dated May 17 2001 which was agreed upon by both parties, Budi Suriani (Head of the One-Stop Integrated Investment Service) as Chair of the Meeting explained as follows:

- a. In accordance with instructions from the Regent of Pelalawan, if there is no good commitment from PT Gandaerah Hendana for the people of Kerumutan sub-district, Kerumutan sub-district, Pelalawan district, the regional government will send a letter and approach the Minister of Environment and Forestry so that the permit to release the forest area that has been granted to PT Gandaerah Hendana can be obtained. revoked.
- b. If there is a good commitment from PT Gandaerah Hendana to the people of Kerumutan sub-district, Pelalawan Regency, the local government will maintain the continuity of the company's operations in Pelalawan Regency.
- c. Meanwhile, PT Gandaerah Hendana commitment to the

¹¹ Septya Hanung Surya Dewi et al., "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat," *Legislatif* 4 (2020), 79. file:///C:/Users/Samsung/Downloads/12322-Article Text-39254-1-10-20201227.pdf.

¹² Chairman of the Air Kuning Mandiri Cooperative, Interview, 10 February 2024, 10.00 Wib.

community of Kerumutan sub-district, Kerumutan sub-district is in the form of handing over approximately 750 hectares of land which was agreed upon in 2001.

- d. The Pelalawan district regional government will evaluate the Cultivation Plantation Business License Decree (IUP-B) that has been given to PT Gandaerah Hendana. If there are obligations that are not fulfilled by the company, the IUP-B Decree will be revoked.
- e. There is an oil palm plantation area of approximately 541 hectares located in a convertible forest area (HPK) which has been controlled and managed by the company PT Gandaerah Hendana to be handed over to the community of Kerumutan sub-district, Kerumutan sub-district as an alternative to fulfill the above obligations.

But not only that, the Head of Kerumutan Subdistrict also expressed his opinion at the meeting by supporting and appreciating the demands of the Kerumutan subdistrict community. It is hoped that there will be a follow-up to the community's demands by the company within a period of 2 weeks. The Regional Government of Pelalawan Regency, under the one-stop integrated investment and licensing service between PT Gandaerah Hendana and

the Air Kuning environmental community which is part of the Air Kuning Mandiri cooperative, Kerumutan Village, Kerumutan District, carried out a mass action to demand clarity on the settlement of land claims for oil palm plantations on Monday February 20 2023 at 09.00 WIB until finished. According to the Chairman of the Air Kuning Mandiri Cooperative) so far it has received attention from the regional government but there has been no follow-up on resolving this problem.¹³

Based on BeritaOne.id media, the Chairman of the Air Kuning Mandiri Kerumutan Cooperative said "asking for support from media colleagues to fight for our rights for more or less 22 years and asking the government and companies that we only want our rights to be granted. Because that's where we can send our children to school, even to make ends meet for our daily lives. On the land of our birth, our rights are not given".¹⁴ According to professor Rober A. William describes the relationship of indigenous peoples with their land as follows "indigenous peoples have emphasized that the spiritual and material basis of their cultural identity is maintained by their unique relationship

¹³ Pelalawan Regency Government One Stop Investment and Integrated Services Service, Minutes, Tuesday 15 February 2022.

¹⁴ BeritaOne.id, "Sedih...750 Hektar Janji Kesepakatan PT Gandaerah Hendana Tidak Terealisasi," *BeritaOne.Id*, 2023, <https://beritaone.id/amp/detail/7558/sedih750-hektar-janji-kesepakatan-pt-gandaerah-hendana-tidak-teralisasi>.

with their traditional territory for generations".¹⁵

Based on the results of research, according to Pebatinan Air Suluh di Laut, the recognition of customary land to date, customary law communities believe that the recognition of customary lands inherited from their ancestors which have been managed by community members for generations, has been proven by the existence of communities that are still in the form of associations, There is an institution in the form of a traditional ruling apparatus, in an area including Kerumutan District which is usually referred to as a pebatinan called Pebatinan Air Suluh di laut. In the process of selecting pebatinan, it is chosen based on descent and deliberation of pebatinan and then ratified by the Malay traditional institution.¹⁶

