

Institutionalizing Customary Land Rights: Insights from the Hatam Tribe's Ulayat Rights, West Papua

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Abstract:

The marginalization of indigenous ulayat rights in Indonesia, particularly among the Hatam Tribe in Manokwari Regency, highlights critical gaps in legal recognition and socio-political inclusion, underscoring the urgent need for institutional frameworks that balance traditional practices with modern governance. This study seeks to address this gap by providing an in-depth analysis of the distinctive challenges and opportunities involved in institutionalizing customary law for the Hatam Tribe. The research focuses on examining the institutionalization process of the Hatam Tribe's customary law in Prafi District, Manokwari Regency, West Papua, Indonesia. Using an empirical approach, the study gathered data from respondents representing the Manokwari Traditional Institution, the local government, and the community. A qualitative descriptive analysis was employed to interpret the findings. The results show that institutionalizing the ulayat (customary land) rights of the Hatam Tribe requires prioritizing justice by fostering collaboration between government bodies and indigenous communities to identify and validate these rights while ensuring comprehensive legal protection. Additionally, systems should be implemented to empower the Hatam Tribe to independently manage and benefit from their natural resources. This process must uphold and integrate local wisdom and traditional legal frameworks to preserve the tribe's cultural practices and social structures. Consequently, the institutionalization of ulayat rights should transcend mere formal recognition, aiming instead to achieve tangible social and economic justice for the indigenous community.

Keywords: Institutions, Customary Law, Indigenous Rights, Customary Communities

1. Introduction

The recognition and protection of customary law in Indonesia are critical to preserving the cultural identity and rights of indigenous communities, particularly as they face pressures from modern governance and economic development. This issue gains importance in regions like Papua, where customary law and ulayat rights are deeply intertwined with the social, economic, and spiritual lives of indigenous peoples. Ensuring the institutionalization of these rights is not only a matter of legal recognition but also a step toward achieving justice and sustainable development for marginalized communities.

Customary law is a social product, created through collective agreement and considered a shared creation (social property) of a customary law community. In Indonesia, the implementation of customary law varies widely; each region has its own set of customary laws, differing significantly from one another. These range from laws closely aligned with Islamic law to those adhering to animism, and from patrilineal and matrilineal systems to parental systems (Wamafma et al, 2019).

Article 28I, paragraph (3) of the 1945 Constitution states that "cultural identity and the rights of traditional communities are respected in line with the development of times and civilization". This reflects the government's recognition and protection of the values and local wisdom present in Indonesia. In the context of development in Papua Province, the government has attempted to improve policies. The governance structure in Papua differs from other provinces in Indonesia in terms of authority, institutional relationships, financial arrangements, and oversight.

The main philosophy of Law No. 21 of 2001 is to improve the welfare of the Papuan people, particularly the indigenous Papuans (Sihombing, 2020). However, fourteen years into its implementation, there has been no significant change in the lives of Papuans. The region remains one of the poorest in Indonesia, with some areas still experiencing starvation and other indicators of underdevelopment (Arifin, 2019). Special autonomy for Papua Province essentially provides greater authority for the province and its people to self-manage within the framework of the Unitary State of Indonesia (Lobubun, et al, 2018). This broader authority implies greater responsibility in governance and law enforcement according to existing regulations.

The empowerment of socio-cultural potential and economic development, ensuring adequate roles for indigenous Papuans through traditional, religious, and female representatives, while respecting the diversity of Papuan life, including recognition of ulayat rights, customary law, and indigenous communities (Jaya, 2018). Papuan Regional Regulation No. 9 of 2019 regarding Guidelines for the Recognition, Protection, and Empowerment of Customary Law Communities and Customary Territories in West Papua Province defines Customary Law Communities (MHA) as groups with legal status residing in specific areas due to ancestral ties, a strong relationship with their environment, and a value system that dictates their economic, political, social, and legal institutions. Ulayat rights are central to the lives of these communities (Kurniawan, 2021).

Disputes within customary law communities have traditionally been resolved through consensus and customary courts, typically involving adat leaders and religious figures. Sudrajat (2016) highlights the role of village peace judges in accommodating community interests toward progressive law. However, conflicts over ulayat rights often arise due to normative requirements for recognizing these rights, with government recognition sometimes failing to align with the realities and needs of indigenous communities. The implementation of ulayat rights through Law No. 5 of 1960 on Basic Agrarian Principles and Ministerial Regulation No. 5 of 1999 promised justice in land ownership but continues to face challenges in equitable implementation (Halim, 2020).

