



Customary Law as a Legal Basis in Disputes over Customary Land Rights

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Abstract

This study aims to analyze the customary legal basis for the acquisition of ulayat land rights and the legal consequences of Decision Number 20/Pdt.G/2024/PN Lrt on the *de facto* and *de jure* status of disputed ulayat land in East Flores Regency. This research employs a normative legal method with statutory, case, historical, comparative, and conceptual approaches. The results show that the customary legal basis for acquiring ulayat land rights originates from Lamaholot customary law as a living law that is recognized and practiced across generations through mechanisms such as ancestral inheritance, customary land transfer, customary oaths, territorial division, and marriage practices as a substitute for bridewealth (*belis*). The existence of ulayat rights in this case fulfills the elements of a customary law community, the existence of ulayat land, and a functioning customary legal system as stipulated in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999. The court decision declaring the claim inadmissible (*niet ontvankelijke verklaard*) is limitedly declarative and does not address the merits of the case. *De facto*, the land remains controlled and utilized by the customary community, while *de jure*, its legal status remains uncertain. Thus, this decision reflects a separation between social reality and legal certainty and highlights the importance of clearly defining legal subjects and objects in ulayat land dispute claims.

Keywords: Ulayat Land; Customary Law; Court Decision; *De Facto*; *De Jure*.

INTRODUCTION

Land in the perspective of customary law is not only seen as an economic object. Soepomo stated that the relationship between humans and land in indigenous peoples is not an individual ownership relationship, but a communal relationship that contains religious-magical values¹. This shows that land not only serves as a source of livelihood, but is also an integral part of the social and spiritual life of customary law communities. From this understanding, the concept of customary rights was born, namely the collective rights of an indigenous community to land that is inherited from generation to generation and managed based on applicable customary norms².

The recognition of the existence of customary law, including customary rights to land, has been regulated in the 1945 Constitution of the Republic of Indonesia, especially Article 18B paragraph (2), which affirms that the state recognizes and respects the unity of customary law communities and their traditional rights, as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. In addition, the regulation regarding customary rights is also contained in Law

¹ Dominikus Rato, *Hukum Adat Kontemporer* (Yogyakarta: LaksBang Pressindo, 2020), p. 98-101.

² Thalia Firda Soraya and Sri Wahyu Handayani, "Perlindungan Hak Ulayat dalam Sistem Hukum Agraria Nasional di Tengah Arus Pembangunan Nasional". *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 6710-6718. <https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/2309>



Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles, especially Article 3, which emphasizes that the implementation of customary rights and similar rights is still recognized as long as it does not conflict with the applicable laws and regulations.

In East Flores Regency, the Lamaholot people still maintain a collective view of their customary land as part of their cultural and spiritual identity. The Lamaholot people believe that the universe is a creation of the highest power known as Lera Wulan Tana Ekan, which symbolizes the unity between the sun, moon, earth, and earth. Land is not only understood as a place to set a foothold, but also as a source of life as well as a protector for humans. This belief is reflected in the traditional expression "Tana Ekan liko lapak kame," which means that the land provides protection to the community. Therefore, land is seen as something sacred and its existence is maintained through various traditional rituals.³ This framework, the Larantuka District Court Decision Number 20/Pdt.G/2024/PN Lrt, is an example of a relevant case to be studied. This case involves five people from Kawalelo Village as the Plaintiff, namely HHH, YWH, PLK, PLK, and YLL, and six people from Lewokluok Village as the Defendant, namely YIG, PKL, PHL, AKL, YKH, and YDL.

The customary land dispute in this case focuses on the claim of ownership of seven fields of plantations (*newa*) located in the Etang Muda Uak area. The Plaintiff, namely the people of Kawalelo Village, bases its claim on ancestral heritage that has been used for generations, including in the implementation of traditional rituals such as land huke. According to the Plaintiff, the gardens came from the gift of *belis* by Dara Kung to their ancestor, Bala Hera, so that it was traditionally considered to be the legitimate property of the descendants of the Koten Kawallo Tribe. Meanwhile, the Defendant, namely the people of Lewokluok Village, also claimed the same land as part of their collective living area. They considered that the actions taken by the Plaintiff had violated the customary rights that they had been controlling, thus causing a conflict between the two parties.

