

## LAW ENFORCEMENT AGAINST THE CUSTOMARY RIGHTS OF INDIGENOUS PEOPLES OF PAPUA (STUDY OF SUPREME COURT DECISION NUMBER 1900/K/PDT/2024)

Finisia Bako<sup>1</sup>, Abdul Razak Nasution<sup>2</sup>

*Faculty of Social Sciences, Law Study Program, Universitas Pembangunan Panca Budi, Indonesia*

Email: [finisiabako1603@gmail.com](mailto:finisiabako1603@gmail.com)

### Abstract

This study was conducted with the aim of determining the legal aspects of customary rights of indigenous peoples in the considerations of judges who decide on customary rights lawsuits in the Supreme Court decision number: 1900/K/Pdt/2024. This study uses normative juridical with a descriptive approach that aims to analyze carefully to solve problems in accordance with the applicable legal framework. In this study, the data sources used are secondary data in the form of Supreme Court case decisions number: 1900/K/Pdt/2024, laws and regulations and literature related to the research problems. Based on the results of the Supreme Court decision Number 1900/K/PDT/2024, it confirms the recognition of the customary rights of Papuan indigenous peoples as a form of collective ownership that is inherited from generation to generation. In this case, the customary land belonging to the Mandacan family is declared to remain theirs because it was never released through a legal mechanism according to customary law. However, land acquisition by other parties, including the issuance of Building Use Rights (HGB) certificates by the National Land Agency (BPN), was carried out without the consent or legal compensation to the customary owners. This action is considered an unlawful act because it does not respect the rights of indigenous peoples guaranteed by Article 18B of the 1945 Constitution. This decision also highlights the important role of state institutions, such as the BPN, in ensuring that land administration processes are carried out with respect for customary law and the rights of indigenous peoples.

### Keywords:

Customary Rights, Law, Indigenous Peoples

### 1. Introduction

Customary rights are the collective rights of indigenous peoples over land, territory, and natural resources that are inherited from generation to generation, in Papua customary rights are very closely related to the cultural, social, and spiritual identity of indigenous peoples. Customary land cannot be sold because it is a common property that cannot be owned individually, but can be leased or given business use rights with the consent of the indigenous community through a deliberative mechanism. The sale of customary land without the permission of the entire indigenous community can be considered a violation of customary and agrarian law, in some cases customary land is often sold through an unauthorized process without the consent of the entire indigenous community, the sale of customary land usually occurs due to economic pressure or lack of understanding of the law of

indigenous peoples, these transactions are often contrary to customary law which prohibits the transfer of permanent ownership.<sup>1</sup>

The customary rights of indigenous Papuans are one of the important aspects in maintaining the sustainability of indigenous peoples in the region. However, in practice, customary rights often face various challenges and obstacles in law enforcement, not all customary territories of Papuan indigenous peoples have clear legal recognition, so there is an overlap with economic interests where conflicts often occur between customary rights and plantation, mining, or infrastructure business licenses. The legal understanding of the customary rights of indigenous Papuans in the context of laws and regulations in Indonesia still needs clarification. The Special Regional Regulation of Papua Province Number 23 of 2008 concerning the Customary Rights of Customary Law Communities and the Individual Rights of Customary Law Residents of Customary Law Communities over Land has been stipulated to recognize and protect customary rights. However, this implementation is still not optimal due to the complexity and unclarity of land boundaries.<sup>2</sup>

The obstacles faced in law enforcement against the customary rights of indigenous Papuans are very significant. Some of the main factors that cause conflicts between indigenous peoples and the government or companies are the lack of clarity of customary land boundaries, the lack of awareness of customary law communities, and the lack of role of customary chiefs in customary law communities. In addition, the government often takes bad actions in managing customary land, such as giving authority to companies to manage customary land without considering the rights of indigenous<sup>3</sup> peoples.

