

Existence Of Indigenous Legal Communities On Land In Procurement Of Land For Public Interest

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DOI: 10.29322/IJSRP.10.01.2020.p9797

<http://dx.doi.org/10.29322/IJSRP.10.01.2020.p9797>

Abstract: Land acquisition under the pretext of public interest, sometimes injures the community, including the Customary Law Community (MHA), because the use of land taken by the government is not as originally planned, and even tends to give birth to misery of the community which was once the rights holder. Many cases have arisen between the Government, Regional Government and the private sector with the Customary Law Community (MHA), related to the implementation of development and investment on land which is the property of the MHA. Research Objectives: 1) Analyzing and discovering the philosophical basis of the protection of property rights of customary law communities. 2) Analyzing and finding the existence of customary community ownership rights in land acquisition for public interest. This type of research is normative juridical research. Basically, indigenous peoples have a philosophical foundation that is closely interrelated with their customary land or customary rights. Customary law communities have full customary authority for the control and use or management of their customary land, but in formal legal jurisdiction their authority is not as strong as that of the State such as the State set out in the Basic Rules of Agrarian Principles (UUPA). The existence of customary law communities in defending their customary rights over land is emphasized in their respective regional regulations in accordance with the characteristics and characteristics of indigenous and tribal peoples in certain areas.

Keywords: Philosophical, rights, community, customary law, land

1. INTRODUCTION

In order to realize a just and prosperous society, the government made a general plan regarding the supply, allocation and use of agrarian resources for development needs in order to achieve the greatest prosperity of the people. With this general plan, land use can be carried out in a guided and orderly manner so as to bring maximum benefits to the country and the people. Land is one type of object that still has a very important position in the governance of community life. Moreover, the compilation of the modernization era, all trajectories have begun to be driven, the role of the land is more advanced. At the time of increasing land values increased by urban communities whose growth rates are increasing, so that the demand for land is increasing and scarce. (Muhammad Yusrizal, 2017). Land and development are an inseparable unity. Besides land also has a social function, in the sense that land owned by someone does not only function for the owner of that right, but also for the Indonesian people as a whole. As a consequence the use of the land is not only based on the interests of the right-holders, but also must remember and pay attention to the interests of the community. Therefore it can be said that land has a dual function, namely as social assets and capital assets. As social assets land is a means of binding social unity among the people of Indonesia for life and living, while as capital assets land is a capital factor in development. (Hermayulis, 2000). As social assets and capital assets, the two are a unity, on which there are humans as their inhabitants and the content of natural resources in them (Elita Rahmi, 2010). Based on the authority possessed by the government in regulating the land sector, in accordance with the mandate of Article 33 paragraph 3 of the 1945 Constitution which states that: "The earth, water and natural resources contained therein are controlled by the state to be used for the greatest prosperity of the people". Then the government followed up by issuing Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). The provisions in UUPA itself provide a strong legal basis for the government to take land owned by the community, including taking land for public purposes as regulated in Article 18, namely: "In the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation in the manner stipulated by law".

Development by the government, especially physical development absolutely requires land. This required land can be in the form of land that is directly controlled by the state or land that is already owned with rights by a legal subject. Related to the land needed for development in the form of state land, land acquisition is not difficult, that is, the government can directly apply for land rights for further use for development, but because of the limited land owned by the government, land is needed from the community including the customary law community to expedite the course of development in the public interest. The need for land to be used by the government for development purposes must not be detrimental to the rights of landowners, including the rights of indigenous

peoples to land. Therefore, to regulate this matter, it is necessary to have a legal regulation that can provide legal protection to holders of land rights.

Legal arrangements relating to the acquisition of land for public purposes and all other relevant regulations have undergone a process of development from time to time. Some existing land acquisition regulations are considered not able to accommodate the interests of holders of land rights, so it is very necessary to have legal instruments at the level of the law to become a strong legal umbrella. To answer these complaints, the government adopted a policy by issuing Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

The government hopes that the issuance of this law will become a strong legal umbrella to facilitate the implementation of infrastructure development in the public interest and at the same time be able to provide legal protection to rights holders, but this still needs to be explored further to address issues related to land acquisition policies which at the same time protects the landowning community. The increase in population in Indonesia will have implications for the increasing need for public facilities related to transportation, housing, education, and so on. Fulfillment of these facilities can not be separated from the need for land as one of the authorized capital. There are almost no development activities that do not require land, so land plays an important role, even the success and failure of physical development is largely determined by the availability of land.

The government as the holder of the right to control the country, in order to fulfill the needs of the land the government has an obligation to hold it. Based on paragraph 33 of the 1945 Constitution, it is evident that the relationship between the state and the earth, water and natural resources contained therein is a relationship of control, not ownership. This is very different from colonial agrarian law which creates ownership relations between the state and land, with the existence of the principle of *domein verklaring* being reflected. The aim is to improve the welfare and prosperity of the people, in accordance with the ideals of the Indonesian nation when it freed itself on August 17, 1945 from dependence on other nations that have controlled, exploited, and drained the Indonesian nation and all of its natural wealth which is the right of the Indonesian people (Daniswara K. Harjono, 2010). Obviously, the ideals of the Indonesian people can be read in the Preamble to the 1945 Constitution of the Republic of Indonesia, particularly in the fourth paragraph, the formulation is as follows: "Then, in order to form an Indonesian Government that protects all Indonesian people and all of Indonesia's blood and to promote public welfare, educate the nation's life, and take part in carrying out world order based on independence, eternal peace and social justice, Indonesian national independence is drawn up. in a Constitution of the Republic of Indonesia which is formed in an arrangement of the Republic of Indonesia which is sovereign of the people based on the Almighty God, Humanity that is just and civilized, Indonesian Unity in Democracy led by wisdom in Consultative / Representative, and with realizing a social justice for all Indonesian people".

If we look carefully at paragraph IV above, the noble ideals of the Unitary State of the Republic of Indonesia are contained, namely "a just and prosperous society". Sumario Waluyo stated that "the ideal of a just and prosperous society in the life of the Indonesian people is a central problem throughout history. In this connection, fair and prosperous are two pairs of words that are not released in the philosophy of society and are their life goals. Fair is the main emphasis and is always mentioned before the word, while prosper is an affirmation and priority that needs to come first "(Sumiario Waluyo, 1979).

