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EQUITABLE LAND OWNERSHIP IN CUSTOMARY LAW COMMUNITIES

PROPRIEDADE EQUITATIVA DA TERRA EM COMUNIDADES DE DIREITO CONSUETUDINÁRIO

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Abstract
The construction of various public facilities and other infrastructure, requires a considerable amount of land and varies in area depending on the needs of an area, at the same time as the population increases, the less land is available, and because the State does not have land for the purpose of building various public facilities and other infrastructure for the public interest mentioned above, So an effort is needed to procure land for the construction of various public facilities and infrastructure. In the orderly implementation of land procurement, the government regulates land procurement, in Article 18 of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA), which is further followed up with Law Number 20 of 1961 concerning the Revocation of Rights to Land and Objects on it. Subsequently, the Minister of Home Affairs Regulation Number 15 of 1975 concerning Provisions on Land Acquisition Procedures was issued. According to the legal issues of this research, the type of research that will be used is normative legal research, which is a research that mainly examines positive legal provisions, legal principles, legal principles and legal doctrines to answer the legal issues faced. Definition Normative legal research is a study that examines both positive legal provisions and legal principles, by systematically explaining legal provisions in a certain legal category, analyzing

Resumo
A construção de diversas instalações públicas e outras infraestruturas exige uma quantidade considerável de terreno, cuja área varia de acordo com as necessidades de cada região. Ao mesmo tempo, com o aumento da população, a disponibilidade de terras diminui, e como o Estado não dispõe de terrenos suficientes para a construção das diversas instalações públicas e outras infraestruturas de interesse público mencionadas, torna-se necessário um esforço para a aquisição de terras para a construção dessas obras. Para a implementação ordenada da aquisição de terras, o governo regulamenta o processo, conforme o Artigo 18 da Lei nº 5 de 1960, que dispõe sobre os Regulamentos Básicos dos Princípios Agrários (UUPA), complementado pela Lei nº 20 de 1961, relativa à Revogação dos Direitos sobre a Terra e os Objetos Nela existentes. Posteriormente, foi emitida a Portaria nº 15 de 1975 do Ministério do Interior, que dispõe sobre os Procedimentos de Aquisição de Terras. De acordo com as questões jurídicas desta pesquisa, o tipo de pesquisa que será utilizado é a pesquisa jurídica normativa, que consiste em examinar principalmente disposições legais positivas, princípios jurídicos e doutrinas jurídicas para responder às questões jurídicas enfrentadas. Definição: A pesquisa jurídica normativa é um estudo que examina tanto disposições legais positivas quanto princípios jurídicos,

the relationship between legal provisions. The answer that can be stated in this writing is that the legal certainty of customary land which is the object of land acquisition needs to be protected by its rights with a clear legal umbrella by local governments.

Keywords: Land Ownership. Justice. Customary Law Society.

explicando sistematicamente as disposições legais em uma determinada categoria jurídica, analisando a relação entre as disposições legais.A resposta que pode ser apresentada neste texto é que a segurança jurídica da terra consuetudinária, objeto da desapropriação, precisa ser protegida por seus direitos com uma clara amparação legal pelos governos locais.

Palavras-chave: *Propriedade da Terra. Justiça. Direito Consuetudinário. Sociedade.*

1 INTRODUCTION

Infrastructure is the main supporter of the functions of the social system and the economic system in the daily life of the community, so infrastructure is more clearly the facilities and physical structures that are built for the functioning of the social system and the economic system pointing to a continuity and sustainability of community activities where physical infrastructure accommodates the interaction between human activities and their environment.[1]

The definition of Infrastructure according to *the American Public Works Association* is the physical facilities developed or needed by public agencies for government functions in the provision of water, electricity, sewage, transportation and similar services to facilitate social and economic purposes[2].