One of the cases regarding customary rights reflected in the Supreme Court's decision number 1900/K/Pdt/2024 involves a dispute between Daud Mandacan as the representative of the plaintiff who is the heir of the late Tomas Mandacan and Samual Mandacan, against PT Pertamina (Persero) as the defendant's representative. This dispute originated from the claim of land which is the customary right of the community in West Papua, belonging to the late Tomas Mandacan and Samuel Mandacan. The disputed land was originally controlled by the Mandacan family, but due to the riots they left the land and hid in the forest. During their absence, the land was controlled by PT. Pertamina has been issuing land rights certificates since 1980, namely Building Rights Certificates (HGB) on behalf of PT Pertamina. When the Mandacan family returned and their land was already taken over by another party, they filed a lawsuit in the Monokwari District Court, demanding legal recognition of the land ownership and compensation for the losses they incurred. The Monokwari District Court ruled that the land belonged to the plaintiffs and required defendant II to pay compensation. This decision was strengthened by the Jayapura High Court. However, defendant II filed an appeal to the Supreme Court on the grounds that the court had misapplied the law in this case. The Supreme Court then issued a ruling related to this case. Therefore, this case reflects the challenges in the recognition and protection of indigenous peoples' customary rights in Indonesia, as well as the importance of proper law enforcement in resolving this dispute. Based on the data or description above, the author is interested in researching the issue with the title "**Law Enforcement Against the Customary Rights of Indigenous Peoples of Papua (Study of the Supreme Court Decision Number 1900/K/Pdt/2024)**".

## 2. RESEARCH METHODS

---

<sup>1</sup> Susilo, E. (2019). *Customary Rights and Legal Regulation in Indonesia: A Recent Review*. Legislative Publishers.

<sup>2</sup> Marpaung, J. (2010). *Indigenous Peoples' Customary Rights and Their Implementation in Indonesia*. Jakarta: PT Raja Grafindo Persada.

<sup>3</sup> Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: Rajawali Pers, 2013), p. 21.

The research method used is normative juridical, namely research on legal principles contained in legislation where this research has the concept that law is a rule. This research was carried out by researching literature or what is called secondary data. The data analysis technique used is descriptive analytical, which is a technique that is carried out by describing the research object carefully, detailed, and systematically and the data collected will be analyzed carefully to solve problems in accordance with the applicable legal framework. The problem approach in this writing is the Statute Approach and the Case Approach. And the data collection method is used in the form of a document study method in the form of a Supreme Court decision in this study.<sup>4</sup>

### **3. RESULTS AND DISCUSSION**

#### **A. Arrangement of Indigenous Peoples' Customary Rights**

##### **1) Basic Legal Framework and Laws and Regulations**

According to the 1945 Constitution of the Republic of Indonesia, article 18B paragraph (2) which states that "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law." This article affirms the state's recognition of customary law communities and their rights. Followed by article 28I which reads "Cultural identity and rights of traditional communities are respected in line with the development of the times." This provision shows that respect for the customary rights of indigenous peoples is part of human rights.

This is emphasized by the 1994 Constitution of the Republic of Indonesia article 33 paragraph (3), that "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people". This article emphasizes that natural resources in Indonesian territory are national assets whose management must be carried out by the state with the main goal of providing the greatest benefits for the welfare of the community. This principle places the state as the holder of control to regulate, manage, and utilize these resources while still prioritizing social justice. Thus, the use of natural resources should not only benefit a few parties, but must be directed to improve the standard of living of all Indonesian people, both directly and indirectly. This article is the legal basis for various policies and laws related to the management of natural resources, such as agrarian, forestry, mining, and energy, all of which aim to realize the prosperity of the people in an equitable and sustainable manner.

##### **2) Related Laws and Regulations**

The customary rights of indigenous peoples are further described in various laws and implementing regulations, as follows<sup>5</sup>:

- a. Article 3 of the Basic Agrarian Law (UUPA) No.5 of 1960 states that "Taking into account the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way that they are

---

<sup>4</sup> Arioen, R., Ahmaludin, A., Junaidi, J., Indriyani, I., & Wisnaningsih, W. (2023). *Research Methodology Textbook*. Sari, N. (2016).

<sup>5</sup> Nurtjahjo, B. (2020). *Laws and Regulations on Customary Rights in Indonesia*. Nusantara Law Publisher.

