

## **Legal Protection of Ulayat Rights In The Traditional Communities of The Baduy Tribe**

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**Abstract:** In fact, the existence of indigenous peoples in Indonesia has existed since the time of their ancestors until now. Constitutionally, recognition of the existence of customary law communities can be found in Article 18B paragraph (2) of the 1945 Constitution. Based on the community structure, customary rights are an integral part of customary law communities. Since its inception, customary rights are recognized as land rights if they meet the specified requirements. Based on Article 3 of the UUPA that customary rights are recognized as a right to land if in reality it still exists and the implementation of these rights must be in accordance with national interests and may not conflict with statutory provisions. The customary rights contained in the Baduy Indigenous people are entrusted by the karuhun in the form of "ngasuh Ratu , ngajaga Menak", according to the Baduy Indigenous people that the land they live on or live in is joint property to be used jointly under the knowledge of the Traditional Head or Puun. As an effort to protect the law on the residential area of the Baduy Indigenous People's customary rights, the Regional Government of Lebak Regency has issued a Regional Regulation of Lebak Regency Number 32 of 2001 concerning Protection of the Ulayat Rights of the Baduy Indigenous People . Another form of legal protection for the existence of customary rights in the Baduy indigenous people can be seen in the criminal provisions stipulated in Article 9 paragraph (1) Lebak Regency Regional Regulation Number 32 of 2001 concerning Protection of the Baduy Community's customary rights.

Keywords: legal protection, customary rights, Baduy indigenous people

### **Introduction**

#### **1. Definition of Customary Law Community**

Society is a form of shared life, whose citizens live together for a long period of time, resulting in culture. Society is a social system, which is a container of patterns of social interaction or interpersonal relationships as well as relationships between social groups. <sup>1</sup>Indigenous peoples in Indonesia are an inseparable part of the long history of legal development in Indonesia. Historically, customary law communities have existed, lived, grown and developed in Indonesia since the kingdom era, Dutch colonialism and during Indonesia's independence. Intervention by the royal government, colonizers and the Indonesian government continued to change according to developments in the state administration.<sup>2</sup>

In fact, the existence of indigenous peoples in Indonesia has existed since the time of their ancestors until today. Indigenous peoples are territorial or genealogical community units that have their own wealth, have citizens who can be distinguished from members of other legal communities and can act internally or externally as a legal entity (legal subject) that is independent and self-governing.<sup>3</sup>

Indigenous peoples are often also referred to by other names, such as customary law communities, traditional communities, indigenous peoples, or indigenous people. Customary law communities or indigenous peoples have ancestral origins from generation to generation in a certain area that have existed since our ancestors prior to the formation of this country. The basis for the composition of customary law communities or indigenous peoples is based on genealogical ties and territorial ties. Based on the history of Indonesian constitutional law which has abolished

<sup>1</sup>Soerjono Soekanto, *Indonesian Customary Law* , (Depok: Raja Grafindo Perkasa, 2016), p. 91.

<sup>2</sup>Tholib Setiady, *Digest of Indonesian Customary Law: in Literature Study* , (Bandung: Alfabeta, 2008), p. 146.

<sup>3</sup>H. Abdurrahman, *Draft Legal Study Report on Mechanisms for Recognition of Indigenous Peoples* , (Jakarta: Center for Research and Development of the National Legal System BPHN Kemenkumham RI, 2015), p. 1.

feudalism, the arrangements regarding indigenous peoples in this law do not include autonomous governments and former sultanates.<sup>4</sup>

Constitutionally, recognition of the existence of customary law communities can be found in Article 18B paragraph (2) of the 1945 Constitution which states that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles The Unitary State of the Republic of Indonesia, which is regulated by law. The formulation in Article 18B paragraph (2) until now still recognizes the existence of indigenous peoples as an important element in the life of the state in Indonesia. However, so far there has been no law derived from the mandate of Article 18B paragraph (2) which specifically regulates the recognition and protection of customary law communities. This resulted in the non-fulfillment of the rights of indigenous peoples in living their daily lives. In addition, conflicts sometimes arise between customary law communities and other parties, such as the general public, land and capital owners, to conflicts of interest with the state.

