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Model for Ulayat Land Dispute Resolution Based on Participatory Justice in the Era of Sustainable Development

B. Rini Heryanti[1]* and Amri Panahatan Sihotang[2]

Faculty of Law, Universitas Semarang, Indonesia

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Abstract

The goal of this research is twofold: to investigate and evaluate the existing model for the resolution of disputes concerning customary rights in Indonesia and to devise a model for the resolution of such conflicts that is founded on participatory justice and is appropriate for use in an era in which sustainable development is a priority. The Juridical Empirical approach is employed as the methodology for this investigation. According to the study's findings, the lack of instruments or mechanisms for resolving ulayat land disputes will make it difficult for indigenous peoples to gain access to the magical religious values of indigenous peoples related to the spiritual, social, and cultural values of indigenous peoples. These magical religious values are tied to indigenous peoples' traditional ways of life. Indigenous peoples' rights can be protected through participatory justice by exerting influence over the processes and policies involved in the resolution of ulayat land disputes. This ensures that indigenous peoples will continue to have access to social rights and human rights about preserving their values, spiritual, social, and cultural qualities sustainably.

A. Introduction

According to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, all nations have the right to self-determination, which includes freely determining their political status and pursuing economic, social, and cultural development. However, there have been disagreements on the meaning of the word nation, and it is unclear who is intended by nation.[1] Because the usage of the word "nation" regarding Indigenous Peoples will be connected with the ability to secede from the independent state system, there is opposition from several states to the use of the term. Some of these nations favor the phrase population, while others prefer to use ethnicity.[2] On the other side, some people use the phrase community because of the acknowledgment inherent in having various identities. These individuals use the term for this reason. Nevertheless, the phrase "Indigenous Peoples" is meant to be referred to when the word "nation" is used in Indonesia.

It is estimated that over 370 million indigenous people live in the world today. These people belong to 5,000 distinct tribes and may be found in 90 countries throughout the globe. Indigenous peoples may be found in

1 B. Guimei, "The International Covenant on Civil and Political Rights and the Chinese Law on the Protection of the Rights of Minority Nationalities," Chinese Journal of International Law 3, no. 2 (January 1, 2004): 441–470.

2 Bengt T. Karlsson and T.B. Subba, eds., Indigeneity In India, 0 ed. (Routledge, 2013), accessed November 11, 2021, https://www.taylorfrancis.com/books/9781136219221.

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Address : Jalan Arteri Soekarno-Hatta, Semarang City, Central Java 59160, Indonesia
E-mail : b.riniheryanti032@gmail.com

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every part of the globe, but Asia is home to around 70 percent of all indigenous people. Indigenous peoples account for around 5 percent of the globe's total population but approximately 15 percent of the world's impoverished population.[3] Indigenous Peoples include Inuit from the Arctic, Native Americans, hunters in the Amazon, traditional herders such as the Maasai in East Africa, Indigenous Dayaks in Indonesia, and tribal peoples in the Philippines. Although there is no universally accepted definition of "Indigenous Peoples," from all available definitions, it can be concluded that those who qualify as Indigenous Peoples are:[4]

- They often have small populations compared to the dominant culture in their country;
- They usually have their language;
- They practice different cultural traditions;
- They have their lands and territories connected to them on various levels; and
- They identify themselves as Indigenous.

In Indonesia, the recognition of indigenous peoples and their rights, such as ulayat rights, is regulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This paragraph states that the State recognizes and respects customary law community units and the rights of their traditional members. This paragraph also states that the State recognizes and respects the rights of its indigenous peoples as long as it is still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

Based on thirteen years of research conducted by Gail Whiteman [5] the effects that the development of natural resources has had on Indigenous Peoples all around the United States demonstrate that conflict can always erupt between local Indigenous Peoples and businesses involved in hydropower, mining, oil and gas, and forestry. Natural resource development projects are also site-specific in terms of their scope and environmental impact on economic development. On the one hand, Indigenous Peoples always try to maintain their original, distinctive culture, but on the other hand, natural resource development projects impact the environment. This can lead to conflicts. The constant cries for "justice" have been a theme that runs through many wars. Indigenous peoples are fighting for justice worldwide, from the arctic to the deserts to the Amazon rainforest. These people often do not believe that extracting natural resources from their territory contributes significantly to economic growth. Despite the emergence of corporate charters on social responsibility and extensive programs for stakeholder interactions and community participation, many people believe that such development is inherently unjust.[6],[7]

It is necessary to prioritize the active participation of all parties in determining the contents of the decision to resolve disputes over customary rights that occur between Indigenous Peoples and the Company or the Government. This understanding comes about as a result of acknowledging the existence of Indigenous Peoples, which leads to the realization that it is necessary to do so. Participatory justice is the term used to describe this idea. The term "participatory justice" often refers to the direct engagement in decision-making itself of whoever would be most impacted by a choice. This may relate to judgments made in courts and choices made by those who decide policy.