- in accordance with the national and state interests based on the unity of the nation and do not contradict higher regulations." The UUPA recognizes the existence of customary rights, but with the limitation that its implementation must not be contrary to the national interest.
- b. Article 67 Law No. 41 of 1999 concerning Forestry, this Law recognizes the role of indigenous peoples in protecting the environment based on local wisdom. The right of indigenous peoples to manage the environment according to their traditions is recognized as long as it does not conflict with laws and regulations.
  - c. Law No. 6 of 2014 concerning Villages, recognizes the existence of customary villages as a form of government that has the right of origin and uniqueness in managing the territory and its traditional rights.
  - d. The Constitutional Court's decision No. 35/PUU-X/2012, this decision is an important milestone in the recognition of customary rights, especially related to customary forests. The Constitutional Court stipulates that customary forests are part of the territory of indigenous peoples and are not state forests, as long as the existence of the indigenous people is recognized through legal mechanisms.
  - e. Law No. 11 of 2020 concerning Job Creation, through the amendments brought by the Job Creation Law, there are several adjustments to the rules related to land and forest management, including the recognition of the rights of indigenous peoples. However, its implementation requires specific technical regulations.
  - f. Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2019, this regulation regulates the procedure for the recognition of customary rights of customary law communities over land, providing clearer procedures for formal recognition of customary rights at the regional level.

### **3) Process of Recognition and Registration of Customary Rights**

The process of recognition and registration of indigenous peoples' customary rights involves a number of stages that aim to ensure that the rights of indigenous peoples are legally recognized by the state. This stage is regulated in various laws and regulations, such as the Basic Agrarian Law (UUPA), the Forestry Law, and other technical regulations. Here is the process in general<sup>6</sup>:

#### **a. Identification of Customary**

This process involves the recognition of the existence of indigenous peoples as legal subjects who have customary rights. The main criteria that must be met are:

- There is a community that has a customary government system in place.
- A clear customary territory and managed for generations.
- Customary norms or laws that are still recognized and applied in daily life.
- Recognition from the surrounding community regarding the existence of the indigenous people.

Identification is carried out by local governments involving experts, local communities, and civil society organizations. The results are outlined in the indigenous people's recognition document.

#### **b. Determination of Customary Rights Areas**

After indigenous peoples are recognized, the next process is the determination of customary

---

<sup>6</sup> Law Number 5 of 1960 regulates the Basic Arrangement of Agrarian Principles

rights areas. These stages include:

- Territory Inventory: Identifying customary boundaries based on historical evidence, maps of the territory, or recognition from surrounding communities.
- Participatory Mapping: Engaging indigenous peoples to create detailed maps of customary territories.
- Verification and Validation: Local governments verify data and ensure there is no overlap with other parties, such as companies or governments.

c. Determination by the Regional Government

Based on the results of identification and mapping, the local government issues an official decision to recognize customary law communities and their customary rights areas. These results usually include:

- Regional Regulation (Perda), or
- Decree of the Regional Head (Regent/Mayor/Governor).

This document became the legal basis for the formal recognition of indigenous peoples and their customary territories.

d. Registration of Customary Rights

After being recognized, indigenous peoples can register their customary rights with the local land office to get legal protection. The registration process involves:

- Submit a document of recognition of customary territory from the local government.
- Attach a map of the customary territory that has been verified.
- The land office records the customary rights in maps and land registers.

This registration does not provide a certificate of ownership, because customary rights are collective and not individual rights. However, this recording is important to provide legal legitimacy to customary rights.

## **B. Law Enforcement Process Against Indigenous Peoples of Papua**

The process of law enforcement against indigenous Papuans involves several main points that are interrelated. First, the identification of indigenous peoples' legal subjects is carried out to ensure that the existence of indigenous communities is legally recognized. This identification involves an assessment of communities that have a customary government system, applicable customary law, and hereditary management areas recognized by the surrounding community. Local governments have the main responsibility in determining indigenous peoples through regulations such as Regional Regulations (Perda).<sup>7</sup>

Second, the law enforcement mechanism integrates customary law and national law. Customary law is used to resolve internal conflicts within communities, such as customary land disputes or violations of customary norms. However, if the conflict involves an outside party, such as a company or government, then national law is applied through the court or mediation route. In some cases, customary law can be part of national legal considerations, especially in cases of customary land or natural resource conflicts.