Confirmation of the status of customary law communities and their land rights is in accordance with the Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities, article 1 paragraph (2): "customary territory is customary land in the form of land, water and/or waters

¹⁵ I Gusti Noman Guntur Dyah Ayu Widowati, Ahmad Nashih Luthfi, *Pengakuan Dan Perlindungan Hak Atas Tanah Masyarakat Hukum Adat Di Kawasan Hutan* (Yogyakarta: STPN Press, 2014),

<https://online.flipbuilder.com/STPNPress/nex/>.

¹⁶ Pebatinan Air Suluh di Laut, *Interview*, Kerumutan, 26 March 2024.

along with "The natural resources that exist above, within certain limits, are owned, utilized and preserved from generation to generation and sustainably to meet the community's living needs obtained through inheritance from their ancestors or ownership claims in the form of communal land or customary forests".¹⁷

Based on what was conveyed by the Head of the Pelalawan Regency National Land Agency Office in the Thesis research interview, the National Land Agency's handling of conflicts is beyond issues that have been handled by the court and have not been handled by Law Enforcement Officials by facilitating both parties to the dispute to resolve it through deliberation or mutual agreement. parties, if there is no agreement then the conflict must be resolved through court. However, there are several disputes/conflicts that are often handled by the Pelalawan Regency National Land Agency, consisting of boundary/equivalence disputes and ownership disputes.

In the regulation of the Minister of Agrarian Affairs and Administration of the Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, the

¹⁷ "Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat", Pasal 4 ayat (1). <https://www.aman.or.id/wp-content/uploads/2014/08/Permendagri-Nomor-52-Tahun-2014.pdf>.

meaning of a land conflict which is called a conflict is a land dispute between individuals, groups, classes, organizations, legal entities or institutions that has a tendency or has had a wide impact. In article 5 letters a, b, and c, cases which constitute disputes and conflicts are classified into 3 (three) classifications: (a) serious cases are cases which involve many parties, have complex legal dimensions, and/or have the potential to cause turmoil. social, economic, political and security; (b) moderate cases are cases between parties whose legal and/or administrative dimensions are quite clear and if the resolution is determined through a legal and administrative approach, it will not cause social, economic, political and security turmoil; (c) light cases are cases of complaints or requests for instructions which are technical administrative in nature and the resolution is sufficient with a letter of resolution instructions to the complainant or applicant.

The existence of traditional law communities has long been marginalized under state power. When faced with the power of the state and the power of big businessmen, traditional law communities are in a weak bargaining position, both economically, socio-culturally, and especially politically. Therefore, protection of the existence and traditional rights of customary law communities is a necessity because customary law communities as a whole are included in the vulnerable groups in

Indonesian society.¹⁸ In the recognition and legal protection of customary law communities according to the results of research on Pebatinan Air Suluh di Laut, there is no special legal protection for the Pebatinan Air Suluh di Laut customary law community when dealing with companies.¹⁹ It can be said that recognition and protection of customary law communities is carried out through three stages, the first is identification of customary law communities, verification and validation of customary law communities and determination of legal communities based on Minister of Home Affairs Regulation Number 52 of 2014 concerning guidelines for recognition and protection of customary law communities in article 4.²⁰

Philipus M. Hadjon explained that legal protection for the people can be divided into two types, namely preventive legal protection and repressive legal protection. Preventive legal protection is legal protection where people are given the opportunity to raise objections or opinions before a government decision takes definitive

¹⁸ Relexi Bayo, Andy Usmina Wijaya, and Fikri Hadi, "Pengakuan Masyarakat Adat Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 1 (April 12, 2023), 1-11, <https://doi.org/10.38156/jihwp.v1i1.87>.