3 Stephanie Russo Carroll et al., "Indigenous Peoples' Data During COVID-19: From External to Internal," Frontiers in Sociology 6 (March 29, 2021): 617895.

4 Zahra Meghani, "Autonomy of Nations and Indigenous Peoples and the Environmental Release of Genetically Engineered Animals with Gene Drives," *Global Policy* 10, no. 4 (November 1, 2019): 554–568.

5 Gail Whiteman, "All My Relations: Understanding Perceptions of Justice and Conflict between Companies and Indigenous Peoples," Organization Studies 30, no. 1 (January 1, 2009): 101–120.

6 Jonathan A. Jacobs and Jonathan Jackson, eds., The Routledge Handbook of Criminal Justice Ethics, Routledge international handbooks (London ; New York, NY: Routledge Taylor & Francis Group, 2017).

7 Claire Garbett, "The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice," Restorative Justice 5, no. 2 (May 4, 2017): 198–220.

According to the United Nations resolution on "Transforming Our World: the 2030 Agenda for Sustainable Development," the global indicator framework that will measure the implementation of the 17 sustainable development goals includes two indicators that refer to indigenous peoples and several other indicators that are relevant to indigenous peoples, especially regarding land rights.[8] This is because the global indicator framework will measure the implementation of the 17 sustainable development goals. Indicators of sustainable development should also be broken down according to income, gender, age, race, ethnicity, migration status, disability, geographic location, and other factors in line with the foundational tenets of official statistics. [9] Sustainable development aims to solve concerns that are directly relevant to Indigenous Peoples. These issues include eliminating poverty, protecting human rights and guaranteeing inclusion for everyone, maintaining good governance, reducing conflict, and ensuring environmental sustainability.[10]

Therefore, in this age of sustainable development, it is essential to construct a paradigm of resolution of customary land disputes based on participatory justice. This is necessary to fulfill justice for Indigenous Peoples as acknowledged by the constitution. Model of settlement of customary rights disputes in Indonesia at this time and to construct a model of settlement of customary rights conflicts based on participatory justice in the age of sustainable development model of settlement of customary rights disputes in Indonesia.

8 Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors. Second Revised Edition* (Leiden, The Netherlands: Brill | Nijhoff, 2016), https://brill.com/view/title/33562.

9 David B. Abraham, "Local SDG Indicators for US Cities and Communities," in Promoting the Sustainable Development Goals in North American Cities: Case Studies & Best Practices in the Science of Sustainability Indicators, ed. David B. Abraham and Seema D. Iyer (Cham: Springer International Publishing, 2021), 147–155, https://doi.org/10.1007/978-3-030-59173-1_11.

10 W. Leal Filho et al., "Using the Sustainable Development Goals towards a Better Understanding of Sustainability Challenges," International Journal of Sustainable Development & World Ecology 26, no. 2 (February 17, 2019): 179–190.

B. Methods

An empirical juridical approach or legal sociology, which is an approach that looks at the legal reality in society, will be employed in this study. Both of these terms refer to a methodology that will be applied. The empirical juridical approach is a method that is used to look at legal issues in social interactions in society. It also acts as a support to identify and explain the results of non-legal materials for legal writing. This technique was developed in the 1970s. [11]

Primary data, which are received directly from the source either via in-depth interviews, in the form of words; observations, in the form of actions; and reports, in the form of unofficial papers collected, are the primary data sources used in this qualitative study. The remainder comprises supplementary information or secondary data, both of which were collected from official sources, such as papers and other sources provided by indigenous peoples and enterprises (key persons).

C. Results and Discussion

1. Indigenous Peoples' and Customary Rights Recognition Based on Indonesian Law

Indigenous peoples are not a group of people whose existence appeared out of nowhere at some point in the past decade, even though there has been much talk about their history and the local knowledge they possess in this country and around the world as a result of the coronavirus pandemic. Indigenous peoples are still around today. On the other hand, it has a long history that predates the establishment of the Indonesian Unitary State and the Republic of Indonesia. Additionally, the law has formally acknowledged the presence of these indigenous peoples; now, there are twenty-five statutes in place that control indigenous peoples. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the state recognizes and respects customary law

11 Zainuddin Ali, Metode Penelitian Hukum (Jakarta: Sinar Grafika, 2021), https://books.google.co.id/books?id=y_QrEAAAQBAJ.