However, recognition of the existence of indigenous peoples in many respects is still not fully institutionalized. This can be seen from the many problems experienced by indigenous peoples. *First*, the existence of indigenous peoples as a minority group has so far been vulnerable and weak in terms of various aspects of life (economic, legal, socio-cultural and human rights). *Second*, indigenous peoples are marginalized in the development process because they have not been fully given recognition of customary lands belonging to indigenous peoples. *Third*, indigenous peoples often experience conflicts, both between indigenous peoples, between indigenous peoples and other indigenous peoples, as well as between communities and the government. *Fourth*, in solving problems related to indigenous peoples, conflicts often occur when customary law is confronted with Indonesian national law.<sup>5</sup>

Jimly Asshiddiqie interprets the meaning of the recognition of Article 18B paragraph (2) of the 1945 Constitution of the 1945 Constitution on customary law communities where the recognition is given by the state (a) to the existence of a customary law community and its traditional rights; (b) the existence that is recognized is the existence of customary law community units; (c) the customary law community is alive (still alive); (d) in a certain environment (*lebensraum*); (e) the acknowledgment and respect is given without neglecting the appropriate criteria for humanity in accordance with the level of development of the nation's existence; (f) recognition and respect must not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia.<sup>6</sup>

Customary law communities are also referred to as traditional communities (*the indigenous people*) in everyday life, more often and more popularly referred to as indigenous peoples. Some legal experts distinguish the term customary law community from indigenous peoples. There are those who see the difference that "customary law community" is a translation of the term *adatrechtsgemeenschap*, while "legal community" is a translation of the word *indigenous people* (English).<sup>7</sup>

The definition of indigenous peoples in the Draft Law on Customary Law Communities, hereinafter referred to as indigenous peoples, is a group of people who live for generations in a certain geographic area, have ancestral origins and/or the same place of residence, cultural identity, customary law, and strong with land and the environment, as well as the value system that determines economic, political, social, cultural, and legal institutions.<sup>8</sup>

According to Hazairin, customary law communities are community units that have the completeness to be able to stand on their own which has a legal unit, a government unit and an environmental unit based on shared rights to land and water for all its members. Indigenous community<sup>9</sup> leaders who are members of AMAN (Alliance of Indigenous Peoples of the Archipelago) define indigenous peoples as a group of people who are bound by their customary legal order as joint citizens of a legal alliance because of the similarity of residence or on the basis of heredity.<sup>10</sup>

## 2. Types of Customary Law Communities

<sup>4</sup>Indonesia, *Draft Law on Indigenous Peoples*, Explanatory Section.

<sup>5</sup>*Ibid.*

<sup>6</sup>Harris YP Sibuea, "The Urgency of Forming a Draft Law on Indigenous Peoples", *Journal of the Research Center for BKD DPR RI*, Vol. XI, No.04/II/Puslit/February/2019, p. 1.

<sup>7</sup>Djamanat Samosir, *Indonesian Customary Law, Existence in the Dynamics of Legal Development in Indonesia a*, (Bandung: Nuansa Aulias, 2014), p. 69.

<sup>8</sup>Indonesia, Customary Law Community Bill, *Loc.Cit.*, Article 1 point 1.

<sup>9</sup>H. Abdurrahman, *Loc. Cit.*, p. 14.

<sup>10</sup>*Ibid.*

Various types of customary law communities spread across several regions in Indonesia, are divided into 4 (four), namely:<sup>11</sup>

- a. Indigenous peoples whose kinship structure is patrilineal, namely indigenous peoples whose kinship prioritizes male descent;
- b. Indigenous peoples whose kinship structure is matrilineal, namely people whose kinship prioritizes descent according to the female line;
- c. Indigenous peoples who are parental, namely people whose kinship does not prioritize male or female descent;
- d. Indigenous peoples who are paternal in origin switch (alternative), meaning that kinship prioritizes the male lineage, but sometimes follows the female lineage due to environmental, time and place influences.

Customary law communities in Indonesia can be divided into 2 (two) groups according to their basic structure, namely:<sup>12</sup>

- a. Indigenous peoples based on ancestry (genealogical) affinity;  
That is an unified community unit, where its members are bound by the same lineage and ancestor, either directly because of blood relations (descendants) or indirectly because of hereditary ties or customary ties.
- b. Customary law community based on regional (territorial) environment;  
That is a permanent and orderly community, whose members are bound to a certain area of residence, both in worldly terms as a place of life and in spiritual terms as a place of worship for ancestral spirits.

