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Justice for Indigenous People: Management Right Term to Third Parties

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Abstract

Management rights are control rights from the state, part of which is given to the right holder. Management rights on customary land can contribute to the state and customary law communities by paying attention to the customary rights of customary law communities recognised by the constitution. This research explores the legal basis for the recognition of customary rights, the concept of management rights over customary rights, and how the time limit for management rights cooperated with third parties can provide justice to Indigenous peoples. The method employed is the normative legal method, utilising both statutory and conceptual approaches. The research results highlight a legal vacuum regarding the time limit of management rights when engaging with third parties, where legal protection to the parties cannot be provided due to a legal vacuum. This gap in legal protection necessitates prompt regulation to set time limits that are equitable for Indigenous communities to ensure certainty, justice and legal protection for all parties involved.

Keywords: *Management Rights*; *Customary Rights*; *Justice*

Abstrak

Hak pengelolaan merupakan hak menguasai dari negara yang sebagian pelaksanaannya diberikan kepada pemegang haknya. Hak pengelolaan di atas tanah ulayat dapat memberikan konstribusi bagi negara dan masyarakat hukum adat dengan memerhatikan Hak ulayat masyarakat hukum adat yang di akui oleh konstitusi. Tujuan penulisan ini untuk menganalisis pengakuan hak ulayat, kedua konsep hak pengelolaan diatas hak ulayat, ketiga dan batasan waktu hak pengelolaan yang dikerjasamakan kepada pihak ketiga dapat memberikan keadilan kepada masyarakat hukum adat. Metode yang digunakan adalah metode penelitian hukum normatif, dengan menggunakan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukan bahwa kekosongan hukum mengenai batasan waktu hak pengelolaan yang akan dikerjasamakan kepada pihak lain/ketiga, yang dimana perlindungan hukum kepada para pihak tidak dapat diberikan karena adanya kekosongan hukum, sehingga demi menjamin kepastian, keadilan dan perlindungan hukum bagi pihak ketiga, terkhusus masyarakat hukum adat, maka perlunya segera diatur batasan waktu yang berkeadilan bagi masyarakat hukum adat.

Kata kunci: Hak Pengelolaan; Hak Ulayat; Keadilan

A. INTRODUCTION

As estimated, there are 476 million Indigenous Peoples across various regions worldwide.[1] As a result, the topic of Indigenous Peoples has sparked intense debate regarding the cultural, legal, and political implications of reconstituting local population groups.[2] In each society, customary practices develop organically, and the characteristics and patterns of customary law have undergone a lengthy historical development process. The dynamics of society and culture have a historical relationship.[3] *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) Article 1 regulates: "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.[4] Indonesia is one of the signatory states of the charter. Furthermore, the Constitution of the Republic of Indonesia 1945 Article 28 letter (i) paragraph (3) regulates: "the cultural identity and rights of traditional communities are respected in line with the progress of time and civilisation."

In the Constitution of the Republic of Indonesia 1945 Article 18 letter (b) paragraph (2): "The state recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, regulated by law." Based on the mandate of the Constitution, the Indonesian government acknowledges and respects the unity of customary law communities by granting rights to control, manage, and utilise their land, known as customary law (Hak ulayat).[5] Customary right (Hak ulayat) entails the authority of customary law communities to manage land, water, and resources according to their needs, based on knowledge systems and practices that embody principles of justice and sufficiency within customary regulations concerning the extraction of natural resources, accompanied by rules and prohibitions.[6]

It is widely acknowledged that Indigenous Peoples have not received adequate attention in the national development process and efforts to achieve Millennium Development Goals due to historical injustices stemming from racism, discrimination, and inequality long suffered by

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[1] Volker Türk, "Indigenous Peoples Can Lead Us All through the Turbulence and Risks of Our Era," United Nations Human Rights, July 17, 2023, https://www.ohchr.org/en/statements/2023/07/indigenous-peoples-can-lead-us-all-through-turbulence-and-risks-our-era-turk.

[2] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2–3 (2011): 167–95, https://doi.org/10.1163/22134379-90003588.

[3] I Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (March 24, 2023): 443, https://doi.org/10.3390/rel14040443.

[4] "United Nations Declaration on the Rights of Indigenous Peoples United Nations," 2007, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

[5] Rosnidar Sembiring, *Hukum Pertanahan Adat* (Depok: Rajawali Pers, 2013).