community units and their traditional rights as long as they are still living and by the development of society and the principles of the Unitary State of the Republic of Indonesia. This article is on the books because of regulations that acknowledge the existence of indigenous peoples and their rights. In many regulations and developing discourses, references to the constitutional rights of indigenous peoples first always refer to Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Advocacy and discourse on indigenous peoples are more at the level of rights than at other levels. The provisions of Article 281 paragraph (3) of the 1945 Constitution of the Republic of Indonesia are also the result of the second amendment to the 1945 Constitution of the Republic of Indonesia in the year 2000. The human rights that are more in line with the constitutional basis of Article 281 paragraph (3) of the 1945 Constitution of the Republic of Indonesia are the same as Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The following language may be found in paragraph 3 of Article 281, which reads: "the cultural identity and rights of traditional communities are protected in keeping with the evolution of the times and civilization." The cultural identity of communities governed by customary law, including rights to property governed by custom, is safeguarded by the requirements of Human Rights Law Number 39 of 1999.

The human rights approach is the constitutional approach to paragraph 3 of Article 281 of the 1945 Constitution of the Republic of Indonesia. This is evident in the organization of the 1945 Constitution of the Republic of Indonesia, which inserts Article 281 paragraph (3) of the 1945 Constitution of the Republic of Indonesia together with other human rights in chapter XA on Human Rights of the 1945 Constitution of the Republic of Indonesia. As a result, the Ministry of Law and Human Rights is the department of the government that has the greatest amount of responsibility for the constitutional foundation.

Article 32, paragraph (1), and paragraph (2) of the 1945 Constitution of the Republic of Indonesia contain other provisions related to indigenous peoples' existence and rights. In addition to the provisions that have been previously explained, these other provisions in the constitution include: Article 32 paragraph (1): advancing Indonesian national culture amid world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values "; Article 32 paragraph (2): guaranteeing the freedom of the people to maintain and develop their cultural values "; Article 32 paragraph (3): The following sentence may be found in paragraph 2 of Article 32: "The state recognizes and preserves regional languages as national cultural treasure."

Any of these two articles does not immediately address the rights of indigenous peoples over natural resources. On the other hand, in indigenous peoples' day-to-day lives, traditional patterns of natural resource management have grown into their own culture, which is distinct from the patterns produced by industrial groups. When it comes to the management of natural resources and the environment, these patterns of natural resource management have evolved into one of the local wisdom or traditional community wisdom. [12]

> *As the primary body of legislation that governs agricultural concerns particularly. Article 5 of the Basic Regulations on Agrarian Principles Law No. 5 of 1960 states explicitly that agrarian law applicable to earth, water, and space is customary law as long as it does not conflict with national and state interests based on national unity, with socialism as stated in the law, and with other regulations, everything with due regard to elements based on religious law. The law also states that agrarian law applicable to earth, water, and space is customary, provided that it does not conflict with. In addition, Article 3 of the Basic Agrarian Law states that the state recognizes and respects community units governed by customary law as long as they are still active and as long as they are by community development and the Unitary State principles of the Republic Indonesia. This provision applies so long as the community units meet the criteria mentioned above. On the other hand, the Basic Agrarian Law does not govern in further depth what is meant by the*

12 Laksanto Utomo, Hukum Adat, 2nd ed. (Jakarta: Raja Grafindo Persada, 2017), 186.

term ulayat rights.[13]

Article 67 of Law no. 41 of 1999 concerning Forestry states (1) Customary law communities as long as in reality they still exist, and their existence is recognized as having the right to (a) collect forest products to fulfill the daily needs of the indigenous peoples concerned, (b) carry out forest management activities. based on applicable customary law and does not conflict with the law, and (c) obtain empowerment to improve their welfare. (2) Confirmation of the existence and elimination of customary law communities as referred to in paragraph (1) shall be stipulated by a Regional Regulation; (3) Further provisions as referred to in paragraphs (1) and paragraph (2) shall be regulated by a Government Regulation.[14] Law No. 32 of 2004 concerning Regional Government was replaced by Law no. 23 of 2014 concerning Regional Government and Law no. 39 of 1999 concerning Human Rights. Judging from some of these regulations, it can be concluded that the recognition of the existence of indigenous peoples recognized by the government is conditional, namely, regarding the existence of indigenous peoples after their existence, their rights are recognized and protected by the state. Each law has criteria for indigenous peoples, and the object of each regulation provides different separate arrangements; of course, this will also provide a different way for indigenous peoples to enjoy their rights. Whereas in the Preamble to the 1945 Constitution, paragraph IV, it is stated:

The independence of the Indonesian nation was subsequently drafted based on this form. The independence of the Indonesian nation was based on an Indonesian state government that protects the entire Indonesian nation as well as the entire homeland of Indonesia, as well as promotes public welfare, educates the nation's life, and participates in carrying out a world order that is based on independence, eternal peace, and social justice. The Constitution of the Indonesian state, which is formed in a state structure of the Republic of Indonesia, which is sovereign by the people based on: Belief in One God, just and civilized humanity, Indonesian unity, and democracy led by wisdom in deliberation/representation, and by realizing social justice for all Indonesian people. The Constitution of the Indonesian state is formed in a state structure of the Republic of Indonesia, which is sovereign by the people.