### 3. Definition, subject, object and boundaries of customary rights

- a. Definition of Customary Rights

The definition of customary rights according to the Draft Law on Customary Law Communities is the communal rights of indigenous peoples to control, utilize and preserve their customary territories and the natural resources on them in accordance with the prevailing values and customary laws.<sup>13</sup>

Theoretically, the definition of legal community and customary law community is different. Kusumadi Pujosewojo defines that: customary law community as a society that determines, is bound to, and is subject to its own legal system. Whereas customary law communities are communities that arise spontaneously in certain areas whose establishment is not determined or ordered by higher authorities or other authorities with a greater sense of solidarity among fellow members who see themselves as not members of the community outsiders and use their territory as a source of wealth, which can only be fully utilized by its members.<sup>14</sup>

Thus customary rights show the legal relationship between the legal community as the subject of rights and certain land/areas as objects of rights. Ulayat rights contain the authority to:

- 1) Regulate and organize land use (for settlement, farming), inventory (building new settlements or rice fields) and maintenance of land;
- 2) Regulate and determine the legal relationship between people and land (granting certain rights to certain objects);
- 3) Establish legal relations between people and legal actions related to land (buying and selling, inheritance).

Hak ulayat is the name given by jurists to legal institutions and concrete legal relations between customary law communities and the land within their territory, which are called ulayat rights. By Van Vollenhoven in Tolib Setiady, customary rights are referred to as "beschikkingrescht". This term in Indonesian (also in regional languages) is a new meaning, because in Indonesian the term used refers more to the meaning of "sphere of power", while "beschikkingrescht" refers more to the relationship between customary law communities and the land itself.<sup>15</sup>

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<sup>11</sup>St. Laksanto Utomo, *Customary Law*, (Jakarta: Raja Grafindo Persada, 2016), p. 134.

<sup>12</sup>*Ibid.*, p. 135.

<sup>13</sup>Indonesia, Customary Law Community Bill, *Loc.Cit.*, Article 1 point 6.

<sup>14</sup>Hidayat, "Legal Recognition of Customary Rights of Indigenous Peoples", *Journal of tō-râ Law*, Volume 1 Number 3, December 2015, available at <http://ejournal.uki.ac.id/index.php/tora/article/download/1140/968>, accessed July 16, 2022, p. 185.

<sup>15</sup>Anonymous, "Definition of Ulayat Rights", available at: [https:// AngleHukum.com/2017/03/pengertian-hak-ulayat-2.html](https://AngleHukum.com/2017/03/pengertian-hak-ulayat-2.html), accessed on 23 July 2022.

As for regional terms that contain the meaning of environment of power, territory of power or "land which is an area controlled by customary law communities", among others; Patuanan (Ambon), Pawatasan (Kalimantan), Wewengkon (Java), Prabumian (Bali), Tatabuan (Bolaang Mongondow), Limpo (South Sulawesi), Nuru (Buru), Ulayat (Minangkabau), Torluk (Angkola), Paer (Lombok), Golat (Batak), and so on. By various customary law experts, customary rights are interpreted in various formulations, but have various understandings in common, although the terms used are different, not always in terms of customary rights.<sup>16</sup>

Several experts on customary law who expressed their opinion on customary rights, namely Roestandi Ardiwilaga in Ida Nurlinda, argued that customary rights are the rights of the customary law community (community) to freely use land which is a grove of forest within its territory, for the benefit of the legal community itself. and its members; also for the benefit of people outside the legal alliance with prior permission, and paying recognition/recognition.<sup>17</sup>

Ulayat rights are the authority according to customary law owned by certain customary law communities over certain areas which are the living environment of their citizens to take advantage of natural resources, including land, in that area, for their survival and life, arising from external relations and spiritually hereditary and uninterrupted between the customary law community and the area concerned.<sup>18</sup>

Imam Sudiyat, named customary rights as ancient rights, namely rights owned by a tribe (*clan/gens/stam*), a union of villages (*dorpenbond*) or usually by a village alone to control all the land in its territory. Departing from this understanding, Imam Sudiyat put forward the characteristics of customary rights as follows:<sup>19</sup>

- 1) Only the customary law community itself and its citizens have the right to freely use ulayat land which is part of ulayat rights within their territory;
- 2) People from outside the community who wish to use the customary land must first obtain permission from the existing legal community;
- 3) Citizens of a legal alliance can benefit from land that is part of customary rights for personal and family interests;
- 4) The legal partnership is responsible for everything that happens within its territory;
- 5) Ulayat rights may not be relinquished, transferred, alienated forever;
- 6) Ulayat rights also include rights that have been cultivated by individuals.