---

<sup>7</sup> G.Kertasapoetra, R.G Kartasapoetra, AG. Kartasapoetra, A. Setiady, Land Law, Guarantee of Agrarian Basic Law for Successful Land Utilization, (Jakarta: Bina Aksara, 1985), p. 88



*LAW ENFORCEMENT AGAINST THE CUSTOMARY RIGHTS OF INDIGENOUS PEOPLES OF PAPUA (STUDY OF SUPREME COURT DECISION NUMBER 1900/K/PDT/2024)*

Third, the government and related institutions play an important role in law enforcement. The central government provides a legal framework that protects the rights of indigenous peoples, while local governments are tasked with issuing specific policies, such as the recognition of customary territories. Papuan customary institutions, such as the Papuan Customary Council (DAP), are responsible for enforcing customary law and acting as a liaison with the government. Law enforcement agencies, such as the police and courts, ensure that national law enforcement is fair, while civil society organizations support advocacy for indigenous peoples' rights.

Fourth, there are various obstacles in law enforcement. Conflicts between customary law and national law often occur, especially related to natural resource management. In addition, overlapping territorial claims between indigenous peoples, governments, and companies are the cause of prolonged conflicts. The lack of policy support and resources from the government, as well as the disparity in legal knowledge between indigenous peoples and outsiders, exacerbates the situation. Economic and political pressures also often weaken the position of indigenous peoples in defending their rights.

Law enforcement against indigenous Papuans requires an approach that respects local wisdom and ensures fair legal protection. Collaboration between governments, indigenous peoples, and civil society organizations is needed to overcome barriers and create an inclusive legal system.<sup>8</sup>

### **C. The Process of Settlement of Customary Ownership Rights Based on the Supreme Court Decision Number 1900/K/PDT/2024**

#### **1) Chronology of Disputes**

This dispute began with the claims of the heirs of the late Thomas Mandacan and Samuel Mandacan over five plots of customary land that have been used without consent since 1980 by PT Pertamina and other parties. The plaintiffs stated that they never waived their rights or received compensation for the disputed land.

The land control by the defendant, which lasted for more than four decades, caused great losses both materially and immaterially to the heirs. The plaintiffs filed a lawsuit to obtain recognition of their customary rights, cancellation of certificates issued to the defendants, and payment of damages as compensation for unauthorized use of the land.<sup>9</sup>

#### **2) Judge's Decision**

In his decision, the judge stated that the disputed customary land belonged to the deceased Thomas Mandacan and the late Samuel Mandacan. No evidence was found to show that the rights to the land had been waived by the owners or that there was a legitimate payment of damages to them or their heirs. The judge also stated that the issuance of HGB by BPN for the land was invalid because it was not based on the waiver of rights or the consent of the customary land owner. PT Pertamina's action of controlling the land without legal compensation was declared an unlawful act.

The judge decided to grant the plaintiffs' lawsuit by providing damages of Rp 405.34 billion as material losses and Rp 1 trillion as immaterial losses. In addition, the judge ordered PT Pertamina to vacate the disputed land until the compensation is paid. In his consideration, the judge also rejected the claim that the payment of Rp 17.5 million made to other parties could be considered as legitimate compensation, because the recipient of the payment was not the

---

<sup>8</sup> Wangi, Ni Komang Putri Sari Sunari, Komang Febrinayanti Dantes, and Ketut Sudiarmaka. "Juridical Analysis of Customary Rights on Customary Land Ownership Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles." *Sui Generis Journal of Law* 3.3 (2023): 112-121.

<sup>9</sup> Supreme Court Decision Number 1900/K/PDT/2024

legitimate owner of customary land.

This decision shows strong law enforcement in protecting the customary rights of indigenous peoples, especially in West Papua. Judges have consistently affirmed that customary rights cannot be released without the valid consent of the owner. In this context, the issuance of HGB certificates by BPN without a clear legal basis is evidence of violations of administrative procedures and customary law.<sup>10</sup> The determination of large damages reflects efforts to provide justice for the aggrieved parties and provides a strong message on the need to respect customary rights in any land-related decision-making.

This decision has a significant social impact, especially in strengthening the recognition of the customary rights of indigenous peoples in West Papua. However, the large amount of compensation and land clearance orders have the potential to trigger new conflicts if not followed by effective mediation efforts between related parties. Therefore, it is important for the government and related parties to facilitate dialogue in order to reach a settlement that is acceptable to all parties.