[6] S B Sinay et al., "Protection of the Rights of Indigenous People in the Archipelagic Province in Planning on Management of Coastal Areas and Small Islands Post of Law Number 11 of 2020 Concerning Job Creation," *IOP Conference Series: Earth and Environmental Science* 890, no. 1 (October 1, 2021): 012071, https://doi.org/10.1088/1755-1315/890/1/012071.

Indigenous Peoples worldwide.[7] In Indonesia, discrimination against the land tenure of customary law communities often occurs due to government efforts to meet land needs for investment purposes, which often target customary lands that have long been controlled by a particular customary law.[8] One example of a case in Indonesia is the Seruyan agrarian conflict, which is not only about the issue of community plasma land that has not been fulfilled by plantation companies but also reflects the seizure of people's land, which is customary land. This issue highlights that the customary land rights of indigenous peoples in Indonesia do not yet have apparent legal certainty. In addition to this case, another unresolved issue by the government is the customary land of the Dayak Pitap Indigenous Peoples, which intersects with the mining company PT. Adaro Indonesia. The operation of the mining area by the company is increasingly encroaching on the territory of the Indigenous community, where the concession area of the company is unknown to the Dayak Pitap Indigenous Peoples, who have long inhabited their customary land.[9] Referring to the Indonesian constitution, the customary land rights of indigenous peoples (MHA) should be respected and recognised as long as they do not conflict with national interests. However, under the pretext of national interest, the state prioritises its own rights in managing mineral and coal resources over the rights of the indigenous peoples. Due to poverty and lack of education, it is difficult for the indigenous peoples to defend their rights.[10]

The enactment of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (PP 18 of 2021) introduces new provisions regarding land rights in Indonesia, as regulated in Article 4 of Government Regulation 18 of 2021: "Management Rights derived from customary land." Therefore, further examination related to justice for Indigenous peoples regarding their traditional rights, "the right to obtain benefits or enjoyment from the land and water or forest products in their vicinity," is necessary.[11] Traditional rights will be granted to future generations of indigenous peoples. Thus, this research aims to determine to what extent the allocation of Management Rights (HPL) ensures justice for Indigenous peoples as the holders of these rights or whether HPL primarily benefits investment.

Rights granted to third parties can later be used as collateral. Regarding such guarantees, Government Regulation 18 of 2021 has anticipated this in Article 13 Paragraph (2) to prevent undesirable outcomes since, in legal actions, particularly in securing debt through mortgage rights, the approval of the management rights holder is required. However, when management rights are to cooperate with third parties, the time limit that forms the basis for determining the

[7] Dalee Sambo Dorough, Albert Deterville, and Victoria Lucia Tauli-Corpuz, "Indigenous Peoples Cannot Be 'Deleted' from the New Global Development Goals, UN Experts State," July 21, 2014, https://www.ohchr.org/en/press-releases/2014/07/indigenous-peoples-cannot-be-deleted-new-global-development-goals-un-experts.

[8] Dian Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Investasi," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 13, no. 1 (June 2022): 21–39, https://doi.org/http://dx.doi.org/10.22212/jnh.v13i1.2970.

[9] Konsorsium Pembaruan Agraria, "Laporan Tahunan Agraria 2023," 2024, https://www.kpa.or.id/catatan-akhir-tahun/.

[10] Mohammad Jamin et al., "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples," *Hasanuddin Law Review* 9, no. 1 (February 26, 2023): 88, https://doi.org/10.20956/halrev.v9i1.4033.

[11] Husen Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah: Masa Lalu, Kini, Dan Masa Mendatang* (Yogyakarta: LaksBang PERSSindo, 2011).

duration of the management rights to cooperate with third parties is not regulated, resulting in a legal vacuum. This legal vacuum creates legal uncertainty, where legal certainty is crucial to protect legal subjects from potential abuse of power by the government in the process of forming, discovering, and applying the law. Legal certainty includes rules, procedures or mechanisms, time, and institutions.[12] The function of law is as an instrument to limit the government's authority in making, applying, and enforcing the law. Clear laws aim to protect the community, especially those bound by the customary legal system. Most indigenous people (MHA) work as farmers and firmly uphold their traditional customs.[13]

In the research conducted by Sulasi Rongiyati (2014), the management rights studied only pertain to management rights originating from land controlled by the state. The research suggests that when granting management rights to third parties, the regulations should include the requirement that agreements be made in writing, containing, among other things, the identities of the parties involved, the location, boundaries, and area of the land in question, its intended use, the land rights to be granted to the third party, as well as the duration and extensions of these rights.[14] In the research conducted by Dian Cahyaningrum (2022), customary land with management rights can cooperate with investors, and the indigenous community will retain control over their customary land once the cooperation ends. This is different from customary land that has not been assigned management rights, which becomes state land after the land rights expire.[15]

Based on previous research, which did not discuss management rights originating from the customary land of Indigenous peoples (MHA), this study focuses on the following analysis: First, the recognition of the customary land rights of Indigenous peoples; second, the concept of management rights over customary land; and third, the time limits of management rights cooperated with the third parties to ensure justice for Indigenous peoples.