The availability of infrastructure is so important for a country, President Joko Widodo (Jokowi) in a discussion at the A1 Forum entitled "Prosperous and Connected Thanks to Infrastructure" held in Jakarta, on November 14, 2019, stated that Infrastructure is the foundation for Indonesia to be able to compete with other countries. Indonesia's competitiveness index is still in the middle position against other countries. We want to be on a higher footing. Then we will enter the second big agenda, namely human resource development and then enter the big agenda of innovation and technology. In fact, President Joko Widodo has included infrastructure development as a priority program out of 9 (nine) development priority program agendas in Nawa Cita, preceding human

[1] Robert J. Kodoatie, 2003, "*Infrastructure Management and Engineering*", Yogyakarta: Pustaka Siswa, p.
[2] Stone, 1974, In Kodoatie, R. J., 2005

resource development, inviting investment, carrying out bureaucratic reforms and ensuring the focused and targeted use of the state expenditure budget (APBN). After observing the 5 (five) main priorities of development, infrastructure development is the main priority because it is the main foundation of the Indonesian nation to compete with other countries.

The construction of various public facilities and other infrastructure, requires a considerable amount of land and varies in area depending on the needs of an area, at the same time as the population increases, the less land is available, and because the State does not have land for the purpose of building various public facilities and other infrastructure for the public interest mentioned above, So an effort is needed to procure land for the construction of various public facilities and infrastructure.

In the orderly implementation of land procurement, the government regulates land procurement, in Article 18 of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA), which is further followed up with Law Number 20 of 1961 concerning the Revocation of Rights to Land and Objects on it. Subsequently, the Minister of Home Affairs Regulation Number 15 of 1975 concerning Provisions on Land Acquisition Procedures was issued.

Prior to the issuance of Law Number 11 of 2020 concerning Job Creation, Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest had been issued, and several Presidential Regulations issued after that, namely Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, Presidential Regulation of the Republic of Indonesia Number 40 of 2014 concerning Amendments to Presidential Regulations Republic of Indonesia No. 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, Presidential Regulation of the Republic of Indonesia No. 99 of 2014 concerning the Second Amendment to the Presidential Regulation of the Republic of Indonesia No. 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, Presidential Regulation of the Republic of Indonesia No. 30 of 2015 concerning the Third Amendment to the Presidential Regulation of the Republic of Indonesia No. 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest and Presidential Regulation of the Republic of Indonesia Number 148 of 2015

concerning the Fourth Amendment to Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, with its implementing regulations, namely the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition and Regulation of the Minister of Agrarian and Governance Space/Head of the National Land Agency Number 6 of 2015 concerning Amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 22 of 2015 concerning the Second Amendment to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition and Regulation of the Minister of Agrarian and Spatial Planning/Head of Agency National Land Number 20 of 2020 concerning Procedures for the Preparation of Land Acquisition Planning Documents.

After the issuance of Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest was issued, with the implementing provisions being the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2021 concerning Provisions for the Implementation of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, and the last is Government Regulation Number 39 of 2023 concerning Amendments to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest.

In Article 1 Paragraph 2 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2021 concerning Provisions for the Implementation of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, it is stated that land acquisition is an activity of providing land by providing appropriate and fair compensation. Meanwhile, to whom the proper and fair compensation is to those who are entitled to the land that will be used as the object of land acquisition for the public interest.

Customary law societies existed before the Republic of Indonesia politically proclaimed its independence. Thus, its existence is *de facto* recognized as the smallest alliance with the characteristics and rights attached to it and the indigenous peoples are recognized and protected constitutionally in Article 28I Paragraph 3 of the Constitution of the Republic of Indonesia of 1945 and article 18B of the Constitution of the Republic of Indonesia of 1945. As the diversity of the Indonesian nation has been recognized by the nation's *founders (Founding Fathers*) with the motto Bhinneka Tunggal Ika. The motto contains the meaning of recognizing differences, and the determination to become one nation, namely the Indonesian nation, without eliminating the existing diversity. Therefore, one of the national goals affirmed in the preamble to the Constitution of the Republic of Indonesia in 1945 is to protect the entire Indonesian nation. The phrase "All Indonesian Nation" refers to the recognition of the reality of diversity, all of which must be protected.[3]

The recognition of the existence of customary law communities as one of the parties that are considered entitled to be referred to as the party entitled to the land that will be used as the object of land acquisition for the public interest is in line with Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia of 1945 which states that the state recognizes and respects the units of customary law communities and their traditional rights. This applies as long as it is alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia. Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia of 1945 contains several meanings, namely:

1. The state recognizes that customary law has an important role in the lives of local communities.
2. The state is committed to preserving and protecting the cultural diversity that exists in Indonesia.
3. The state recognizes that customary law communities have inherent rights.
4. The state respects that customary law communities have unique local wisdom and culture.