Overall, this case is an important precedent in law enforcement involving customary land disputes. This is not only relevant for the case in Papua, but also for customary land disputes in other regions of Indonesia involving the interests of large corporations and the government.

### **3) Obstacles in Law Enforcement Based on Supreme Court Decision Number 1900/K/PDT/2024**

#### **a. The Complexity of Evidence of Customary Rights**

One of the biggest obstacles in this case is the proof of customary rights by the Plaintiffs. Customary rights are traditional forms of ownership that are recognized by customary but are often not documented in a formal form recognized by positive law.<sup>11</sup> In this case, the Mandacan family had to rely on evidence such as customary confessions, witness statements, and informal documents to support their claims. However, this faced a challenge from the Defendant who had a Building Rights (HGB) certificate, an official document that gave the impression of legality. The dualism between customary law and positive law creates complexity in assessing the validity of each party's claims, especially in courts that more often prioritize formal documents.

#### **b. Unclear Previous Settlement**

There is proof of the previous compensation payment of Rp 17.5 million made by PT Pertamina to another party, namely the deceased. Jaconias TDB Sorbu. However, this payment is problematic because the individual is not the legal owner of customary land. This situation shows that previous settlement efforts were not thorough and transparent, complicating the recognition of the party entitled to compensation. This conflict of claims became a loophole for the defendant to maintain its position and weaken the plaintiffs' lawsuit.

#### **c. Inconsistency of Law Enforcement**

The uncertainty of legal outcomes is also a major obstacle. A similar lawsuit filed by the Mandacan family in 2015 did not result in an adequate decision, casting doubt on the effectiveness of the justice system. These inconsistencies can reduce indigenous peoples' trust in the legal

---

<sup>10</sup> Tekege, Peter. "The Essence of Recognition and Protection of Customary Rights for Indigenous Peoples in Papua." *Innovative: Journal Of Social Science Research* 4.4 (2024): 6660-6678.

<sup>11</sup> Azis, Yuldiana Zesa, and Emiliana Bernadina Rahail. "The Legal Framework of the State of Indonesia in the Protection of Customary Rights and the Welfare of Indigenous Peoples in Border Areas." *Journal of Restorative Justice* 8.2 (2024): 136-149.

system, especially when parties with great economic power appear to benefit more from the lengthy and winding legal process.

d. Slow Legal Process

The long and protracted legal process is a significant obstacle, especially for indigenous peoples who have limited resources. The case has been going on for many years and involves various levels of court. This uncertainty not only drains the plaintiffs' energy and finances, but also exacerbates the injustice already felt.

## **D. The Role of the National Defense Agency (BPN) on Customary Rights Based on the Supreme Court Decision Number 1900/K/PDT/2024**

In the case handled under Decision Number 1900 K/Pdt/2024, BPN plays the role of one of the defendants who is considered to have violated the customary rights of indigenous peoples. The following is a more detailed explanation of the roles and responsibilities of BPN in the context of the decision:

### **1) Issuance of Land Certificate on Customary Land**

BPN, in its capacity as a land administration manager, is considered not to carefully verify the status of customary land before issuing a Building Rights (HGB) certificate. The customary land that is the object of the dispute turns out to still belong to the heirs of Thomas Mandacan and Samuel Mandacan. However, the HGB certificate was given to another party (Defendant I), which was then used as the legal basis for land tenure since 1980. The Court stated that this action was not in accordance with the principles of recognition of customary rights as stipulated in Article 18B of the 1945 Constitution and laws and regulations related to customary rights.<sup>12</sup>

### **2) Not Ensuring a Legitimate Indemnity Process**

BPN is considered to have facilitated or approved the process of relinquishing customary land rights without ensuring that the compensation process to the landowner has been carried out correctly and fairly. In the ruling, it was stated that the Mandacan family as the owner of customary rights never received compensation from the party who obtained the HGB. As a result, land ownership by other parties is declared an unlawful act.

### **3) Legal Consequences for BPN's Actions**

The court stated that the issuance of the HGB certificate by BPN for the customary land was a legal defect. Therefore, HGB certificates issued by BPN are declared invalid and have no legal force. This is an important precedent in ensuring that BPN must be more careful in handling land that has the status of customary rights or customary land.

