

**LEGAL ANALYSIS OF ACCESS OF CUSTOMARY LAND
BY PARTIES OUTSIDE THE ENDE LIO CUSTOMARY
LEGAL COMMUNITY IN ENDE REGENCY, EAST NUSA
TENGGARA PROVINCE****(Case Study of Supreme Court Decision No. 241 K/Pdt/2020)****Mora H Ramadhan Panggabean¹, Rosnidar Sembiring², Maria³****Magister Kenotariatan Universitas Sumatera Utara****E-mail: mora14.panggabean@gmail.com**

ABSTRACT

This research examines the vital role of customary land for the Ende Lio indigenous community in Ende Regency, East Nusa Tenggara as a cultural identity and source of livelihood passed down through generations, yet facing challenges in the form of land tenure disputes by external parties as seen in the Supreme Court Decision Number 241 K/Pdt/2020. Using normative juridical research methods with descriptive characteristics and qualitative analysis through literature study, the research finds that legal regulations regarding customary land tenure in Indonesia are based on the 1945 Constitution Article 18B paragraph (2), Basic Agrarian Law Article 3, and ATR/BPN Ministerial Regulation No. 14/2024. The Ende Lio traditional leader (Mosalaki) holds multidimensional responsibilities and authority over Tana Nggoro, encompassing spiritual, legal, social, and ecological aspects as the highest guardian of ancestral land. Analysis of the Supreme Court Decision demonstrates prioritization of recognition and protection of Tana Nggoro land belonging to the Ende Lio indigenous community by affirming that the disputed object constitutes ancestral heritage land of the Plaintiffs as Mosalaki, and declaring that land possession by external parties without legal title and without approval from authorized customary leaders constitutes an unlawful act.

Keywords: Customary Land, Customary Legal Community, Ende Lio,**Journal History**

Received : May 7, 2025;
Reviewed : May 27, 2025;
Accepted : May 30, 2025;
Published : May 31, 2025.

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INTRODUCTION

Land is a natural resource that has strategic value for human life, both in terms of economics, social and culture.¹ In Indonesia, the existence of land cannot

¹ Maria S.W. Sumardjono, *Kebijakan Pertanahan: Antara Regulasi dan Implementasi*, (Jakarta: Kompas, 2005), p 55.

be separated from the existence of customary law communities that have inhabited and managed the land for generations long before this country was formed. Land control by these customary law communities is regulated through customary law that applies in each region, where customary leaders have a central role in its management and regulation.²

Land has a very important position in Customary Law, which can be seen from several fundamental aspects. According to Soerojo Wignjodipoero, the significance of land in customary law is reflected in its permanent and stable nature, where any condition and situation does not greatly affect the existence of the land.³ Moreover, in fact and reality, land has a multi-function that is very vital for indigenous communities: as a place of residence for all community members, a source of livelihood that provides life for community members, a sacred place where community members are buried and cremated or incinerated, and is believed to be the place where the supernatural beings who protect and the spirits of the ancestors of indigenous communities reside.⁴

Customary land is a plot of land that is within the scope of customary rights of a particular customary law community. Rosnidar Sembiring emphasized that customary land has two dimensions of ownership, namely joint ownership (communal bezit) which is managed by the community collectively, and individual ownership (individual bezit) which can be given to community members with certain conditions. This dual ownership concept is a characteristic of the customary land system in Indonesia which distinguishes it from the western land system.

Van Vollenhoven introduced the term "beschikkingsrecht" which describes the legal relationship between customary law communities and the land within their territory.⁵ In its development, the interaction between customary law communities and outsiders, especially immigrant communities, has given rise to various dynamics in the control of customary land. Population mobility and the increasing need for land have caused many immigrant communities to then control and utilize customary land in various ways, both through mechanisms recognized by customary law and those not. This condition often triggers disputes between customary law communities and immigrant communities regarding the status of control of the customary land.

² Soerjono Soekanto, *Hukum Adat Indonesia*, (Jakarta: Raja Grafindo Persada, 2012),p.178.

³ Surojo Wignjodipuro, *Pengantar dan Asas-Asas Hukum Adat*, (Bandung: Alumni, 2014),p.197

⁴ Bambang Daru Nugroho, *Dinamika Hukum Adat*, (Bandung: Yayasan Pendidikan Nasional Bandung, 2016),p. 1-2.