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Law No. 5 of 1960) in Article 2, states that:

- (1) On the basis of the provisions in article 33 paragraph (3) of the Constitution and matters as referred to in article 1, earth, water and space, including the natural resources contained therein are at the highest level controlled by the State, as power organization of the whole people.
- (2) The controlling right of the State referred to in paragraph (1) of this article authorizes:
 - a. regulate and carry out the designation, use, supply and maintenance of the earth, water and space;
 - b. determine and regulate legal relations between people and earth, water and space;
 - c. determine and regulate legal relations between people and legal actions concerning earth, water and space.
- (3) The authority derived from the right to control from the State in paragraph (2) of this article is used to achieve the greatest prosperity of the people, in the sense of happiness, prosperity and independence in society and the free, sovereign, just and prosperous Indonesian rule of law.
- (4) The controlling right of the said State can be empowered by the autonomous regions and traditional law communities, only as necessary and not in conflict with national interests, according to the provisions of Government Regulations.

Provisions of Article 2 of Law No. 5 of 1960 above means that the state is given the authority to regulate, organize allotment and use of BARA. To meet the demands it is not uncommon that land owned or controlled by legal subjects as private rights is subject to the fulfillment program. So through legislation made by the government, the takeover of private rights is carried out on the grounds for public interest. There are three ways that can be done by the state to meet these needs, namely first, done in the usual way, namely through buying and selling, exchanging, and others; secondly, it is carried out through land acquisition institutions; and third, is carried out through institutions that revoke land rights.

Development activities are not only the responsibility of the government, but also the active role of private companies and the community in general is needed. To carry out development activities can not be separated from the need for land as a container of its activities.

Specifically to meet the need for land for the government and private companies, it is unlikely to use land that is directly controlled by the state due to limited land availability. As a way out is to use land rights by providing compensation to holders of land rights.

Activities to obtain land by providing compensation to those entitled to land are known as land acquisition. According to his interests, land acquisition is carried out for interests of the government or government agencies and land acquisition is for the benefit of private companies.

Land acquisition for government interests is carried out with the assistance of the Land Procurement Committee formed by the Governor, while land acquisition for the interests of private companies is carried out directly by the private company without the assistance of the Land Procurement Committee.

Land acquisition for the benefit of the government or government agencies is better known as the acquisition of land for public purposes, which is regulated in Presidential Decree Number 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest (Presidential Decree No. 55 of 1993). Following up as the implementation of this Presidential Decree, Minister of Agrarian Regulation / Head of National Land Agency No. 1 of 1994 was issued concerning the Provisions for the Implementation of Presidential Decree Number 55 of 1993 concerning Land Procurement for Implementation of Development for the Public Interest (Agrarian Regulation of the Head of BPN Number 1 of 1994).

Land Procurement for Public Interest is finally regulated by Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (Law No. 2 of 2012) and Government Regulation Number 40 of 2014 concerning Amendments to Presidential Regulation Number 71 of 2012 concerning Procurement Implementation Land for Development in the Public Interest.

Land acquisition under the pretext of being in the public interest, sometimes injures the community, including the Customary Law Community (MHA), because the use of land taken by the government is not as originally planned, and even tends to give birth to the misery of the community which was once the rights holder. Not infrequently under the pretext of public interest, MHA land is used to fulfill these needs, for example the needs of industrial development, the construction of shopping centers that are only used by a handful of groups. Likewise, it is not uncommon for land acquisition to leave legal problems. According to Gunanegara, problems related to land acquisition are not only juridical issues, but also develop into socio-cultural and economic-political problems. (Gunanegara, 2008).

An interesting thing to study is the existence of MHA land rights as a result of land acquisition for development. MHA is a party that is very vulnerable to land acquisition activities for development in the public interest. Under the pretext in the public interest, MHA rights are often taken over without any effort to replace with other land ownership rights.

In addition, it is also interesting to study the criteria of public interest, specifically how the laws and regulations relating to land acquisition for development purposes have set these criteria. Without clear criteria on the public interest, various interpretations can be created to fill the criteria. If this is done, it is not impossible that every activity can be shaded under the pretext of public interest. It will further make land rights holders the victims.

Investment opportunities that are wide open in Indonesia, including in Maluku, provide the possibility of the acquisition of MHA rights by the Government, Regional Governments and the private sector for development and investment on the pretext of public interest. Many cases arising between the Government, Regional Government and the private sector with MHA related to the implementation of development and investment on land which is the property of the MHA. The cases that occurred such as in West Seram District (Tanahnahu District, in Southwest Maluku District (Romang Island). In addition, the planned implementation of the Masela block also in time also did not rule out a conflict of interest with the MHA.

A. Problem Formulation

1. How is the philosophical protection of customary community land rights?
2. What is the existence of customary community land rights in land acquisition for public use?

B. Research Objectives

1. Analyze and discover the philosophical basis of the protection of the ownership rights of indigenous and tribal peoples.
2. Analyzing and finding the existence of customary community ownership rights in land acquisition for public interest

C. Research Benefits

Theoretically, the results of this study are expected to contribute constructive thinking to the development of legal science, particularly state administration law and state administration law related to the state's responsibility for the protection of all people. Practically, the results of this study can be a reference for the Government and Regional Governments in carrying out development, particularly in the acquisition of land for development in the public interest.

2. RESEARCH METHOD

A. Research Type

This type of research is normative juridical research. Normative juridical research is a legal research method carried out by examining mere library or secondary material. (Soejono Soekanto and Sri Mamudji, 2007)

B. Problem Approach

The first problem is using normative legal research with a philosophical approach to study and analyze the philosophical protection of the rights of indigenous peoples. The second problem uses normative legal research using a conceptual approach and case studies to determine the existence of customary law community property rights in land acquisition for public use.

C. Sources of Legal Materials

The source of legal material in this study comes from library research, where library research uses primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is material whose contents are binding because it is issued by a government or agency that has authority. And secondary legal sources are materials in the form of books and other printed materials, and software, namely by accessing a number of data via the internet (downloading) various books, scientific journals and research results, and tertiary legal materials are legal materials that are supporting primary and secondary legal materials. (Devi K. G Sondakh, 2009).

D. Legal Materials Collection Techniques

In this study, the legal material collection techniques used are primary legal materials and secondary legal materials. Secondary legal materials include materials that support primary legal materials such as text books, articles in various scientific magazines or research journals in the field of law, papers submitted in various forms of meetings such as discussions, seminars, workshops, etc. other. To support or complement this research, the authors also use case studies related to this research.