As a result, the state is obligated to protect its citizens, especially its indigenous peoples. Indigenous peoples are inextricably linked to the land on which they live; besides providing a means of subsistence, the land also shares a magical and spiritual connection with indigenous peoples. Based on this connection, indigenous peoples are formed so that there is an arrangement of indigenous peoples formed based on factors specific to particular regions. Alternatively, territories, which are called territorial indigenous peoples or genealogical territorial indigenous peoples, are community structures formed not only based on their territory but also on their heredity and genealogical indigenous peoples structure, which are formed only due to heredity. Indigenous people's structures formed solely due to heredity are indigenous genealogical peoples. In Java, there is a proverb that goes, "sedumuk batuk sanyari bumi ditohi kanti pati," which translates to "even though the land is narrow, it will be maintained until the last drop of blood or until a life is sacrificed in defending their rights." This proverb serves as an illustration of the close relationship between indigenous peoples and the lands they inhabit.

Ulayat land is a plot of land on which there are ulayat rights of a certain community. Indigenous peoples acknowledge the existence of ulayat land, a parcel of land on which there are ulayat rights of a certain community and in which there are ulayat rights, which are the right to control the authority possessed by customary law communities over the territory. There is a distinction in customary law between legal alliance rights (also known as individual rights) and individual rights in terms of property ownership. The rights of legal partnerships on land and the rights of individuals on land have a very tight connection with one another and impact one another.[15] Abdon Nababan said that of the many categories of rights related to indigenous peoples, there are at least four rights of indigenous peoples that are most often voiced, including:[16] The right to "own"

13 Mudjiono, "Eksistensi Hak Ulayat Dalam Pembangunan Daerah," Jurnal Hukum 11, no. 24 (2004): 152–166.

14 Putera Astomo and Asrullah Asrullah, "Legal Protection for The Indigenous Law Communities and Their Traditional Rights Based on the Verdict of the Constitutional Court," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 6, no. 1 (April 2019): 90–108.

15 Bambang Daru Nugroho, Hukum Adat Hak Menguasai Negara Atas Sumber Daya Alam Kehutanan Dan Perlindungan Terhadap Masyarakat Hukum Adat (Bandung: Refika Aditama, 2015), 96.

16 Abdon Nababan and S Sampurna, Perlindungan

(control), as well as manage (keep, use) land and natural resources that are located within its customary area; the right to self-regulate in line with customary law, as well as any other customary regulations that have been freely agreed upon by communities governed by customary law; The right to look out for oneself by the administrative structure and traditional institutions; and The right to one's own identity, culture, belief system (religion), knowledge system (wisdom), and the ability to communicate in one's tongue.

1. Model for Communal Land Dispute Resolution Based on Participatory Justice in the Era of Sustainable Development

Adat Badamai in the Banjar community of South Kalimantan, Adat Badamai is a form of conflict settlement that is still successful in both civil and criminal elements. The Adat Badamai is recognized by the constitution as an alternative conflict settlement method and incorporates the ideas and norms of restorative justice. The concept of a win-win situation (its benefits). The Adat Badamai is a conflict settlement used by the Banjar people. As a consequence of the process of deliberation or deliberation in cooperative conversations to conclude a solution to a problem, the Adat Badamai is also significant. This peaceful tradition is acknowledged for its effectiveness in settling conflicts or disputes and its ability to erase sentiments of vengeance and play a part in the creation of calm, tranquillity, and harmony. Adat Badamai are also known as Babikan, Baparbaik, and Bapatut.

Traditional wisdom in resolving ulayat land disputes can occur in indigenous peoples, both with the government and with investors; it is preferable if they continue to use traditional dispute resolution, such as reviving or strengthening customary land dispute resolution (for example, Adat Badamai), which benefits and benefits the disputing parties.