[3] Gaffar, *Constitutional Democracy, Indonesian Constitutional Practice, After the Amendment of the 1945 Constitution,* Konpres, Jakarta 2013, p. 160

5. Customary law communities have an obligation to contribute to national development.

Customary law sees society as a type of coexistence where humans view each other as the goal of living together, so that this system of coexistence gives rise to a new culture where each member of the group feels that he or she is bound to each other.

The concept of customary law societies was first introduced by Cornelius Van Vollenhoven. Ter Haar as a student of Cornelius Van Vollenhoven explored more deeply about customary law societies. Ter Haar gives the following definition, customary law society is an organized group of people, settled in a certain area, has its own power, and has its own wealth in the form of visible and invisible objects, where the members of their respective units experience life in society as a natural thing according to the nature of nature and none of the members has the mind or tendency to dissolve the bond that has grown or abandoned in the sense of breaking free from that bond for ever. [4]

The definition of customary law communities itself is regulated in Article 1 Paragraph 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Rights of Customary Law Communities, which states that the recognition of the rights of customary law communities is a group of people who are bound by their customary law order as joint citizens of a legal alliance due to the similarity of residence or on the basis of descendants who are have customary institutions, have property and/or customary objects owned by the commonwealth, as well as value systems that determine customary institutions and customary law norms. Thus, it can be concluded that a customary law society is a group of people that have their own provisions, territorial boundaries, and norms that apply wherever the community is located and are obeyed by the members of the community group in that group.

Meanwhile, F.D Hollemen stated that in general there are 4 (four) types of customary law societies in Indonesia as follows:[5]

[4] Husen Alting, *Legal Dynamics in the Recognition and Protection of Customary Law Peoples' Rights to Land*, LaksBang Pressindo, Yogyakarta, 2010, p. 30

[5] Jawahir Thontowi, *Regulation of Indigenous Law Communities and the Implementation of Protection of Their Traditional Rights*, Faculty of Law, Islamic University of Indonesia, Volume 10, Number 1, 2015, p. 4

1.1 Magical religious

Magisch Religieus is defined as a mindset based on people's beliefs about the existence of something sacred. This religious magic also means that people do not recognize the separation between the natural world and the supernatural world, both of which run in balance. People believe that every deed in all its forms will receive rewards and punishment from God. The pattern of thinking of the people before knowing religion is to believe in supernatural objects that inhabit an object. In Scholten's mind, such legal rules were not based on the mind alone, but also involved the spiritual realm.

1.2 Communal

Customary law societies assume that each member of society is an integral part of the customary law society as a whole. The *communal* principle in customary law society requires that members of customary law communities maintain the principles of harmony, kinship and mutual cooperation and do not highlight personal interests, but rather prioritize common life. Sociologists place this shared life as a model *of gemeinschaft*. This is different from the *gesselschaft* model where the relationship between members of society is formal, economically oriented, utilitarian, and more based on social reality.

1.3 Concrette

Concrete principles are interpreted as clear or tangible principles that show that every act done in society is not done secretly. It is important to affirm that this concrete or tangible principle relates to legal liability. Current developments show that legal responsibility is more imposed on policy implementers when the heavier legal responsibility should lie with policymakers.

1.4 Constant

The constant principle means participation, especially in the fulfillment of achievements. Every achievement achievement is always accompanied by a counter-

achievement that is given immediately or directly. For example, in a sale and purchase agreement after an agreement has occurred, it is always accompanied by payment as a sign of completion (panjar). The constant principle does not only occur in buying and selling transactions but also in other things such as marriage with the terms pangjadi (West Java) and paningset (Central Java) given by the groom to the bride in all its forms which is intended as the groom's seriousness to carry out the marriage.

The point of problem is that it can be mentioned as a party that has the right to be used as the subject of land acquisition if the land is the customary land of the customary law community. This can be found in Article 46 Paragraph (2) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2021 concerning the Implementing Provisions of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, which essentially states that the party who has the right to be the subject of land acquisition is the holder of land rights, holders of management rights, nazhir for waqf land, holders of written evidence of old rights, **customary law communities,** parties who control State Land in good faith, holders of the basis of control over land and/or owners of buildings, plants, or other objects related to land.