Boedi Harsono, defines customary rights as a set of authorities and obligations of a customary law community, relating to land within their territory, which is the main supporter of the livelihood and life of the people concerned at all times. Some of these powers and obligations fall into the field of civil law, namely those related to shared rights; and some are included in the field of public law, namely in the form of authority tasks to manage, regulate, and lead their allocation, control, use, and maintenance.<sup>20</sup>

b. The subject of customary rights

Based on the community structure, customary rights are an inseparable part of the legal community. <sup>21</sup>According to Boedi Harsono, the subject of customary rights is customary law communities who live in a certain area. <sup>22</sup>Indigenous peoples are divided into 2 (two), namely:

- 1) Indigenous peoples are territorial because their members live in the same place.
- 2) Geneological customary law community, because its members are bound by blood ties.

c. Customary rights object

The object of customary rights in general covers all land (land, beaches, rivers, lakes which are located within the territory of customary law communities, and customary rights relating to land, water, plants and wild animals.<sup>23</sup>

d. Customary rights boundaries

Indigenous peoples have a certain way of maintaining and defending their customary rights. *First*, by setting boundaries around their territory, usually with physical boundaries, in the form of rocks, planting trees, hills, rivers, etc. *Second*, by appointing certain officials, *nets*

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<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

<sup>18</sup>Regional Regulation of Lebak Regency Number 32 of 2001 concerning *Protection of the Ulayat Rights of the Baduy Indigenous People*, Article 1 number 4.

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*

<sup>21</sup>Djamanat Samosir, *Op. Cit.*, p. 117.

<sup>22</sup>Boedi Harsono, *Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation*, (Jakarta: Djbatan, 1999), p. 56.

<sup>23</sup>Djamanat Samosir, *Op.Cit.*, p. 119.

(Minangkabau), *canals* (Minahasa), *heads of kewang* (Ambon), *lelipis softkit* (Bali). In addition, there are also border patrols.<sup>24</sup>

According to Ter Haar, there are clear boundaries of customary rights, namely as a result of meetings between legal alliances and other alliances, and vague boundaries, namely in the form of large vacant lands. Boedi Harsono believes that it is not always easy to know with certainty the boundaries of customary rights. Meanwhile, genealogical communities can be identified by distinguishing which includes common land. The ambiguity of the measurement used in determining the boundaries of customary rights often creates conflicts in the field of customary law land.<sup>25</sup>

#### 4. Acknowledgment of Legal Position on Ulayat Rights

Since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), customary rights are recognized as land rights if they meet the specified requirements. Based on Article 3 of the UUPA that customary rights are recognized as a right to land if in reality it still exists and the implementation of these rights must be in accordance with national interests and may not conflict with statutory provisions.<sup>26</sup>

Based on the provisions of Article 3 UUPA it can also be understood that customary rights are recognized as a separate land right, if it fulfills two requirements, namely; 1). The right exists (exists), and 2). The exercise of these remaining rights must be in accordance with national and state interests and must not conflict with statutory provisions. However, there are no further provisions and explanations regarding the criteria for "existing" customary rights and regarding the boundaries of "national and state interests". Boedi Harsono stated that the reason for forming the UUPA did not regulate ulayat rights was because setting ulayat rights, both in determining the criteria and in registering them, would preserve the existence of ulayat rights, while naturally there was a tendency for ulayat rights to weaken.<sup>27</sup>

It turns out that the recognition of customary rights in the UUPA has also received recognition in various other statutory provisions, even in the second amendment of the 1945 Constitution and TAP MPR No. IX/MPR/2001. Some of these statutory provisions include:<sup>28</sup>