Tensions increased when on March 16, 2021, the Defendant issued a letter of termination of the construction of the lopo carried out on the disputed land. The conflict then continued on April 13, 2021 with the destruction of the lopo that was being built by the Kawalelo community for the festival of superior products. Furthermore, on April 16, 2021, the people of Lewokluok Village dismantled and destroyed the drinking water pipeline network owned by Kawallo residents. This action resulted in losses, both materially and immaterially, for the Plaintiff. Because the efforts to settle peacefully through mediation did not reach an agreement, the Plaintiff then took the litigation route by filing a lawsuit with the Larantuka District Court on October 2, 2024, which was subsequently officially registered on October 3, 2024. The lawsuit was filed with the aim of obtaining legal recognition of their rights to the customary land that is the object of the dispute.

Although Decision Number 20/Pdt.G/2024/PN Lrt has contained various legal arguments, administrative evidence, and descriptions of customary history submitted by the parties, there are a number of important aspects that have not been fully reflected in the judge's consideration, especially related to the sociological dimension and traditional values that live in indigenous peoples. From a sociological point of view, this dispute is not solely related to the issue of land ownership, but also reflects the identity struggle between two

³ Benedikta Yosefina Kebingin, Yosep Belen Keban, and Adison Adrianus Sihombing. "Local Wisdom Masyarakat Flores Timur Sebagai Pilar Toleransi Beragama." *Harmoni* 23, no. 2 (2024): 207-228. <https://doi.org/10.32488/harmoni.v23i2.754>

indigenous communities who each have a strong attachment to customary land as the center of their lives.

For the people of Kawallo Village, the disputed land is seen as an ancestral heritage as well as a symbol of customary sovereignty. This value is strengthened through traditional practices such as giving belis, inter-tribal marriage relationships, and the implementation of the land huke ritual that is inherited from generation to generation. So that the land not only has economic value, but also contains historical and sacred value.

On the other hand, the people of Lewokluok Village view customary land as part of a collective living space that connects humans, ancestors, and nature. This spiritual attachment is reflected in various cultural practices, from rituals at springs to the implementation of ceremonies in the life cycle, such as birth, marriage, death, and expressions of gratitude for the harvest. On March 10, 2025, the Larantuka District Court handed down a verdict in a customary land dispute case located in the Muda Uak to Sabah Koten area. In the decision, the Defendant, namely the Lewotanah Lewokluok community, was declared the winning party, while the Kawalelo community as the Plaintiff did not succeed in proving its lawsuit. The provisions of the decision include: 1) Granting the exception submitted by the Defendant (Lewokluok); 2) Declaring that the Plaintiff's lawsuit (Kawalelo) is unacceptable; and 3) Punish the Plaintiff to pay the case fee of IDR. 3.318.000.

In this regard, this study is relevant to examine the basis of customary law that underlies the claims of the parties in Decision Number 20/Pdt.G/2024/PN Lrt, as well as analyze the legal consequences arising from the decision on the status of customary lands, both *de facto* and *de jure*. This study is important to understand the extent to which customary law is accommodated in judicial practice, as well as how the interaction between positive law and the traditional values of indigenous peoples is intertwined. So the question that can be used as a formulation to study and analyze this paper is what is the basis of Customary Law on the Acquisition of Customary Land Rights for the parties in Decision Number/Pdt.G/2024/PN Lrt in East Flores Regency? What are the legal consequences of Decision Number/Pdt.G/2024/PN Lrt on the *de facto* and *de jure status* of the customary land object in question by the parties?

METHODS OF THE RESEARCH

This research uses normative legal research methods, which are research that focuses on the study of legal norms written in laws and regulations and laws that live in society. Normative legal research views law as a system of norms that includes principles, rules, and rules contained in laws and regulations, court decisions, agreements, and legal doctrines. The object of study in this study is the norm or legal rule that is analyzed as a legal event. The legal approaches used in this study are the statute *approach*, the *case approach*, the *historical approach*, the *comparative approach*, and the *conceptual approach*). The legal materials used in this study have three sources of legal materials, namely primary, secondary and tertiary legal materials. The technique of collecting legal materials used in this study is to use a literature study with a research object that focuses on the analysis of court decisions, so that the main legal material used is in the form of jurisprudence as a product of judicial institutions. Furthermore, the legal materials used in this study are then analyzed using a qualitative method that is descriptive-analytical. This method aims to interpret, examine, and relate legal norms to legal facts contained in a concrete case.