E. Legal Material Analysis Techniques

Analysis of the materials used in the study was carried out in a qualitative and comprehensive analysis. The analysis of legal material in this study was carried out using descriptive techniques, clarifying the materials by constructing law and argumentation, which were then assessed based on reasons of legal reasoning related to the problem.

3. RESULTS AND DISCUSSION

1. Regulation of Customary Law Community Rights According to National Law

In examining the substance of other constitutions that have been applied in Indonesia, such as the 1949 Constitution and the 1950 Constitution, it is certain that such regulation has never been carried out. The mandate of the 1945 Constitution was apparently not followed up, but what was done was to uniform the original arrangement owned by the indigenous people as "village". Meanwhile, recognition of the existence of indigenous peoples and customary land rights or customary rights can only be formulated in 15 (fifteen) years. Juridically, the regulation of customary rights in legislation in Indonesia is based on the Indonesian Land Law, namely Law No.5 Year 1960 concerning Basic Rules of Agrarian Basic Law No. 1960 104. September 24, 1960. With the enactment of Law no. 5 of 1960, then there was a change in Indonesian Agrarian Law. With UUPA. The colonial legal regulations were abolished and the dualism of the Agrarian Law was ended which consisted of regulations that originated in western law and which guaranteed legal certainty for all Indonesian people. Our agrarian law is then based on one legal system, namely Customary Law, as the original law of Indonesia, (Boedi Harsono, 1971) which is clearly formulated in article 3 paragraph (3) of the 1945 Constitution as the foundation.

The main objectives of the Agrarian Law in general explanation are:

- a. Laying the groundwork for the drafting of national agrarian law, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially peasants, in the framework of a just and prosperous society;
- b. Laying the groundwork for establishing unity and simplicity in land law;
- c. Laying the groundwork to provide legal certainty regarding land rights for the people as a whole.

Customary Law as the basis for the establishment of the National Land Law has 2 (two) positions, namely:

1) Customary Law as the main basis

The appointment of Customary Law as the main basis in the formation of National land law can be concluded in the Consideration of UUPA letter (a), viz "In connection with what is stated in the above considerations, the need for national agrarian law, which is based on customary law on land, is simple and guarantees legal certainty for all Indonesian people, without ignoring elements that are aware of religious law"

"Naturally the new agrarian law must be in accordance with the legal awareness of the people at large. Therefore, the Indonesian people are partly scattered subject to Customary Law, so the new agrarian law will also be based on the provisions of customary law, as original law, people in a modern country and in relation to the international world, and adapted to Indonesian socialism . As it is understood, customary law in its growth cannot be separated from political influence and colonial society which is capitalist and feudal society. "

2) In connection with the incomplete written National Land Law, the Customary Law norms serve as a supplement. This is stated in the UUPA article, namely:

"As long as the law regarding ownership rights as referred to in Article 50 paragraph (1) has not yet been formed, then the provisions of the local Customary Law and other Regulations concerning land rights which give authority as or similar to the intended in Article 20, as long as it does not conflict with the soul and the provisions of this Law. "

Recognition of customary law as the basis for national agrarian law is expressly stated in Article 3 and Article 5 of the UUPA In Article 3 it reads as follows:

Bearing in mind the provisions in Articles 1 and 2 of the implementation of customary rights and similar rights of the Customary Law communities, as long as in reality they still exist, must be such that they are in accordance with national and state interests, which are based on national unity and are not may conflict with laws and other high regulations.

In Article 5 also stated as follows :

Agrarian Law that applies to earth, water and space is Customary Law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in this Act with other laws and regulations, everything by heeding the elements that rely on religious law.

Based on the provisions in Article 5 of the UUPA, the applicable land law is Customary Law with certain limitations. The existence of these requirements implies that the Customary Law is located as a supplementary law. Requirements and restrictions on the enactment of Customary Law and national land law are explicitly contained in article 5 of the UUPA, namely:

1. Does not conflict with national and state interests.
2. Does not conflict with Indonesian socialism.
3. Does not conflict with the provisions contained in the UUPA itself
4. Does not conflict with other agrarian regulations.
5. Must heed the elements that rely on religious law.

In connection with the recognition of customary rights or communal rights of customary law communities in Article 3 of the UUPA it can be stated that there are 2 (two) conditions, namely:

1. Its existence

In terms of the existence of customary land rights or customary rights recognized as long as in reality they still exist. Thus if in areas where there are no more customary rights, then of course the customary rights will not be revived, and of course in areas where there are no customary rights will not be given new customary rights.

2. Implementation

In terms of implementation, if in reality it still exists, the implementation of customary community customary rights must be such that it is in accordance with national and state interests, which are based on national unity. The exercise of customary rights or customary rights of customary law communities is also customary or may not conflict with other higher laws and regulations. (Boedi Harsono, 1971)

However, by adhering to the conception originating in Customary Law, it would be fair if the criteria for determining the existence of customary rights are based on the existence of 3 (three) elements which must be fulfilled simultaneously, namely:

1. The subject of customary rights, namely the customary law community, which fulfills the characteristics of termination;
2. Objects of customary rights, namely territorial land which constitutes their lebensraum;
3. The existence of certain authority from the customary law community to manage the land of their territory, intended to determine the relationship that is pleasing to the supply, establishment, and utilization, as well as the preservation of the territory's land. (Maris Sumardjono, 2006).

Concerning customary law must not contradict other higher and higher laws and regulations, according to Gautama, (Sundargo Gautama, 1990) that:

"Customary law may not conflict with the provisions contained in the UUPA. An outline of the UUPA has been outlined what constitutes the main joints of the new national agrarian legislation. Customary law which is declared to apply to land rights must not conflict with the principles stated in the UUPA. This also means that where in the UUPA are formulations of new rights regarding land, then these formulations apply, if there is no conformity between the Customary Laws on rights similar to rights new rights in the UUPA and the formulation of UUPA itself. In addition to the formulation contained in the UUPA it will be used as a guide for the perpetrators of law ".

In general explanation II number 3 relating to article 3 of the UUPA, it states that this provision first stems from the recognition of the existence of customary rights in the new agrarian law. As is known, despite the fact that customary rights exist and apply and are taken into account in judges' decisions, such rights have never been formally recognized in the law, with the result that in implementing agrarian regulations, customary rights in ancient times were often ignored.