In Minangkabau, ulayat land conflicts are settled using the "Bajanjang Naiak Batanggo Turun" technique. Every issue is settled via the process of customary institutions at the lowest level, namely by mamak people, according to Bajanjang Naiak. If no compromise is reached, the matter is escalated to the village level, namely by the village mamak. And so on, all the way up to tribal leaders and penghulu in the Nagari Customary Density. The term Batanggo Turun refers to the expectation that the outcomes of discussion or conflict settlement by ninik mamak or elders in adat would be followed by the litigants. Dispute resolution processes used by Minangkabau traditional institutions, ranging from smaller institutions, such as mamak separuik or mamak head of inheritance, to higher levels, such as the Nagari Customary Density, are based on debate and consensus and emphasize a sense of fairness. The resolution of ulayat land conflicts via traditional institutions is much more successful than the resolution through district courts. This is because clan members have a higher regard for their clan's elders, namely the mamak of the clan chief or the mamak of the head of the heirs.[17]

Matrilineal is the term used to describe the family tree structure followed in Minangkabau. If an ulayat land dispute arises prior to being taken to the District Court, the matter must first be addressed by the Nagari Adat Density. The resolution of communal land disputes in Nagari Sungai Nanam, Solok Regency, is carried out in what is known as a "Bajanjang Naiak Batanggo Turun" manner. This phrase translates to "it is first resolved through customary institutions at a lower level, specifically the tribal level," and then moves on to the final tribal level, the Nagari Customary Density level, resolved by deliberation. Case registration, trial procedures, field surveys, and decision-making are the several steps to resolve land disputes. There was either inadequate or incomplete evidence. There were no witnesses present, and the parties behaved in an unfriendly manner, which was the hurdles encountered in resolving ulayat land disputes

Masyarakat Adat: Refleksi Kritis Untuk Hari Esok (Palangkaraya: Aliansi Masyarakat Adat Nusantara, Wilayah Kalimantan Tengah, 2013), 77–78.

17 Ali Amran, "Penyelesaian Sengketa Tanah Ulayat Melalui Lembaga Adat Di Minagkabau Sumatera Barat," ADHAPER: Jurnal Hukum Acara Perdata 3, no. 2 (2017): 175–189.

in Nagari Sungai Nanam. [18]

Government Regulation No. 40/1996 on Cultivation Right is connected to customary land conflicts, particularly those about customary lands claimed under the Cultivation Right. One example of this is what occurred to the indigenous people of Ketungau Sesaek. In the case of ulayat land awarded a Cultivation Right, the land must first be freed from the control of the customary community before it can be considered state property. After the customary land rights and control have been transferred away from the customary community unit, the indigenous people will no longer have access to the customary land so long as the Cultivation Right is in effect.

In Article 29 of the Basic Agrarian Law, it is stated that Cultivation Rights are granted for a maximum period of 25 years; however, in special provisions for businesses that require a longer usage period, Cultivation Rights may be granted for a maximum period of 35 years; these are the only two provisions that allow for this longer time frame. This may still be extended in line with the relevant laws, and each extension will be granted for 25 years. Disputes are caused when indigenous peoples' competing interests in defending their ulayat lands, intimately connected to their spiritual, social, and cultural practices, conflict with one another concerning the dispute between the indigenous people of Ketungau Sesaek and PT. Tinting Boyok Sawit Makmur's efforts have been focused on finding a resolution that does not involve the court system's use. This has been accomplished through negotiations between the disputing parties regarding the release of land rights that have the Ketungau Sesaek community. However, the negotiations that were carried out did not depict any form of justice or legal certainty in resolving the dispute. This is because there was no active involvement of the relevant agencies in resolving the dispute, particularly the land agency and law enforcement agencies, and particularly the participation of the Ketungau Sesaek community and traditional elders in the settlement.

The resolution of land disputes requires understanding the relationship between humans or groups as legal subjects and land as legal objects, which land rights can represent. This understanding must be the foundation for any discussion regarding the resolution of land disputes. In addition, there is a need for a deeper understanding of land rights, which are the integration of human rights, particularly concerning indigenous peoples. Land rights must be viewed through a unique perspective that considers the spirituality and socio-cultural relationship formed between indigenous peoples and the lands they occupy. This is especially important when considering indigenous peoples.

When viewed from the perspective of the rights owned by indigenous peoples, land rights can be interpreted as inseparable rights arising from the cultural and spiritual activities of indigenous peoples and the territories they occupy. This interpretation is possible because land rights are inextricably linked to indigenous peoples' cultural and spiritual activities.[19] So that the general doctrine applies to the obligation of the state to respect, protect, and fulfill the rights of indigenous peoples, including economic and socio-cultural rights.[20] It is necessary to give recognition and respect to regional government units that have special or special characteristics which are regulated by law, as well as customary law community units with their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law, according to Article 18B of the 1945 Constitution of the Republic of Indonesia, which states that it is necessary to give recognition and respect to regional government units that have special or special characteristics which are regulated by, In ad-

18 Nurhidayati, "Penyelesaian Sengketa Tanah Ulayat Kaum Menurut Hukum Adat Minangkabau (Studi Kasus Di Nagari Sungai Nanam Kabupaten Solok)" (Universitas Bung Hatta, 2020).