While there is substantial research on the general issues surrounding indigenous rights and the implementation of customary law in Indonesia, there is a significant gap in focused studies on the specific challenges faced by the Hatam Tribe in Manokwari Regency. This research addresses this gap by examining the effectiveness of

institutionalizing ulayat rights for the Hatam Tribe amidst the unique socio-legal challenges in the region.

Weak recognition of ulayat rights places them in a difficult position when confronting state control. State control is intended to promote public welfare but often conflicts with indigenous ulayat rights (Kalalo et al, 2017). This legal issue indicates that significant work remains to ensure ulayat rights are recognized and implemented fairly. Cooperation between the government, customary law communities, and other stakeholders is essential for achieving sustainable solutions that respect indigenous rights (Wulandari, 2022).

Customary institutions have the authority to resolve disputes related to customs and traditions, provided their resolutions do not contradict applicable laws. To protect indigenous rights, several customary institutions have been established to oversee the implementation of customary law, safeguarding land rights and traditions in Manokwari Regency. Indigenous communities maintain cultural values inherited from their ancestors, manifesting in daily norms and institutional structures known as customary institutions (Amiruddin, 2021). These institutions, whether intentionally created or naturally evolved, serve as platforms for discussing and resolving customary issues within Indonesia (Nugroho, 2019).

Despite these efforts, the visibility of ulayat rights in Manokwari Regency has diminished over time. The role of customary institutions remains crucial in nurturing, protecting, adjudicating, and regulating community behavior according to customary laws. However, reports from indigenous communities in Manokwari indicate that ulayat land claimed by the Hatam Tribe has been certified and given to transmigrant communities, with the Hatam Tribe disputing this claim.

2. Method

This research is normative legal research using statute and cases approach. The data analysis method used in this research is descriptive analysis, namely analyzing data from field studies and literature by presenting and explaining the results or reality of objects that will be arranged logically. Data analysis was carried out using qualitative analysis methods.

3. Legal Framework for Ulayat Rights: Institutional Role and Historical Context

The institutionalization of ulayat rights for the Hatam Tribe in Prafi District, Manokwari Regency, involves navigating a complex legal landscape to ensure that indigenous land and resource rights are effectively recognized and protected. Ulayat rights are formally recognized under Indonesian law, particularly in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which acknowledges the rights of indigenous

communities over their traditional lands. Article 3 of UUPA provides a foundational legal basis for the recognition of customary land rights, while Article 5 emphasizes that land rights should be implemented in accordance with customary laws (Halim, 2020).

However, despite this legal framework, the implementation of ulayat rights often encounters significant barriers. The absence of specific criteria for recognizing and protecting ulayat rights can result in inconsistent and inadequate legal protections. The legal process for recognizing ulayat rights typically involves several stages: documentation of customary laws, verification of community claims, and formal acknowledgment by the government. These stages require clear criteria and procedural transparency to ensure fair outcomes (Kurniawan, 2021).

Despite these efforts, several challenges remain. The bureaucratic process for recognizing ulayat rights can be lengthy and complex, leading to delays and inconsistencies. Additionally, there is often a lack of coordination between different government agencies and indigenous institutions, which can hinder effective implementation. To address these issues, recommendations include:

- a. **Establishing Clear Criteria:** Develop objective criteria for the recognition and protection of ulayat rights to ensure consistent and fair outcomes.
- b. **Enhancing Transparency:** Improve transparency in the legal and administrative processes related to ulayat rights, including clear communication with indigenous communities.
- c. **Strengthening Collaboration:** Foster stronger partnerships between government bodies and indigenous institutions to facilitate joint decision-making and conflict resolution.

In judicial practice, courts often face challenges in interpreting and applying customary laws in the context of national land laws. This is due to the complexity of customary legal systems, which may not always align neatly with formal legal standards. For instance, the Supreme Court's decision in Case No. 547/Pdt.G/2016/PN.Jkt.Sel highlighted the difficulties courts face in balancing customary rights with national development interests (Arifin, 2019). The lack of clear legal precedents and the potential for conflicting interpretations of customary law can undermine the protection of ulayat rights.

