



LEGAL ANALYSIS OF THE TRANSFER OF FUNCTION OF TRADITIONAL LAND INTO OIL PALM PLANTATIONS PERSPECTIVE OF THE MURSALAH PROBLEM

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ABSTRACT

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Function Transition, Customary Land, Plantation, Masalahah Mursalah

Customary land is land controlled by certain customary communities in areas spread throughout Indonesia. Customary land law is independent because the existing legal norms are living norms that are followed by sanctions and obeyed by the community and the relevant institutions. In the transfer of the function of customary land by the private sector to customary land, it certainly gives a negative response from the community. Masalahah mursalah becomes a source of law where the taking of the land is detrimental to the community, because all sources of life from customary land have provided prosperity, especially if the private sector builds oil palm plantations, the community loses the land that supports various lives. This study uses a normative type taken from library materials.

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1. INTRODUCTION

Land has an eternal relationship with humans. Its function, which is so important in supporting human life, often becomes an object of contention among the parties involved over the land. For indigenous legal communities, land is a valuable asset, not only serving as a place for daily activities but also as a symbol of prestige that demonstrates the existence of an indigenous group. Customary law communities have structures and rules that are created and agreed upon together and passed down through generations as a legacy for their descendants, and land is within the realm of wealth that strengthens their existence.

Customary land is owned by the customary law community that has possessed it since ancient times. From the perspective of human life development, God endows each individual with reason and behavior, which initiates the emergence of law. Continuous individual behavior leads to personal habits. If others imitate the habit, it will also become their habit. If the people around them also practice that habit, over time it will become a "custom" in that society. Law and society have interrelated functions. The function of law in society is to prevent conflicts of interest. If it occurs, then the law becomes a provider of ways to resolve it based on policies grounded in applicable norms. The relationship between society and the law protects against conflicts and keeps people from enforcing the law themselves. In customary legal societies, they have their own laws and are bound by them. Basically, land is controlled by the state as mandated by the constitution, as stated in Article 33, paragraph 3,

which is used for the prosperity of the people. Individual ownership rights and communal land, known as ulayat rights, can control land management.

In Indonesia, in addition to state law, there is also customary law. The customary law referred to is a set of legal rules or provisions that are adhered to by the community because they were born and developed along with the development of that community, which are not products of state institutions and are mostly unwritten. Customary law is a law that does not originate from regulations. The implementation of communal land rights demonstrates the existence of customary law. In customary land law, there is recognition of ulayat land, which is a collective right of the members of the relevant customary law community that has had its function taken over by private parties for plantation purposes. In national land law, all land within the territory of our country is the collective land of the Indonesian people, who have united to become the Indonesian nation. The religious element of this conception is indicated by the statement that the earth, water, and airspace, including the natural resources contained within the territory of the Republic of Indonesia, are a gift from God Almighty to the Indonesian nation.

Customary land rights are a series of authorities and obligations of an indigenous legal community related to land located within its territorial environment. Every member of the customary law community is entitled to freely cultivate and utilize the land and natural resources within that area. Outsiders have no rights except with the permission of the customary law community. The ulayat rights of indigenous law communities hold a rightful place in the state of Indonesia. According to Article 3 of Law No. 5 of 1960 about the Basic Agrarian Law (UUPA), it says that "the use of ulayat rights and similar rights of customary law communities, as long as they are still present, should match the interests of the nation and the state, support national unity, and not go against higher laws and regulations." The UUPA does not state the criteria for the existence of ulayat rights, but in reality, the existence of ulayat rights can be determined based on

1. The existence of a group of customary law communities.
2. The existence of land that constitutes the territory of a specific customary law community
3. The presence of a customary chief or traditional leader recognized by their community and having the authority to manage and regulate the users of the land.

2. RESEARCH METHODS

The normative research method, which is a library legal research study carried out by analyzing solely secondary data or library materials, was the approach the author used in this study. By applying the deductive technique of reasoning, which is a method of thinking that focuses on something specific and draws conclusions from something general that has been shown to be true. Peter Mahmud Marzuki defines normative legal research as the act of identifying legal doctrines, rules, or principles in order to resolve legal challenges.

