Land Registration Policy And Its Implications For Land Tenure In Maluku Province

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Abstract: Research that takes the form of Land Registration Policy and Its Implications for the Control of Ulayat Land in Maluku Province indicates that; The nature of the existence of customary land rights is to be used jointly by the people who inhabit their customary land / land. Through the complete systematic land registration rules (PTSL) will be able to accelerate the customary law community to obtain legal certainty over their customary rights. Through PTSL, the rights of individuals originating from customary land can also be done simultaneously being registered as ownership rights. Individualization of customary land can not be avoided in the lives of indigenous and tribal peoples, including in Maluku, one of the causes is the economic factor of the community itself which is classified as poor. However, the individualization of customary land rights should not lead to communal or collective lands (petuannya) being distributed among the community members, thus causing the loss of customary community rights over their petuana.

Key words: Policy, Land Registration, Customary Land Tenure.

1 INTRODUCTION

The presence of the Customary Law Community (MHA) on the archipelago, both on large islands, medium and small islands is a reality that has existed since the beginning viewed as the creation of God Almighty. Until now the presence of indigenous and tribal peoples in fact in the Republic of Indonesia has been blessed by God and lasted a long time. Indigenous and tribal peoples have characteristics, settle in a certain territorial or territorial environment, have their own assets, have authority, their members have kinship relations based on their origin with their ancestors, and have a relationship with the natural environment governed by their customary law. Regarding the term indigenous peoples, various terms are still being used, including indigenous peoples, customary law community units, traditional communities, and other terms both listed in the 1945 Constitution of the Republic of Indonesia and various other laws relating to the existence of these indigenous peoples. In connection with the term indigenous peoples, according to Titahelu, it is more appropriate to use the term indigenous peoples, rather than the term indigenous peoples. Emphasis on the term customary community unity basically reflects the life or existence of customary law in a unity in certain communities, both according to territory or territory, as well as ethnic lines. In this paper the term customary law community is used to indicate the existence of certain groups of people living in certain areas whose life arrangements are governed by their customary law, especially those relating to their relationship with customary land and their control over the communal land. Discussing the existence of customary law communities in relation to customary land is important, because without customary law communities there would be no ulayat land (customary land) and without customary land, customary law communities could not be categorized as customary law communities, but only as legal communities. Therefore, customary land for customary law communities has a function not only as a place to live, a place to make a living, but also as a place for socio-cultural, political and economic development, in addition, customary land is an eternal human relationship to land that has religious value. It is on the basis of customary relationships that land rights are born. In general, in the customary law literature, the definition of customary rights is primarily concerned with the legal relationship between the customary law community and the land in their area of territory. Customary rights themselves have a public aspect as the highest authority of the customary law community in addition to the private aspect. Recognition and respect for the existence of indigenous and tribal peoples and their rights constitutionally stated in Article 18B paragraph (2), namely: The State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the State. The Unity of the Republic of Indonesia, which is regulated in law. The provisions of Article 18B paragraph (2) of the 1945 Constitution are then strengthened by the provisions of Article 28I paragraph (3) that: "Cultural identity and traditional community rights are respected in accordance with the times". In addition TAP MPR XVII / MPR / 1998, emphasized in Article 41 that: Cultural identities of traditional communities, including rights to customary land are protected, in harmony with the times. Implementation of regulations on the existence of indigenous peoples and their rights, namely the customary rights are regulated in the Regulation of the Minister of Agrarian Affairs / Head of BPN No.5 of 1999 Concerning the Guidelines for the Settlement of the Customary Rights Rights of the Customary Law Communities. In this regulation the control which includes parcels of land including customary land if desired by the rights holder, his rights can be registered as land rights in accordance with the provisions of the LoGA. Then the government issued another regulation governing customary law communities and revoked Permenag Number 5 of 1999, namely Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 9 of 2015 concerning Procedures for Establishing Communal Rights on Land for Customary Law Communities and Communities Located in a Specific Area. A year later the government issued the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 10 of 2016 concerning Procedures for Establishing Communal Rights over the Customary Community's Land and Communities in Certain Areas, replacing the previous regulation. In both provisions the nomenclature of customary rights is replaced by communal rights. Meanwhile, the existence of control of land rights is carried out by a process by submitting an application for land rights to the Regent / Mayor or Governor. Furthermore, based on the request, the Regent / Mayor forms a team to determine the existence of customary law communities. This provision is certainly not
easy to be carried out by the customary law community itself due to various limitations. Meanwhile land registration is an important mandate of Article 19 of the 1960 BAL which must be carried out by the government in all regions of the Republic of Indonesia to ensure legal certainty for right holders. The said land registration is carried out according to the provisions regulated by government regulations. The complete systematic land registration policy (PTSL) is expected to be a solution to the existence of indigenous peoples and the legal certainty of their customary rights. In Maluku, ulayat rights are known as petuan rights. Petuanan is the territory of the customary law community which borders with the territory of other countries. Within the petuanan area there are several types of land rights both communally and individually controlled and owned. The question that then arises is what is the policy on registration of lands which are within the scope of ulayat / petuanan lands and their implications for the control of these ulayat / petuanan lands in Maluku Province.