⁵ Van Vollenhoven, dalam Soepomo, *Bab-Bab tentang Hukum Adat*, (Jakarta: Pradnya Paramita, 2014),p. 45

Land ownership patterns in their development are increasingly marginalized due to land law policies that are not firm in regulating and protecting the rights of local indigenous communities, and are internally influenced by the development of communities that tend to abandon Custom (behavior according to customs). Recognition of the existence of indigenous legal communities and their traditional rights, including rights to customary land, has received constitutional legitimacy through Article 18B paragraph (2) of the 1945 Constitution. This was then emphasized in various sectoral laws and regulations, including the Basic Agrarian Law (UUPA) which explicitly recognizes the existence of customary law as the basis for national agrarian law. However, in practice, legal protection for customary land still faces various challenges, especially when dealing with formal legal systems that tend to prioritize written evidence in proving land rights. This often makes it difficult for indigenous legal communities to defend their rights to customary land.

One concrete example of the complexity of customary land disputes can be seen in the Supreme Court Decision Number 241 K/Pdt/2020, which is a customary land dispute in the Ende Lio customary law community in Ende Regency, East Nusa Tenggara Province. The Ende Lio customary law community has a complex land management system and is closely tied to social institutions that have developed over centuries. In this context, control of customary land by parties outside the customary law community becomes a fundamental issue that raises various in-depth legal questions. The concept of "outsiders" in the Ende Lio community does not simply refer to geographical or administrative categories, but includes very complex cultural, genealogical, and spiritual dimensions.

The Ende Lio community recognizes an open customary law system but has strict limitations in terms of land transfer and control. In this context, a customary village is not just an administrative unit, but a complex social structure with a leadership system led by a Mosalaki. Mosalaki acts as the highest guardian of customary land, has the authority to regulate, transfer, and limit land use within the framework of customary law that has been passed down from generation to generation. The urgency of research on the control of customary land by outside parties lies in the complexity of the legal dynamics that occur. The Ende Lio customary law system has unique "inward" and "outward" characteristics. Inwardly, customary law regulates internal community relations, while outwardly, it creates a very strict mechanism for interaction with external parties. Borrowing and using customary land is never understood as an ownership transaction, but rather the granting of temporary rights with very rigid moral and spiritual limitations.

In practice, land ownership by parties outside the Ende Lio customary law community occurs through several mechanisms. First, through "borrowing and using" which has very complex customary rules. Outsiders are only given the right to work the land for a certain period of time, without obtaining ownership rights. They are required to respect the spirit of the land, perform customary ceremonies, and return the land in the same or better condition. The concept of "Rina Kema" (only for work) emphasizes that land cannot be transferred or its substance changed.

The case of "Detu Kombo" which is the focus of the research shows the complexity of land ownership by outsiders. Pius Rasi Wangge, an individual from the Lise customary community, obtained land rights through a disputed mechanism. The Plaintiff's version states that the land was only borrowed for use as a model rice field garden, while the Defendant's version claims that there was a transaction in the form of giving gold and animals that transferred ownership rights.

The characteristics of customary law in land ownership show that the object of the dispute is communal customary land, not individual. Ownership is collective, inherited from generation to generation, and cannot be transferred arbitrarily. Each transfer of rights requires the approval of the customary leader and requires a series of long sacred processions. Customary law literature shows that the status of borrowed land has a unique legal construction. Borrowing does not create new ownership rights, but rather simply provides temporary rights to cultivate with a number of moral and spiritual obligations. If the borrower does not respect the customary agreement, then social and spiritual sanctions will be imposed, the impact of which is much deeper than just formal legal consequences.

The court ruling in this case shows how the national legal system provides legitimacy for the customary legal system. The Supreme Court did not only consider formal legal aspects, but also paid attention to the cultural context, oral history, and social institutions of the indigenous community. Testimony from customary leaders, inheritance mechanisms, and recognition of the role of Mosalaki became fundamental considerations in the ruling. The legal impact of land control by outside parties goes beyond the mere issue of ownership. It opens up a space for discourse on legal pluralism, the position of customary law in the national legal system, and the complexity of the relationship between indigenous communities and external parties. Every transfer or control of customary land is not just a material transaction, but a social process involving very complex cultural, spiritual, and legal negotiations.