B. METHOD

This research employs a normative legal research method to study legal norms by examining legislation, court decisions, and existing legal doctrines.[16] This normative legal research examines the time frame that ensures justice regarding the management rights of customary land of Indigenous people. This is done by studying legal norms, legislation, court decisions, and legal doctrines related to customary and management rights.

This normative legal research utilises primary legal materials consisting of legislation, government regulations, and subordinate regulations, while secondary legal materials include research findings and publications of legal scholarly works. Expert opinions in law, as well as

[12] Moh Fadli and Sofyan Hadi, *Kepastian Hukum Perspektif Teoritik* (Malang: Nuswantara Media Utama, 2023).
[13] Moh Fadli et al., "Inquiring into the Sustainable Tourism Village Development Through the Social Complexity of Adat Peoples in Digital Era," *LJIH* 31, no. 2 (2023): 181–201, http://www.ejournal.umm.ac.id/index.php/legality.
[14] Sulasi Rongiyati, "Pemanfaatan Hak Pengelolaan Atas Tanah Oleh Pihak Ketiga," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 5, no. 1 (2014): 77–89, https://doi.org/http://dx.doi.org/10.22212/jnh.v5i1.212.
[15] Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Investasi."
[16] Satjipto Rahardjo, *Hukum Dan Perubahan Sosial* (Jakarta: Rajawali Pers, 1995).

dictionaries and encyclopedias, serve as tertiary legal materials.[17] Thus, the primary legal materials used in this research consist of legislation related to customary rights and management rights, while the secondary legal materials in this study include research findings and publications of legal scholarly works, as well as expert opinions in law related to customary rights and management rights.

By employing the analytical techniques of systematic interpretation perspective and historical interpretation method, the systematic interpretation method is used to interpret legislation that is always related to other legislation, in this case, the 1945 Indonesian Constitution and several other laws. Meanwhile, the historical interpretation method is utilised to examine the history of laws and the legal history of MHA customary rights and management rights.

C. RESULTS AND DISCUSSION

1. Recognition of Customary Land Rights of Indigenous People

Indigenous people are a group of individuals who are the original descendants of a country, residing and inhabiting a territory of that country with social, economic, and cultural conditions different from other parts of the society in that country, and the state regulates their legal status with special rules.[18] Recognition of customary land rights has been a central issue in Indonesia since 1960, regulated in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles (henceforth referred to as UUPA): "Considering the provisions in Articles 1 and 2, the implementation of customary land rights and similar rights of indigenous people, as long as they still exist in reality, must be carried out in such a way that is in line with national interests and the state, which are based on national unity, and must not contradict higher laws and regulations." Indigenous people may have rights to land in the form of management rights as part of the implementation of state control rights under Article 2 Paragraph 4 of UUPA and recognition of communal rights of indigenous people (customary land rights) as stated in Article 3 of UUPA.[19]

Indigenous people may have rights to land in the form of management rights as part of the implementation of state control rights under Article 2, paragraph 4 of UUPA. The communal rights of indigenous people (customary land rights) are also recognised as stated in Article 3 of UUPA. Customary land rights refer to a set of authorities and obligations of an Indigenous community related to land located within the territory of its land.[20] Achmad Sodiki mentioned that "the state's burden to restore the customary rights of Indigenous people over their living space was evident in the Constitutional Court Decisions No. 45/2011 and 35/2012. The

[17] Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *FIAT JUSTISIA:Jurnal Ilmu Hukum* 8, no. 1 (November 5, 2015), https://doi.org/10.25041/fiatjustisia.v8no1.283.

[18] Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 30, 2023): 89–102, https://doi.org/10.24090/volksgeist.v6i1.7867.

[19] Ayu, Dyah. Widowati, Nasihih, Ahmad. Luthfi, and Gusti Nyoman, I Guntur, *Pengakuan Dan Perlindungan Hak Atas Tanah Masyarakat Hukum Adat Di Kawasan Hutan* (Yogyajkarta: STPN PRESS, 2014).

