



Land Procurement for the Public Interest

Fansiska Vivi Ganggas^{1*}, Adonia Ivonne Laturete², La Ode Angga³, Barzah Latupono⁴

¹, Postgraduate Program Universitas Pattimura, Ambon, Indonesia.

^{2,3,4}, Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : fansiskavivi@gmail.com

Corresponding Author*



Abstract

The construction of various public facilities and other infrastructure requires land in large quantities and varying in size depending on the needs of a region. At the same time, as the population increases, there is less and less land available, and because the State does not have land for the construction of various public facilities and other infrastructure for the public interest mentioned above, efforts are needed to procure land for the construction of various public facilities and infrastructure. This research is a normative legal research, using a problem approach that includes the statutory approach (Statute Approach) and the conceptual approach (Conceptual Approach) as well as the case approach. With the statutory approach (statute approach) it is intended that as a legal research, the answer to the legal issue of this research uses related statutory regulations, and with these statutory regulations the relationship between one regulation and another can be analyzed as an inseparable series, especially statutory regulations related to the land acquisition process on customary land. Public land acquisition for the benefit of objects with customary land ownership is customary land acquisition for the public interest that involves the recognition of customary rights through a deliberation process and appropriate compensation, based on the principles of humanity, justice, and welfare. The implementation of this land acquisition is regulated by Law Number 2 of 2012 and its implementing regulations, which mandate the involvement of customary law communities, customary leaders, and relevant agencies in the planning process through to the transfer of land rights.

Keywords: Customary Law Communities; Land; Public Interest.

INTRODUCTION

The construction of various public facilities and other infrastructure, requires a considerable amount of land and varies in area depending on the needs of an area, at the same time as the population increases, the less land is available, and because the State does not have land for the purpose of building various public facilities and other infrastructure for the public interest mentioned above, So an effort is needed to procure land for the construction of various public facilities and infrastructure. In terms of land acquisition, the government makes regulations for land acquisition, in Article 18 of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA), which is further followed up with Law Number 20 of 1961 concerning the Revocation of Rights to Land and Objects on It. Subsequently, the Minister of Home Affairs Regulation Number 15 of 1975 concerning Provisions Regarding Land Acquisition Procedures was issued.

Prior to the issuance of Law Number 11 of 2020 concerning Job Creation, Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest had been issued, and several Presidential Regulations issued after that, namely Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, Presidential Regulation of the Republic of Indonesia Number 40 of 2014 concerning Amendments to Presidential Regulations Republic of Indonesia Number 71 of 2012 concerning the Implementation of

Land Acquisition for Development in the Public Interest, Presidential Regulation of the Republic of Indonesia Number 99 of 2014 concerning the Second Amendment to the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, Presidential Regulation of the Republic of Indonesia Number 30 of 2015 concerning the Third Amendment to the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest and Presidential Regulation of the Republic of Indonesia Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, with its implementing regulations, namely the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition and Regulation of the Minister of Agrarian and Governance Space/Head of the National Land Agency Number 6 of 2015 concerning Amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 22 of 2015 concerning the Second Amendment to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition and Regulation of the Minister of Agrarian and Spatial Planning/Head of Agency National Land Number 20 of 2020 concerning Procedures for the Preparation of Land Acquisition Planning Documents.

Article 1 Paragraph 2 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2021 concerning Provisions for the Implementation of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest states that land acquisition is an activity of providing land by providing appropriate and fair compensation. Meanwhile, to whom the proper and fair compensation is to those who are entitled to the land that will be used as the object of land acquisition for the public interest.

Customary law societies existed before the Republic of Indonesia politically proclaimed its independence. Thus, its existence is *de facto* recognized as the smallest alliance with the characteristics and rights attached to it and the indigenous peoples are recognized and protected constitutionally in Article 28I Paragraph 3 of the Constitution of the Republic of Indonesia of 1945 and article 18B of the Constitution of the Republic of Indonesia of 1945. As the diversity of the Indonesian nation has been recognized by the nation's *founders* (*Founding Fathers*) with the motto *Bhinneka Tunggal Ika*, the motto contains the meaning of recognizing differences, and the determination to become one nation, namely the Indonesian nation, without eliminating the existing diversity. Therefore, one of the national goals affirmed in the preamble to the Constitution of the Republic of Indonesia in 1945 is to protect the entire Indonesian nation. The phrase "All Indonesian Nation" refers to the recognition of the reality of diversity, all of which must be protected.¹