### **4) Obligation to Comply with the Rights of Indigenous Peoples**

In this decision, the role of BPN is emphasized as an institution responsible for respecting the rights of indigenous peoples in the land administration process. Non-compliance with this principle not only harms indigenous peoples, but also prolongs legal conflicts.

Implications of the Decision This decision gives a strong message that BPN must conduct in-depth verification of the status of land, especially if it involves customary rights. Oversee the compensation process to ensure justice for customary land owners. Comply with legal regulations

---

<sup>12</sup> Syam, Dewi Fatimah, Hasbuddin Khalid, and Anggreany Arief. "Implementation of the role of the Ministry of Agrarian and Spatial Planning/National Land Agency as a mediator of the parties in resolving land disputes." *Journal of Lex Philosophy (JLP)* 5.2 (2024): 935-950.



related to customary land and customary rights, as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 10 of 2016 concerning Procedures for the Determination of Communal Rights to Land.

The role of BPN in this decision reflects the importance of accountability of state institutions in managing land administration related to the rights of indigenous peoples. Neglect in respecting customary rights is not only unlawful but also detrimental to indigenous communities that depend on land as a source of livelihood and cultural identity.

### **E. Legal Limitations of the National Defense Agency (BPN) on Customary Rights Based on Supreme Court Decision Number 1900/K/PDT/2024**

Based on Decision Number 1900 K/Pdt/2024, the legal limits of the National Land Agency (BPN) are regulated in its obligation to carry out administrative functions carefully, fairly, and in accordance with applicable law. In carrying out its duties, BPN is required to respect the customary rights of indigenous peoples, including ensuring that every administrative action, such as the issuance of a Building Rights (HGB) certificate, is carried out in compliance with the principle of recognition of customary rights as stipulated in Article 18B paragraph (2) of the 1945 Constitution and related laws and regulations. In this case, BPN was considered negligent because it issued an HGB certificate for customary land without verifying the legal status of the land and without ensuring the legal approval of the customary rights owners, namely the heirs of Thomas Mandacan and Samuel Mandacan.

BPN's actions that ignore the in-depth verification process of legality documents and compensation resulted in the issued certificate being declared legally defective and has no legal force. In addition, the ownership of customary land by a third party through an HGB certificate issued by BPN is also declared unlawful, because it is not preceded by legal compensation to the landowner. The court emphasized that BPN must comply with legal restrictions in issuing land certificates, namely by ensuring the legality of land rights, verifying the validity of the process of relinquishing customary rights, and respecting applicable customary laws.<sup>13</sup> In this case, the BPN's actions that exceeded the limits of its authority and ignored the customary rights of indigenous peoples were declared unlawful, so the issued certificate was canceled and the land was returned to the owner.

This decision shows that BPN must not override the principles of justice, legality, and respect for the customary rights of indigenous peoples in exercising their authority. BPN's failure to comply with this legal limit has serious implications, both administratively and in legal conflicts that harm the owners of customary rights materially and immaterially.

### **F. Problems According to Local Customs**

The problem in Decision Number 1900 K/Pdt/2024 related to customary land is very closely related to local customs that apply in West Papua. In the tradition of the indigenous people of Papua, customary land has a deep social, cultural, and spiritual meaning so that its transfer or use must be carried out with respect for customary procedures. In this case, the customary land belonging to the Mandacan family has been controlled by another party since 1980 without the valid consent of the owner. This is contrary to customary norms that require every process of using customary land to involve deliberation with customary owners and the payment of fair compensation. In practice, the

---

<sup>13</sup> Efendi, Saparudin, and Maulana Sheikh Yusuf. "The National Land Agency as a Mediator in Land Dispute Resolution is Reviewed from the Regulation of the Head of BPN Number 11 of 2016." *Collaborative Journal of Science* 7.3 (2024): 1128-1135.

party receiving compensation for the land is not the rightful owner according to customary law, so this violation not only harms the Mandacan family materially, but also violates the values of respect for the indigenous community.

The court in its decision acknowledged that the customary land remained the legitimate property of the Mandacan family because it was never released according to customary procedures. This decision emphasizes that customary rights must be protected and cannot be transferred without a legal process in accordance with local customs. The absence of customary deliberations in resolving land conflicts worsens the situation and causes protracted injustices. Customary deliberations, if carried out, can be a more restorative and fair solution for all parties. This decision shows the importance of formal legal recognition of customs in the settlement of customary land disputes, as well as reminding that formal law must run in harmony with customary values that live in society.