The customary law community's rights to land are known as "Customary Law Community Land Ownership" or in some communities referred to as "customary land". Land ownership of customary law or customary rights to land. In proving the land that is the object of land acquisition, it can be guided by Article 23 of Government Regulation Number 24 of 1997 concerning Land Registration, which states that in order to obtain the correctness of juridical data, namely:

1. The determination of the granting of rights from the authorized official to grant the rights concerned according to the applicable provisions if the granting of rights comes from state land or land of management rights.
2. The original PPAT deed which contains the grant of the right by the owner of the property to the recipient of the right concerned regarding the right to use the building or the right to use the land of ownership.

If the object of land acquisition already has a land certificate, then the land rights certificate becomes proof of land ownership from the person who is entitled to the land, which then becomes the basis for the payment of compensation to the rightful owner, but

the problem is if the land is land under the control of customary law communities, because until now, there are still differences in definitions of indigenous peoples and land ownership by indigenous peoples in Indonesia. which leads to multi-interpretations and inconsistencies in identifying and defining indigenous peoples and their land tenure systems in Indonesia.

A problem that is very likely to arise in customary land is the difficulty of 'translating' customary law on the control and ownership of customary land into the national legal system. Customary law in Indonesia is very diverse, including in the regulation of control and ownership of customary lands. In many places, customary/customary land is under the management of customary elders, and indigenous peoples are allowed to use and utilize the land, as a place to live and a source of livelihood.

In customary law, these lands are still controlled by indigenous peoples, even though their control and utilization are carried out by individuals or even allowed to other parties to cultivate as agricultural land. This then creates complexity in land registration based on the perspective of Indonesian land law, about how to describe the subject and object of land rights for customary land.

From various studies on customary land and land acquisition, the complexity of customary and customary land administration in Indonesia in the context of land acquisition can be classified into several aspects, including the difficulty of identifying indigenous peoples and customary lands in projects that involve land acquisition for the public interest, including in defining the subjects and objects of customary lands. This mainly affects the mechanism for awarding compensation, about who is entitled to compensation, and how much each party receives compensation.

In the context of land acquisition in Indonesia, compensation is given to the right party who physically owns and controls land with a certain territory. Meanwhile, in many cases, indigenous peoples in Indonesia may not inhabit a place permanently, they may be nomadic inhabitants who do not inhabit certain territories, and may be affected by these procurement activities due to the loss of access to natural resources or land in them. In this case, it is difficult to detect the existence of indigenous peoples based on their geographical existence.

In the regulations related to the Indonesian land acquisition process, there is no specific evidence of juridical evidence of ownership or control of land by indigenous

peoples that is required to exist as a basis for determining land ownership or in terms of providing compensation. In practice, the Land Acquisition Committee requires proof of ownership of indigenous peoples' land or customary law community land ownership, guided by Article 52 Paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2019 concerning the Implementation Regulation of Government Regulation Number 19 of 2021 concerning Land Acquisition, namely a statement of physical control of the land plot from the person concerned, known by a reliable person and witnessed by at least 2 (two) witnesses from the local community who do not have a family relationship with the person concerned to the second degree, either in vertical or horizontal kinship, who state that the person concerned is the true owner or control of the plot of land and the plot of land is really controlled by the person concerned continuously/uninterruptedly accompanied by a history acquisition. This is like what happened on Nustual Island, Tanimbar Islands Regency, Maluku Province, the land acquisition process which is the object of land acquisition is the joint property of the Customary Law Community in Lermatang Village.

The obligation of Article 52 Paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 19 of 2019 concerning the Implementation Regulation of Government Regulation Number 19 of 2021 concerning Land Acquisition is actually a requirement for juridical evidence of land control from a party who in good faith controls state land, while in this provision, the object of land acquisition derived from the land ownership of customary law communities is not categorized as land State, but is a type of control over its own land.