The definition of customary law communities itself is regulated in Article 1 Paragraph 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024 concerning the Implementation of Land

¹ Gaffar, *Demokrasi Konstitusional, Pratik Ketatanegaraan Indonesia, Setelah Perubahan UUD 1945*, (Jakarta: Konpres, 2013), p. 160

Administration and Registration of Customary Rights of Customary Law Communities, which states that the recognition of the rights of customary law communities is a group of people who are bound by their customary law order as joint citizens of a legal alliance due to the similarity of residence or on the basis of descendants who are have customary institutions, have property and/or customary objects that are jointly owned, as well as a value system that determines customary institutions and customary law norms, thus it can be concluded that customary law society is a group of communities that have their own provisions, territorial boundaries, and norms that apply wherever the community is located and is obeyed by members of the community group in that group.

The customary law community's rights to land are known as "Customary Law Community Land Ownership" or in some communities referred to as "customary land". Land ownership of customary law or customary rights to land. In proving the land that is the object of land acquisition, it can be guided by Article 23 of Government Regulation Number 24 of 1997 concerning Land Registration, which states that in order to obtain the correctness of juridical data, namely: 1). Determination of the granting of rights from the authorized official to grant the rights concerned according to the applicable provisions if the grant of rights comes from state land or land of management rights. 2). The original PPAT deed which contains the grant of the right by the owner of the property to the beneficiary of the rights concerned regarding the right to use the building or the right to use the land of ownership.

If the object of land acquisition already has a land certificate, then the land rights certificate becomes proof of land ownership from the person who is entitled to the land, which then becomes the basis for the payment of compensation to the rightful owner, but the problem is if the land is land under the control of customary law communities, because until now, there are still differences in definitions of indigenous peoples and land ownership by indigenous peoples in Indonesia. which leads to multi-interpretations and inconsistencies in identifying and defining indigenous peoples and their land tenure systems in Indonesia. A problem that is very likely to arise in customary land is the difficulty of 'translating' customary law on the control and ownership of customary land into the national legal system. Customary law in Indonesia is very diverse, including in the regulation of control and ownership of customary lands. In many places, customary/customary land is under the management of customary elders, and indigenous peoples are allowed to use and utilize the land, as a place to live and a source of livelihood.

These lands in customary law are still controlled by indigenous peoples, even though their control and utilization are carried out by individuals or even allowed to other parties to cultivate as agricultural land. This then creates complexity in land registration based on the perspective of Indonesian land law, about how to describe the subject and object of land rights for customary land. From various studies on customary land and land acquisition, the complexity of customary and customary land administration in Indonesia in the context of land acquisition can be classified into several aspects, including the difficulty of identifying indigenous peoples and customary lands in projects that involve land acquisition for the public interest, including in defining the subjects and objects of customary lands. This mainly affects the mechanism for awarding compensation, about who is entitled to compensation, and how much each party receives compensation. Compensation in the context of land acquisition in Indonesia is given to the right party who physically owns and controls land with a certain territory. Meanwhile, in many cases, indigenous peoples in Indonesia may not

inhabit a place permanently, they may be nomadic inhabitants who do not inhabit certain territories, and may be affected by these procurement activities due to the loss of access to natural resources or land in them, so it is difficult to detect the existence of indigenous peoples based on their geographical existence.

In addition, in reality, indigenous peoples do not occupy and control the land that is the object of land acquisition, nor do they have written evidence related to the ownership of the land in question, but on the other hand they are required to submit a statement of physical control of the land plot, which is something that cannot be held accountable in the future and can cause criminal prosecutions, both for the land acquisition committee, nor do the parties consider themselves entitled to their land. In addition, the land acquisition implementation committee has an obligation so that the implementation of land acquisition must be carried out because it is part of the National Strategic Project, so that development activities must be carried out as soon as possible. The formulation of the problem that can be raised in this writing is How is land acquisition for the public interest with the object of land ownership of customary law communities.