- a. Article 18 B paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution, second amendment.
- b. Article 4 TAP MPR No. IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources.
- c. In Law no. 39 of 1999 concerning Human Rights.
- d. In Law no. 41 of 1999 concerning Forestry.
- e. In Law no. 22 of 2001 concerning Oil and Gas.
- f. In Law no. 7 of 2004 concerning Water Resources.
- g. In Law no. 18 of 2004 concerning Plantations.
- h. In Law no. 31 of 2004 concerning Fisheries, which was amended by Law no. 45 of 2009.
- i. In Law no. 38 of 2004 concerning Roads.
- j. In Law no. 11 of 2006 concerning the Government of Aceh.
- k. In Law no. 27 of 2007 concerning Management of Coastal Zone and Small Islands.
- l. In Law no. 6 of 2014 concerning Villages, and others.

#### Discussion

##### 1. Overview of Baduy Indigenous Peoples

The Baduy tribe ( Baduy language y: *Urang Kanekes* ) or sometimes often called the Baduy are indigenous and sub-ethnic peoples of the Sundanese tribe in the interior of Lebak Regency , Banten Province . Their population is around 26,000 people, they are a group of people who shut themselves off from the outside world. Apart from that, they also have taboo beliefs to document, especially the residents of the Baduy Dalam area . <sup>29</sup>The Baduy people are people who live in Kanekes Village, Leuwidamar District, Lebak Regency, which have cultural characteristics and customs that are different from the general public.<sup>30</sup>

According to the Big Indonesian Dictionary (KBBI), the correct term for writing is "Badui", not "Baduy". Bedouin are included in the Sundanese tribe , they are considered as a Sundanese tribe that has not been affected by modernization or a group that is almost completely isolated

<sup>24</sup>*Ibid.* , pp. 119-120.

<sup>25</sup>*Ibid.*

<sup>26</sup>Ilyas Ismail, " Situation and Recognition of Ulayat Rights in the National Agrarian Law System", available at: <http://www.jurnal.unsyiah.ac.id/kanun/article/download/6287/5178> , accessed on 23 July 2022.

<sup>27</sup>*Ibid.*

<sup>28</sup>*Ibid.*

<sup>29</sup>*Ibid.*

<sup>30</sup>Rosnidar Sembiring, *Customary Land Law* , (Depok: Rajawali Pers, 2019), p. 297.

from the outside world. The Bedouins reject the terms "wisata" or "tourism" to describe their villages. Since 2007, to describe their area and to maintain the sacredness of the area, the Bedouin people introduced the term "Saba Bedouin Culture", which means "Bedouin Cultural Gathering". The term "Bedouin" is a term given by outsiders to this group of people, originating from the name of the Dutch researchers who seem to equate them with the Badawi Arab group which is a nomadic society. Another possibility is because of the Bedouin River and Mount Bedouin in the northern part of the area. They themselves prefer to call themselves *Urang Kanekes* or "People Kanekes" according to the name of their area, or a designation that refers to the name of their village such as *Urang Cibeo*.<sup>31</sup>

The Bedouins live in an area in Kanekes Village, Leuwidamar District, Lebak Regency. The settlements are concentrated in the watershed of the Ciujung river which is included in the Kendeng Mountains Cultural Heritage area. Kanekes is geographically located at the coordinates 6°27'27" – 6°30'0" South Latitude and 108°3'9" – 106°4'55" East Longitude (Permana, 2001). They live right at the foot of the Kendeng mountains which is about 40 KM from Rangkasbitung City. The area which is part of the Kendeng Mountains with an altitude of 300 – 600 m above sea level (DPL) has a hilly and undulating topography with an average slope of 45%, which is volcanic soil (in the north), sedimentary soil (in the north) . the middle), and mixed soil (in the south). average temperature 20°C.<sup>32</sup>

The three main villages of Kanekes Dalam are Cikeusik, Cikertawana, and Cibeo villages. The language they use is the Bedouin dialect of Sundanese. To communicate with outsiders they are fluent in Indonesian, even though they don't get that knowledge from school. The Kanekes Dalam people do not know written culture, so that customs, beliefs/religion, and ancestral stories are only stored in oral speech. The Kanekes people do not know schools, because formal education is contrary to their customs. They rejected the government's proposal to build school facilities in their villages. Even to this day, even though since the Soeharto era the government has tried to force them to change their way of life and build modern school facilities in their area, the Kanekes people still reject the government's efforts. However, the Kanekes people have their own way of learning and developing their insights so that they are commensurate with people outside the Bedouin tribe.<sup>33</sup>