[20] Julius Sembiring, *Dinamika Pengaturan Dan Permasalahan Tanah Ulayat* (Yogyakarta: STPN PRESS, 2018).

restoration of Indigenous community rights over their living space brings a new understanding of natural resource management for Indigenous people."[21]

The Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Indigenous people (Permen ATR/BPN 14 of 2024) provides several provisions regarding the implementation of land administration for customary land rights of indigenous people. In this regulation, the administration process is divided into 4 (four) stages, namely:

a. The administration of customary land rights can be carried out as long as they still exist in reality;
b. After the customary rights are administered, the next step is inventorying and identification;
c. Measurement and mapping of customary land; and
d. Recording the list of customary land.

Based on the above, indigenous people (MHA) require at least four stages in the administration of their territories. However, according to the Secretary-General of AMAN, this administration legitimises the seizure of customary territories and the resources within them, as no specific law regulates the protection and recognition of Indigenous Peoples' rights. On the contrary, various laws issued by the government actually legitimise the seizure of customary territories and the resources within them. As a result, Indigenous Peoples lose their customary territories.[22]

Customary land with management rights can collaborate with investors, and indigenous people still retain control over their customary land after the collaboration ends. However, it is different for customary land that has not been assigned management rights; if it originates from customary land, it becomes state land after its land rights expire.[23] Based on that, the government issued data on the distribution map of inventory and identification of customary land in Indonesia until 2023. The data was obtained from the National Land Agency under the National Priority Program, Pilot Project:

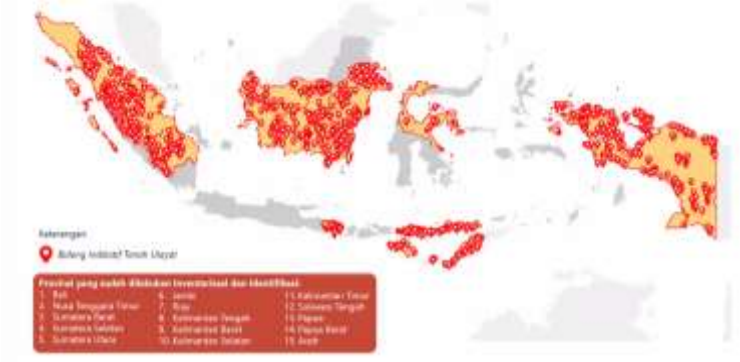

Figure 1. Inventory and Identification of Customary (Ulayat) Land in Indonesia

[21] Ari Ade Kamula, Rachmad Safa'at, and Imam Koeswahyono, "Restoration of Indigenous People's Rights in Natural Resources Management," International Journal Of Humanities Education And Social Sciences, vol. 2, 2023, https://ijhess.com/index.php/ijhess/.
[22] Della Azzahra, "Sekjen AMAN: Situasi Masyarakat Adat Sedang Kritis Karena Tak Ada UU Masyarakat Adat," *Aliansi Masyarakat Adat Nusantara - AMAN* , 2024.
[23] Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Investasi."

The inventory and identification of customary land in Indonesia until 2023 have been conducted in at least 15 provinces. This national priority program (pilot project) serves as the basis for the remaining customary territories to date. However, it should be noted that Article 6 paragraph (2) of Regulation Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous people stipulates: "Regents/mayors shall establish the recognition and protection of Indigenous people based on the recommendation of the Indigenous Community Committee with the Decision of the Regional Head." Therefore, the distribution map of inventory and identification of customary land above only covers the remaining customary lands in Indonesia to date. However, if the distribution and inventory map are regulated by the Regional Head's Decision or Regional Regulations (PERDA), then recognition and protection of indigenous people cannot be granted but only include the distribution of MHA customary lands. The stages of recognition and protection include: a. Identification of Indigenous people; b. Verification and validation of Indigenous people; and c. Establishment of Indigenous people.

Based on the stages of recognition and protection of Indigenous people (MHA), at least three stages must be followed for MHA to be recognised and protected. Therefore, the identification and inventory map cannot provide protection for MHA customary land, as it has not yet issued regional regulations or decrees from the local government regarding the customary land of indigenous people recognised. Therefore, regional regulations or decrees from the local government serve as the basis for recognising MHA customary land rights over their customary land.