Due to the mention of customary rights or the rights of indigenous peoples in the basic agrarian law, which in essence also means recognition of these rights, then the customary rights will be considered, as long as these rights are in fact still in the legal community concerned. For example, in the granting of land rights (for example, for business purposes), the legal community concerned will be heard beforehand and will be given an "recognitie". Which indeed he has the right to accept as the winner of the Customary Rights.

The existence of customary community rights is recognized by the UUPA, but it does not provide clear boundaries regarding whether or not customary rights exist in customary law communities. The UUPA allows the regulation of customary rights to continue according to local customary law. The lack of clarity about the existence of customary rights or customary rights can cause problems between the customary law community and the government. For this reason, it is necessary to clarify the customary rights regulation regarding customary rights related to the position, understanding and content of the National Defense Law system.

As stressed by Simarmata (Rikardo Simarmata, 2007) that the form of recognition of customary rights is more "conditional recognition". That means, customary rights held by indigenous peoples can only be done "as long as in reality they still exist, do not conflict with national interests, and may not conflict with other laws and regulations that are higher." The concept of conditional

recognition of the indigenous peoples' knowledge which was introduced by the UUPA and then followed by standard legislation afterwards actually has narrowed the space for what was mandated in article 18 of the 1945 Constitution before the amendment.

The concept of conditional recognition of customary rights or customary rights owned by indigenous peoples also took place in the early days of the new order, especially when a number of laws were issued such as law number 5 of 1967 concerning forestry article 17, and law number 11 of 1967 concerning the basic provisions of mining which have been amended by law number 4 of 2009 concerning mineral and coal mining. Both of these laws have clauses of recognition of indigenous peoples but as long as they remain in reality and do not interfere with the achievement of the objectives of the law. It is this style of recognition that makes the forestry law not optimally provide indigenous peoples with basic freedoms but rather sets boundaries that are increasingly difficult for indigenous peoples to reach.

After waiting for about 55 (fifty-five) years, it was only in 2000 that a second amendment to the 1945 Constitution resulted in a new clause regarding indigenous peoples. Article 18B Paragraph (2) of the 1945 Constitution as a result of the amendment confirms that: "The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Republic of Indonesia, which are regulated in the law." A similar style of regulation and recognition is also carried out in the provisions of MPR Number XVII of 1998 concerning Human Rights; Article 6 paragraph (2) of Law no. 39 of 1999 concerning Human Rights; and Regulation of the Minister of Agrarian Affairs / Head of BPN No. 5 of 1999 concerning Guidance to adjust the Customary Community Rights issue.

Recognition and respect for customary rights are contained in various regulations including regional regulations (PERDA) that use the legal basis relating to the authority to make regulations and the legal basis relating to the material regulated in these regulations. Examples of some areas that regulate recognition and respect for customary rights are regional regulations of Kampar district number 12 of 199 concerning customary rights; lebak district regulation No. 32/2001 concerning protection of the customary rights of the Baduy community; West Sumatra Regional Regulation No. 6 of 2008 concerning customary land. Some areas that are drafting Tobelo Land Rights Regulations, North Halmahera Land Rights Regulations.

Recognition of the customary rights of indigenous and tribal peoples was issued in 2001 through the provisions of the MPR Republic of Indonesia No. IX / MPR / 2001 concerning the reform of Agrarian Law and Natural Resource Management.

Article 5 MPR Decree No. IX / MPR / 2001 determines, inter alia: in sub e: "developing democracy, legal compliance, transparency and optimization of people's participation; in realizing justice in the experience, ownership, use, utilization and maintenance of agrarian and natural resources "; and in sub f: "maintaining sustainability that can provide optimal benefits, both for present and future generations, by being prepared to pay attention to the capacity and support of the environment" and in sub g "carrying out social functions, sustainability, and ecological functions in accordance with social conditions local culture ", and by continuing to " respect and uphold human rights "(sub c); "Respect the rule of law by accommodating diversity in law unification" (sub c). the special thing that is put forward in article 5 of TAP MPR No. IX / MPR / 2001 is as set out in point j, namely: recognizing and respecting the rights of indigenous peoples and national cultural diversity over agrarian and natural resources. "

Based on the view above it can be concluded that the existence of natural resource law and environmental law can still be seen as two sides of one currency. Both can only be distinguished but can not be separated. [Ronald Z Titahelu, 2005].

If in the previous thinking the rights to natural resources were emphasized as the rights of the government and entrepreneurs based on fulfilling the interests of the State's foreign exchange earning and priorities in the private sector to be able to try freely, then in the current development opportunities for business must also be expanded in a balanced way by including the people's rights as referred to in item j of MPR Decree No. IX / MPR / 2001 above: "recognizing and respecting the rights of indigenous peoples and the nation's cultural diversity of agrarian resources and natural resources", and developing democracy, legal compliance, transparency, and optimization of people's participation.

This style of conditional recognition of indigenous peoples was immediately followed by Law No. 41/1999 concerning forestry and various other regulations concerning plantations, water resources management, coastal management, and small islands, utilization and preservation genetic resources, mining, natural resource management and others. As with previous legal products, all legal products produced in this reform era did indeed recognize indigenous peoples and their customary rights, but still set conditions, that the new rights could be recognized: (1) as long as in reality they still existed; (2) in tune with the times; (3) does not conflict with national interests; and (4) must be confirmed by local regulations (Rikardo Simarmata, 2007) Ownership and authority to manage natural resources in the hands of the government, private sector and local communities. For example, forests are known as state forests, private forests and also community forests, including customary forests. Even though Law No. 41 of 1999 does not prioritize community forestry referred to as customary forest as a separate category, but recognition of the existence of community forestry is a condition for the development of the people's economy. Another example is management of the coast and the sea. The authority granted by Law No. 22 of 1999 concerning regional governments, heads of provincial and district / city governments as well as villages, is a good opportunity for each local government to manage existing coastal natural resources. Even for island regions, both island provinces and island districts, authority can also be exercised over sea areas between islands. (Law Number 6 of 1996).

For example, although seaweed cultivation is carried out by coastal fishing communities. Likewise with the creation of a Sea Protection Area (a kind of Marine Protection Area or area called a sanctuary), as well as seaweed cultivation efforts, the creation of a Sea Protection Area, and so on cannot be said to be traditional activities. Although it is well known that in some countries it is known as *sasi* (in Southeast Maluku), and *mane's* (in Talaud) and *eha* (in sangir) which are traditional in nature, activities to organize marine protected areas and so on. In Kalimantan there are rattan forests which are cultivated by the local community. In Lampung, it is known as Repong Resin. In certain places near Jayapura, West Papua, it is known that there is a "Coffee Forest" which is cultivated by local

indigenous people. In Central Maluku it is known as "*dati dati*" or "*dusun*" in Seram. The rights that are above can be found in the knowledge of the local Customary Law.