19 Victor Emanuel, "Perlindungan Hukum Atas Tanah Adat Dalam Kaitan Dengan Pemberian Izin Usaha Perkebunan Kelapa Sawit Di Kecamatan Serawai Kabupaten Sintan," Perahu 5, no. 2 (2017): 73–80.

20 Marhcel R. Maramis, "Kajian Atas Perlindungan Hukum Hak Ulayat Dalam Perspektif Hak Asasi Manusia" XXI, no. 4 (2013): 98–110.

dition, the right to control the state can be delegated to autonomous regions and communities governed by customary law according to the provisions of Article 2 paragraph (4) and Article 3 of the Basic Agrarian Law as long as such delegations do not go against the provisions of Government Regulations. This provision can be found in both of the articles mentioned above of the Basic Agrarian Law.

Because the relationship between indigenous peoples and the territory or land they control cannot be separated from the recognition of the traditional rights of indigenous peoples by the Unitary State of the Republic of Indonesia, land rights owned by indigenous peoples are logically included in this recognition. This recognition cannot be separated from the relationship between indigenous peoples and the territory or land they control. Therefore, since it has been determined by internationally applicable law that land rights owned by indigenous peoples are an integrated part of human rights, which is also in line with the recognition given by the State of Indonesia, this means that the State of Indonesia should protect land rights by viewing it as nothing more than a human right.[21]

Access to ancestral lands, freedom of religion, cultural rights, and the right to gain access to natural resources are all impacted by the emerging recognition of the rights of indigenous peoples to maintain their cultural integrity. This is a sign of a relationship between access to ancestral lands and these other rights. On the other hand, land rights are not explicitly stated in the American Convention or the African Charter. Nevertheless, legal entities that pay attention to human rights have given recognition to land rights as an important human rights issue, particularly for indigenous peoples as members of the community. Rights are given to a group of individuals on a more general scale, including social rights, cultural rights, and property rights. From the standpoint of land rights as a human right, this approach represents the next most developed phase.[22]

As is known, human rights broadly include life, liberty, and property.[23] Further, the relationship between ideology and politics will give rise to an economic right. The relationship between social and cultural will give rise to a right called socio-cultural rights. These three aspects of human rights become the main legal object and foster rights for a human being that must be protected, guaranteed, and developed by the state in all aspects of human life.[24] Therefore, at this moment in time, the connection between land rights and human rights has a connection with economic rights and socio-cultural rights.

Since the participation of all parties is required in the formulation of a policy, participatory justice offers the conveyance and implementation of the rights owned by indigenous peoples. This is especially important in regulating legal relations between indigenous peoples as legal subjects and customary land in its position as legal objects. Participatory justice offers these benefits because it allows for the participation of all parties. Because the enforcement of justice through participatory justice is carried out by considering the interests of all parties involved in the problem, specifically related to the settlement of disputes involving ulayat lands and indigenous peoples, this is considered very reasonable. [25] Because the enforcement of justice through participatory justice is carried out by considering the interests of all parties involved in the problem, specifically related to the settlement of disputes involving ulayat lands and indigenous peoples, this is considered very reasonable. Because the participatory justice model allows for adjudication at the national, regional, and worldwide levels,

21 Jérémie Gilbert, Indigenous Peoples' Land Rights under International Law: From Victims to Actors (Brill Nijhoff, 2016).

22 Jérémie Gilbert, "Land Rights as Human Rights: The Case for A Specific Right to Land," International Journal on Human Rights 18, no. February (2013): 115–135.

23 Locke John, "An Essay Concerning the True Original Extent and End of Civil Government," Great Book of Western World (1992): 52.

24 Istiana Heriani, "Implikasi Pencabutan Hak Atas Tanah Terhadap Perlindungan Hak Asasi Manusia," AL'Adl 64, no. 2 (2015): 14–20.

25 Sandra Liebenberg, "Participatory Justice in Social Rights Adjudication," Human Rights Law Review 18, no. 4 (2018): 623–649.

there is an interest in investigating the factors that contribute to the adoption of this form of justice. Participatory justice should be recognized as an integrated component of the normative features and duties that arise from the rights attached to every human being. This is something that has to be understood.[26]

Participation referred to in the realm of participatory justice is the participation of every element in related parties that have interconnections in perpetuating basic human rights with a note that these rights have an influence and contribution in formulating and implementing a policy contained therein for their welfare and benefit; rights that determine the relationship of their government institutions to the state or the central government; rights to land, territories, and natural resources; the right to participate and the right to obtain information; cultural rights; and the right to justice. Concerning the settlement of customary land disputes, the rights that must and want to be considered are in the form of the right to determine their destiny, namely the right to make choices about their way of life, determine and develop plans and sequences of interests in how people use land, territories, and resources. Then these rights will be linked to the interests of indigenous peoples to perpetuate/maintain their spiritual, social, and cultural values , which are closely tied to their growth and development with the lands/territories that indigenous peoples inhabi and occupy.[27]