The establishment of indigenous institutions in Prafi District reflects the historical and cultural context of the Arfak people, including the Hatam Tribe. These institutions have traditionally played a role in managing land and resources according to customary laws. The recognition of these institutions is crucial for maintaining cultural continuity and legal validity of ulayat rights (Jaya, 2018).

Indigenous institutions in Prafi are responsible for preserving cultural heritage and mediating disputes according to customary norms. They also act as intermediaries between the government and the community, facilitating dialogue and ensuring that

development projects respect traditional values. This role is vital in the context of modern development pressures, which often challenge traditional land use and management practices (Wulandari, 2022).

Effective collaboration between indigenous institutions and government bodies is essential for successful implementation of ulayat rights. The Government of Papua Barat has introduced regulatory measures such as Peraturan Daerah Khusus (Perdapus) No. 9 of 2019, which provides guidelines for the recognition and protection of indigenous rights. This regulation aims to streamline the process of recognizing indigenous communities and their ulayat rights while integrating these rights into broader development planning (Sudrajat, 2016).

According to the theory of justice as equality, all individuals should have equal access to rights and opportunities. For the Hatam Tribe, this means that their ulayat rights should be recognized and protected without discrimination or marginalization (Amiruddin, 2021). In the context of ulayat rights, this means that the benefits derived from land and resource utilization should be equitably shared among community members and should not be exploited by external parties without appropriate compensation (Wulandari, 2022).

The history of institutionalizing the Hatam indigenous community is also influenced by their interactions with the government and other stakeholders, including in the context of land and natural resource conflicts (Vel, 2008). This institutionalization effort continues as part of the Hatam tribe's struggle to maintain their traditional rights and sustainably manage their natural resources (Kleden, 2014). The Hatam Indigenous Council was formally established through customary deliberation in 2022. Following these deliberations, tribal leaders from various customary regions within Prafi district, particularly from the Hatam tribe, were elected to lead the Hatam Indigenous Council. Customary law issues are resolved through mediation led by the council.

Procedural justice relates to the fairness of the processes used to determine and protect rights. This involves ensuring that the process of recognizing and implementing ulayat rights is transparent, inclusive, and participatory. The Hatam Tribe should be actively involved in decision-making processes affecting their lands and resources (Arifin, 2019). The institutionalization of ulayat rights for the Hatam Tribe requires a nuanced approach that respects traditional customs while navigating modern legal frameworks. Addressing the challenges and ensuring justice requires a collaborative effort between indigenous institutions and government bodies, guided by principles of fairness and equity. This approach will help safeguard the rights and well-being of the Hatam Tribe and contribute to sustainable development in the region.

4. The Ideal Role of the Hatam Tribe Indigenous Council in Maintaining Social and Cultural Sustainability

The institutionalization of indigenous communities arises from the need to manage and regulate customary land rights and natural resources in their territories. For the Hatam tribe, land and forests hold religious significance and form an integral part of their social, cultural, economic, and political life. Consequently, this institutionalization also functions as a means to strengthen intergenerational relationships and as a way to maintain their identity and autonomy.

During the process of institutionalization, the Hatam tribe faces challenges, particularly regarding the recognition and protection of their customary land rights under national law (Alfons, 2022). Although there is formal recognition of customary land rights in Indonesian legislation, overlapping interests often lead to inadequate protection of indigenous rights (Yasmi et al., 2010).

As an independent social institution, the Indigenous Council's role is to oversee and protect the rights of indigenous peoples. The council functions as a bridge between indigenous communities and the government, as well as private entities (Moniaga, 2010). Indigenous communities are governed by unwritten customary laws and norms that are regulatory, binding, and sanction-bearing (Lombard & Syafruddin, 2016). This context necessitates the existence of organizations to manage indigenous communities and their rights, such as the Indigenous Council. The objectives of establishing the Indigenous Council include:

- a. Protecting and preserving positive customary values and advocating for indigenous rights.
- b. Supporting development programs implemented by the government and private sector that benefit indigenous communities.
- c. Advocating for the rights of indigenous people, including their natural resources, both above and beneath the ground within their customary territories (Wibisono, 2014).
- d. Improving the welfare of indigenous communities through community-based economic management of natural resources to support regional development programs.
- e. Facilitating the resolution of disputes among indigenous community members and between indigenous communities and external parties within the customary territories (Bedner & Arizona, 2019).