2. Customary Law Community Rights According to Customary Law

Land has a very important position in human life, especially for the Customary Law community. The relationship between the land and the community itself always occurs in a variety of interests, the land used as a place of settlement, for the purpose of making fields, a place to take the results, a place to gather with others or a place of worship or for worship. This legal community's right to land is called land rights or customary rights. (Bushar Muhammad, 2006). The use of the term Customary Rights was first introduced by *Van Vollenhoven*, a Dutch legal expert named *beschikkingsrecht* who described the relationship between the legal community and the land itself.

According to Ter Haar: *beschikkingsrecht* (*beschikkingskring*) as an environment everywhere practically has a term: the term is a term for the environment of "*beschikkingsrecht*" both as belonging - *petuanan* (Ambon) - and as a food-producing area - *panyampeto* (Kalimantan) - or as a field which is fenced off (Kalimantan), *wewengkon* (Java), *prabumian* (Bali), or as forbidden land for others - *tatabuan* (Bolang Mongodow). Then there are terms like *torluk* (Angkola), *limpo* (South Sulawesi), *nuru* (Buru), *payar* (Bali), *paer* (Lombok), *Ulayat* (Minangkabau)

With regard to the rights of indigenous peoples to certain areas or what is commonly referred to as Customary Rights, the discussion refers to geographical units. Whereas when it comes to rights, the authorities or authorities that are based on the willingness to do or not do something above customary territory are covered. (Ronald Z. Titahelu, 2008). As such, Customary Rights refer to a relationship between indigenous peoples and certain territories. The relationship between customary law communities and their customary lands gives birth to customary rights, and the relationship between individuals over land. (Boedi Harsono, 2003) Regarding this relationship, Ter Haar (Ter Haar Bzn-K. Ng. Soebakti Poespono) states:

"The living relationship between human beings who are regularly arranged and related to one another on the one hand and the land on the other, that is, the land where they dwell, the land that feeds them, the land where they are buried and which is the residence of the refined protectors. along with the ancestral spirits of the land which permeates the life force, including the life of the Ummah and therefore depend on it, such affinity is felt and rooted in his "completely paired" mindset (*participierend denken*) that should be considered a legal relationship (*rechtssbetrekking*) humanity is against the land. "

The relationship that exists between customary law communities and land as a unity that cannot be separated as a legal alliance. The legal alliances (*rechtsgemeenschappen*), namely, "organized groups are permanent by having their own power, also their own wealth in the form of objects that appear to be rights and not seen". (Ter Haar Bzn-K. Ng. Soebakti Poespono). It is clearly seen that to be called a legal alliance must meet several elements, namely: 1) the existence of unity; 2) has a fixed area; 3) has its own power; 4) has own wealth. In the form of objects that are visible or not.

Customary Rights are basically a right of alliance on occupied land, while the implementation is carried out both by the community itself and by the head of the association on behalf of the alliance. In general the customary area is an area in which there are parts which are naturally manifested in a single unit that are interrelated and inseparable. With this naturally formed geographical condition, what becomes the object of the Customary Rights consists of land space, waters that include lakes, rivers and coastal and marine waters, plants that live wild (trees that can be used both for wood burn or for carpentry needs). Customary territory in customary law community units in Indonesia are generally located on land along the land in the Dutch Colonial. There are some benefits to this, but there are also disadvantages. The beneficial influence certainly provides protection for the Customary Rights of its territory. For example, the charter letters issued by the kingdoms which meant to emphasize the boundaries of the relevant fellowship concerned. This kind of thing also existed in the Dutch colonial government, namely with the announcement of "ordinances": such as the village of Staatblaad 1941 No.356 and the clans of Staatblaad 1931 No.6

As a legal alliance in defending their customary rights, basically the customary law community still practices habits repeatedly accompanied by certain sanctions, in utilizing the natural resources in them, both on land and on the coast, which are needed for Their life. Activities that utilize natural resources both on land and in coastal areas that are on the surface and that are in the ground show a tendency for environmental maintenance to damage, habits that are practiced repeatedly in various regions show variations that tend to be individualistic , although in some villages it still shows communal character.

Meanwhile, the natural mineral wealth in the bowels of the earth that can be mined such as gold, or natural resources in the form of underground water, and natural resources in the form of energy, are all in the customary territory. On top of this customary territory, there is unity of activity from the community. Unity of activity in the economic, social, cultural and even political areas, and settlements within ulayat areas is essentially based on principles inherited from the ancestors of the local customary law community, which inheritance characterizes differences influenced by the previous government system, such as the sultanate , and also differences in the characteristics of tenure and land use among the spheres of society.

3. Customary Law Community Rights in Land Procurement for Public Interest

The right to control land by the state in Indonesia is contained in Article 33 paragraph (3) of the 1945 Constitution which reads: The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Before the amendment of the 1945 Constitution, Article 33 paragraph (3) was explained in the explanation of Article 33

paragraph 4 which read: Earth and water and natural resources contained therein are the main points of people's prosperity. Because it must be controlled by the state and used for the greatest prosperity of the people.

Authentic explanation of the understanding of the earth, water and natural resources contained therein (called natural resources, hereinafter abbreviated as SDA) is controlled by the state, contained in Law No. 5 of 1960 concerning "Basic Regulations on Agrarian Principles" or better known as the "Basic Agrarian Law" hereinafter abbreviated as UUPA came into force on September 24, 1960. Article 2 of the UUPA which is the implementing regulation of Article 33 paragraph (3) of the Constitution, explain the definition of the right to control natural resources by the state.

In accordance with General Explanation II / 2 of the UUPA, the words "controlled" in this article do not mean "owned", but rather are understandings, which give authority to the state, as the power organization of the Indonesian nation, to the highest degree:

- a. regulate and carry out the designation, use, inventory and maintenance;
- b. determine and regulate the rights that can be owned over (part of) the earth, water and space;
- c. determine and regulate legal relations between people and legal actions concerning earth, water and space.
- d. Everything with the aim of achieving the greatest prosperity of the people in the framework of a just and prosperous society.