RESULTS AND DISCUSSION

A. Customary Law Basis for the Acquisition of Customary Land Rights for the Parties in Decision Number/Pdt.G/2024/PN Lrt in East Flores Regency

Larantuka District Court Decision Number 20/Pdt.G/2024/PN Lrt A case involving five (5) people from Kawalelo Village as the Plaintiff, namely HHH, YWH, PLK, PLK, and YLL, and six (6) people from Lewokluok Village as the Defendant, namely YIG, PKL, PHL, AKL, YKH, and YDL. The customary land dispute in this case focuses on the claim of ownership of seven fields of plantations (*newa*) located in the Etang Muda Uak area. The Plaintiff, namely the people of Kawalelo Village, bases its claim on ancestral heritage that has been used for generations, including in the implementation of traditional rituals such as land huke. According to the Plaintiff, the gardens came from the gift of *belis* by Dara Kung to their ancestor, Bala Hera, so that it was traditionally considered to be the legitimate property of the descendants of the Kote Kawallo Tribe. Meanwhile, the Defendant, namely the people of Lewokluok Village, also claimed the same land as part of their collective living area. They considered that the actions taken by the Plaintiff had violated the customary rights that they had been controlling, thus causing a conflict between the two parties.

Tensions increased when on March 16, 2021, the Defendant issued a letter of termination of the construction of the lopo carried out on the disputed land. The conflict then continued on April 13, 2021 with the destruction of the lopo that was being built by the Kawalelo community for the festival of superior products. Furthermore, on April 16, 2021, the people of Lewokluok Village dismantled and destroyed the drinking water pipeline network owned by Kawallo residents. This action resulted in losses, both materially and immaterially, for the Plaintiff. Because the efforts to settle peacefully through mediation did not reach an agreement, the Plaintiff then took the litigation route by filing a lawsuit with the Larantuka District Court on October 2, 2024, which was subsequently officially registered on October 3, 2024. The lawsuit was filed with the aim of obtaining legal recognition of their rights to the customary land that is the object of the dispute.

The dispute in Decision Number 20/Pdt.G/2024/PN Lrt originated from a dispute regarding the ownership and control of customary land between the people of Kawalelo Village as the Plaintiff and the people of Lewokluok Village as the Defendant in East Flores Regency. The object in dispute is in the form of plantation land (*newa*) located in the Etang, Muda Uak to Sabah Kote areas, which historically and customarily have important significance for the two community groups. The recognition of customary law in the Indonesian legal system is an inseparable part of the formation and development of national law. Customary law is understood as *living law*⁴, namely a law that grows, develops, and is actually obeyed by indigenous peoples in regulating their social relations. The existence of customary law does not depend on the formation by the state, but comes from social practices, values, and customs carried out from generation to generation by indigenous peoples. This understanding is in line with the *principle of ubi sociates ibi ius*, which emphasizes that where there is a community, there is a law.

The *Lamaholot* people still hold a strong collective view of customary land as part of their cultural and spiritual identity. The *Lamaholot* people believe that the universe is the creation

⁴ Sulistyowati Irianto, "Globalisasi Hukum dalam Pluralisme Hukum Modern," *The Indonesian Journal of Socio-Legal Studies* 4, no 1 (2024): 1-18. <https://scholarhub.ui.ac.id/ijsls/vol4/iss1/6/>.

of a great power that they call *Lera Wulan Tana Ekan* (sun, moon, earth, and earth). Land is not only a place to stand on, but also a source of life as well as protection⁵. Based on Decision Number 20/Pdt.G/2024/PN Lrt, the dispute examined by the Larantuka District Court is closely related to the parties' claims to land that has historically been sociologically associated with customary land.

The basis of customary law for the acquisition of customary rights for the parties in Decision Number 20/Pdt.G/PN Lrt, the control of customary land begins with the ancestors of *Mau Bei Ma Kalu Sari Bunga Gona Wayo*, who controlled an expanse of customary land territory with natural boundaries (sea, river, hill, mountain) based on hereditary customary recognition. The customary land was handed down to *Hatan Nara Hulo Belu Pelu and Ene Bera Liha Lame* through the customary mechanism of handing over *ni lagan tanah ekan* (tale kora), which is recognized as a form of surrender of customary authority over the land. There is a customary oath that causes one of the parties to leave the customary land area, without the customary land handover, so that the rights to the land do not transfer to the other party. The division of customary land areas between *Hatan Nara Hulo Belu Pelu and Nara Doan* is carried out based on customary agreements, with the determination of territorial boundaries using natural signs. The acquisition of land rights also occurred through traditional marriage, when *the Bala Hera* gave up land in lieu of *belis* because they could not afford to pay for ivory and goats. In return for *belis* (ohe), he was given *the land of Etang Muda Uak* in which there were seven fields of gardens (*newa*), which were then controlled and worked by *Bala Hera* and his descendants. The right to customary land is strengthened by the continuous control and management of land and the implementation of customary rituals that take place from generation to generation, in the custom reflected in the decision, land tenure rights and customary ritual rights can be distinguished, so that customary ownership of land is not always synonymous with ritual authority.