2. The Concept of Management Rights Above Indigenous People's Customary Land Rights

In Article 1, paragraph 3 of Government Regulation Number 18 of 2021, management rights are generally the state's ownership rights, part of which is delegated to the rights holder. Furthermore, Boedi Harsono argues that management rights are a derivative of the state's ownership rights and not rights to the land. Not only Boedi Harsono but also A.P. Parlindungan and Maria S.W. Soemardjono concur that management rights are not rights to the land but derivatives of the state's ownership rights.[24] From the definition of management rights above and the views of experts, management rights are derivatives of land ownership and not direct rights to the land. Therefore, when viewed from the state's ownership rights, Article 2 paragraph (2) of UUPA regulates a. The state's ownership rights authorise: a. Regulating and organising the designation, use, supply, and maintenance of land, water, and airspace; b. determining and regulating legal relationships between individuals and land, water, and airspace; c. determining and regulating legal relationships between individuals and legal acts related to land, water, and airspace.

Based on the experts' opinions outlined above, management rights are derivatives of the state's ownership rights. Therefore, the three authorities granted to third parties under management rights also apply to the rights holder. Regarding the authorities of the rights holder,

[24] Dewi Nawang Wulan, Veronica Tjokroaminoto, and Abdul Ghofur, "Analisis Hukum Pemberian Hak Pengelolaan Yang Berasal Dari Tanah Ulayat Pasca Terbitnya Undang-Undang Cipta Kerja," *Notaire* 5, no. 1 (February 24, 2022): 83, https://doi.org/10.20473/ntr.v5i1.32708.

they are regulated in Article 7 Paragraph (1) of Government Regulation Number 18 of 2021, namely: a. preparing plans for the designation, use, and utilisation of land in accordance with spatial planning; b. using and utilising all or part of the land under management rights for personal use or collaboration with others; and c. determining tariffs and/or annual fees from other parties according to the agreement. Thus, management rights can also be granted over customary land to preserve the existence of indigenous people. Furthermore, Constitutional Court Decision Number 35/PUU-V/2012 is a pioneering decision in the existence of the Constitutional Court. This decision not only reaffirms Indigenous peoples' rights to customary forests but also increases the level of legitimacy in shifting their position as subjects of association rights before the state. Thus, now the category of rights holders in Article 28 and Article 28E paragraph (1) of the 1945 Constitution is no longer limited to "individuals" only.[25] The following is the regulation regarding management rights under Government Regulation Number 18 of 2021 and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/the National Land Agency of 202:

Table 1. Formulation of Management Rights Rules Content and Nature of Management Rights

Regulatory Provision	Elucidation
Article 1 point 3 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Residential Units, and Land Registration. Right of Management; "a right of control from the State whose implementation authority is partially delegated to the holder of the management right."	a. In this regulation, consistency remains, and management rights are part of the state's right of control. b. In Chapter III of this regulation, management rights are regulated from Article 4 to Article 16. c. Article 4 of Government Regulation No. 18 of 2021 marks the starting point where management rights can be granted from customary land.
Article 1 point 2 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. Right of Management; "a right of control from the State whose implementation authority is partially delegated to the holder of the management right."	a. In this regulation, consistency remains, and management rights are part of the state's right of control. b. The provisions regarding the procedure for determining management rights over customary land are regulated in this regulation. c. The provisions regarding the procedure and mechanism for cooperation with third parties are regulated in this regulation.

[25] Arasy Pradana A Azis and Yance Arizona, "Afirmasi Mk Terhadap Jukstaposisi Masyarakat Adat Sebagai Subyek Hak Berserikat Di Indonesia (Analisis Terhadap Keterlibatan Aliansi Masyarakat Adat Nusantara Dalam Putusan Mahkamah Konstitusi No. 35/PUU-X/2012)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 19, https://doi.org/10.33331/rechtsvinding.v8i1.300.

	d. However, the duration and time limit for cooperation with third parties regarding management rights originating from customary land or state land are not regulated.

Primary data: Processed 2024

The Table above indicates that the regulation of management rights shows consistency in Government Regulation No. 18 of 2021 and Ministerial Regulation No. 18 of 2021. Therefore, the understanding of the concept of management rights, strengthened by experts' opinions that management rights are part of the state's ownership rights, undergoes a conceptual shift, where conceptually, the hierarchy of land control over land ownership rights by the state (HMN) and customary rights are two different matters.[26]

Article 4 of Government Regulation No. 18 of 2021 serves as the basis for determining the objects of management rights, which are divided into two, namely State Land and Customary Land. In the case of State Land, it can be distinguished into two types, namely free State Land and non-free State Land. Free State Land is land directly controlled by the State, and there are no rights held by others on that land, while non-free State Land is land on which some rights belonging to others have been attached, whether controlled by the community, private legal entities, or government agencies. As for land controlled by the community, it may be in the form of customary rights or customary land ownership.[27]