Thus, according to the concept of the UUPA, the notion of being "controlled" by the state does not mean "possessed", but rather the right that authorizes the state to regulate the three things mentioned above. The contents of State authority originating from the right to control natural resources by the state are merely "public" in nature, namely the authority to regulate (regulatory authority) and not the authority to physically control land and use its land as the authority of the holders of land rights that are "private". The legal relationship between the state and land gives birth to the right to control land by the state. (A.P. Parlindungan, 1982). The relationship between customary law communities and their customary land gives birth to customary rights, and the relationship between individual and land gives birth to individual rights over land. (B. Harsono, 2003). Ideally the relationship between land rights by the state, customary rights and individual rights to land is harmonious and balanced. That is, the three rights are the same position and strength, and do not harm each other, but the statutory regulations in Indonesia, giving large powers and unclear boundaries to the state to control all land in the territory of Indonesia.

As a result, there is a dominance of the state's right to control land over customary rights and individual rights to land, thereby giving the state an opportunity to act arbitrarily and potentially violating customary rights and individual rights to land. One of the authority of the state that comes from the right to control land by the state is to give a right to land or other rights to people, both alone and with other people, as well as legal entities. The granting of this right may violate the customary rights of customary law communities which are recognized, respected and at the same time denied by the laws and regulations that deny customary rights.

Laws and regulations in Indonesia, in addition to those who recognize and respect customary rights as in the UUPA, there are also those who deny the customary community's customary rights. The denial is carried out by denying the existence of customary land which is declared as state land. With the claim of customary land as state land, it causes the loss of the rights of the customary law community / customary law community members based on their customary rights, because those rights are on the customary land.

Therefore, denial of customary land also means denial of customary community customary rights. Laws and regulations that deny customary land include: Law Number 5 of 1967 concerning "Basic Forestry Provisions"; Law Number 41 of 1999 concerning "Forestry"; Law Number 11 of 1967 concerning "Basic Mining Provisions"; and Law Number 22 of 2001 concerning "Oil and Gas."

Related to the government's authority to regulate the use, designation and provision of land, private rights crystallized in various rights as stipulated in Article 6 of the UUPA must comply with regulations based on state control over the land and natural resources contained therein. Included in this case is the right of ownership of citizens' land can be taken over or revoked in order to meet the needs of land intended for the implementation of development activities in the public interest. Considering that land acquisition involves individual or community rights, land acquisition must pay attention to the principle of justice so that it does not harm the original owner.

One of the basic principles of universal land acquisition is "no private property shall be taken for public use without just and fair compensation", meaning that the process of land acquisition is carried out with honest and fair compensation. However, in practice these principles are often ignored and the government as the organizer of the state puts forward its power by using the shield of the right to control the state and the public interest.

Efforts to bridge the people's interest in their land and fulfill the needs of land for activities have been carried out by the government by issuing Presidential Regulation No. 36/2005 concerning Land Procurement for Implementation of Development in the Public Interest in lieu of Presidential Decree No.55 of 1993. Initially Presidential Regulation No. 36/2005 the controversy stemming from an overly broad definition of public interest and guarantees of compensation for communities whose lands were taken over for development activities in the public interest.

But with the issuance of Presidential decree No. 65 of 2006 concerning Amendment to Presidential decree No. 36 of 2005, the definition of public interest is relatively firmer and has legal certainty, namely with the reduction in the types of public interest from 21 (twenty one) to 7 (seven) types and the affirmation of restrictions on land acquisition for public interest is limited to public interests carried out by the Government or Regional Government which is subsequently owned or will be owned by the Government or Regional Government.

Another important thing that should be underlined is that in the Presidential decree it is no longer possible to procure land for the implementation of development in the public interest through the revocation of land rights. This means that the government provides protection to the community not to take over their land rights by force but through the mechanism of releasing or surrendering of land rights carried out through consultation and agreement of the parties concerned.

The community basically does not mind if their land should be taken over for development purposes that aim for the common welfare, but the practice of expropriation of land so far has often been used by certain groups for their own benefit under the guise of the public interest, creating doubts in the community every time land acquisition activities are in the public interest. In the future, it is important to consider that land acquisition should not only be seen from the results, but also the process. For every development activity, whether carried out by the Government / Regional Government or the private sector, as long as it has an impact on reducing the socio-economic welfare of land rights holders, the procedures must be regulated in law.

Considering that this Presidential decree is problematic, both in terms of substance and its existence and has the potential to not apply sociologically, it is necessary to postpone its enforcement. To prevent legal vacuum, Presidential Decree No. 55/1993 was reinstated for a while until the enactment of the law on land acquisition. It is true that after the enactment of Law No. 10/2004 concerning the Formation of Laws and Regulations, the issuance of presidential decree is no longer possible (Article 7). But presidential decree No. 55/1993 which should have remained in force if it had not been replaced by this problematic Presidential decree, could be reinstated by reading the Presidential Decree as a Presidential Regulation in accordance with Article 56 of Law No.10 /2004.

Another thing that needs attention is regarding "proper compensation losses in the manner regulated by the law", the government as the party that takes the policy based on public interest, sometimes ignores the rights of the people holding the rights to the land. Respect for land rights is of course also for the holders of their rights. Therefore, the release and acquisition of land held by indigenous peoples or customary land must also be carried out in accordance with the correct procedures and the determination of appropriate compensation. The United Nations Conference on Environment and Development, held in Rio de Janeiro in June 1992, produced a new development for indigenous peoples regarding their relationship with the United Nations. The conference recognized that indigenous peoples and their communities have a very important role in environmental management and development, based on their knowledge and traditional practices.

It was emphasized that efforts in national and international scope to implement sustainable and environmentally oriented development must recognize, accommodate, advance and strengthen the role of indigenous peoples and their communities. Article 26 of Agenda 21 (the program of action set forth at the conference) is intended for indigenous peoples. Indigenous peoples meet in the Earth Summit, which is the largest non-governmental organization forum. The forum adopted the Kari-Oka Declaration, a declaration on the environment and development. One of the results of the forum was the signing of the Convention on Biological Diversity which included conditions relating to indigenous peoples. (B. Harsono, 2003).

On June 29, 2006 the United Nations Declaration on the Rights of Indigenous Peoples was agreed upon by the United Nations Declaration on the Rights of Indigenous Peoples. This declaration is progressive because it recognizes important foundations in the protection, recognition and fulfillment of the rights of indigenous peoples. This declaration contains recognition of both individual and collective rights of indigenous peoples, the right to cultural identity, the right to education, health, language and other basic rights. This declaration recognizes the right of indigenous peoples to self-determination, and recognition of the rights of indigenous peoples to land, territories and natural resources and participation in development. As Human Rights, general rights apply the general doctrine of the state's obligation to respect (to respect), protect (to protect) and fulfill (to fulfill) the customary rights of indigenous peoples.