To this point, it has become abundantly clear that participatory justice is proposed in order to protect the rights of indigenous peoples as human beings related human rights, with an emphasis on the preservation of the spiritual, social, and cultural values that indigenous peoples have lived, believed, and put into practice. Measures to preserve access to housing, health care, education, and other issues connected to fundamental human rights are among the things that need to be emphasized in the process of putting participatory justice into practice. These human rights can then be materialized into land rights as a series of explanations of the legal relationship between legal subjects (humans or groups) and legal objects (land). It is known that land has an inseparable relationship with human life and a strong connection (land). The land is known to have an inseparable relationship with human life and a strong connection with the implementation of human rights, such as obtaining a decent living and the right to have a place to live.[28] It should be emphasized that land has a very strong correlation with access to food, housing, and development; consequently, if one is prevented from accessing land, one will also be denied access to aspects of basic human rights. Although no international treaties or declarations state a strong relationship between land rights and human rights, it should be emphasized that land has a very strong correlation with access to food, housing, and development.[29]

In this scenario, participatory justice might be seen as having something to do with the importance of the legal fight for social rights, which are a component of human rights.[30] In the context of indigenous peoples and ulayat land, this phrase denotes that all aspects of indigenous peoples have the same right to fight for their social rights, with a focus on the spiritual, social, and cultural values that they uphold as indigenous peoples.[31] The settlement of ulayat land disputes in Indonesia does not describe the spirit of protecting the social rights of indigenous peoples, which have strong links with human rights. This is indicated by the need for spe-

26 György Málovics et al., "Socio-Environmental Justice, Participatory Development, and Empowerment of Segregated Urban Roma: Lessons from Szeged, Hungary," Cities 91 (2019): 137–145.

27 Gaetano Pentassuglia, "Towards a Jurisprudential Articulation of Indigenous Land Rights," European Journal of International Law 22, no. 1 (2011): 165–202.

28 Elisabeth Wickeri and Anil Kalhan, "Land Rights Issues in International Human Rights Law," Malaysian Journal on Human Rights 4, no. 10 (2010): 16–25.

29 Sandra Liebenberg, "The Value of Human Dignity in Interpreting Socio-Economic Rights," South African Journal on Human Rights 21, no. 1 (2005): 1–31.

30 Cécile Fabre, "Constitutional Social Rights and Democracy," Social Rights Under the Constitution 6 (2003): 110–151.

31 Darwin Ginting, "Politik Hukum Agraria Terhadap Hak Ulayat Masyarakat Hukum Adat Di Indonesia," Jurnal Hukum & Pembangunan 42, no. 1 (2012): 29.

cial arrangements for each variety of indigenous peoples or ulayat land through Regional Regulations, which, if this fails to do so, the rights of indigenous peoples to obtain justice and legal certainty in settlement of customary land disputes will be violated. This does not comply with the requirements of the Constitution of the Republic of Indonesia, which was ratified in 1945 and stipulates that the right to state protection belongs to everyone and every component of society without exception.

Participatory justice plays a crucial element in ensuring that indigenous peoples' inherent social rights are maintained. This is especially true when preserving the human rights of indigenous peoples via the preservation of their social rights is taken into consideration. The paradigm that has been established for participatory justice calls for the involvement and participation of non-governmental third parties, disputing parties, associated authorities, and customary leaders. Non-governmental organizations may represent these non-governmental third parties. Figure 1 provides an abstract of the suggested model for perusal.

The participatory justice model that Rodriguez-Garavito used has both substantive and participative components. [32] This model gives a substantive interpretation of social rights and procedural rights by allowing information disclosure and participation in this position to contribute as an important source in bringing balance or justice to marginalized groups, which can be linked to indigenous peoples. This model also considers indigenous peoples' unique cultural and historical perspectives. The participatory approach to conflict resolution is mostly used in this model throughout the stage of remediation and monitoring of the litigation stage. Rodrguez-justification Garavito's for a strong participatory dimension in social rights litigation is closely related to the empowerment of rights recipients and the organizations that support them through collective mobilization and active involvement in realizing social rights in the integration of human rights in the process of resolving ulayat land disputes. The empowerment of rights recipients and the organizations that support them is accomplished through collective mobilization and active involvement in realizing social rights in the process of resolving.