Management rights over customary land are regulated in Article 3 of Ministerial Regulation No. 18 of 2021, which stipulates that besides State Land, Land Rights and/or State forest areas, applications for Management Rights can also originate from Customary Land. Based on this, the concept of management rights over customary land is actually registered by the Indigenous community itself, provided that the customary land of Indigenous people has been regulated by Regional Regulations (PERDA) and/or decrees from the local government regarding customary land. In this regard, Indigenous people can become legal subjects as holders of management rights if they have been acknowledged as legal subjects through the enactment of PERDA and/or Decrees from the Local Government.

Based on this, several mechanisms and stages must be followed so that the granting of management rights over customary land, where the Indigenous community (MHA) acts as the subject holder of these management rights, can be provided in accordance with legal certainty over customary communities as stipulated in Government Regulation No. 18 of 2021 and Ministerial Regulation No. 18 of 2021. Therefore, management rights over customary land is a concept of rights registration. Registration of rights always relates to the subject and object of the registration of rights; therefore, the enactment of Regional Regulations (PERDA) and/or

[26] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria Dan Pelaksanaannya* (Jakarta: Universitas Trisakti, 2013).
[27] Tanjung Nugroho and Akur Nurasa, *Permasalahan Surat Ijin Memakai Tanah Negara Sebagai Alas Hak Dalam Pendaftaran Tanah Di Kota Tarakan*, Cetakan Pertama (Yogyakarta: STPN Press, 2014).

Decrees from the Local Government concerning MHA must be established first to enable MHA to serve as the subject and object in rights registration.

3. The Duration of Management Rights involving Third Parties and their Impact on Justice for Indigenous Peoples

The basis for management rights collaboration with third parties requires the enactment of Regional Regulations (PERDA) and/or Decrees from the Local Government concerning MHA to be established first to allow MHA to become the subject and object in management rights registration. Furthermore, regarding customary land to collaborate, an agreement on land utilisation must be made first. After the land utilisation agreement is established, rights over the land can be granted, such as land use rights, building use rights, land occupancy rights, and other land utilisation agreements to be stipulated. This is regulated in Article 8 paragraph (1) letter b: "other parties, if the Management Rights Land is collaborated with a land utilisation agreement." However, granting rights over the land to third parties does not provide clear limitations and duration for establishing the land utilisation agreement. This is in accordance with Article 45 paragraph (2) of Ministerial Regulation No. 18 of 2021, which stipulates: "The duration of Land Rights over Management Rights shall not exceed the duration specified in the land utilisation agreement, effective from the date of the land utilisation agreement."

The ambiguity regarding the duration of the land utilisation agreement in Article 45 paragraph (2) stipulates that the land rights over management rights collaborated with third parties cannot exceed the duration of the land utilisation agreement that has been established. However, the duration of the land utilisation agreement with third parties does not specify how long the duration will be for the collaboration with third parties. This means that if we base it on regulations regarding land use rights, building use rights, land occupancy rights, and other rights based on positive law, which will be used in the land utilisation agreement, it only regulates the overall duration without considering the stages of extension and renewal of rights.[28] The issue that arises is the fate of the customary land rights of future generations of indigenous people, considering that in Indonesia, customary land rights are governed by customary law.[29] Therefore, this becomes the basis for determining a fair duration for land utilisation agreements with third parties when not related to land rights.

Referring to Government Regulation 18/2021 and the Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18/2021, there is no clarity on the substance of the third party. However, concerning land rights registration and contractual subjects, the third party in this context refers to legal entities. In the Dutch civil law system, which is still adopted in the Indonesian legal system, legal subjects are divided into two categories: individuals (persons) and legal entities (rechtperson).[30] In the current development of legal subjects, MHA

[28] Abdilbarr Isnaini Wijaya, Iwan Permadi, and Imam Rahmat Safi'i, "Penyelesaian Sengketa Tanah Ulayat Pada Proyek Pembangunan Jalan Di Papua Barat (Studi Kasus Di Kabupaten Sorong Papua Barat)," *Jurnal Jatiswara* 33, no. 3 (November 28, 2018): 310, https://doi.org/10.29303/jatiswara.v33i3.180.