As written in Article 2 paragraph (2) of the Minister of Agrarian Affairs of the Head of the National Land Agency Number 5 of 1999 concerning guidelines for resolving the issue of customary rights of customary law communities where it is stated that customary rights of customary law communities are considered to still exist if: There is a group of people who still feel bound by their customary law order as citizens with a certain legal alliance, who recognize and apply the provisions of the covenant in their daily lives, there are certain customary lands that are the living environment of the citizens of the covenant and the place where they take their daily life needs, There is a customary law order regarding the management, control and use of customary land that applies and is obeyed by the citizens of the legal covenant. It can be stated that the basis of customary law⁶ The acquisition of customary land rights for the parties in this case is still real and fulfills the elements of the existence of customary rights. This can be seen from the existence of a group of people who are bound by one Lamaholot customary law alliance, which recognizes the origins of ancestors, kinship structures, and customary mechanisms as the basis for land control and management. This attachment is reflected in the way the parties base their claims on customary history, family genealogy, and recognition of local indigenous communities.

Furthermore, the element of the existence of certain customary land is also fulfilled, because the disputed land has a clear identity, both in terms of territory and social function.

⁵ Rofinus Nara Kean, et al, *Selayang Pandang Budaya Lamaholot* (Larantuka: Offcet Jovi Stender, 2008), p. 9.

⁶ Eman Suparman, *Hukum Adat Indonesia: Eksistensi dan Perkembangannya*, (Bandung; Refika Aditama, 2020), p. 72-75.

The land is known for its natural boundaries and has been used for generations as garden land and a source of livelihood, including *the land of Etang Muda Uak* which consists of seven gardens (*newa*). The existence of this land is not only recognized historically, but also factually still used by the parties in daily life, thus showing the existence of a real relationship between indigenous peoples and their customary lands.

The third element, namely the existence of customary law regarding the management, control, and use of customary land, is also clearly reflected in the decision. The customary land handover mechanism (*handing over ni lagan tanah ekan*), customary oath as conflict resolution, division of territory based on customary agreements, and the use of land as a substitute for *belis* in customary marriage show that there are customary rules that are alive and obeyed. These rules are not purely symbolic, but are implemented concretely and become the basis for the acquisition of customary land rights by the parties. So that the basis of customary law for the acquisition of rights to customary land in Decision Number 20/Pdt.G/2024/PN Lrt comes from the enactment of Lamaholot customary law as a living law. The right to customary land is born from the control of ancestors, customary land handovers, customary oath events, division of customary territories, and customary marriage mechanisms, all of which are recognized and carried out by the local customary law community. This shows that the acquisition of rights to customary land does not depend on formal recognition of the state alone, but on social and customary legitimacy that develops from generation to generation. Therefore, it can be concluded that the basis of customary law for the acquisition of customary land rights for the parties in Decision Number 20/Pdt.G/2024/PN Lrt is the existence and enforceability of Lamaholot customary law itself, which fulfills the elements of customary law alliance, the existence of customary land, and the customary law order as stipulated in Article 2 paragraph (2) of the Minister of Agrarian Affairs/Head of BPN Number 5 of 1999. All of these elements are the juridical-customary basis in determining the legal relationship of the parties to the disputed customary land.

Conceptually, the basis of customary law for the acquisition of customary land rights in this case shows that Lamaholot customary law recognizes social legitimacy as the main source of the birth of rights. Land rights do not arise from unilateral claims, but from mutual acceptance and recognition within indigenous communities. So that the enactment of customary rights is highly dependent on a living social consensus, not on physical control alone. This aspect of social legitimacy is the main differentiator between customary rights and individual property rights in the western civil law system.⁷

The acquisition of customary land rights in this case shows that Lamaholot customary law does not separate the legal dimension and the moral-spiritual dimension. The legal relationship over land is always associated with the value of balance, respect for ancestors, and the obligation to maintain harmony between members of the customary alliance. Therefore, the right to customary land cannot be separated from the social and customary obligations that accompany it, so that every acquisition of rights always carries the consequences of customary responsibility.