METHOD

The method used in this study is the normative legal research method. Normative legal research that uses a statute approach *by* examining various legal

rules.⁶ The data sources used are primary data with primary, secondary, and tertiary legal materials. The analysis used is qualitative analysis, adhering to the characteristics of legal science as an applied science. Therefore, the results of legal research, even if they are not new legal principles or new theories, are at least new arguments.

The approach used is the legislative approach and the case approach to build legal arguments in concrete cases with the aim of finding the truth and solutions according to the principles of justice. Data sources use secondary data which are divided into primary legal materials (legislation), secondary (non-official legal publications), and tertiary (dictionaries, internet articles). Data collection is carried out through literature studies with qualitative data analysis, while drawing conclusions using deductive methods.

DISCUSSION

Legal Regulations Regarding Customary Land Control in the Indonesian National Land Law System

The existence of customary law communities and their customary rights is constitutionally recognized and protected based on Article 18B Paragraph (2) of the 1945 Constitution, which stipulates that: "The state recognizes and respects customary law community units and their 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 by law". In addition to the constitutional basis, the existence of customary rights is recognized and protected in the Decree of the People's Consultative Assembly Number IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources. One of the principles in the MPR Decree is to recognize, respect, and protect the rights of customary law communities and the nation's cultural diversity over agrarian resources/natural resources.

The form of recognition and protection of customary rights is organically regulated in the UUPA. Article 3 of the UUPA regulates:

Considering the provisions in Articles 1 and 2, the implementation of customary rights and similar rights from customary law communities, as long as they actually still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with higher laws and regulations.

It is undeniable that the UUPA is one of the founders of the concept and regulatory material regarding the recognition of customary law communities, but it is not presented to regulate the existence of customary law communities. The mention of customary law communities in the UUPA relates to their position as subjects who have the right to receive power from the State in order to exercise the right to control the State and have customary rights. According to Article 3 of the

⁶ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

UUPA, the owner of customary rights is the customary law community. Likewise, it can be seen from General Explanation II number 3 of the UUPA which states that customary law communities that have customary rights are prohibited from obstructing the granting of land use rights (HGU) or rejecting the opening of forests for the purpose of increasing food supplies and relocating residents. By using this concept, the UUPA simultaneously recognizes the existence of customary law communities as subjects that have customary rights (objects).

Customary rights as an object cannot exist without the existence of customary law communities as subjects. In addition, the provisions in Article 3 emphasize that the existence of customary rights has been modified in such a way that customary rights that in reality still exist have undergone a change in form because customary rights are recognized as long as they actually still exist with various certain restrictions for customary law associations that still have these rights.⁷

Budi Harsono³ said that customary rights, in addition to being recognized, their implementation is limited, in the sense that they must be in such a way that they are in accordance with national and state interests, which are based on national unity and must not conflict with higher laws and regulations. According to Budi Harsono, in reality the strength of customary rights tends to decrease, with the increasing strength of the personal rights of citizens or members of the customary law community concerned over the parts of the customary land they control. Therefore, customary rights will not be regulated and the UUPA also does not order them to be regulated, because the regulation of these rights will result in their continued existence. On the other hand, Abdurrahman said that this is a hidden policy of our government which we can conclude from various applicable legal regulations that want these existing customary rights to be killed secretly and gradually so that in the end their existence will disappear by itself as a result of changes in the situation that are actually created by the government itself.

Regardless of the pros and cons, the Government initially issued Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Settlement of Customary Rights Issues of Customary Law Communities. This regulation is a guideline for regions in implementing land affairs, especially the issue of customary rights of customary law communities that actually still exist in the relevant region. This regulation contains policies that clarify the principle of recognition of customary rights and similar rights of customary law communities, as referred to in the UUPA. The policy of recognition of customary law communities' rights to customary rights in the Regulation in question regulates the procedures for determining the subject of customary law community rights and customary rights with certain parameters, namely based on the criteria stipulated in this regulation. This Ministerial Regulation also regulates the procedure for determining customary rights, namely through research on the existence of customary law communities and their rights,

⁷ Abdurrahman, *Kedudukan Hukum Adat Dalam Perundang-undangan Agraria Indonesia*, (Jakarta: Akademika Pressindo, 2014),p. 99.

and determining Regional Regulations as instruments for determining/ratifying customary rights by each region.