The legal and social change model illustrates the instrumental benefits of the participation of beneficiaries and stakeholders in generating the political energy to bring about the institutional and policy reforms needed to realize social rights. This model was developed by the Center for Law and Social Change. This model, much like democratic experimentalism, offers at least a partial solution to the legitimacy and democratic capacity problems facing judicial bodies in politically controversial and polycentric cases. It encourages multiple stakeholders' participatory policy-making and broadens the grassroots and expert knowledge available to the public participants and courts. Recent writings in this tradition show that there is the possibility for dynamic connections between participatory justice and the substantive commitment to social rights in campaigning for these rights.[33]

Not only is it crucial when individuals lose their social rights because of governmental or private actors, but it is also significant when positive efforts are required to fulfill social rights. Participatory justice is important in both of these scenarios. The third and final scenario occurs when people do not have access to certain social rights or do not enjoy adequate, relevant rights. This may occur, for instance, in the case of indigenous peoples who do not have access to land-related to spiritual, social, and cultural values.[34] Participation of the community in a meaningful way plays a vital part in creating the connection between the decision-making processes and options involved in policy-making and

32 César Rodríguez-Garavito, "Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication," in The Future of Economic and Social Rights, 2019, 20–21.

33 Rodríguez-Garavito, "Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication."

34 Aoife Nolan, Nicholas J. Lusiani, and Christfian Courtis, "Two Steps Forward, No Steps Back? Evolving Criteria on the Prohibition of Retrogression in Economic and Social Rights," in Economic and Social Rights After the Global Financial Crisis, 2014, 121–123.

the accomplishment of these substantive social rights objectives. Moreover, it can help inform the types of interventions that are most likely to be effective in responding to the community's needs. For instance, indigenous peoples' engagement is required to identify particular impediments that make it difficult for communities to acquire access to the customary territory. It can also help inform the types of programmed interventions that are most likely to be effective in responding to the community's needs, which in this case are the interests of indigenous peoples in the ulayat lands that are the subject of the dispute.

The ultimate goal of settling land disputes involving ulayats via the use of a participatory justice model is to produce a policy or decision that is fair and takes into consideration various elements of social rights as well as human rights possessed by every component of society.[35] It is important to keep in mind that to put this model into action, it is necessary to consider urgent human needs that are considered to be a priority. Determining the appropriate priorities will affect the process of budgeting and the final results produced by policy-making. [36] When it comes to developing, structuring, and sustaining the link between the process of policy-making and the substantive objective of attaining the goals of social rights, the involvement of each component, notably indigenous peoples, has an essential significance and function. For instance, the involvement of indigenous peoples is required to identify the elements that obstruct access to social rights in connection with how indigenous peoples continue to uphold the moral, social, and cultural values in which they believe. This will play an important part in the realization of policies that are responsive to the requirements of communities. In this instance, the needs of indigenous peoples were gained via identifying the intervention variables in the process of settling ulayat land conflicts.

Settlement of customary land disputes through a participatory justice model offers protection of social rights as human rights owned by indigenous peoples. This protection is especially important on an ongoing basis since the participation provided by indigenous peoples is influenced by their needs, which of course, change over time. This change will influence policies/responsive decisions and realize progressive policies. Therefore, the participatory justice model (participatory justice) has the potential to resolve communal land disputes sustainably and becomes the best way/alternative to achieving justice for indigenous peoples. This is because of the potential for participatory justice to resolve communal land disputes sustainably. Despite this, a few key points should not be overlooked. These include the priority needs of indigenous peoples, the neutrality of third parties as supervisors and assessors of the entire process, legal instruments that can accommodate the process of resolving communal land disputes through participatory justice, and the role of traditional elders as parties who will fight for and defend the values of indigenous peoples. Paying attention to these key points is essential.

D. Conclusion

Masyarakat adat dan hak ulayat In Indonesia, indigenous peoples and customary rights have been acknowledged in a number of the country's laws and regulations; nevertheless, the confirmation and eradication of the existence of indigenous peoples are still highly reliant on the presence of Regional Regulations. Values of indigenous peoples' magical religion are connected to their social, cultural, and spiritual beliefs and practices.

In the context of conflict resolution, the concept of participatory justice refers to the practice of taking into account the interests of all parties involved, including those of the disputing parties who have their interests, customary leaders who represent the interests of indigenous peoples, third parties who serve as supervisors and appraisers, and law enforcement officers and other authorized officials. Ulayat Land conflict settlement through participatory justice offers protection

35 Rodríguez-Garavito, "Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication."

36 Liebenberg, "Participatory Justice in Social Rights Adjudication."

of the rights of indigenous peoples by exerting influence over the processes and policies involved in the settlement of ulayat land disputes. This ensures that indigenous peoples will continue to have access to social rights and human rights for the sustainable upkeep of spiritual, social, and cultural values.

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