The Kanekes community is generally divided into three groups, namely *tangtu*, *panamping*, and *dangka*. The *tangtu* group is a group known as the Kanekes Dalam (Badui Dalam), which strictly follow adat, namely residents who live in the three villages of Cibeo, Cikertawana, and Cikeusik. The distinctive feature of the Kanekes Dalam people is that their clothes are naturally white and dark blue (tarum color) and wear a white headband. They are forbidden by custom to meet with foreigners. Kanekes Dalam is part of the entire Kanekes people. Unlike the Outer Kanekes, the Inner Kanekes people still adhere to the customs of their ancestors. Some of the rules adopted by the Kanekes Dalam people include:<sup>34</sup>

- a. It is not permitted to use vehicles for transportation
- b. Not allowed to use footwear
- c. The door of the house must face north/south (except the house of the *Pu'un* or the customary leader)
- d. Prohibition of using electronic devices (technology)
- e. Using black/white cloth as clothing that is woven and sewn by yourself and not allowed to use modern clothes.

The second group of people called *panamping* are those known as the Outer Baduy (Outer Baduy), who live in various villages scattered around the Inner Kanekes area, such as Cikadu, Kaduketuk, Kadukolot, Gajeboh, Cisagu, and so on. The Outer Kanekes people are characterized by wearing dark blue clothes and headbands (tarum color). Outer Kanekes are people who have left the Kanekes Dalam area and customs.<sup>35</sup>

There are several things that led to the expulsion of the Kanekes Dalam residents to the Outer Kanekes:<sup>36</sup>

- a. They have violated the adat of the Kanekes Dalam community.
- b. Desire to get out of Kanekes Dalam

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<sup>31</sup>Anonymous, "Bedouin Tribe", available at: [https://id.wikipedia.org/wiki/Badui\\_Suku](https://id.wikipedia.org/wiki/Badui_Suku), accessed 23 July 2022.

<sup>32</sup>*Ibid.*

<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

<sup>36</sup>*Ibid.*

- c. Married to a member of the Outer Kanekes  
The characteristics of the Outer Kanekes community:<sup>37</sup>
- a. They are familiar with technology, such as electronic equipment.
  - b. The process of building houses for the Kanekes Luar residents has used tools, such as saws, hammers, nails, etc., which were previously prohibited by Kanekes custom.
  - c. Using traditional clothes in black or dark blue (for men), which indicates that they are impure. Sometimes using modern clothing such as T-shirts and jeans.
  - d. Using modern household appliances, such as mattresses, pillows, glass & plastic plates & cups.
  - e. They live outside the Kanekes Dalam area.
  - f. Some of them have been influenced and converted to become a Muslim in quite significant numbers.

## 2. The Existence of Ulayat Rights in Baduy Indigenous Peoples

The customary rights contained in the Baduy Indigenous people are entrusted by the karuhun in the form of "ngasuh queen, ngajaga menak", according to the Baduy Indigenous people that the land they live on or live in is shared property to be used jointly under the knowledge of the Traditional Head or *Puun*. The Baduy Adat tribe consists of two groups, the *first*, the Adat Baduy Dalam who do not recognize land ownership and only recognize the right to cultivate the land, if there is a transfer of rights over land ownership it violates the provisions of karuhun or "taboo", with sanctions for violators being expelled from the indigenous community of the Inner Baduy Tribe, while the *second*, is the Outer Baduy Indigenous People who have progressed and accepted culture from outside, the Outer Baduy live and develop outside the Inner Baduy area led by a Village Head or what is called "Jaro". The main livelihood of the Indigenous Baduy people for hundreds of years has been farming (*ngahuma*).<sup>38</sup>

The Baduy people are the subject of customary rights, namely customary law communities that are still communal, usually there are customary members as their community, there are leaders and sometimes there are customary elders, each customary law community together has civil rights over the territory of their customary people. . Currently, land is a need for all Indonesian people, including the Baduy community, because land functions as a means or place to live for everyday people, so it becomes a need that must be confirmed by proof of ownership in the form of a land certificate. Land as a requirement must be certified, this is in accordance with the redaction of Article 19 paragraph (1) of the Basic Agrarian Law which states that in order to guarantee legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to provisions regulated by government regulations.<sup>39</sup>