Based on the mandate of the Ministerial Regulation, several regions have followed up on it, including: West Sumatra Province, Tana Toraja Regency, Lebak Regency in Banten, Central Kalimantan, Bali Province, and so on. Although these regions have declared the existence of indigenous peoples and/or the existence of customary/customary land as an object, the operational recognition of customary land has not been able to be technically realized in terms of registration by the land authorities. With the Decision of the Constitutional Court of the Republic of Indonesia on Case Number 35/PUU-X/2012 concerning the Material Review of the Forestry Law, it is expressly stated:

The position of customary forests is part of the customary land of customary law communities, customary forests are within the scope of customary rights because they are in a single territorial unit (territory unity) of customary law communities, whose implementation is based on ancestors (traditio) who live in a people's atmosphere and have a central administrative body that is authoritative in all areas of its territory.

Following the Constitutional Court Decision, customary forests, which were previously regulated by the Ministry of Forestry, were transferred to the Ministry of Agrarian and Spatial Planning/National Land Agency. With the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2015, which was replaced by 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 Land of Customary Law Communities and Communities in Certain Areas. This policy was issued to implement the objectives of the Constitutional Court Decision, namely to protect the rights of customary law communities while revoking the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999. In this decision, customary law communities can be given rights to land called communal rights to land.

Although the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 5 of 1999 is no longer valid, the Regulation of the Minister of ATR/Head of BPN Number 10 of 2016 in substance still uses the criteria for the existence of customary law communities, the procedure for determining customary law communities as subjects of rights and the determination of their rights. With the issuance of the Regulation of the Minister of ATR/BPN Number 18 of 2019 concerning Procedures for Administration of Customary Land of Customary Law Community Units, there has been an update in the regulation of customary land which was then refined again through the Regulation of the Minister of ATR/BPN Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. This latest regulation provides a more comprehensive legal framework by differentiating the characteristics of customary law communities into Customary Law Community Units and Customary Law Community Member Groups, as well as regulating the

mechanism for registering customary land into management rights or ownership rights while maintaining the validity of customary law.

The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency has undergone several changes related to the regulation of customary land, reflecting the dynamics in land policy and recognition of customary rights of customary law communities. The evolution of this regulation shows an effort to balance the concept of the state's right to control with recognition of customary land.

The Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Customary Rights Problems of Customary Law Communities is the initial milestone for formal recognition of customary land in the form of a ministerial regulation. This regulation provides criteria for determining the existence of customary rights, namely that there is still a group of people who feel bound by their customary legal order, the existence of certain customary land that is the community's living environment, and the existence of a customary legal order regarding the management and control of customary land that is obeyed by the community. This regulation emphasizes that research and determination of the existence of customary rights is carried out by the regional government by involving customary law experts, indigenous communities and NGOs.

The next development, Regulation of the Minister of ATR/BPN Number 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities in Certain Areas presents a new concept, namely "communal rights" as a replacement for the term "customary rights". This regulation expands the subject of rights not only to customary law communities but also communities in certain areas. The criteria for the existence of customary law communities still maintain the elements contained in Permenag No. 5/1999 but with an emphasis on the formal aspect in the form of determining customary law communities through regional regulations. Regulation of the Minister of ATR/BPN Number 18 of 2019 concerning Procedures for Administration of Customary Land of Customary Law Community Units then replaces the previous regulation by re-using the term "customary land" and focusing on the aspect of land administration or administration. This regulation regulates the inventory, verification, and registration of customary land as part of the national land administration system. This regulation also introduces the concept of a Certificate of Customary Land as evidence of ownership of customary land.

The latest regulation, Regulation of the Minister of ATR/BPN Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities, brings a more comprehensive approach. This regulation clearly defines Customary Rights as "the authority that according to customary law is held by certain customary law communities over certain areas that are the environment of their citizens to benefit from natural resources." This regulation differentiates the characteristics of customary law communities into Customary Law Community Units and Customary Law Community Member Groups, which provide differences in the land

registration process. Article 2 of Regulation of the Minister of ATR/BPN No. 14/2024 emphasizes that Customary Rights are implemented as long as in reality they still exist according to the provisions of applicable customary law, with the criteria of the existence of community groups bound by customary law, certain customary land, and customary legal arrangements regarding land management that are obeyed. Article 3 of this regulation specifically limits the implementation of Customary Rights to land that does not have land rights, is not used as a public facility, has not been released by a government agency/legal entity/individual, and is not self-governing land/former self-governing land.