[29] Muhammad Kibar Akib, Imam Koeswahyono, and Rachmi Sulistyarini, "Penyelesaian Sengketa Waris Yang Berkeadilan Pada Masyarakat Adat Suku Kajang Kabupaten Bulukumba," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 2 (July 15, 2022): 349, https://doi.org/10.17977/um019v7i2p349-356.

[30] Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, "Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia," *Jurnal Hukum Media Bhakti* 3, no. 2 (February 27, 2020), https://doi.org/10.32501/jhmb.v3i2.38.

also becomes one of the legal subjects if local regulations (PERDA) and Regional Government Decrees (Surat Keputusan Pemerintah Daerah) are established regarding their customary land. One of the cases mentioned in the background is the mining area in the Dayak Pitap MHA land, which is increasingly encroached upon by mining companies. These mining companies are legal entities (rechtperson) classified as legal subjects.

Rawls provides his perspective on justice as fairness, which refers to the original equality of primary conditions related to natural circumstances. However, the original position is not considered historical or primitive conditions but is understood as a hypothetical situation leading to a particular conception of justice. According to Rawls, the principles of justice are divided into two:[31]

1. The principle of equal liberty encompasses basic freedoms, including political freedom, freedom of thought, freedom from arbitrary actions, personal freedom, and freedom to possess wealth.
2. Inequality (the principle of difference), the economic and social spheres must be organised in such a way so that inequality can benefit everyone, especially those who are naturally disadvantaged and attached to positions and functions that are open to all people.

Thus, in line with Rawls' assertion that absolute equality in terms of wealth, status, or occupation is not required because it is unrealistic, the duration of the management rights to be entrusted to third parties must align with the rights of the Indigenous customary communities themselves. Wealth, status, and occupation are inherently linked to one's nature or inherent characteristics. However, what is most important is how such inequality is regulated in such a way as to create bonds, cooperation, and mutually beneficial relationships both for the Indigenous customary communities as holders of management rights originating from customary land, and also for the third parties as managers of the management rights originating from customary land.

However, the principle of freedom of the first party should not be sacrificed in order to achieve the socio-economic goals of the second principle. According to Amartya Sen, there are three main features that make certain targets a priority for justice theory:[32]

1. Justice theory can be used as a practical consideration along with an assessment of how to reduce injustice and create justice rather than merely characterising an ideally fair society.
2. Justice theory can address issues of justice comparatively and is well-received based on logical argumentation.
3. Justice theory is aimed at addressing injustice associated with deviant behaviour rather than institutional weaknesses.

Regarding the primary targets of justice theory, issues of justice can be addressed related to the time limit for the management rights that will involve third parties based on four criteria in assessing the significance of the greatest prosperity of the people towards the collective rights

[31] ali, Muchamad, Safa'at, "Pemikiran Keadilan (Plato, Aristoteles, Dan John Rawls)," http://www.safaat.lecture.ub.ac.id/files/2011/12/keadilan.pdf, December 2011.
[32] Amartya Sen, *The Idea of Justice* (Cambridge: Belknap Press of Harvard University Press, 2009).

of Indigenous people. The management rights collaborated with third parties can be explained more rigorously as follows:[33]

1. The benefit of natural resources for Indigenous customary communities: the role of Indigenous people in environmental management should encompass access to information, transparency, and the demand for good and clean governance, ultimately leading to the welfare of Indigenous customary communities. Therefore, the existence of Indigenous customary communities is crucial in protecting their natural resource environment because their traditional wisdom in land management stems from their real-life experiences passed down from generation to generation.
2. Levelling the distribution of benefits from natural resources for Indigenous customary communities: in terms of management rights, the use and utilisation of all or part of their land for personal use or collaboration with third parties can grant Land Rights. Thus, the distribution of benefits from natural resources for indigenous customary communities can be fulfilled, whether managed individually or collaborated with third parties for part or all of their land.
3. Level of participation of Indigenous customary communities in determining the benefits of natural resources: In determining the benefits of natural resources, the utilisation agreement of management rights from Indigenous customary communities to third parties is an agreement subject to civil law and made before a public official.
4. Respect for the ancestral *ulayat* rights of Indigenous customary communities in utilising the natural resources of their territory: *ulayat* rights are the authority held by certain Indigenous customary communities over specific territories, including their inhabitants, to derive benefits from natural resources, including land, within that territory, for their survival and livelihoods. These rights arise from a continuous and unbroken relationship, both physically and spiritually, between the indigenous customary communities and the respective territory.