The type of research done in this thesis is normative juridical research, according to the criteria given above, as the author does not undertake field research and instead relies on library resources as the primary source of information for the case analysis. The following are the general goals of library legal research, which is carried out utilizing secondary library materials: legal principles, legal systematics, legal synchronization, legal history, and comparative law.

3. RESULT AND ANALYSIS

3.1. Definition of Customary Land Law and Masalah Mursalah

Customary Land Law

Human life cannot be separated from the land. Land is an important element that is very much needed besides other life necessities, and it can even be said that land is a place for humans to live their lives and obtain resources to continue human life. For customary law communities (especially those of a territorial nature), almost everything is centered around a specific area (in this case, land).

Customary Land Law relates to the entire body of legal principles concerning land and is derived from customary law. The object of customary land law is the right to customary land. The right to customary land consists of ulayat rights and customary ownership rights. The ulayat right is the right of

an indigenous legal community over the land area that grants certain authorities to traditional leaders to regulate and oversee the use of the land area of that legal community.

This customary land right consists of the right to clear land or forests and the right to gather forest products. Customary land ownership is an individual right and a communal right. Understanding customary land law and customary land tenure law is an important contribution, especially in education and research in the field of legal studies. Starting from two legal systems according to the conventional perspective, namely the customary law system and the national legal system. This is due to the two legal institutions of society (community) of customary law (*adatrechtsgemeenschap*) and the collective rights of the community (community) of land law (*bescikkingsrecht*) in question, which are legal institutions according to the national legal system.

Maslahah Mursalah

According to the etymology, "maslahah mursalah" was adapted into the Indonesian language, resulting in the term "maslahah mursalah," which means bestowing virtue, granting blessings, and avoiding evil. Maslahah mursalah comes from the words *salahu*, *yasluhu*, and *salah*, which all mean something better, appropriate, and practical. On the other hand, *katamurlah* means free from religious justification (Hadith and Al-Qur'an) that supports or denies it.

Whereas, in terms of terminology, preserving the objectives of Islamic law involves rejecting disasters, damage, and harmful things from creatures (humans). Muhammad Abu Zahra defines *maslahah mursalah* as all virtues that align with the objectives of Sharia (in upholding Islamic law), and according to him, there is no specific basis for deciding whether it is accepted or not.

From a redactional perspective, the meaning of *maslahah mursalah* above seems to vary, but in reality, there is only one fundamental similarity in terms of content, which is the establishment of laws in areas that are not regulated at all in the Qur'an or Sunnah, while still paying attention to the advantages or interests of human life.

3.2. Regulation of the Transfer of Customary Land Law Functions in Indonesia

Customary land law has been enacted in Law No. 5 of 1960 on Basic Agrarian Principles, commonly known as UUPA. In the formation of this law, customary land law is the main source in the formulation of UUPA because it serves as a source for taking the materials needed for the development of national land law. Customary land law has the position of customary land law within the UUPA is that national customary land law is structured based on customary land law, as stated in the considerations or opinions of the UUPA. The statement regarding customary law in the UUPA discusses:

1. General explanation of point III (1)
2. Explanation of Article 5 of the UUPA, explaining the land rights that can be owned by Indonesian citizens. The land rights include ownership rights, cultivation rights, building rights, and usage rights.
3. Explanation of Article 6 of the UUPA, explaining the land rights that can be owned by foreign individuals and foreign legal entities.
4. Article 56 of the UUPA
5. Article 58 of the UUPA

Here it can be seen that all issues related to customary land law are practically accommodated by the regulations made by the government. And customary land law itself holds a position as the main source in the gathering of materials, which are then used as the basis for the creation of the UUPA. The explanation of the UUPA paragraph emphasizes that the customary law referred to in the UUPA is "customary law that has been refined and adjusted to the interests of society in a modern state and in international relations, as well as adjusted to Indonesian socialism," so that land law becomes the main source of national agrarian law based on the principles of customary law construction.