An important innovation in Permenag ATR/BPN No. 14/2024 is the detailed regulation of the administration of customary land rights which includes inventory and identification, measurement and mapping, and recording in the Customary Land Register. Inventory is carried out through a survey of the existence of customary law communities, while identification is carried out to determine indications of the existence of customary land, including research on the characteristics of customary law communities and ensuring that there are no disputes. This regulation also regulates the mechanism for registering customary land with two options: (1) registration as a management right by the Customary Law Community Unit, or (2) registration as ownership rights in the name of the Customary Law Community Member Group as joint land. The registration process includes submitting an application, collecting and examining land or researching legal data, issuing a decision or announcement, and issuing proof of rights.

Article 16 of the Minister of Religion Regulation ATR/BPN No. 14/2024 recognizes the existence of unregistered customary land by stating that "Customary Land Areas that are not submitted for confirmation as management rights by Customary Law Community Units still have the status of Customary Land." This confirms that recognition of customary land does not solely depend on formal registration. Another important aspect is the regulation regarding cooperation between Customary Law Community Units and third parties based on an agreement (Article 16 paragraph 2), which opens up the possibility of legal control of customary land by parties outside the customary law community. This provision is a form of recognition of the dynamics of the modern economy without eliminating the essence of protection for customary land.

The entire ministerial regulation reflects an effort to balance the concept of state control rights with recognition of customary land. On the one hand, the state through the Ministry of ATR/BPN regulates the land administration and registration system, which is a manifestation of the state's control rights. On the other hand, this ministerial regulation recognizes the existence of customary rights of customary law communities and provides a legal protection mechanism for customary land within the framework of the national land law system. It can be concluded that the development of ministerial regulations in the land sector shows an evolution from merely general recognition of the existence of customary land to the integration of customary land into the national land administration system while still respecting the special characteristics and validity of customary law. Permenag ATR/BPN No.

14/2024 represents the latest approach that seeks to bridge state control rights with recognition of customary land in the Indonesian land law system.

Responsibilities and Authority of the Ende Lio Traditional Chief Over Customary Land (Tana Nggoro) in Ende Regency, East Nusa Tenggara Province

The Ende Lio customary leadership structure is a highly sophisticated social system, with hierarchies and mechanisms of power that have been tested over centuries. Customary leaders, known by titles such as Mosalaki Pu'u and Mosalaki Ria Bewa, are not merely traditional administrators, but central figures who carry out multidimensional functions in society. They act as guardians of tradition, customary judges, spiritual leaders, and social architects who simultaneously maintain the internal balance of society and protect the cultural heritage that has been passed down from generation to generation. Mosalaki Pu'u, who occupy the most strategic position in the customary leadership hierarchy, have comprehensive responsibilities in maintaining the cultural and spiritual continuity of society. They do not simply lead customary ceremonies, but actively maintain the complexity of the social system that has developed over centuries. Every ceremony they lead - from the Po'o Teu ceremony, the planting ceremony, to the Customary House ritual - contains a deep philosophical dimension, which transforms ritual practices into mechanisms for the reproduction of knowledge and cultural values.

The Mosalaki Ria Bewa have a special role as managers of certain customary areas, with authority that crosses modern administrative boundaries. They act as guardians of customary territory, advisors, and first judges in resolving internal conflicts. Their authority is not merely legal, but has a very strong moral and spiritual dimension. Every decision taken is not only based on logical considerations, but also through spiritual contemplation and consultation with ancestors. The process of customary leadership succession takes place through a very complex mechanism, involving genealogical considerations, personal qualities, and communal recognition. A prospective customary leader does not simply inherit the position automatically, but must go through a series of long initiation and recognition processes. They must prove their leadership abilities, in-depth knowledge of tradition, and spiritual capacity to carry out the community's mandate.