## 3. Legal Protection of Ulayat Rights in the Baduy Indigenous People

As an effort to protect the law on the residential area of the Baduy Indigenous People's customary rights, the Regional Government of Lebak Regency has issued a Regional Regulation of the Lebak Regency Number 32 of 2001 concerning Protection of the Ulayat Rights of the Baduy Indigenous People. In addition, customary rights have been recognized by the constitution and have received international recognition according to Law Number 39 of 1999 concerning Human Rights which states that in the framework of recognizing human rights, differences and needs within indigenous and tribal peoples must be considered and protected by law. and the government, as well as the cultural identity of indigenous and tribal peoples including customary land rights are protected in line with the times. A state based on law must look at the applicable provisions, the use or taking of land from its rights holders carried out by the state whose reasons are for the development of the public interest must not conflict with the law because this is also contrary to the principles and objectives of national development which aims to create a society that fair and prosperous.<sup>40</sup>

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<sup>37</sup>*Ibid.*

<sup>38</sup>Ade Irmawan, "Legal Protection of Ulayat Rights in the Baduy Tribe as a Result of Land Procurement for Development for Public Interests", available at: <https://repository.untirta.ac.id/TA/KT/KT03/0/2015/KT0300025/legal-protection-of-ulayat-rights-of-the-baduy-tribes-as-a-result-of-the-procurement-of-land-for-development-for-public-interest.html>, accessed on 23 July 2022.

<sup>39</sup>Eliana, "Legal Certainty of Baduy Customary Land Ownership", available at: [https://www.researchgate.net/publication/342714686\\_KEPASTIAN\\_HUKUM\\_KEPEMILIKAN\\_TANAH\\_ULAYAT\\_KAUM\\_AD\\_AT\\_BADUY](https://www.researchgate.net/publication/342714686_KEPASTIAN_HUKUM_KEPEMILIKAN_TANAH_ULAYAT_KAUM_AD_AT_BADUY), accessed 23 July 2022.

<sup>40</sup>Ade Irmawan, *Loc. Cit.*

The form of legal certainty over land ownership of the indigenous Baduy people is the implementation of Government Regulation Number 24 of 1997 concerning Land Registration and the development of Government Regulation Number 10 of 1961. The Baduy Communal Community believes that land rights are a gift from God which they directly obtain to be used together for the sake of its survival as a representative of the owner of nature. In contrast to the Baduy people who have left the Baduy traditional group (named the Outer Baduy) and have blended in with the Kenekes community, living outside the ulayat land area of the Baduy Indigenous people, the same provisions apply as other Banten people, if the right holder cannot provide proof of ownership the land, whether in the form of written evidence or other forms that can be trusted, then the bookkeeping of rights can be carried out not based on ownership but based on evidence of physical ownership of the land, provided that:<sup>41</sup>

- a. The Petitioner has actually owned the land for 20 years;
- b. The control of the land has been carried out in good faith;
- c. Such control has never been contested and therefore is considered to be recognized and justified by the customary law community or village/kelurahan;
- d. The land is not in dispute;
- e. If the statement is not in accordance with reality, be prepared to be prosecuted before a judge in a criminal or civil manner for giving false information.

The form of legal certainty over the control of Baduy customary land has never been needed by the Baduy customary community, official confirmation and recognition that Kenekes Village is Baduy community customary land is Lebak District Regulation No. 32 of 2001 concerning Protection of Baduy Community Ulayat Rights. The inauguration was stated in the Regional Gazette of Lebak Regency Number 65 series D of 2001 which was further strengthened by the Decree of the Lebak Regent Number 580/Kep.233/Huk/2002 concerning Determination of Detailed Boundaries of Ulayat Rights of the Baduy Indigenous People in Kenekes Village, Leuwidamar District, Lebak Regency, dated 16 July 2002 based on measurement and mapping results referring to administrative area boundaries, special boundaries and natural boundaries carried out by the Land Office (BPN) of Lebak Regency.<sup>42</sup>