Look at instruments of international human rights law on economic rights. Many social and cultural related to customary rights, the government must take positive action in the form of a series of actions in respecting, protecting, fulfilling customary rights and enforcing legal rights against violations of rights that occur. Indonesia as one of the countries that signed the declaration has the mandate to adopt it in Indonesian national law. The package of four amendments to the 1945 Constitution (1999-2002) became the space where the battle of ideas took place. There are at least two components related to the relationship between indigenous peoples and natural resources (customary rights) and the relationship between the state and natural resources, which must be seen as a link. The linkage stems from the assumption that "rights" are formal, relational and discrete themes.

The most important progress from the recognition of customary rights in the Constitution in Indonesia was found as a result of the second amendment to the 1945 Constitution of the Unitary State of the Republic of Indonesia. Article 18 B paragraph (1) and paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia stated:

- a. The state recognizes and respects special or special regional government units that are regulated by law.
- b. The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

The above provisions separate the special and special governance issues that are regulated by law (Article 18B paragraph 1) from the issue of customary rights and limitations (Article 18 paragraph 2). All this time, customary issues have often been linked to rights to natural resources drawn from the royal system in the past. The separation between Article 18B paragraph (1) and Article 18B paragraph (2) gives an important meaning to distinguish between the forms of community (customary) community and the old "royal" government that is still alive and can be special.

Even though they have recognized and respected the existence of customary law communities and their customary rights, declaration of Article 18B paragraph (2) includes several requirements that must be fulfilled by a community in order to be categorized as customary law communities and their customary rights which can be safely enjoyed. The cumulative requirements are:

- a. As long as it's alive.
- b. In accordance with the development of society.

- c. In accordance with the principles of the Republic of Indonesia.
- d. Regulated in the law.

Rikardo Simarmata said that the requirements for indigenous peoples and their traditional rights carried out by the 1945 Constitution after the amendment had a history that could be traced back to the colonial period. Aglemene Bepalingen (1848), Regering Regulations (1854) and Indische Staatregeling (1920 and 1929) said that native and eastern foreigners who did not want to submit to European Civil law, were subject to religious laws, institutions and customs of the people, as long as they did not conflict with generally recognized principles of justice. (Rikardo Simarmata, 2006). Such requirements are discriminatory because they are closely related to the existence of culture. The orientation of the emerging requirements is an attempt to subdue customary / local law and try to direct it into formal / positive / national law. On the other hand it also has a presumption that indigenous peoples are communities that will be "eliminated" to become modern societies, who practice the pattern of production, distribution and consumption of the modern economy.

Conditional recognition of indigenous peoples in the history of the Republic of Indonesia began with the UUPA, the old forestry law, the irrigation law on the new forestry law and several government department and government regulations. After the 1945 Constitution of the Unitary State of the Republic of Indonesia adopted four requirements for indigenous peoples, various laws that were born after the amendment followed the flow, among others by the water resources law, the fisheries law and the plantation law. This conditional recognition indicates that the government still has not seriously made clear provisions to respect and recognize the customary rights of indigenous people.

The regulation of indigenous peoples and their customary rights to date is unclear and unclear. It is not clear because there are no concrete rules about what are the rights, rights associated with the existence of society that can be enjoyed. It is said to be indecisive because there is no enforcement mechanism that can be taken in fulfilling the rights of indigenous peoples, which can be prosecuted before the court (*justiciable*). The lack of clarity and uncertainty occurs due to two things, namely the inability and unwillingness of the government to make general provisions regarding the recognition (rights) of indigenous peoples. Not able to because the alliance of indigenous peoples in Indonesia is very diverse based on the distribution of islands, social systems, anthropological and religious. Do not want to because a vague arrangement about the community gives space for discretion and hegemony to the government to be able to manipulate the community's original rights in the interests of exploitation of natural resources in the territory of indigenous peoples.

This unwillingness benefits the authorities and disadvantages the indigenous people. The requirements in Article 18B paragraph (2) along with a series of requirements that are continued by several natural resource laws indicate that the country cq. the new government can recognize and respect the customary rights of indigenous peoples declaratively, not yet up to legal action to protect and fulfill so that the customary rights of indigenous peoples can be fulfilled. In fact, it has not touched the mechanism of national law enforcement when there is a violation of customary rights that are considered human rights.

As already stated, the recognition of the existence of customary law communities and their customary rights is contained in Article 18 B paragraph (2) and Article 28i paragraph (3), but in reality the recognition of the existence of customary law communities and traditional rights, commonly called customary rights , often inconsistent in the implementation of national development. The emphasis on customary rights is control over customary land and all its contents by the customary law community. Mastery here is not in the sense of having but only limited to manage. This can be seen in the laws and regulations issued. In Act Number 23 of 1997 concerning Environmental Management, Act Number 22 of 2001 concerning Oil and Gas, Act Number 21 concerning Special Autonomy of Papua, Act Number 18 of 2004 concerning Plantations, and Act Number 41 of 1999 concerning Forestry.

As for example in Law No. 41 of 1999 concerning Forestry, explicitly stated that there are only 2 (two) forest statuses, namely state forests and private forests. Customary forests are referred to as state forests that are within the territory of indigenous and tribal peoples. Whereas in reality the customary forest existed before the Republic of Indonesia was established on August 17, 1945, possibly due to the recognition of the existence or existence of indigenous peoples and their customary rights. The inconsistency is due to the absence of standard criteria regarding the existence of customary law communities and their customary rights in an area.

Regarding the existence of customary rights (Hermayulis, 2008), states that at least three opinions have developed regarding customary land, namely; customary land is gone, customary land is still there, and the doubtful opinion is that ulayat land exists and does not exist. These opinions are generally related to the interests contained therein.