METHODS OF THE RESEARCH

This research is a normative legal research, using a problem approach that includes the *Statute Approach* and the *Conceptual Approach* as well as the *case approach*,² With the *statute approach*, it is intended that as a legal research, the answer to the legal issue of this research is used related laws and regulations, and with these laws and regulations, the relationship between one regulation and another regulation will be analyzed as an inseparable series, especially laws and regulations related to the process of land acquisition on customary land.

RESULTS AND DISCUSSION

Customary law societies always maintain a historical and spiritual relationship with their natural resources, so that the culture owned by the customary law community can develop from generation to generation, so if the customary territory or natural resources contained in it are disturbed by the State or other parties, it will be able to threaten the economic life and existence of the customary law society itself. Along with the development of the times until now, the existence of customary territories or what we usually know as customary lands is decreasing and even almost disappearing. The reduction of the existence of customary land of customary law communities is influenced by several factors, one of which is the laws and regulations enacted by the Government which were initially issued to protect the rights of customary law communities, but in their implementation they are inversely proportional to the purpose of issuing these rules.

According to Fifik Wirayani, the rights of Indigenous peoples are economic, social and cultural rights protected by the International Covenant on Human Rights, so it is appropriate and appropriate that the rights of Indigenous peoples are protected by the applicable laws and regulations in Indonesia.³ The Religious Communalist nature of the conception of the National Land Law is affirmed by Article 1 Paragraph (2) of Law Number 5 of 1960 concerning the Basic Agrarian Regulations, which states that "The entire earth, water and space, including the natural resources contained therein within the territory of the Republic

² Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Setara Press 2020), p. 93.

³ Fifik Wirayani, *Reformasi Hak Ulayat Pengaturan Hak-hak Masyarakat Adat dalam Pengelolaan Sumber Daya Alam*, (Malang: Setara Pers, 2009), p. 2.

of Indonesia, as a gift of God Almighty, is the earth, water and space of the Indonesian nation and is a national treasure." The provisions of Article 1 of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles affirm that: a) The entire territory of Indonesia is the unity of the homeland of all Indonesian people united as the Indonesian Nation; b) All earth, water and space including natural resources contained in it in the territory of the Republic of Indonesia as a gift of God Almighty are the earth, water, and space of the Indonesian Nation and are National Treasures.

Furthermore, the government's intensive efforts to show the existence of communal rights to land have been narrowing since the enactment of the Regulation of the Minister of Agraria and Spatial Planning/National Land Agency Number 9 of 2015 concerning Procedures for the Determination of Communal Rights to Customary Law Communities and Communities in Certain Areas. The enactment of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015 expressly revokes the Regulation of the Minister of State Agrarian and Spatial Planning/Head of the National Land Agency Number 5 of 1999 which has been a guideline for resolving the issue of customary rights of customary law communities.

A year later, the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015 was revoked by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to the Land of Customary Law Communities and Communities in Certain Areas. In the Dictum Considering letter (b) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 states that one of the reasons for the replacement of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015 is to avoid differences in understanding of communal rights to land.

Unfortunately, both the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015 and the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 both have the wrong concept of communal rights. The Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 still adheres to the same concept as the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015, namely to facilitate communal rights with customary rights. This concept clearly clashes with the principle of land registration regulated in Government Regulation Number 24 of 1997 concerning Land Registration, especially Article 9 Paragraph (1) concerning the object of land registration, where customary rights and communal rights are not the subject of land registration (where there are property rights, business use rights, building use rights and others). If you follow Government Regulation Number 24 of 1997 concerning Land Registration, communal rights are equated with property rights, so it is not customary rights, even in the certificate of communal land in the Tengger community it comes from yasan land (customary property rights).⁴ Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015 and the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016, the National Land Agency

⁴ Purnawan D. Negara, "Hak Masyarakat pada Masyarakat Tengger: Sebuah Refleksi atas Pelaksanaan Pengakuan "Hak Komunal Atas Tanah" pada Masyarakat Tengger, *Jurnal Digest Epistema* 6, (2016): 29.

has introduced a new type of right, namely Communal Rights to Land, which is formulated as "joint ownership rights over the land of a Customary Law Society (MHA)" as well as has made a legal breakthrough, without making amendments to Government Regulation Number 24 of 1997 concerning Registration of Rights.⁵

Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 classifies the Subject of Communal Rights into two categories, namely Customary Law Communities that meet the requirements can be confirmed their land rights and community groups located in a certain area can be in the form of cooperatives, units or village sections, or other community groups that meet the requirements can be given land rights. Unfortunately, the character of customary law communities hinted at in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency is more inclined to the concept of determining rights with a private dimension and ignoring the dimension of customary public rights. This means that the concept of determining rights in the ministerial regulation is more inclined to lead to the land rights of members of an indigenous group as is the case with the customary land of the tribe in Minagkabau.