In addition, in reality, indigenous peoples do not occupy and control the land that is the object of land acquisition, nor do they have written evidence related to the ownership of the land in question, but on the other hand they are required to submit a statement of physical control of the land plot, which is something that cannot be held accountable in the future and can cause criminal prosecutions, both for the land acquisition committee, nor do the parties consider themselves entitled to their land. In addition, the land acquisition implementation committee has an obligation so that the implementation of land acquisition must be carried out because it is part of the National Strategic Project, so that development activities must be carried out as soon as possible. The formulation of the problem that can be studied in this writing is how is the legal

certainty of evidence of land ownership against the communal rights of customary law communities on the object of land acquisition?

2 RESEARCH METHODS

According to the legal issues of this research, the type of research that will be used is normative legal research, which is a research that mainly examines positive legal provisions, legal principles, legal principles and legal doctrines to answer the legal issues faced. Definition Normative legal research is a study that examines both positive legal provisions and legal principles, by systematically explaining legal provisions in a certain legal category, analyzing the relationship between legal provisions. [6]

3 DISCUSSION

3.1 Legal certainty of evidence of land ownership of communal rights of customary law communities on the object of land acquisition

The customary land of customary law communities has actually been regulated in customary law. The concept of customary law itself in each region is different depending on the characteristics of the customary law community. One of the characteristics of customary land regulation is the existence of proof of ownership carried out through material control (physical control). This is an inherent characteristic of customary law which is indeed unwritten regulation but has its own authority that is followed, obeyed and implemented by customary law communities. The right of customs, according to Vanvollhoven, is the right to control the lands of indigenous peoples. However, the legal community does not have the authority to sell immovable property under its jurisdiction. Customary rights are the right of a legal partnership to use land that is still growing within its environmental zone for the benefit of the legal community and its members, as well as for the benefit of outsiders with its permits and payments.

Land acquisition often uses customary land as a target to carry out development

[6]Terry Hutchinson, *Researching and Writing in Law*, Lowbook Co., Sydney, 2002, hlm. 9

for the public interest. In providing compensation to customary law communities in the form of replacement land, resettlement, or other forms that have been approved by customary law communities which do not violate the provisions of the law. However, land acquisition carried out by the government or local government has many problems or obstacles. Problems in procurement occurred because in the deliberation process there was no agreement on the compensation price between indigenous peoples and the Government, this also caused the land acquisition process to be protracted.[7]

Customary law communities actually do not object if their land is taken over for development that can provide benefits and welfare for the community, but in the process of land takeover, it is often used by groups which are for their own benefit by pretending to be in the public interest. This also raises doubts among indigenous peoples whenever there is a land acquisition activity for development for the public interest.[8] Even in terms of land acquisition, the community is dissatisfied and the community does not have the right to their land affected by the land acquisition project.

The problem of compensation is the most difficult for the government to handle, in the efforts made by the government which uses the land rights of customary law communities to cause losses to customary law communities because the form or compensation given by the government to customary law communities is not in accordance with what the customary law community wants, even the compensation is detrimental.[9] According to Setiono that: "Legal protection is an act or effort that aims to protect the community from arbitrary acts by the ruler that is not in accordance with the rule of law in order to realize order and tranquility"

Talking about evidence of indigenous peoples' land ownership as an object of land acquisition for the public interest, it will be found that the system of proof on customary land as an old right, can be found in the provisions of Article 24 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, which stipulates that "In the event that the means of proof as referred to in Paragraph (1) are not

[7] Denico Doly, 2011, The Status of Customary Land in the Planning of Laws on Land Acquisition for General Development, Journal of Studies Vol. 16 No. 3, p.455
[8] Marulak Togatorop, 2020, Protection of Land Rights of Indigenous Law Communities in Land Procurement for the Public Interest, Yogyakarta, p. 160
[9] Retno Mumpuni, et al., 2017, Ondofolo Participation in Land Compensation for the Equitable Public Interest Scientific Journal of Pancasila Education and Citizenship, Vol. 2 No. 1, p. 68

or are no longer fully available, Proof of right can be done based on the fact of physical possession of the land in question for 20 (twenty) years or more consecutively by the registration applicant and his predecessors", provided:

a) The possession is carried out in good faith and openly by the person concerned as the owner of the land, and is strengthened by the testimony of a trustworthy person;
b) The control both before and during the announcement as referred to in Article 26 is not questioned by the customary law community or the village/sub-district concerned or other parties".