From the perspective of the structure of customary law, this case also shows that Lamaholot customary law recognizes the hierarchy of customary authority in determining

⁷ B. Ter Haar Bzn., *Asas-Asas dan Susunan Hukum Adat*, Terjemahan. K. Ng. Soebakti Poesponoto (Jakarta: Pradnya Paramita, 2001), p. 55.

whether or not the acquisition of land rights is legal. Not all members of indigenous peoples have the same authority in determining the status of customary land. The validity of the acquisition of rights depends on the involvement of parties who customarily have authority, such as customary elders or genealogically authoritative. This shows that the acquisition of customary rights is institutionalized in the customary structure, not individual and free⁸. In addition, the customary law basis for the acquisition of customary land rights in this case shows the existence of the principle of continuity in customary law. Customary rights are not born instantly, but through a long process that continues from generation to generation. This sustainability is a key indicator of the legitimacy of rights, so claims that are disconnected from the chain of customary history tend not to be recognized customarily. This principle of continuity also strengthens the position of customary law as a stable and sustainable legal system⁹.

From the point of view of national legal analysis, the construction of the acquisition of customary rights in this case shows that Lamaholot customary law has legal rationality that is in line with the principles of certainty and justice, even though it is not stated in written form. Legal certainty in the customary context is born from consistency of practice and collective recognition, while justice is realized through customary mechanisms that prioritize balance and deliberation. This shows that customary law is not an irrational system, but a legal system that has its own internal logic. Decision Number 20/Pdt.G/2024/PN Lrt, the basis of customary law that underlies the acquisition of customary land rights by the parties in East Flores Regency is based on the Lamaholot customary law system which lives and develops in the community as a living law. The acquisition of land rights is not determined by written evidence, but by customary legitimacy formed through history, social practices, and collective recognition within indigenous communities.

Genealogically, the right to customary land is rooted in the initial control by the ancestors which is then inherited from generation to generation. In this case, the parties based their claims on a kinship relationship with the ancestors who first opened and controlled the customary land area. This inheritance is the main basis in determining land rights according to customary law. In addition, the acquisition of rights also takes place through customary mechanisms, such as the granting of *belis* which in certain practices can be replaced by land. The land given in lieu of *belis* is seen as a form of surrender of legal rights according to custom, thus giving authority to the recipient and his descendants to control and utilize the land. In addition, it is also known as the process of handing over customary land (*ni lagan tanah ekan*) which shows the transfer of authority over land through a mechanism recognized in the community. The basis of customary law is further strengthened by the sustainable control and use of land by the parties. Land use in the form of gardening activities and involvement in customary activities shows a real relationship between the community and customary land. Continuous control from the perspective of customary law is an important indicator in determining the validity of a land right.

The legitimacy of customary land rights is also determined by the recognition of indigenous peoples as a legal alliance. Rights are not born from unilateral claims, but from shared acceptance in the community. Therefore, the existence of customary rights is highly

⁸ Jemmy Sondakh Rio Rocky George Wakary Moniaga and Revy Samuel M. Korah, "Perlindungan Hukum Hak-Hak Masyarakat Atas Tanah Adat Di Tengah Modernisasi," *Lex Administratum* 12, no. 4 (2024).

⁹ Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, dan Dinamika Masalahnya*, HuMa-ELSAM, Jakarta, edisi revisi, 2018, hlm. 133-136.

dependent on a living and maintained social consensus in indigenous peoples. In addition, customary practices and rituals also strengthen the basis of customary law on customary land. The use of land in various rituals, such as the huke of the land, reflects the spiritual relationship between humans, ancestors, and land. This shows that land not only has economic value, but also religious-magical value that is part of the belief system of the Lamaholot people.

Therefore, it can be said that the basis of customary law for the acquisition of customary land rights for the parties in this case includes ancestral inheritance, customary mechanisms such as belis and land handover, control that takes place from generation to generation, and the collective recognition of indigenous peoples which is strengthened through customary practices and rituals. All of these elements affirm that the acquisition of customary land rights in the Lamaholot community is collective, sustainable, and based on social legitimacy and customary values that live in the community.¹⁰

B. Legal Consequences of Decision Number 20/Pdt.G/2024/PN Lrt on the *De Facto* and *De Jure* Status of the Customary Land Object in Question.