3.3. Legal Analysis of the Conversion of Customary Land Functions into Oil Palm Plantations from the Perspective of Maslahah Mursalah

The conversion of customary land into oil palm plantations is an issue that often attracts attention in Indonesia, especially concerning land rights, environmental sustainability, and its impact on indigenous communities. To understand the law regarding the conversion of customary land into oil palm plantations, we need to examine several legal aspects involved.

The conversion of customary land functions into oil palm plantations must comply with applicable legal provisions, including the recognition of indigenous people's rights, legitimate licensing procedures, and environmental protection. The frequent conflicts between companies and indigenous communities, as well as the negative impact on the environment, indicate the need for improvements in the implementation of laws and policies related to the conversion of customary land functions.

Ushul fiqh experts define mashlahah mursalah as a benefit deemed good by reason; however, the Quran does not mention accepting or rejecting it.¹⁵ Therefore, Sharia does not specifically regulate whether or not to recognize the harmful benefit as a form of public good. The takeover of customary land for the development of palm oil plantations will certainly cause harm, as the benefits of the customary forest land, which have always been utilized for various livelihoods, are taken over for palm oil plantations. Mashlahah mursalah serves as a guideline that prioritizes public interest, and the government should consider granting permits for the construction of palm oil factories that could eliminate the livelihoods and income of the existing indigenous communities.

The Maslahah Mursalah law has become one of the concepts in Islamic law used to assess an action or decision based on the interests of the community. In the conversion of customary land functions to oil palm plantations, several factors can be considered, namely:

1. Community interests, the conversion of customary land functions into oil palm plantations will bring benefits to the community, such as increased income, job opportunities, and community prosperity.
2. Environmental impact, the conversion of customary land functions will have negative or positive effects on the environment, such as deforestation, water pollution, and climate change.
3. The rights of indigenous peoples, the rights of indigenous peoples will be fulfilled with the conversion of customary land use, or they may become unfulfilled because there will be new regulations that prevent indigenous peoples from freely managing their customary land.

There are several positive and negative impacts of converting customary land functions into oil palm plantations from the perspective of maslahah mursalah, namely:

Positive impacts:

1. Increased income, palm oil plantations can boost the income of local communities through the sale of harvests.
2. Job creation, palm oil plantations can create job opportunities for the local community, both for plantation workers and small entrepreneurs.
3. Improvement of infrastructure, this can trigger an increase in infrastructure in the area.
4. Improvement of the local economy (hifzh al-mal), with the presence of palm oil plantations can provide economic growth through the purchase of necessary goods.

Negative impact:

1. Loss of land rights, the conversion of customary land functions can lead to the loss of land rights for indigenous communities.
2. Environmental damage, oil palm plantations can cause environmental degradation such as water pollution and climate change.
3. Social conflict, this can occur due to conflicts between the plantation parties and the local indigenous communities.
4. Loss of cultural identity for indigenous communities.
5. The increase in poverty because indigenous communities no longer have access to natural resources and land that they have traditionally owned (hifzh al-mal).

In the perspective of *maslahah mursalah*, the conversion of customary land into palm oil plantations must consider the welfare of indigenous communities and environmental sustainability. Therefore, sustainable and wise management is necessary to maximize the positive impacts and minimize the negative ones.

4. CONCLUSION

We as humans always live in connection with the land because humans engage in activities with the land. Before concluding further, we must understand the definition of soil. Land is a material resource and the most important resource. Soil is the top layer, and from this layer, a variety of creatures, including humans, live. Land is considered the only source for obtaining income and wealth. Land is also believed to have the ability to produce large quantities and high-quality output. The rules concerning land regulations, in terms of the establishment of rights, maintenance, transfer of rights, and so on, are referred to as land law.

The parties involved should support the economic development of indigenous communities through the sustainable management of customary resources. The private sector must collaborate with indigenous communities, civil society organizations, and academics to develop and implement programs for managing the functions of customary land for indigenous communities.

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