The management rights to be entrusted to third parties, which will involve land use agreements, can be analogised to the term of the Land Use Right (HGU) under Government Regulation Number 18 of 2021, which was initially set at a maximum of 35 years, with a possible extension of 30 years, and renewable for a maximum of 35 years, but must be in accordance with the land allocation. Therefore, the management rights to be contracted to third parties must first consider the land allocation to determine a transparent and fair duration for the Indigenous customary communities as holders of management rights. This is because legal systems require consistency and coherence among regulations.

Thus, ensuring the certainty of the duration of management rights entrusted to third parties can fulfil justice for the Indigenous customary communities and the parties entering into the management rights agreements by respecting the customary rights of the Indigenous people, which are constitutionally recognised and respected, as in line with Article 18B paragraph (2) of the 1945 Constitution stating “The state recognizes and respects the customary communities along with their traditional rights as long as they are alive and in accordance with the

[33] Imam Koeswahyono, “Tanah Untuk Keadilan Sosial : Perbandingan Penataan Dan Pengaturan Pertanahan Di Beberapa Negara,” *Arena Hukum* 12, no. 1 (April 30, 2019): 64–90, https://doi.org/10.21776/ub.arenahukum.2019.01201.4.

development of society and the principles of the Unitary State of the Republic of Indonesia, regulated by law." Moreover, Article 28I paragraph (3) of the 1945 Constitution mentions, "The cultural identity and rights of traditional communities and their continuity, and special treatment for indigenous people, whether they arise in the future in the form of customary law and its application within the national legal system. Indigenous people are also guaranteed to be respected in accordance with the development of time and civilisation." The Constitution regulates and protects the existence and diversity of Indigenous people within the nation. Therefore, recognition by the constitution serves as a legal basis for their existence, continuity, and special treatment under customary law and its applicability within the national legal framework.[34]

Management rights are derived from the state's authority, which constitutes a public right, differing from the characteristics of private rights in the realm of civil law. Referring to state authority, the state is not in a position to own natural resources but is present to formulate policies (*beleid*), establish regulations (*regelendaad*), administer affairs (*bestuurdaad*), manage resources (*beheersdaad*), and supervise (*toezichthoudendaad*). The exercise of state authority must consider existing rights, both individual rights and collective rights held by indigenous people (customary rights), rights of indigenous people, as well as other constitutional rights held by the people and guaranteed by the constitution.[35] This justice-focused theory emphasizes addressing injustices arising from institutional weaknesses that refer to the mechanisms of timeframes and limitations in agreements regarding management rights with third parties, which must be recognised by the government, considering Indigenous people as the holders of management rights. The explanation above regarding the timeframe and limitations of management rights to collaborate with third parties to achieve the principle of justice for Indigenous people can serve as a basis for considering clarity in regulations regarding the timeframe and limitations of agreements on the use of management rights on Indigenous lands with third parties.

D. CONCLUSION

Management rights originating from customary land are beneficial to Indonesia and indigenous people. This mutually beneficial nature can be achieved if the regulations regarding the timeframe of management rights to collaborate with third parties are clearly defined in Indonesian positive law, especially for management rights originating from the customary lands of Indigenous people. There is a legal vacuum concerning the regulation of timeframes in Indonesian positive law. This lack of regulation on timeframes needs to be addressed in Indonesian positive law to ensure legal certainty for all parties involved, especially for Indigenous people who are often marginalised in relation to their customary lands. Additional regulations should refer to the land use allocation considering the land use agreement, not exceeding 35 years, with an extension of 30 years and a maximum renewal of 35 years as the

[34] Rachmad Safa'at and Dwi Yono, "Pengabaian Hak Nelayan Tradisional Masyarakat Hukum Adat Dalam Politik Perundang-Undangan Pengelolaan Sumber Daya Pesisir," *Arena Hukum* 10, no. 1 (April 1, 2017): 40–60, https://doi.org/10.21776/ub.arenahukum.2017.01001.3.

[35] Tody Sasmitha, Haryo Budiawan, and Sukaryadi, *Pemaknaan Hak Menguasai Negara Oleh Mahkamah Konstitusi (Kajian Terhadap Putusan MK No. 35/PUU-X/2012; Putusan MK No. 50/PUUX/ 2012; Dan Putusan MK No. 3/PUU-VIII/2010)* (Yogyakarya: STPN Press, 2014).

time limit. The constitution recognises Indigenous customary rights, and Indigenous people have become legal subjects in legal actions once established by Regional Regulations (PERDA) or Decrees of Local Government.

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