2 RESEARCH METHOD
This study is a jurisdiction-normative research, namely research conducted on the principles of law, legal principles in the sense of the value (norm) of concrete law and legal system, (Sudikno Mertokusumo, in La Ode Angga MJ Saptenno, 2019: 3). In this study using several approaches. The approaches used in the research are the approach of the statute approach, (Theory Hutchinson, 2002: 55 in La Ode Anga, MJ Saptenno 2019: 3), and the conceptual approach, (Peter Mahmud Marzuki, in La Ode Angga, M.J. Saptenno, 2019: 3).

3 RESULTS AND DISCUSSION
1. Land in the View of the Maluku Customary Law Community
In the Maluku context, the view of the customary law community on ulayat land (petuanan) is believed to be a gift from God to the ancestors and passed down until now, as a cosmic entity that has a religious value interpreted as a source of life, also as a binder and a sign of collectivity and to be a collective and to be a place to continue to maintain kinship ties. Furthermore, land in the view of the Maluku traditional law community, is a cultural identity (cultur identity), so that the loss of land including forests (petuanan) is the same as losing the cultural identity as a Maluku people. In the basic arrangement of the Maluku customary law community, the nature of control of land is placed on the basis of their customary law, with the aim to be used and utilized by the indigenous peoples concerned in ensuring welfare, and carried out jointly, led by the head of their customary legal alliance (king, saniri country). The control of the customary land / guidance of the Maluku traditional law community living in the archipelago includes not only land (forests, rivers, gardens), but also the coast and sea. Maluku people, interpret the land can not be separated from the sea, even the sea is called a runny land or also referred to as a continuation of the land.

2. Reality of Mastery and Ownership of Ulayat Land / Petuanan Maluku MHA
The concept of ownership and ownership of communal land / petuanan is communalistic religious, which allows individual land tenure, with rights to land that are personal as well as contain elements of togetherness. The origin of the mastery and possession of the petuan in Maluku has historically varied but there is a common pattern in common. The mastery is usually preceded by the arrival of a person or group of people from a certain place (the Moluccans, especially Central Maluku and Ambon Island according to their history from various literature, originating from a place on Seram Island), that place is an empty place, there are no inhabitants. Next they chose the location of the land then followed by land clearing for houses and gardens, followed by the clearing of the surrounding forest for agricultural recycling, hunting and gathering of forest products. Then they put a certain sign at the furthest point that can be reached from the center of the settlement or village. Signs as boundaries are usually natural boundaries, in the form of rivers, streams, trees, large stones and so on. The control over petuanan territory in Maluku is based on land that does not yet have any rights over it. The area of an ulayat / petuanan area varies greatly, depending on the ongoing relationship over a very long period of time by each of the customary law communities, recognized and accepted by the adjacent customary law community. On the other hand, there is a fact that the total area of ulayat / petuanan is more than an administrative area. The authority to regulate and lead the control and use of ulayat / petuanan land, whether intended for the common interest or the interests of its citizens cannot always be carried out jointly by members of the customary law community itself. Therefore, some of the daily tasks are left to the head of the alliance together with the traditional elders. The existence of the customary lands mentioned above was later strengthened by the Regional Regulation (Perda) of Maluku Province Number 14 of 2005 concerning Re-Establishment of the State as a Unit of Customary Law Communities in the Maluku Province Government Area and Perda Number 03 of 2008 concerning Petuanan. Common rights which are communal rights / custodial rights are not property rights in the juridical sense, but rather are shared rights, so in the context of customary rights / petuanan rights it is possible to have ownership and ownership of land both communally and individually. In Central Maluku (including Ambon Island) and Ambon City, control and ownership of land are categorized among other things: public land, land land, heirloom land, company land, and kintal / yard land.