The council is structured to prioritize deliberation principles, beginning with clan leaders, village councils, district councils, and regional councils, outside the organizational structure of local government. The council serves to collect and convey the opinions of the community to the government and other private entities, resolve

disputes related to customary law, and protect, preserve, and empower customary practices to enrich local culture. Accordingly, the council functions as an informant, mediator, and facilitator between indigenous communities, private companies, social organizations, and other institutions (Li, 2001).

The council is empowered to request information from external parties conducting permanent or temporary activities within customary territories. This information aims to foster harmonious relationships that mutually benefit the government and non-governmental organizations, thus enhancing the living standards of indigenous communities (Colchester & Chao, 2011). Consequently, protecting indigenous rights to natural resources and indigenous artistic products becomes a shared responsibility between the council, the government, and non-governmental organizations, supporting the process of community development.

Transmigration programs in Papua and West Papua during the special autonomy era remain centrally determined but require legitimacy from local governments, indigenous communities, and religious leaders to prevent policy clashes. Transmigration policies should also be based on local cultural contexts. The Special Autonomy Law (UU Otsus) Article 43 highlights the protection of indigenous rights, specifying that any use of customary land must involve deliberation with indigenous communities to reach agreements regarding land transfer and compensation (Kleden, 2014). In practice, transmigration policies continue to face challenges in balancing development goals and indigenous rights of strategies to ensure harmonious integration and respect for customary law.

Indigenous communities often face various social and political issues, such as land disputes, mining, government apparatus appointments, political party leadership decisions, and local elections (Afif & Lowe, 2007). In this context, the Indigenous Council should act as a safeguard for the rules governing the council organization while maintaining that the council is a common house for achieving collective agreements through deliberation. Openness is a positive trait that the council should uphold, ensuring that it serves the interests of all indigenous people and their rights, not individual or group interests.

The council's presence reflects the indigenous community's desire for equality, whether physically, culturally, or socio-politically. In its formation, there is a desire within the indigenous community to unify thoughts and foster a sense of solidarity among all Papuans, both in the mountains and along the coast. The council stands amidst the challenges facing the Papuan people, aiming to protect Papuan rights, culture, and identity (Chao, 2012).

Issues resolved by the Indigenous Council include customary land rights, marriage, the administration of customary land, and issuing recommendations on behalf of the indigenous community (Moniaga, 2010). In Prafi district, the Hatam tribe has resolved around 30 cases through the council, ranging from household issues such as infidelity,

domestic violence, and sexual assault to land disputes among Hatam community members (Rutherford, 2012). However, the council's operations have been hindered for about a year due to the prolonged process of preparing for new council leadership elections, which requires extensive customary preparations (Li, 2001).

Further challenges for indigenous communities arose during the New Order regime when Suharto's leadership exercised unchecked authority, designating areas for transmigration without indigenous consent. This created issues between indigenous communities, transmigrants, and local populations (Bedner & Arizona, 2019). The ongoing conflicts in Manokwari can be traced back to New Order policies aimed at accelerating development, economic growth, and transmigration programs. These policies deviated from customary procedures, especially regarding the transfer and implementation of customary land rights.

5. Conclusion

The institutionalization of ulayat rights for the Hatam Tribe in Prafi District represents a crucial effort to safeguard indigenous land and cultural heritage. The Hatam Indigenous Council plays a vital role in bridging the gap between traditional customs and modern legal requirements, advocating for fair processes and equitable distribution of resources. However, consistent criteria, enhanced transparency, and stronger collaboration between government bodies and indigenous institutions are necessary to protect these rights fully. For future research, it is recommended to conduct in-depth case studies on the effectiveness of indigenous councils in different regions, analyzing their roles in conflict resolution and their interactions with governmental and non-governmental organizations. Additionally, research should explore the impact of regulatory frameworks on the long-term sustainability of ulayat rights, focusing on how policies can be adapted to better align with the unique cultural and social contexts of indigenous communities in Papua and beyond.

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