Even though beyond that, there is still a scope of customary rights with a public dimension such as customary institutions, alliances of customary law communities or customary villages such as nagari, negeri, kasepuhan and others that have the content of customary public rights assets including the right to regulate legal relations between clan members in customary law societies or outside customary law communities over the use and management of existing natural resources, The right to regulate the allocation, utilization and allocation of land and space for the public benefit of customary law communities, such as the determination of prohibited forests and so on.

Although Law Number 6 of 2014 concerning Villages has regulated customary law communities as "customary villages", in substance customary rights are merged into customary village assets, so that the determination of customary villages is part of the determination of the right of origin over customary territories which is also called customary rights. On the other hand, the regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency in question hints at the procedure for determining customary law communities as the subject of rights, both in the form of customary villages and customary law communities through Regional Regulations and/or Regional Head Decrees using various mechanisms, the transitional rules of the ministerial regulation in question accommodate the diversity of the determination mechanisms, By ensuring that the determination of customary law communities and their existing and ongoing rights are recognized, so that the rights of indigenous peoples can be established as communal rights.

Firmansayah stated that the restriction on the determination of customary law community rights is only on the private communal rights, so customary rights, like state customary laws in regional regulations on customary lands in West Sumatra, experience legal uncertainty, so that the most possible thing is to change the status of nagari as customary villages and include nagari customary as assets as customary villages, In the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to the Land of Customary

⁵ Noer Fauzi Rachman, "Masyarakat Hukum Adat dan Hak Komunal Atas Tanah", *Jurnal Digest Epistama*, 6 (2016): 8-9.

Law Communities and Communities in Certain Areas, there are 2 (two) types of land that will be granted communal rights: 1) Land controlled by customary law communities outside the forest and within the forest (Article 9 Paragraph (2)) and; 2) Land controlled by the community in certain areas (forest areas and plantations). So the object of the right is outside the forest and is in the forest.

In the forest, there is a possibility of being controlled by the community and customary law communities, so that conflicts are very possible. If this happens, which should be protected by customary law communities living in forest areas that have lived there for generations or communities that have been occupying forests for 10 (ten) years or more which are also claimed to be in the control of customary law communities. This is not regulated in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights to Customary Law Community Land and Communities in Certain Areas.

This opportunity raises legal uncertainty related to the object of rights due to the overlap of the control of the object of land rights. Even worse, it will even give birth to the potential for horizontal conflict between customary law communities and non-customary law communities that have control over the same object, namely over customary territory. In fact, so far there have been several social assimilation processes built by the community to resolve conflicts related to the overlapping claims of customary law communities with non-customary law communities on customary territories, so it is feared that the ministerial regulation will strengthen claims between communities, so that the social assimilation process that has been or is being built becomes fragile and even broken.

Furthermore, the equalization of customary law and non-customary law communities as the subject of communal rights seems to simplify the concept of communal rights narrowly and set aside customary rights broadly. So that the determination of the subject who has the right to a land object is only limited to the control of land over an area without paying attention to the ties to land and natural resources by customary law communities with a traditional, social and cultural background. The results of the social assimilation process in resolving conflicts between communities seem to be outside the scope and authority regulated by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to the Land of Customary Law Communities and Communities in Certain Areas.

Different treatment of customary law communities can potentially lead to the loss of traditional rights of customary law communities over their forests, making it difficult for customary law communities to obtain natural resources from forests for their livelihoods. The loss of these rights is sometimes in an arbitrary way so that it will not infrequently result in conflicts between customary law communities and rights holders.

The recognition and protection of customary rights has 2 (two) conditions, namely the condition of existence, meaning that the customary rights of customary law communities are still recognized if in reality they still exist. The second condition is the implementation condition, which means that the exercise of customary rights must not conflict with the applicable national law. The recognition and protection of customary rights regulated in Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles contains the understanding that juridically the recognition and protection of customary rights is in a weak

position. The authority of customary law communities to regulate the use of their customary rights has become very tight, because the system in the current Indonesian Government is difficult to provide the possibility for customary law communities to be able to take their role.