a) State land is land controlled by the state / partnership, where its use is intended for the common good;
b) from land. From land is a piece of public land (guidance) given by the state to a family branch (ruma eye) which has been served in the country as a production unit that functions to ensure the economic survival of the branch of the ruma eye according to patrilineal lineage (fatherhood), by hence, land and land can be classified as land with communal rights;
c) Heritage Land. Heritage land is a piece of state land or guidance that is given to a child of the country to be used as a land for the "company". If it is continuously cultivated, over time this land can be turned into individual rights and can be inherited;
d) Company Land. Land company is a plot of vacant land usually ex-garden (aong) or open forest (ewang) with the permission of the state
government to be cultivated or cultivated. This land right is a usage right, but it is also possible for individual land rights if it is cultivated continuously; e) Ground or yard land; and Ground or yard land is intended for the residence of members of the community, generally located in the center of the country and some distance from the land where it is planted. Yard land is individual land.

Tenure and ownership in West Southeast Maluku (Tanimbar Island) are almost the same as in Southeast Maluku, where the territory of a village (pnue) has been completely divided into communal rights called soa land, so that over customary lands (including forests) There are four patterns of ownership and ownership, namely: village general petuanan land (pnue), soa land (communal land), relatives land (house eyes) and homeland, (Jenny Kristiana Matuankotta, 2016: 5). The table below is a description of ownership and ownership within the scope of the customary law community of Maluk

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Mastery and joint ownership (communal)</th>
<th>Mastery and joint ownership (communal)</th>
<th>Individual rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Central Maluku Regency</td>
<td>Petuanan land / state land</td>
<td>Dati Land (not all country)</td>
<td>1. Land of the Company 2. heirloom land 3. ground / yard ground</td>
</tr>
<tr>
<td>2</td>
<td>West Southeast Maluku Regency</td>
<td>Village / Pnue Petuanan (ampat karempau)</td>
<td>Soa Land</td>
<td>1. Land company (clan land) 2. ground kintal / yard</td>
</tr>
<tr>
<td>3</td>
<td>Southeast Maluku Regency</td>
<td>General Petuan (Utan, Bilan, Ohoinuhu)</td>
<td>Marga / Soa petuanan (faam fixation or taam scum)</td>
<td>1. Starch family land 2. Yard / Kintal</td>
</tr>
</tbody>
</table>

Source: 2014 field data; processed

With the reality of the conditions of control and ownership of land in the Petuanan area in Maluku as described above, it can be understood that the process of individualization of the Petuanan land becomes common because the process occurs naturally. Individualization of customary land can occur due to the following factors:

1. The existence of exploitation of land by domestic children with the permission of the government of the country, which takes place continuously for a very long period of time becomes individual land rights.

2. The existence of economic factors, so that parcels of land that have become individual rights are sold off both to domestic children and people from outside the customary law community.

3. There is an assumption that registering land rights as ownership rights to obtain proof of rights in the form of a certificate of ownership will also make it easier for holders of legal rights to engage in legal relations with certain legal subjects for certain purposes, such as for example selling, renting or giving / passing down land rights.

4. There is a need for land for development in the public interest and for government offices, especially in the city / regency center

5. The existence of investments that require extensive land.

6. The existence of a shift in view from the land as a place to look for livelihood tends to be an economic commodity

In addition to the above factors, the individualization process can also occur due to the coercion of the customary law community to release the land of the land rights, especially for the interests of investors who need large tracts of land.