The decision of the Larantuka District Court in the case of customary land disputes between the people of Kawalelo Village and Lewokluok Village is a form of judicial settlement of conflicts rooted in differences in claims of control and customary authority over a customary land area. In examining and deciding the case, the court not only assesses written evidence and witness statements, but also traces historical facts, customary practices, and land tenure conditions that take place in the lives of local communities¹¹.

Through the trial process, the Larantuka District Court seeks to reconstruct the events and legal relationship of the parties to the object of dispute based on the statements of the parties, customary witnesses, and evidence submitted. The decision handed down does not stand solely on the formal aspects of civil law, but also considers the social and customary realities that live in the community, considering that the object of dispute is customary land that has historical, social, and cultural value. Therefore, in order to fully understand the implications of the decision on the status of the disputed customary land, it is necessary to distinguish between the circumstances that occur in real life on the ground and the legal position determined by the court. This distinction is important so that it can be seen how the decision of the Larantuka District Court has an impact both on the factual conditions of land tenure and on the recognition and affirmation of the rights of the parties legally. The consequences of the Larantuka District Court's decision on the status of the disputed customary land are reviewed from the *de facto* situation, namely the real conditions that take place in the field, as well as from the *de jure* situation, namely the legal position of the customary land as determined through a court decision.

De facto, the customary land that is the object of dispute in this case from the beginning is described as an area that is actually controlled and utilized by the people of Kawalelo Village, especially the Plaintiffs and their ancestors, in the judgment it was revealed that the land had been cleared, worked on, and utilized since the ancestors of the Plaintiffs, long before the emergence of the claim from Lewokluok Village. The control is not just a verbal claim, but is shown through real activities in the form of clearing gardens, managing agricultural land,

¹⁰ Maria SW Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2018), p. 85–87.

¹¹ Maria S W Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, (Jakarta: Kompas, 2008), p. 95–97.

and using land products in a sustainable manner. The facts of the trial show that around 1936, the indigenous people of Kawalelo Village together with the ancestors of the Plaintiffs opened a garden in the *Etang Muda Uak* area in which there were seven *newas* or gardens. Since then, the land has been continuously cultivated and has become a source of livelihood for the Plaintiffs and their families. There is no pause in land ownership or abandonment that can show that the land has been abandoned or controlled by another party for a long time.

In addition to physical control, the *de facto state* of this customary land is also seen from the customary practices carried out on it. Before opening a garden or carrying out certain activities, a traditional ritual of *huke tanah* is carried out as per the tradition of the local community. The ritual has factually taken place since previous generations and continues to be carried out to this day. This customary practice shows that the land is treated as part of a living customary space, not just an empty land without social and cultural attachments. The decision in the course of time, also noted that there had been involvement of other parties in the implementation of customary rituals on the land, but the involvement was limited and occurred due to a temporary mandate or assignment. This fact shows that the involvement of the other party is not accompanied by a real transfer of land ownership, because after the ritual is carried out, the management and control of the plantation remains in the hands of the Plaintiffs.

The *de facto* situation is increasingly seen when the people of Kawalelo Village build traditional facilities in the form of *lopo* on the land as part of the village's social and cultural activities. The construction of the *lopo* was carried out openly and was known by the surrounding community, which shows that the land is actually considered an area under the control of Kawallo Village. This development also shows that the land was not treated as a disputed area by the local community before the conflict arose.

The verdict also revealed the acts of obstruction, demolition of buildings, and disturbances to the activities of the Kawalelo Village community by other parties. However, this action occurred after the land had been controlled and used by the Plaintiffs for a long time. *De facto*, the action does not erase the fact that prior to the outbreak of the conflict, physical control and land management had been stable on the part of the Plaintiffs. Thus, as described in the decision, *de facto* the disputed customary land is in a state of control, work, utilization, and customary life by the Plaintiffs and the people of Kawalelo Village for a long period of time. This factual circumstance forms the social reality before the dispute is litigated, and becomes the basis for the court to assess the relationship of the parties to the object of customary land. The term *de jure* means a situation that is based on the law or according to the provisions of applicable law. *De jure* in law is used to indicate the position, rights, and authority of a person or a legal object as recognized, determined, or protected by legal norms, whether sourced from laws and regulations or court decisions. Thus, *the de jure situation* is not always the same as the situation that occurs in real life in the field, because *de jure* focuses on the legitimacy and legal certainty, in the context of customary land disputes, *the de jure* situation is related to how the court assesses and determines the legal position of the land, who is legally declared to have customary rights or authority, and what acts are legally considered valid or violates the law. *De jure* assessment is important because through the judicial mechanism, the state provides legal certainty for disputes that were previously in the area of social and customary conflict.