¹⁹ Pebatinan Air Suluh di Laut, *Interview*, Kerumutan, 26 March 2024

²⁰ "Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat. <https://www.aman.or.id/wp-content/uploads/2014/08/Permendagri-Nomor-52-Tahun-2014.pdf>."

form, meaning that preventive legal protection aims to prevent disputes from occurring. On the other hand, repressive legal protection aims to resolve disputes. Legal protection for the people from government legal actions is a juridical means in a rule of law state to prevent and recover losses experienced by the people as a result of government legal actions that cause losses to the people.²¹

Recognition and protection of the rights of customary law communities is indeed important, because it must be acknowledged that traditional customary law communities were born and existed long before the unitary state of the Republic of Indonesia was formed. Various problems arise related to the weak recognition of customary law communities as legal subjects who have special and special rights. Thus, laws and development policies in Indonesia should pay special attention to the rights of indigenous peoples. The push for the government to immediately issue implementing policies for the recognition and protection of indigenous peoples continues to roll out.

B. Factors Causing Land Problems of the Pebatinan Air Suluh di Laut Indigenus Community with PT Gandaerah Hendana

Customary land, as part of customary rights, provides unique rights to control and manage natural resources in Indonesian customary law

communities. The importance of customary rights in the management and control of natural resources reflects the cultural principles that exist in Indonesian communal society. The national land law system which is based on customary law is built on the existence of customary land which is based on customary law.²²

According to Article 3 of the UUPA, customary rights are considered land rights if they exist and their implementation must be in accordance with national interests and not conflict with statutory provisions. In fact, various statutory provisions still place customary rights in different and conflicting positions. Conflicts relating to customary land control have emerged as a result of different interpretations of legislation regarding the assignment of customary rights and different interpretations by various interested parties. This will inevitably result in land not being fully utilized, and this can also lead to unhealthy relationships between entrepreneurs, communities, and authorities, which can ultimately lead to social unrest.²³

²² M Sofyan Pulungan, "Menelaah Masa Lalu, Menata Masa Depan: Sejarah Hukum Tanah Ulayat Dan Model Penanganan Konflik Sosialnya," *Online* 6, no. 1 (2023): 235–67, <https://doi.org/https://doi.org/10.22437/ujh.6.1.235-267>.

²³ Setya Okta Wijaya, Thoriq Hendika Pratidhatama, and Illa Riski Agus Jayane Harto, "Kedudukan Hukum Tanah Adat Pasca Ditetapkan Hukum Agraria Nasional," *Jurnal Education And*

²¹ Ragawino B, "Hukum Administrasi Negara" (Jawa Timur: Sinar Grafika, 2018), 207.

According to Ichan Malik and Ritha Safithri, in Indonesia there are five main sources of conflict, namely: first, structural sources of conflict related to wrong policies and decision making from the central government to the regions. Second, sources of conflict of interest which include political interests, economic interests and dominant cultural interests. Third, the source of value conflict is related to issues of custom, ideology and interpretation of religious values. Fourth, social psychological conflict, related to issues of misperception, stereotypes, negative attitudes and issues of group and regional identity. Fifth, data conflict, related to the interpretation of data and manipulation of data, the form of which is very clear, for example in the manipulation of history, history is recontextualized to current conditions. Meanwhile, according to Soerjono Soekanto, the causal factors or roots of conflict or conflict are:

- 1) differences between individuals
Differences in stance and feelings might give rise to clashes between them, especially differences in stance and feelings between them.
- 2) Cultural differences
Personality differences between individual people also depend on the cultural patterns that are the background for the formation and development of personality,

which will more or less influence a person's personality in that culture.

- 3) Differences in interests
Differences in interests between individuals and groups are another source of conflict in both economic and political interests.
- 4) Social change
Social changes that take place quickly will temporarily change the values that exist in society which can cause the emergence of groups with different views.

From the description above, it can be concluded that the factors that cause conflict are the roots of conflict in society, whether in the form of differences between individuals, competition for natural resources and violations of rights. As for the results of interviews with the chairman of the Air Kuning Mandiri Cooperative and also Pebatinan Air Suluh di Laut,²⁴ The factor causing the land problems of the Pebatinan Air Suluh di Laut indigenous community with PT Gandaerah Hendana, is due to the company's uncertainty in fulfilling the agreement that has been made by the Company with the Air Kuning Mandiri Cooperative Community that the company PT Gandaerah Hendana will return the oil palm plantation land

Development 11, no. 1 (December 26, 2022): 250–54, <https://doi.org/10.37081/ed.v11i1.4444>.