3. Complete System of Land Registration Policy and its implications for the acquisition of customary land / guidance

The legal basis for the PTSL regulation is Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, PP No 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 12 of 2017 concerning the Acceleration of the Implementation of a Systematic Complete Land Registry. Complete Land Registration System (PTSL) is a land registration activity that is carried out for the first time simultaneously which includes all land registration objects that have not been registered in one village / kelurahan area or another equivalent name, and also includes a mapping of all land registration objects that have already been registered, registered in order to collect and provide complete information about the parcels of land. (Article 1 paragraph (2) PTSL) In Article 3 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 12 of 2017 covers all parcels of land without exception, including parcels of land that do not yet have land titles or parcels of land rights, whether they are land assets of the Government / Regional Government, land of State-Owned Enterprises / Region-Owned Enterprises, village land, state land, customary community land, Forest area, land object land reform, transmigration land, and other parcels of land. Based on this provision, including land which is the object of land registration is village land and customary community land. In the Maluku context, PTSL policies within the scope of ownership control over land with individual rights, or which have been released to individual rights based on physical data and juridical data will be easier in the process of implementation as it has been ongoing lately. The individual rights referred to are land or yard, company land that has been cultivated for a long time, or even to inheritance and part of the land that has been released (sold, granted) from its data rights. Registration of land rights is a registration for the first time. This policy actually really helps the right owner to get...
legal certainty and certainty of their rights to land. As the basis for the right to the land registration process is proven by the fact or factually someone occupies the place in the sense that there is physical control, continuous, recognized and accepted by the owner of the boundary land. While the land rights that have been released to people outside the partnership, the practice so far has been carried out by releasing customary rights, which are known and witnessed by the state apparatus (saniri, head of soa). However, the evidence for the release of customary rights is not as a basis for the rights of the transfer of land rights but is a letter containing the release of the customary land rights. Conversely, common land rights (communal rights) such as soa land, in West Southeast Maluku, Southeast Maluku, as well as in Southwest Maluku have similarities with customary land / petuanan. It is said to be similar because its control lies with the customary head / head of his business who has the authority to regulate the exploitation, utilization or permit of his exploitation, so that communal land rights can be said to be public, in addition to private rights because there are also individual rights (see table). In a village there are 4 (four) or 5 (five) questions, each of which is in charge of approximately 5 (five) to 10 (ten) house clans / eyes. On the other hand there are also customary rights / petuanan (state land) in Central Maluku and Seram Island in general also in the city of Ambon whose control lies with the king as the head of the customary legal alliance. The customary lands, if they are to be registered, require research, physical data collection and legal data which is certainly not easy, but that does not mean it cannot be done. To start it can be done by taking one of the customary land rights / petuanan as an example of course must coordinate with the local district / city government. Furthermore, the existence of customary rights is stated in the basic map of land registration, and if the boundaries can be determined according to the procedure for land registration, the boundary is drawn on the basic map of land registration and land is recorded in the land register. (Maria S W. Sumardjono, 2001: 68) The implication of the PTSL policy on customary land tenure / will provide legal interest and protection for customary law communities over their customary land, especially in the case that land will be used for investment purposes in the plantation sector, for example, area, boundaries of customary land rights can be known for sure, so that the community can jointly control the use of the land so that it does not exceed what was agreed upon. Thus, it can reduce future disputes.

A. CLOSING
The nature of the existence of customary land rights is to be used jointly by the people who inhabit their customary land / land. Through the complete systematic land registration rules (PTSL) will be able to accelerate the customary law community to obtain legal certainty over their customary rights. Through PTSL, the rights of individuals originating from customary land can also be done simultaneously being registered as ownership rights. Individualization of customary lands can not be avoided in the lives of indigenous and tribal peoples, including in Maluku, one of the causes is the economic factor of the community itself which is classified as poor. However, the individualization of customary land rights should not lead to communal or collective lands (petuanan) being distributed among the community members, thus causing the loss of customary community rights over their petuan. If this happens, it certainly affects the cultural identity of Moluccans and maintains kinship ties.

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