The decision of the Larantuka District Court Number 20/Pdt.G/2024/PN Lrt, de jure the customary land dispute between the people of Kawalelo Village and Lewokluok Village is declared a valid civil case to be examined and decided by the court, with the receipt of the lawsuit and the implementation of the case examination, the court legally affirms its authority to adjudicate customary land disputes, so that the conflict is no longer solely in the customary or social realm, rather, it is in the realm of state law.

During the trial process, the court legally assesses all the postulates of the lawsuit, answers, replicas, and duplicates of the parties, and examines the evidence submitted. The testimony of witnesses, including customary witnesses, is treated as valid evidence according to the civil procedure law. The history of land tenure, customary ritual practices, and the relationship between the parties and the object of dispute are assessed by the judge as legal facts that have juridical relevance in determining the legal position of the parties.¹²

The court, in its legal considerations, de jure considers that the claim of customary authority over customary land cannot be determined solely on the basis of unilateral recognition, but must be supported by a series of convincing evidence and facts. Based on this assessment, the court then determined the party who was legally considered to have customary authority over the disputed customary land, including the authority to carry out customary rituals on the land.

The decision also legally states that actions in the form of obstruction of customary activities, termination of the construction of customary buildings, and dismantling of facilities carried out by certain parties against other parties are acts that are contrary to the law. This assessment is expressly stated in the court's legal considerations and forms part of the basis for the imposition of the judgment.

According to the ruling, the court de jure establishes the legal relationship of the parties to the object of dispute and provides legal certainty regarding the rights and obligations of each party. Since the decision was rendered, the legal relationship with the disputed customary land is no longer uncertain, but has been determined and bound by a court decision that must be complied with by the parties¹³.

The Larantuka District Court Decision Number 20/Pdt.G/2024/PN Lrt states that the Plaintiffs' lawsuit is inadmissible (*niet ontvankelijke verklaard*). According to the amar, the Panel of Judges did not enter the examination of the main case and did not assess the substance of the claim of customary land rights submitted by the parties. A *quo* decision is thus a decision that stops at the procedural realm of civil procedure law. In the doctrine of civil law, a *niet ontvankelijke verklaard* judgment is qualified as a limited declarative judgment, because it only states the legal state regarding the formal defect of the lawsuit without creating, changing, or removing the material legal relationship of the parties.¹⁴

Such limited declarative nature carries direct implications for the de jure status of the disputed customary land. De jure, Decision Number 20/Pdt.G/2024/PN Lrt does not specify who is entitled to customary land, does not recognize and does not reject the claims of the parties' rights. The State, through a court decision, does not provide legal certainty regarding the status of ownership or control of the customary land, in the absence of an

¹² Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan*, (Jakarta: Kencana, 2009), p. 286–288.

¹³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2010), p. 201–203.

¹⁴ Yahya Harahap, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika, 2019), p. 821–823

assessment of the subject matter, the disputed customary land remains in a legal state that is not normatively determined. This decision also cannot be used as a basis for the affirmation or registration of land rights, because it does not contain a constitutional amar.¹⁵

This condition shows that from a positive legal perspective, the customary land dispute in this case has not received a substantive resolution. The decision *niet ontvankelijke verklaard* only resolves the problem at the procedural level, so that *de jure* the dispute is still open and it is possible to resubmit it through a new lawsuit by correcting the existing formal weaknesses. In contrast to the *de jure* status, the *de facto* status of customary land after the verdict shows a relatively unchanged situation. *De facto* status refers to the factual reality on the ground about who owns, manages, and utilizes the land after a verdict is rendered. In Decision Number 20/Pdt.G/2024/PN Lrt, there is no amar that orders the emptying, termination of management, or transfer of physical control over the object of dispute. Therefore, *de facto*, the control and management of customary land continues as before the case was submitted to the court.

Indigenous peoples continue to carry out land management based on customary laws that live in their communities. Agricultural activities, control of customary territories, and the implementation of customary rites continue as part of social practices that are recognized and respected by local communities. This shows that although customary land disputes have been brought into the realm of formal justice, customary law still functions effectively in regulating the relationship between indigenous peoples and customary lands factually.