Article 1 Number 4 of the General Provisions of Law Number 2 of 2012 states that "The object of land acquisition is land, above-ground and underground spaces, buildings, plants, objects related to land, or others that can be assessed", in relation to the legal regulation of communal rights as an object of land acquisition, also seems to be beyond the reach of Law Number 2 of 2012. It is as if all plots of land attached to communal rights can be used as objects of land acquisition.

As previously explained, that the object of communal rights based on the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 there are 2 types of land that can be used as objects of communal rights, namely the following: 1) Land controlled by customary law communities outside the forest and in the forest (Article 9 Paragraph 2); and 2) Land controlled by the community in certain areas (forest areas and plantations). This means that there are two subjects that control the object of communal rights based on the regulation, namely the object of land parcel that is quasi-owned by the customary law community and the object of land parcel (in a certain area) that is quasi-owned by a community group (non-customary law community).

Regarding the two objects of communal rights, not all land plots of communal rights can be used as objects of land acquisition. Because, if referring to the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to Customary Law Communities and Communities in Certain Areas, it opens up opportunities only for communal rights owned by customary law communities that can be used as objects of land acquisition, Meanwhile, communal rights for people in certain areas are not possible to be used as objects of land acquisition.

The opportunity for communal rights of customary law communities can be used as an object of land acquisition in writing in the provisions of Article 20 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to the Land of Customary Law Communities and Communities Situated in Certain Areas, which fully states that; "Communal rights given to customary law communities that have been registered in Article 18 Paragraph 3, the use and utilization of their land can be collaborated with third parties, in accordance with the agreement of the parties and the provisions of laws and regulations".

Another opportunity for communal rights to be transferred as an object of land acquisition is discussed in Article 23 Paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights to Customary Law Communities and Communities in Certain Areas which states that; "The communal rights of the customary law community are based on the provisions of customary law that apply to the customary law community concerned".

It is different from the treatment of communal rights that are acquired by the community in certain areas that have been restricted to not be transferable and/or used as objects of land

acquisition as contained in the provisions of Article 23 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for the Determination of Communal Rights to the Land of Customary Law Communities and Communities in Certain Areas which states that; "The communal rights of the community in a certain area cannot be transferred to other parties except by inheritance".

Based on the above description, it can be understood that communal rights that can be used as objects of land acquisition are communal rights that are quasi-owned by customary law communities. However, the pattern of transfer of rights must also refer to legal provisions that are not only limited to what has been regulated in Law Number 2 of 2012.

Land acquisition for development for the public interest is another form of the social function of land rights, the essence of which is the implementation of development in an effort to achieve and improve the welfare of the people. The next limitation of the public interest can be seen in Article 1 Paragraph 6 of Law Number 2 of 2012, namely "that the Public Interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people."

Furthermore, Article 18 of Law Number 5 of 1960 states that "For the public interest, including the interests of the nation and the state and the common interests of the people, land rights may be revoked, by providing appropriate compensation and in the manner regulated by law." If it is related between the two articles mentioned above, then the public interest as a form of social function can be used as one of the justifications for the revocation of land rights (including communal rights to land) by the state under certain conditions, namely by providing appropriate compensation and in the manner regulated by the Law.

Article 6 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles states that "All land rights have a social function". When referring to the article mentioned above, it can be understood that the use of the right to a piece of land must also pay attention to the public interest including the community, nation and state.

In relation to the public interest above communal rights, if referring to Article 5 of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, it states that "The agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with the national and state interests", then on the basis of national unity, with Indonesian socialism and with the regulations listed in Law Number 5 of 1960 concerning the Basic Regulations Agrarian Principles have the consequence that every matter regarding land and land, including customary land, must be in accordance with the national and state interests. The public interest can then be seen in Article 1 Paragraph 6 of Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, namely that the Public Interest is the interest of the nation, state and society that must be realized by the government and used as much as possible for the prosperity of the people. Therefore, the juridical basis for the revocation of a piece of land of customary rights/communal rights of customary law communities must use public interest reasons.