The authority of the customary chief covers a very broad spectrum, from conflict resolution, social system regulation, to reinterpreting traditions in the context of changing times. They act as a bridge between the past and the present, able to maintain cultural substance while selectively adapting to external changes. This requires high intellectual and spiritual wisdom, where every decision is considered not only from a pragmatic perspective, but also from a deep philosophical dimension. The resolution of customary land conflicts in the Ende Lio community is a complex process that goes far beyond formal legal mechanisms. The customary chief does not merely act as a mediator or arbitrator, but as an architect of social reconciliation who is able to uncover hidden layers of conflict. Every conflict is seen as a disturbance to the cosmological balance, not just an individual dispute or material interest alone.

The conflict resolution mechanism starts from the lowest level through family deliberation, where the customary leader acts as a neutral facilitator with high moral authority. This process does not merely seek pragmatic solutions, but rather seeks to restore damaged social relations, restore communal harmony, and re-establish disturbed customary institutions. Each stage of conflict resolution is carried out with great care, using symbolic language and rituals rich in meaning.

The authority of customary leaders in resolving land conflicts includes several fundamental dimensions. First, they have the ability to conduct in-depth historical investigations related to the origins of the land, using the collective memory of the community and genealogical documentation that has been passed down from generation to generation. Second, they have the authority to organize customary ceremonies that function as mechanisms for recognizing and resolving conflicts, where the spiritual and social dimensions are united in one sacred procession.

The principles of justice applied in resolving customary land conflicts are holistic, going beyond the concept of formal justice known in the modern legal system. Justice is not simply defined through the distribution of material goods, but rather through the ability to restore cosmological balance, restore social relations, and re-establish the spirit of family that has been disturbed. Every decision is made by considering the interests of the entire community, not just the interests of certain individuals or groups.

Conflict resolution rituals are very complex. Customary ceremonies are not just formal protocols, but mechanisms of social transformation that involve spiritual, psychological, and cultural dimensions. Through these rituals, conflict is transcended from merely a material issue to an opportunity to renew social ties, repeat cultural narratives, and reaffirm the collective identity of indigenous peoples.

The traditional leaders of Ende Lio do not just resolve conflicts, but actively prevent potential conflicts through proven social mechanisms. They carry out ongoing mediation, maintain intergroup communication, and proactively manage complex social dynamics. Thus, the conflict resolution system is not only reactive, but preventive and transformative.

Analysis And Legal Balance Of The Supreme Court Decision Number 241 K/Pdt /2020 In The Settlement Of Disputes Over Customary Land Control By Outside Parties In Ende Regency, Lio Customary Law Community In Ende Regency, East Nusa Tenggara Province

Land dispute resolution encompasses a number of complex and diverse aspects, including the recognition and protection of indigenous peoples' rights. The concept of state land control is not only aimed at improving people's welfare through fairer distribution, but also as an effort to protect them from oppression.⁸ Although the Basic Agrarian Law recognizes the rights of indigenous peoples, conflicts often occur due to diverse interpretations of customary rights. Therefore, goodwill is needed from the government to facilitate the resolution of land disputes

⁸ H. M. Arba, dkk., *Hukum Tata Ruang Dan Tata Guna Tanah: Prinsip-Prinsip Hukum Perencanaan Penataan Ruang Dan Penatagunaan Tanah*, (Jakarta: Sinar Grafika, 2020),p. 118.

fairly and efficiently. Recognition of the rights of indigenous peoples is also reflected in the constitution, which emphasizes the protection of their cultural identity and traditional rights. The laws governing regional government also emphasize recognition of regional specialties based on local customs and culture. However, in its implementation, concrete steps are still needed to effectively protect the rights of indigenous peoples. Changes in policies and programs that take into account the diversity of laws and the interests of indigenous peoples need to be prioritized in an effort to create equitable prosperity for all Indonesian people.