To find out whether customary lands in the territory of customary rights/"*petuanan*" in Maluku still exist or not, of course, research and research must be done to show that customary lands as customary rights / "*petuanan*" along with other rights that fall within the scope of the "*petuanan*" area, factually still exists and is still maintained by indigenous and tribal peoples in Maluku, even though the existence of the customary land rights or land has changed because there are parts of the land that have been removed from the land due to various things related to development and economic needs of the community

The origins of mastering a guide, according to local history, are diverse in the process in different places or islands, even though there is a common pattern. The arrival of the first people in a certain place, usually that begins the mastery of a customary territory. To fulfill their daily needs, these people first cleared a piece of land for houses and gardens, then proceed with the opening of the surrounding forest for shifting cultivation, hunting, and gathering forest products. Then they put a certain sign (usually natural signs) at the farthest points they can reach from the center of the settlement. By drawing a straight line from connecting all these points, then a complete boundary line for a state apparatus has been created.

In Southwest Maluku, West Southeast Maluku, Southeast Maluku, in general the control over customary land is only in the STATE, SOA, and HOME EYES. While it is not much different from other regencies, customary land tenure in Central Maluku and Ambon Island generally recognizes three forms of land rights, namely; state / "*petuanan*" land, land owned by klen (fam) or land owned by house ("*dati*" land) and land owned by the head of the family (heirloom). Thus the customary law community's relationship with land like this is a dominating relationship, not having a civil status, meaning that where they can occupy the land that's where they control, and use it collectively. The concept of / "*petuanan*" land rights is not known to exist individually, and even if there is individual property, the ownership rights are only on the plot of land which is not absolute. However, in the current development and economic needs of the community, it is unavoidable to individualize the right to customary lands in Maluku, for example "*dati*" land, as a relative's land which according to the norms should not be alienated or permanently transferred in the sense of being sold or sold. granted to people / legal entities from outside the customary law community concerned, it turns out that now many have been transferred ownership.

The Maluku traditional law community in general is very respectful and aware that a plot of land cultivated since ancestors is a customary land from which they live and is subject to binding customary rules. For the Maluku customary law community, the hometown or the country is indeed not only the location of houses, yards and fields, but also all objects on it (forests, hills, valleys, rivers and seas) or underground. The whole area is / "*petuanan*" (from the word "lord" or "owner"), so the word / "*petuanan*" is always mentioned by the name of the owner, for example the Hutumuri country, a country located in the Ambon city area. By saying "country" that means a / "*petuanan*" is a common property of the local customary law community.

The state always has communal meaning, and guidance is always the concept of shared ownership of a communal area as well. In short, the basic concept of traditional land (and sea) ownership in Maluku, in essence is a concept of joint ownership of the local customary law community. Based on this concept, the customary law of Maluku, then develops a unique concept of natural resource management in their territory in accordance with patterns of social relations and kinship that are also locally specific. According to Roem Topatimasang in Central Maluku, where the social structure is relatively more equal (egalitarian) with a system of leadership and village governance that is limited to only one country (village), the management of local natural resources is relatively simpler than other regions in Maluku. The decision making process can be done more quickly and concisely, for example, it is enough just to listen to the opinions and suggestions of all representatives of the clan or *soa*. In Southeast Maluku, especially in the Kei Islands, the process is somewhat different because social coatings still apply on the basis of class (caste) which is quite complicated. Management of natural resources is more complicated because it does not only involve one country, but also involves local political processes with multiple power structures (federation) of several countries called *Ratcschaap*. As a result, the decision-making process takes longer, and often results in tension and inequality and even inequitable sharing of results among themselves.

One common feature in Maluku is that in natural resource management systems based on the principle of mutual benefit and reciprocity to maintain the balance of the natural environment called "*sasi*". "*Sasi*" is a customary law that strictly prohibits anyone from taking something in the natural surroundings, land or sea, at a certain time in order to guarantee its sustainability. Examples of "*sasi*" in the land area such as "*sasi ewang*" (forest), *sasi* hamlet sago, *sasi* coconut (to preserve local food). In some places a kind of "eternal *sasi*" for sacred forests (ancestral sites), including "*eternal sasi*" of mangrove forests, even includes "*eternal sasi*" for species of wildlife that are sacred, such as all types of snakes, monitor lizards, and forest rats on Ta Island, Tanimbar Kei, Southeast Maluku.

The customary law community in Maluku and their rights over their customary lands or customary rights or custody rights were formed in a long historical process, until now it still exists and is maintained. They are also generally very respectful and aware that a plot of land cultivated since ancestors is a customary land from which they live and is subject to binding customary rules. Customary lands, known as / "*petuanan*" lands are essentially a concept of joint ownership of the local customary law community. Based on this concept, the customary law of Maluku, then develops a unique concept of natural resource management in their territory in accordance with the patterns of social relations and kinship that are also locally specific, called *sasi*.

The existence of customary rights / custody rights and management rights, in various regions in Maluku, often confront or conflict with development policies, particularly related to regional policies in the field of investment (forestry, mining, tourism and so on) which eventually lead to conflicts between indigenous and tribal peoples government institutions and with investors. Such conflicts and disputes become easier when the political law of the government, especially the local government, to protect the rights of indigenous and tribal peoples over land is still inadequate. For this reason, regional legal politics are needed that regulate the management rights and utilization of natural resources based on community interests, as protection for natural resources in the territory, as well as efforts to maintain their traditional rights over these natural resources. For this reason, Maluku Provincial Regulation No. 3/2008 concerning State *Petuanan* needs to be followed by the same regional regulations in regencies / cities in Maluku.

4. CONCLUSION

1. Basically, indigenous peoples have a philosophical basis that is closely interrelated with their customary land or customary rights, especially regarding the pattern of control and use, at first it must be recognized that indigenous peoples have authority that can be said to be very autonomous and absolute in the control and use of customary land and various agrarian resources in it. The state on the constitutional basis then claims the lands which have been controlled by the customary law community on the

- grounds that the customary land area needs to be protected for environmental preservation and safety or on the grounds that in the customary land area there is a very natural resource potential vital to support the interests of the State.
2. Customary law communities have full customary authority for the control and utilization or management of their customary land, but legally the authority is not as strong as that of the State as stipulated in the UUPA. The existence of customary law communities in defending their customary rights over land needs to be emphasized in their respective regional regulations in accordance with the characteristics and characteristics of indigenous and tribal peoples in certain areas. As a result of the absence of imbalance in legislation will affect the role of the community in the control and use or management of their customary land, especially those that contain natural resources which are considered vital by the State to meet the lives of many people. In reality, land problems arise and are experienced by all levels of society. Conflicts have arisen along with population growth, development progress, and increasingly broad access of various parties to obtain land as a basis for capital in various interests. The phenomenon of conflict in a number of mining cases that occurred in the regions.

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