#### **4. CONCLUSION**

The Supreme Court's Decision Number 1900/K/PDT/2024 affirms the recognition of the customary rights of indigenous Papuans as a form of collective ownership inherited from generation to generation. In this case, the customary land belonging to the Mandacan family was declared to remain their property because it was never released through a legal mechanism according to customary law. However, land ownership by other parties, including the issuance of Building Rights (HGB) certificates by the National Land Agency (BPN), is carried out without legal approval or compensation to the customary owners. This action is considered an unlawful act because it does not respect the rights of indigenous peoples guaranteed by Article 18B of the 1945 Constitution. The ruling also highlights the important role of state institutions, such as BPN, in ensuring that the land administration process is carried out with respect for customary law and the rights of indigenous peoples.

In addition, the resolution of customary land conflicts should involve customary deliberation as the main mechanism to maintain justice. The absence of deliberation in this case is one of the causes of injustice experienced by the Mandacan family. The judge in his ruling canceled the HGB certificate issued on the land and ordered the payment of significant damages to the Mandacan family, providing stronger legal protection for the customary rights of indigenous peoples. However, the case also exposed obstacles in law enforcement, such as conflicts between customary law and national law, lack of formal documentation of customary rights, and slow legal process. This entire decision is an important precedent in integrating customary law into the national legal system and strengthening the protection of indigenous peoples' customary rights in Indonesia.

#### **BIBLIOGRAPHY**

##### **BOOK**

Arioen, R., Ahmaludin, A., Junaidi, J., Indriyani, I., & Wisnaningsih, W. (2023). *Research Methodology Textbook*. Sari, N. (2016).

Djaman Samosir, 2013, *Indonesian Customary Law, (Existence in the Dynamics of Legal Development in Indonesia)*, Nuansa Aulia, Bandung, p. 104.



Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: Rajawali Pers, 2013), p. 21.

G.Kertasapoetra, R.G Kartasapoetra, AG. Kartasapoetra, A. Setiady, *Land Law, Guarantee of Basic Agrarian Law for Successful Land Utilization*, (Jakarta: Bina Aksara, 1985), p. 88

Marpaung, J. (2010). *Indigenous Peoples' Customary Rights and Their Implementation in Indonesia*. Jakarta: PT RajaGrafindo Persada.

Sihotang, R. A. (2015). *Customary Law in Indonesia: Theory and Practice*. Bandung: Citra Aditya Bakti Publisher.

Susilo, E. (2019). *Customary Rights and Legal Regulation in Indonesia: A Recent Review*. Legislative Publishers.

Harefa, J. (2018). *Indigenous Peoples of Papua: Problems and Solutions*. Scholar Publisher

Nurtjahjo, B. (2020). *Laws and Regulations on Customary Rights in Indonesia*. Nusantara Law Publisher.

## JOURNAL

Azis, Yuldiana Zesa, and Emiliana Bernadina Rahail. "The Legal Framework of the State of Indonesia in the Protection of Customary Rights and the Welfare of Indigenous Peoples in Border Areas." *Journal of Restorative Justice* 8.2 (2024): 136-149.

Adrianto, R. R. (2023). Juridical Review of the Protection and Recognition of Customary Rights of Indigenous Peoples in Papua. *Novum: Law Journal*, 127-138.

Putra, A. A., & Azhar, F. (2024). Respecting local wisdom by integrating indigenous peoples' customary rights into sustainable development and conservation strategies. *Culture: Journal of Law, Social Sciences, and Humanities*, 2(6), 243-253.

Poro, Stivani Marantika, Ali Imron, and Wika Yudha Shanty. "Legal protection of the traditional rights of customary law communities against the act of individualizing customary land for commercial purposes." *Bhirawa Law Journal* 2.1 (2021): 73-78.

Hadi, S., Tanati, D., Palenewen, J. Y., Bauw, L., Solossa, M., & Rongalaha, J. (2024). Legal Socialization of the Regulation of the Minister of Agrarian Affairs/KBPN Number 5 of 1999 concerning Guidelines for Resolving Customary Rights Problems of Customary Law Communities in West Koya Village, Muara Tami District, Jayapura City. *Nanggroe: Journal of Scholarly Service*, 3(3).