²⁴ Pebatinan Air Suluh Di Laut, Interview, Kerumutan, 26 March 2024.

with a KKPA pattern agreement.²⁵ However, it can also be concluded that the results of interviews obtained by researchers with the Head of the National Land Agency Office of Pelalawan Regency, obtained information regarding the factors that caused the Land Problems of the Pebatinan Air Suluh di Laut Indigenous Community with PT Gandaerah Hendana, namely as follows: disorganized administration in the past, unclear control and ownership, claims/indications that the rights of one of the parties are not fulfilled and there are parties who deliberately seek profit from the land.²⁶

The relationship between customary law communities and occupied land has a special meaning according to customary law. According to customary law, this relationship is very close and spiritual in nature. Therefore, customary law communities have the right to use and produce products from the land, as well as hunt animals on it. Van Vollenhoven calls "beschikkingsrecht", the rights of customary law communities to this land, which then turn into ulayat rights or lordship rights.²⁷

Legal certainty is a guarantee that people are entitled to obtain their rights, legal certainty regarding customary land is obtained through registration of land rights, but in Article 1 point 13 of the Republic of Indonesia Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, "ulayat land is land that is in the area of customary law community control which in reality still exists and is not attached to any land rights" this causes there to be no registration of customary community land rights.

Therefore, a form of land registration is needed which will be carried out by the National Land Agency to recognize and protect the land rights of customary law communities over their customary (forest) areas. Several ideas that have emerged in proposing recognition of rights to communal land include: (a) providing individual land rights through the form of a certificate, or ratification of a "semi-formal" system of proof of community ownership; (b) provide management rights, management permits, or land use agreements; (c) granting collective ownership or use rights to land to indigenous communities; (d) provide recognition of customary rights (beschikkingrecht).

²⁵ Chairman of the Air Kuning Mandiri Cooperative, Interview, Kerumutan, 09 February 2024.

²⁶ Head of the National Land Agency Office, Pelalawan Regency, Interview, Pangkalan Kerinci, Pelalawan Regency, 10 April 2024.

²⁷ I Made Suwitra, "Eksistensi Tanah Adat Dan Masalahnya Terhadap Penguatan Desa Adat Di Bali,"

WICAKSANA: *Jurnal Lingkungan Dan Pembangunan* 4, no. 1 (2020): 31–44, <https://doi.org/10.22225/wicaksana.4.1.1816.31-44>.

Sectorization is considered to be one of the factors that hinders the implementation of customary law community laws. Each agency has their own policies and programs. This sectorization causes internal government conflicts, both real and hidden. As a result, legal recognition of customary law communities cannot be carried out comprehensively. On the ground, sectorization makes it more difficult for communities to advocate for legal recognition of their existence and rights because they have to negotiate their interests with various government agencies.²⁸

In addition, the constitution guarantees judicial review of the 1945 Constitution in the Constitutional Court by indigenous peoples to protect their rights. Constitutional Court Decision Number 31/PUU-V/2007 expressly states the state's recognition of the legal status of indigenous peoples to exercise the right to legal examination. An indigenous community's lawsuit against the law can be legally accepted if the indigenous community fulfills three requirements: they are still alive, they have developed historically, and they

are in accordance with the principles of the Unitary State of the Republic of Indonesia.²⁹

Customary rights in a place can be ascertained by looking at several aspects, namely: on the land there is still a group or person as part of the traditional village; There are areas that are the object of customary rights which are based on land belonging to traditional villages and have customary control and are recognized by customary law communities. Therefore, it is necessary to handle and resolve conflicts which aim to provide legal certainty regarding control, ownership, use and exploitation of land on the Pebatinan Air Suluh di Laut customary land, especially in resolving land disputes.