Basically, Law Number 2 of 2012 has outlined a 'proper and fair' way of compensation for land acquisition originating from communal right lands or outside of communal right land. Article 36 of Law Number 2 of 2012 has determined that forms of compensation can be in the form of money; replacement soil; resettlement; share ownership; or any other form agreed upon by both parties. The distinction between a 'proper and fair' compensation

mechanism for the communal rights of customary law communities as the object of land acquisition has basically been accommodated in the explanation of Article 40 of Law Number 2 of 2012 concerning the Acquisition of Land for Development for the Public Interest which explains that "... Compensation for customary land is given in the form of replacement land, resettlement, or other forms agreed upon by the customary law community concerned...".

It seems that in relation to the acquisition of land derived from the communal rights of the customary law community as another form of customary institutional wealth assets of a customary village, the process of providing 'proper and fair' compensation is not as simple as the acquisition of land on the lands of non-communal individual rights. The affirmation of the form of compensation as described in the above regulation can be interpreted as replacement land, namely land with the same area as the land used, then resettlement is about if the land is residential land the government is obliged to relocate the settlement to another area with the same facilities, or with a replacement approved by the customary law community and the government.

The approval mechanism by customary law communities and the government is a differentiator from the mechanism of land acquisition of communal rights of customary law communities and lands outside it. Because basically the function of customary land in general is divided into two, namely its function inwards and its function outward, the function inwards is intended for the customary law community, while the function outwards is for the community at large, so this outward function is one of the basic foundations of the revocation of the rights to customary land from the customary law community. Therefore, the land acquisition committee must be more thorough and careful in interpreting the juridical basis of land acquisition derived from communal rights. Because in addition to Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, there are still other laws and regulations that must be considered in relation to the release and elimination of village treasury land which does not rule out the possibility of regulating customary village treasury land.⁶

From the problems raised by the author, Lermatang Village is one of the villages that is included in the administrative area of South Tanimbar District, Tanimbar Islands Regency, Maluku Province, according to one of the traditional leaders there, Lermatang Village was established in 1806, but in ancient times the name was lermatan which had the meaning of the Sun but over time there was a change in the pronunciation of the word or the mention of the name that used to be called Lermatan is now known as Lermatang.

Soa is an assembly or combination of several clans or families. Examples in Soa Batlemem also consist of 4 (four) clans, namely the Nusmesse Clan, Kelbulan, the Kormpaulun Clan and the Batlolone Clan. Likewise from the other three Soa. Customs that are still thick are indeed part of the daily life of the Lermatang Village Community there are 4 (four) Soa in Lermatang Village, namely: 1) Batlelempun; 2) Taborat; 3) Osungrease; 4) Olingerotorempun. The Soa structure also has a membership structure consisting of the Head of Shoa, Treasurer, Secretary and Members. Interestingly, in this Soa there is 1 (one) Clan or family that is elderly and highly respected by other clans and has the right (Seat) of Customary Stones, for example in Soa Batlelempun Batu Adat is in the Nusmesse Clan. Regarding the control of customary land in Lermatang village consists of 2 (two) parts, the first is the control that has fallen to each individual or has been owned by an individual, this

⁶ Maria S.W. Sumardjono, *Loc. Cit.*

land is only in a settlement (village). The second is communal land control (clan/family), in the sense that these lands are still owned and controlled together, cultivating the land, and cultivating crops. The question is whether customary land can be certified, the answer is that it can, with the record that the status of the land has fallen to each individual or has received approval from the Clan and the Head of Soa by being equipped with a basis of rights in the form of a release or Certificate of Ownership from the Chairman of the Customary Law Stakeholders Association and known by the Village Head.

On the other hand, if customary land is cultivated, is it necessary to pay taxes to the clan/head of soa? This does not need to be paid but when the clan children are going to open new land, they must ask for permission and approval from the Head of Soa/Clan. It is different when the outside party or outside of the clan who will clear the land/own the land must be with a *sopi* plug, the term *sopi* plugs is a customary term for giving *sopi* with plugs, the plugs are in the form of money or goods that have been mutually agreed. This agreement also varies, some are only limited to managing the land or only using it, some can be free, depending on the agreement between the Head of Soa/Clan and the prospective cultivator. After the agreement occurred, the party who needed the land came to the Village Head and Chairman of the Customary Stakeholders Association to make a Release in accordance with the agreement. In the area of Lermatang Village, there is an island called Nustual, the ownership of Nustual Island had been the object of a dispute between the Kelbulan Clan and the Batlayar clan. However, based on sources from traditional figures there, the island that is now made of Nustual was formerly called Tuale which has the meaning of a place of kumbili, kumbili is one type of tuber.