Rahmat, T. (2020). "Challenges of Recognition of Customary Rights of Indigenous Peoples of Papua in a Legal Perspective." *Journal of Law and Society*, 15(2), 115-117

Sari, L. (2019). "Protection of Indigenous Peoples' Customary Rights in Papua: Social and

Legal Perspectives." *Journal of Papuan Studies*, 12(1), 45-60.

Andika, R. (2022). "Customary Rights Regulation in Indonesian Laws and Regulations: A Comprehensive Review." *National Law Journal*, 18(3), 210225

Wangi, Ni Komang Putri Sari Sunari, Komang Febrinayanti Dantes, and Ketut Sudiatmaka. "Juridical Analysis of Customary Rights on Customary Land Ownership Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles." *Sui Generis Journal of Law* 3.3 (2023): 112-121.

Widianto, F. (2021). "Implementation of Indigenous Peoples' Customary Rights Regulations in Indonesia: Challenges and Prospects." *Journal of Law and Legislation*, 17(2), 95-110.

Gorby, A., Hamdi, M., Mulyati, D., & Arsad, R. (2023). Implementation of Customary Land and Customary Rights on Land Policy in Central Kalimantan Province. *Perspective*, 12(4).

Laturette, Adonia Ivonne. "Settlement of Customary Rights Disputes in Forest Areas." *Sasi* 27.1 (2021): 102-112.

Tekege, Peter. "The Essence of Recognition and Protection of Customary Rights for Indigenous Peoples in Papua." *Innovative: Journal Of Social Science Research* 4.4 (2024): 6660-6678.

Syam, Dewi Fatimah, Hasbuddin Khalid, and Anggreany Arief. "Implementation of the role of the Ministry of Agrarian and Spatial Planning/National Land Agency as a mediator of the parties in resolving land disputes." *Journal of Lex Philosophy (JLP)* 5.2 (2024): 935-950.

Efendi, Saparudin, and Maulana Sheikh Yusuf. "The National Land Agency as a Mediator in Land Dispute Resolution is Reviewed from the Regulation of the Head of BPN Number 11 of 2016." *Collaborative Journal of Science* 7.3 (2024): 1128-1135.

Artina, Dessy, et al. "OVERLAPPING REGULATION: CERTAINTY OF CUSTOMARY RIGHTS TO THE LAND OF THE MUARA SAKAL PELALAWAN RIAU CUSTOMARY LAW COMMUNITY." *Legal Issues* 53.1: 23-34.

## **LAW**

Law Number 5 of 1960 regulates the Basic Arrangement of Agrarian Principles

Law Number 21 of 2001 regulates Special Autonomy for Papua Province

## **INTERNET**

Rizha Aulia Puspita "Rights to Customary Land to Indigenous Peoples in the Investment Era (Case Study of the Suay Umpu Clan, Tulang Bawang Regency, Lampung)". Student of the Faculty



*Finisia Bako, Abdul Razak Nasution:*

*LAW ENFORCEMENT AGAINST THE CUSTOMARY RIGHTS OF INDIGENOUS PEOPLES OF PAPUA (STUDY OF SUPREME COURT DECISION NUMBER 1900/K/PDT/2024)*

of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta in 2021.

<https://repository.uinjkt.ac.id/dspace/handle/123456789/56232>

Soraya Felisia "The Position of Customary Rights to Land After the Enactment of Law Number 6 of 2014 concerning Villages". Students of the Faculty of Law of Lampung in 2016.

<http://digilib.unila.ac.id/23103/3/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>

Supriadi, "Analysis of Land Disputes between PT. Sumbawa Agro Island with the Talonang Indigenous People in West Sumbawa". Student of the Faculty of Law, Hasanuddin University in 2017.

<https://core.ac.uk/download/pdf/141541633.pdf>

<https://www.kamus-hukum.com/definisi/8521/Masyarakat%20Hukum%20Adat>

<https://media.neliti.com/media/publications/73730-ID-masyarakat-hukum-adat-dan-hak-ulayat-di.pdf>