There are two general reasons for land disputes to arise. The first is through the legislative process, namely through the judiciary which is usually assisted by the BPN. The second is through a non-legislative process, namely through deliberation, which usually involves village officials or regional traditional leaders.³⁰

²⁸ Yusuf Salamat, "Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah) (Case Study of Recognition of the Dayak Adat Law Community Land In," *Jurnal Legislasi Indonesia* 13, no. 04 (2016): 411–20, <https://doi.org/https://doi.org/10.54629/jli.v13i4.88>.

²⁹ Wihelmus Jemarut and Pahrur Rizal, "Law No. 39 of 1999, Law No. 41 of 1999" 5, no. 5 (1960): 117–26, <http://publishing-widyagama.ac.id/ejournal-v2/index.php/yuridika/>.

³⁰ Arina Novizas Shebubakar and Marie Remfan Raniah, "Hukum Tanah Adat/Ulayat," *Jurnal Magister Ilmu Hukum* 4, no. 1 (2021): 14, <https://doi.org/10.36722/jmih.v4i1.758>.

Conflict resolution according to the expert opinion of Delzi Syofiana Dewi, the role played by the Regional Government in handling land conflicts which constitute the customary land of indigenous communities is in the form of:

1. Facilitation Process

Regional governments facilitate customary land conflict issues by providing a place to make efforts to resolve problems experienced by parties in conflict.

2. Mediation Process

The Regional Government becomes a neutral third party, does not have the authority to make decisions, but helps the disputing parties reach a settlement (solution) that is acceptable to both parties.

According to Soerjono Soekanto, there are several ways to resolve conflicts, namely:³¹

1. Coercion

The solution is by forcing and pressuring the other party to surrender. Coercion is a way in which one party is in a weak state when compared to the opposing party. This method is often less effective

because one party has to give in and surrender forcefully.

2. Compromise

A way in which the parties involved reduce each other's demands, in order to reach a resolution of the existing dispute.

3. Arbitration

It is a way to reach an agreement between both parties. A third party listens to both parties' complaints and functions as a "judge" who finds a binding solution.

4. Mediation

Use invited mediators to mediate disputes. Mediators can help gather facts, establish broken communications, clarify and clarify problems and pave the way for integrated problem solving.

5. Conciliation

It is an attempt to reconcile the desires of disputing parties in order to reach a mutual agreement.

³¹ Syamsuddin Anas, Susi Fitria Dewi, and Junaidi Indrawadi, "Faktor Penyebab Konflik Tanah Ulayat Antara Peladang Pemandang Vs Masyarakat Adat Di Desa Tamiai Kabupaten Kerinci," *Jurnal Sosiologi Reflektif* 14, no. 1 (October 18, 2019): 131, <https://doi.org/10.14421/jsr.v14i1.1702>.

3. Conclusion and Suggestion

a. Conclusion

The existence of customary rights over the land of the Pebatinan Air Suluh di laut customary law community in Kerumutan District, Pelalawan Regency, has existed for a long time. In reality, these customary rights are still jointly managed and controlled by customary law communities represented by a leadership system in a customary institution and the authority attached to it. These communities are still bound by the customary law order regarding the management and control of the use of customary rights over land that are in force, recognized and obeyed by the local customary law community. The land conflict involving the Pebatinan Air Suluh dilaut customary land with PT Gandaerah Hendana still has not yet found a resolution, the company is uncertain about fulfilling the agreement that has been made by the Company with the Air Kuning Mandiri Cooperative Community that the company PT Gandaerah Hendana will return the oil palm plantation land with the agreement KKPA pattern, which until now has not been realized so it can be concluded that there is no legal protection, especially for the Pebatinan Air Suluh di laut customary law community when dealing with companies.

b. Suggestion

The Regional Government needs to form Regional Regulations as implementing regulations to provide

legal protection for the rights of customary law communities to land, especially the customary law communities of Pebatinan Air Suluh Di Laut and pebatinan in Pelalawan Regency.

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