The provisions of Article 24 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration are the legal basis for ownership of customary land that has not been proven by the existence of a certificate. In Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration, physical control is determined for 20 (twenty) years consecutively and in good faith as previously explained. Regarding the condition of good faith, it can be interpreted that he is the owner of the land and not the land belonging to someone else. In addition, from the factual aspect of the law, the legal subject who controls the land makes the land as the source of his daily life on the land so that the land is managed continuously without interruption.[10] The physical control letter of land can be used as a guideline, handle and proof of ownership for customary law communities as long as the ownership is carried out for 20 (twenty) consecutive years, in good faith and openness and evidenced by the testimony of a trustworthy person.

A physical land control letter can actually be used as proof of land ownership. Customary law communities who are constrained by the recognition and protection as stipulated in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights to the Land of Customary Law Communities and Communities in Certain Areas.

[10] M I Arisaputra and S W A Mardiah, *"The Legal Position of Customary Land in the Development of Land Administration in Indonesia: A Comparative Study"*, Amanna Gappa 27, no. 2, 2019, Accessed at the website address https:TahunTahunjournal.unhas.ac.idTahunindex.phpTahunagjlTahunarticleTahunviewTahun8338.

can carry out land management through the issuance of a letter of physical control of the land as stipulated in Article 24 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. Government Regulation Number 24 of 1997 concerning Land Registration which stipulates in Article 26 that a statement of physical possession is an alternative evidence if there is no juridical evidence.[11] The provisions of Article 24 Paragraph (2) of Government Regulation Number 24 of 1997 concerning land registration provide legal solutions if the right holder does not have proof of ownership either in the form of written evidence or other forms that can be trusted.[12]

The recognition and protection of the rights of customary law communities in the form of collective recognition is the government's task in order to guarantee the rights of customary law communities as a unit of Indonesian citizens. Collective recognition of the existence of legal communities is the main thing as well as the level of development of indigenous peoples' recognition that has also been carried out in the international world.[13]

Regarding the existence of indigenous peoples and their land rights, which are hereinafter referred to as customary rights as described above, the location of the research in this writing is located in Tanimbar Islands Regency, Maluku Province, where in 2020, land acquisition activities for the liquefied natural gas refinery in the Masela working area have been carried out, by the Land Procurement Implementer, namely the Regional Office of the National Land Agency of Maluku Province. The author found the fact that until now the land acquisition activities on Nustual Island, which is located in the Tanimbar Islands Regency, cannot be resolved because the land that is the object of land acquisition is an empty island, which is recognized by one of the families as customary land, which is then handed over to a third party as a cultivator of long-lived and short-lived plants with rent, but at the same time it is the object of a civil lawsuit by one indigenous family

[11] A Zefanya and F X A A Lukman, *"Benchmarking the Fulfillment of Physical Control of Land Through A Statement of Physical Control of Land Plots*", JURNAL USM LAW REVIEW, 2022, Accessed at the website address https:TahunTahundoi.orgTahunhttp:TahunTahundx.doi.orgTahun10.26623Tahunjulr.v5i2.4878.

[12] D A Mujiburohman, *"Legalization of Former Land of Eigendom Rights"*, Judicial Journal, 2021, Filed at the website address https:TahunTahunwww.academia.eduTahundownloadTahun66755472TahunLegalisasi_eigendon_Jurnal_KY.pdf.

[13] Vicky Tauli-Corpuz et al*., "Cornered By Pas: Adopting Rights-Based Approaches To Enable Cost-Effective Conservation And Climate Action*", World Development 130 (June 2020): 104923, Diakses pada alamat Website https:TahunTahundoi.orgTahun10.1016Tahunj.worlddev.2020.104923

to another, so it is a question for the Author, is it true that the land belongs to a family that has been determined from the beginning as the rightful owner by the Land Acquisition Implementer, based on a physical possession letter as proof of land ownership, which is given to the Land Acquisition Implementer?