In the past, when there was famine and it was difficult to find food in the sense of hunger, people went to a place called Tuale or now Nustual Island to look for kumbili. The first clan or family or from the past has planted and cultivated the land there, namely the Clan or Family of Kelbulan. As for the Clan or Batlayar Family is a Sea Animal, the meaning of marine animals is a part or function can also be called a territory, for example when the time when taking natural resources from the sea or marine products is the first is the Batlayar Family, after that the Batlayar family only invites the entire community to take marine products. The interview conducted by the author, the Traditional Head in Lermatang Village is automatically the head of customs/heads of customary tuasan. As reviewed above, in Lermatang Village, there are 8 (eight) clans under Soa under Soa. The highest clan in Lermatang Village is the Nusmesse clan.

One of the support of the Tanimbar Islands Regency Regional Government for the existence of indigenous peoples is to support and participate in every traditional activity that is held. However, until now there have been no special records or studies in the form of books or records about the wealth of cultural customs in each village or “petuanan” within the scope of administration of Tanimbar Islands Regency, even though this is a form of maintaining and preserving customs and culture itself. Indeed, maintaining and preserving these customs and culture is not easy, it requires cooperation from all parties, including the government, the entire community and of course the younger generation.

Talking about the division of land in Lermatang Village, based on the author's research, the one who has the right to divide the land control in Lermatang Village is the Village Head. The customary land area in Lermatang Village is divided into 2 (two) parts, one in the village area and the other in the area outside the village with the following division: 1) For the village

area, divided and handed over by the Village Head as the Head of Traditional Ownership, to members of the community in the Lermatang Village customary land area to build residential houses only, without any compensation and the use is to build a residential house where each owner of the house may apply for the making of a certificate on their respective behalf, in the event that the land will be certified, and a written proof is required regarding the acquisition of the land, then the village head as the head of the customary lordship is considered as the party with the right to the land and who will sign the release of land rights to the residents who acquire the land. Everyone in the possession of land rights is given the same extent. Every resident who acquires land from the Head of the Traditional Chief, is sure to have his own family, will build a house on the land obtained so that finally a village of the indigenous people in Lermatang Village is formed as it appears today; 2) For areas outside the village, there is a large expanse and most of it is still in the form of vacant land, not used for plantations but as cattle grazing fields, but customarily controlled and used jointly by existing clans with the same rights, there is no division of territory for which clan, all of them jointly control the land of the master. So in Lermatang Village, both the presence and place of residence as well as the land control of indigenous peoples are recognized.

CONCLUSION

Land procurement for the public interest with the object of land ownership of customary law communities is the procurement of customary law community land for the public interest involves the recognition of customary rights through a process of deliberation and proper compensation, based on the principles of humanity, justice, and welfare. The implementation of this land acquisition is regulated by Law Number 2 of 2012 and its implementing regulations, which mandate the involvement of customary law communities, customary heads, and related agencies in planning and handing over the right to fortitude.

REFERENCES

- Fifik Wirayani, *Reformasi Hak Ulayat Pengaturan Hak-hak Masyarakat Adat dalam Pengelolaan Sumber Daya Alam*, Malang: Setara Pers, 2009.
- Gaffar, *Demokrasi Konstitusional, Pratik Ketatanegaraan Indonesia, Setelah Perubahan UUD 1945*, Jakarta: Konpres, 2013.
- Noer Fauzi Rachman, "Masyarakat Hukum Adat dan Hak Komunal Atas Tanah", *Jurnal Digest Epistama*, 6 (2016).
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Setara Press 2020.
- Purnawan D. Negara, "Hak Masyarakat pada Masyarakat Tengger: Sebuah Refleksi atas Pelaksanaan Pengakuan "Hak Komunal Atas Tanah" pada Masyarakat Tengger, *Jurnal Digest Epistema* 6, (2016).