However, the sustainability of *de facto* land tenure without *de jure* legal certainty creates tensions between social reality and state law. On the one hand, indigenous peoples actually still control and utilize customary land. On the other hand, the state has not provided formal legal recognition through a court ruling. This condition has the potential to cause further conflicts in the future, because there is no legal legitimacy of the state that can provide definite legal protection for the control of the land¹⁶ The change in the status of customary land both *de facto* and *de jure* in this case cannot be separated from the error in *subjecto* and *error in objecto* in the Plaintiffs' lawsuit. *Error in subjecto* is related to the unclarity of the legal subject who filed the lawsuit. The subject of law in customary land disputes should be the customary law community as a collective unit. The lack of clarity on who has the right to legally represent indigenous peoples causes the Panel of Judges to be unable to ascertain the *legal standing* of the Plaintiffs.

In addition, *the error in objecto* is reflected in the unclarity of the object of dispute, both in terms of location, area, and boundaries of disputed customary land. The clarity of the object of dispute in the civil procedure law is a fundamental requirement for the court to examine and decide the case substantively. This ambiguity causes the lawsuit to be considered vague (*obscuur libel*), so that the judge does not have a sufficient basis to enter the examination of the subject matter of the case¹⁷.

Based on the overall description, it can be concluded that the legal consequences of Decision Number 20/Pdt.G/2024/PN Lrt on the status of customary land are the existence

¹⁵ Lilik Mulyadi, *Seraut Wajah Putusan Hakim dalam Hukum Acara Perdata*, (Bandung: Alumni, 2019), p. 96–98.

¹⁶ Lia Nuraini, and Dewi Haryanti, "Perlindungan Hukum Masyarakat Terhadap Hak Atas Tanah Ber-Status Quo Di Pulau Galang," *Jurnal Hukum Ius Quia Iustum* 28, no. 2 (2021): 307–324. <https://doi.org/10.20885/iustum.vol28.iss2.art4>

¹⁷ Rikardo Simarmata, and Bernadinus Steni, *Masyarakat Hukum Adat sebagai Subjek Hukum: Kecakapan Hukum Masyarakat Hukum Adat dalam Lapangan Hukum Privat dan Publik*, (Bogor: The Samdhana Institute, 2017).

of a strict separation between *de facto* and *de jure* conditions. *De facto*, customary land remains under the control and management of indigenous peoples based on the living and practiced Lamaholot customary law. *De jure*, the legal status of customary land has not obtained legal certainty through a court decision because the decision is limited and non-constitutive. Thus, this decision emphasizes that the settlement of customary land disputes through formal courts requires high precision in the formulation of legal subjects and objects so that living customary law can be translated appropriately and obtain effective legal protection in the national legal system.

CONCLUSION

The basis of customary law for the acquisition of customary land rights in this case stems from the applicability of Lamaholot customary law as a *living law* in the people of East Flores Regency. The acquisition of customary land rights is not born from formal recognition of the state, but from social and customary legitimacy that grows from generation to generation. These rights are formed through ancestral control, customary land handover (*ni lagan tanah ekan*), customary oath events, division of customary territory, and customary marriage mechanisms as a substitute for *belis*. All of these mechanisms are carried out and recognized collectively by the Lamaholot customary law community. The existence of customary rights in this case fulfills the elements as stipulated in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999, namely the existence of customary law alliances, the existence of certain customary lands, and the existence of customary law orders that regulate the management, control, and use of customary land. This is reflected in the genealogical attachment of the parties, the identity of customary land areas with natural boundaries, and the sustainability of customary practices obeyed by the local community. The legal consequences of Decision Number 20/Pdt.G/2024/PN Lrt on the status of customary land show that there is a separation between *de facto* and *de jure* circumstances. *De facto*, customary land remains under the control and management of the indigenous people of Kawallo Village, who actually use the land for generations and carry out customary rituals on it. There was no change in physical control after the verdict because there was no executory *amar*. *De jure*, the *a quo* ruling does not provide legal certainty on the status of the disputed customary land rights. A decision declaring the lawsuit inadmissible (*niet ontoankelijke verklaard*) is a limited declaratory decision and stops at the procedural aspects of civil procedure law. The court did not assess the subject matter and did not determine the parties entitled to the customary land, so that the legal status of the land remained normatively determined. The decision shows that the failure of the lawsuit to be examined substantively was caused by formal defects, in the form of *errors in subjecto* and *errors in objecto*. The unclarity of the legal subject representing indigenous peoples and the unclarity of the object of dispute caused the judge to be unable to enter the examination of the subject matter. This emphasizes that the settlement of customary land disputes through formal courts requires the formulation of clear legal subjects and objects so that living customary law can obtain effective legal protection in the national legal system.

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