Based on the author's interviews and research, the two families sued each other at the Saumlaki District Court, continued to the Ambon High Court and until then one of the parties filed a Cassation to the Supreme Court of the Republic of Indonesia, and at the stage of issuing a Letter of Introduction by the Chief Executive of Land Acquisition to the Entitled Party to take the compensation funds that were previously entrusted *(consignment)* At the Saumlaki District Court, the Supreme Court of the Republic of Indonesia Decision Number: 3350K/Pdt/2023 was issued, so that the implementation of land acquisition activities was temporarily stopped and could even be canceled. This is an infinite loss, for all parties involved, both agencies that need land, and Land Acquisition Implementers, because they have spent a lot of energy, time and cost to be able to carry out land acquisition activities since 2020. The biggest impact is that development for the public interest in the form of a liquefied natural gas refinery in the Masela work area, is delayed and income tax revenue for the Tanimbar Islands Regency is in danger of being lost.

As for one of the considerations of the Panel of Judges in the Decision of the Supreme Court of the Republic of Indonesia Number: 3350K/Pdt/2023, it is stated that "that the object of the dispute should be managed by the Regional Government of Tanimbar Islands Regency, to be used as much as possible for the prosperity and welfare of the Tanimbar Islands Regency Community in general and the Lermatang Village Community in particular, so that if any transfer of rights to the object of dispute is made, the government must be involved Tanimbar Islands Regency".

In its ruling, the Panel of Judges adjudicated itself, namely rejecting all lawsuits of the Plaintiff/Appellant/Cassation Petitioner and did not designate one of the litigants as the owner of the land.

The same thing is also in the Provisional Review Decision Number: 1089 PK/Pdt/2024 upholding the Supreme Court's Decision which in the judge's consideration stated that "the object of the dispute should be managed by the state in casu through the Regional Government of Tanimbar Islands Regency to be used as much as possible for

the welfare and prosperity of the community in general and the people of Lermatang Village in particular".

Based on the legal considerations and the decision of the Panel of Judges of the Supreme Court of the Republic of Indonesia mentioned above, it is clear that the Physical Possession Letter submitted by the party claiming to be entitled to the customary land, as well as meeting the requirements as proof of ownership of customary land Article 24 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Registration of *junto* Land Article 52 Paragraph 1 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 19 of 2021 concerning Provisions for the Implementation of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, is not recognized as evidence of ownership of customary land that is the object of land acquisition for the liquefied natural gas refinery in the Masela work area.

The above consideration of the Panel of Judges, which involves the Regional Government in every transfer of its land rights, gives several conclusions, namely as follows:

1. The Panel of Judges did not necessarily ignore the existence of land ownership by the traditional family (community) over the land.
2. The Panel of Judges does not designate the Regional Government as the owner of the land, but the involvement of the Regional Government is required in every transfer of land ownership.
3. In line with the provisions of Law Number 23 of 2014 concerning Regional Government, it provides authority for the Regions to be able to make regional regulations that provide recognition of customary rights to the land of customary law communities.

Local governments and regional autonomy that form local governments are the first line that can provide recognition and protection of customary rights to the land of customary law communities. Thus, in relation to the existence of land rights from indigenous peoples in Tanimbar Islands Regency, the author concludes that:

1. It must begin with the issuance of a decree or regulation of the Regional Head regarding the existence of indigenous peoples *and/or* land rights controlled or owned by indigenous peoples

2. Providing information on the history of land ownership to an indigenous people who actually own and/or control their land
3. As an official and/or witness in the document of land ownership of indigenous peoples' control

Thus, every land acquisition activity carried out in the Maluku Province area can make the Decision of the Supreme Court of the Republic of Indonesia Number: 3350 K/Pdt/2023 and the Review Decision Number: 1089 PK/Pdt/2024 as jurisprudence, and the new formula related to the recognition and juridical evidence of indigenous peoples' land ownership as explained above, can be added as a document that must be used as evidence of the control and ownership of land in The object of land acquisition, other than that which has been determined as proof of ownership which is a requirement in the provisions of the applicable rules, so that later the land acquisition process for the development of the public interest can run smoothly and not become the material of findings that indicate criminal acts in the future for the parties involved in it.

4 CLOSING

The conclusion that can be expressed in this writing is that the legal certainty of customary land which is the object of land acquisition needs to be protected by its rights with a clear legal umbrella by local governments.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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