The basics of resolving legal disputes over land are related to state authority, which is regulated in the Basic Agrarian Law and Government Regulation No. 10 of 1961. Granting of land rights is entirely carried out by the government, especially the Minister of Home Affairs or the Director General of Agrarian Affairs. Settlement of land disputes is part of the government's administrative duties to regulate legal relations between individuals and land. The main objective is to create legal certainty, where land ownership does not guarantee land rights. Settlement of legal disputes over land is directed through several regulatory provisions, such as Government Regulation No. 10 of 1961 and Decree of the Minister of Home Affairs No. 72 of 1981. The concept of legal disputes over land covers a variety of issues, from the priority of land rights to civil issues and social aspects. The resolution mechanism has not been regulated concretely, but generally involves a complaint process, research, deliberation, and if necessary, settlement through the courts. These stages of settlement take into account the interests of the parties, legal balance, and are attempted until a complete settlement is reached.⁹

Supreme Court Decision Number 241 K/Pdt/2020 is a real example of how the Indonesian national legal system interacts with the customary legal system in resolving customary land disputes. This case involves a dispute between Fransiskus Wangge as the Applicant (Defendant) with Martinus Tolo as Mosalaki Ria Bewa Tana Moni-Watugana along with other Appellants (Plaintiffs) regarding control of the customary land "Tana Nggoro (Tana Laki Watu Ongga)" located in the territory of the Ende Lio customary law community in Ende Regency, East Nusa Tenggara Province. The legal considerations established by the Supreme Court in the decision reflect the recognition and protection of the existence of customary land. The Supreme Court upheld the decision of the Kupang High Court which stated that the object of the dispute was proven to be the customary property of the Moni indigenous people in the Lio-Ende customary culture. This decision firmly confirms that the customary land is the ancestral heritage of the Plaintiffs led by Plaintiff I as Mosalaki Ria Bewa Tana Moni-Watugana.

An important aspect highlighted in this decision is Fransiskus Wangge's status as a party outside the Ende Lio customary law community. The Supreme Court confirmed the High Court's finding that Fransiskus Wangge came from the Lise customary law community, not from the Moni (Ende Lio) customary law community. This is a crucial consideration in determining the legality of Fransiskus Wangge's control of customary land. As a party outside the Ende Lio customary

⁹ Ansel Dilago, "Analisis Yuridis Perselisihan Tanah Ulayat Di Kabupaten Fakfak Berdasarkan Kepastian Hukum", *Action Research Literate*, Vol. 8, No. 6, Juni 2024, p. 6

law community, Fransiskus Wangge's control of customary land requires a legal basis according to local customary law. The Supreme Court's decision confirms that Fransiskus Wangge does not have a legal basis for the disputed land. The Supreme Court stated that the control of customary land by the Defendant was carried out without the knowledge and without the consent of the Plaintiffs as the legal heirs and owners of the customary land. This is an application of the fundamental principle in customary law that the transfer or control of customary land by an outside party must go through a procedure recognized by local customary law and obtain the consent of the authorized customary leaders.

Analysis of this decision shows that the Supreme Court recognizes the customary leadership structure in the Ende Lio customary law community, especially the role of Mosalaki Ria Bewa Tana Moni-Watugana as the authorized party in managing customary land. This recognition reflects the implementation of Article 18B paragraph (2) of the 1945 Constitution which recognizes and respects customary law community units and their traditional rights. The control of customary land by the Defendant without the knowledge and consent of Mosalaki is a violation of applicable customary law. The Supreme Court's decision also confirms the concept of "borrowing" customary land in Ende Lio customary law. In its legal considerations, the Supreme Court stated that the disputed land was ancestral land inherited from the Plaintiffs which was "borrowed" by Kaki Kabu (deceased) to Pius Rasi Wangge (deceased, who is the ancestor of the Defendant). This concept of "borrowing" does not transfer ownership of customary land, but only provides temporary and limited rights of use. Therefore, the Defendant's actions in granting permission to occupy and rent the land subject of the case to another party without the Plaintiffs' consent are declared invalid and constitute an unlawful act.

The Supreme Court in its decision rejected the cassation appeal from the Applicant (Fransiskus Wangge) and upheld the decision of the Kupang High Court. This rejection was based on the consideration that the decision of the Kupang High Court did not conflict with the law and/or statutes. This shows that the Supreme Court recognizes and respects the customary law applicable in the Ende Lio customary law community, especially in terms of control and utilization of customary land.

This decision is in line with the principles contained in Article 3 of the UUPA which recognizes the customary rights of customary law communities as long as in reality they still exist. In this case, the Supreme Court recognized that the customary rights of the Ende Lio customary law community to the disputed land still exist and must be protected. This recognition provides legal protection for the Ende Lio customary law community in defending its customary land from control by parties outside the customary law community without a legitimate legal basis.

Supreme Court Decision Number 241 K/Pdt/2020 is also in line with the spirit of the Regulation of the Minister of ATR/BPN Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities. Although this regulation was issued after the Supreme Court decision, the principles contained therein reflect the recognition

and protection of customary land of customary law communities that have long been part of the Indonesian national land law system.

Article 3 of the Regulation of the Minister of ATR/BPN Number 14 of 2024 emphasizes that the implementation of Customary Rights by customary law communities is not carried out in cases where the land area is already owned by an individual or legal entity with a land right, is a land area that has been used as a public facility/social facility, is a land area that has been obtained or released by a government agency, legal entity or individual in accordance with applicable provisions and procedures, and/or land swapraja and former land swapraja that has been abolished. In this case, none of these conditions are met, so that the customary rights of the Ende Lio customary law community to the disputed land remain protected. Article 16 of the Regulation of the Minister of ATR/BPN Number 14 of 2024 stipulates that the Customary Law Community Unit can cooperate with third parties based on an agreement in accordance with the provisions of laws and regulations. This emphasizes that the transfer or use of customary land by outside parties must go through a formal procedure in the form of an agreement with the Customary Law Community Unit. In this case, there was no agreement made between Fransiskus Wangge and the Ende Lio customary law community for control of the disputed land, so his actions had no valid legal basis.

The Supreme Court Decision Number 241 K/Pdt/2020 provides several important lessons regarding the control of customary land by parties outside the customary law community. First, control of customary land by outsiders must be based on a legitimate legal basis according to local customary law. Second, the approval of authorized customary leaders is an absolute requirement in the transfer or use of customary land by outsiders. Third, the concept of "borrowing" customary land does not transfer ownership, but only provides temporary and limited use rights.

This decision also confirms that the Indonesian national legal system recognizes and respects legal pluralism, especially in terms of control of customary land. The Supreme Court does not enforce the application of positive law rigidly, but rather integrates the principles of Ende Lio customary law in its considerations. This reflects a balanced approach in the interaction between state law and customary law. In the context of protecting customary land, this decision strengthens the position of the Ende Lio customary law community in defending its customary land from control by outside parties without a legitimate legal basis. The Supreme Court ordered the Defendant and people or anyone who received rights from the Defendant to vacate the object of the case and dismantle anything on it and hand over the land of the object of the case to the Plaintiffs in an empty state without any conditions or burdens. This is a form of restoration of the customary rights of the Ende Lio customary law community over the disputed land.

Supreme Court Decision Number 241 K/Pdt/2020 is a concrete example of how the Indonesian national legal system recognizes and protects the existence of customary land from control by parties outside the customary law community who do not have a legitimate legal basis. This decision confirms the fundamental principle that control of customary land by outside parties must go through

procedures recognized by local customary law and obtain approval from authorized customary leaders. This decision provides legal certainty for the Ende Lio customary law community over its customary land and becomes valuable jurisprudence in resolving similar disputes in the future.

CONCLUSION

Control over customary land in the Indonesian national land law system is constitutionally recognized by the state. Article 18 B paragraph (2) of the 1945 Constitution provides recognition and respect for customary law community units. In addition, regulations related to customary land are seen in the Decree of the People's Consultative Assembly Number IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources. In positive law, the UUPA provides and recognizes the existence of customary community units which have implications for the existence of customary rights for customary communities.

The Ende Lio (Mosalaki) customary head has multidimensional responsibility and authority over customary land (Tana Nggoro) which includes spiritual, legal, social, and ecological aspects, where they act as the highest guardians of customary land who have the authority to determine utilization, regulate inheritance, resolve land disputes, and carry out customary ceremonies.

Legal analysis of Supreme Court Decision Number 241 K/Pdt/2020 shows that the Supreme Court prioritizes the recognition and protection of the existence of customary land belonging to the Ende community. The Lio customary law community by strengthening the decision of the Kupang High Court which confirms that the object of the dispute is the customary land inherited from the Plaintiffs as Mosalaki, and stating that control of land by outside parties without a valid legal basis and the approval of the authorized customary leader is an unlawful act in line with the principle of recognition of customary rights in the UUPA and the related Regulation of the Minister of ATR/BPN.

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i1.24308>

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