The boundaries of customary rights in the Baduy Indigenous People consist of:

- a. village boundaries;<sup>43</sup>

Kanekes Village as a residential area for the Baduy Community has village boundaries as follows:

  - 1). North:
    - a). Bojongmenteng Village, Leuwidamar District.
    - b). Cisimeut Village, Leuwidamar District.
    - c). Nyagati Village, Leuwidamar District.
  - 2). West:
    - a). Parakanbeusi Village, Bojongmanik District.
    - b). Keboncau Village, Bojongmanik District.
    - c). Karangnunggal Village, Bojongmanik District.
  - 3). South
    - a). Cikate of Cijaku District.
  - 4) . East:
    - a). Karangcombong, Muncang District.
    - b). Cilebang Village, Muncang District.
- b. Natural boundaries;<sup>44</sup>

The Baduy Community area located in Kanekes Village has the following natural boundaries:

- 1). North: Ciujung River.
- 2). South: Kali Little.
- 3). West: Cibarani River.
- 4). East: Kali Cisimeut.

The more detailed boundaries regarding the existence of customary rights of the Baduy Community are measured based on the results of measurements and benchmarks by the relevant Offices/Institutions stipulated by a Decree of the Lebak Regent.

Administratively, legal certainty regarding the form of Baduy customary communal land ownership is accommodated by measurements that have been carried out by the BPN of Lebak

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<sup>41</sup>Eliana, *Loc. Cit.*

<sup>42</sup>*Ibid.*

<sup>43</sup>Lebak Regency Regional Regulation No. 32 of 2001 concerning *Protection of the Ulayat Rights of the Baduy Indigenous People*, Article 6.

<sup>44</sup>*Ibid.*, Article 7.



Regency as a form of legal protection of the customary land rights of the Baduy Indigenous people which has been stipulated through the Lebak Regency Regional Regulation Number 32 of 2001 concerning Protection of Community Ulayat Rights. Baduy.<sup>45</sup>

The customary land of the Baduy Indigenous people is 5,136.58 hectares which is divided into two parts, namely ±3,000 hectares of closed/protected forest and ±2,136.58 hectares of arable land and settlements. Consisting of 59 villages, 3 villages namely Cibeo, Cikartawan and Cikeusik are included in the Baduy Dalam area and 56 other villages are the Baduy area.<sup>46</sup>

Up to now, the transfer of land over the communal land of the Baduy adat community or on behalf of the Baduy Customary Chief has never been known or registered at the Land Office because the transfer of customary land on behalf of the Baduy customary leader has never happened and is registered at the Land Office of Lebak Regency. However, all legal actions aimed at transferring a plot of land to another party must be carried out before the Land Deed Making Officer (PPAT) in charge of making the Deed, which proves the occurrence of the legal action of transferring the right, the PPAT functions as an assistant to the Head of the Land Office, where the Head of the Land Office only will make changes to the juridical data contained in the land book if there is a change based on an authentic deed made by the PPAT. The form of legal protection for the customary land of the Baduy in the event of a transfer of rights is to involve the PPAT, because all legal actions aimed at transferring a piece of land to another party require that the transfer of rights be carried out before the Land Deed Making Officer (PPAT) who is in charge of making the transfer deed, which proves that there has been a legal act of transfer of said right.<sup>47</sup>

According to the provisions of Article 11 of the Regional Regulation of Lebak Regency Number 32 of 2001 concerning Protection of the Ulayat Rights of the Baduy Community, that in order to avoid disputes and confusion over the customary rights of the Baduy Community from individual interests and as a form of recognition of the rights of the Customary Law Community, efforts to certify Baduy areas are not permitted. Another form of legal protection, regarding the existence of customary rights in the Baduy indigenous people, can be seen in the criminal provisions stipulated in Article 9 paragraph (1) of the Lebak Regency Regional Regulation Number 32 of 2001 concerning Protection of the Baduy Communities' customary rights, which states that every community outside the Baduy who carrying out activities that disturb, destroy and use customary land rights of the Baduy people is punishable by imprisonment for a maximum of 6 (six) months or a fine of up to Rp. 5,000,000 (five million rupiah).<sup>48</sup>

### **Conclusions and recommendations**

The existence of customary rights in the Baduy tribal community as an integral part of Indonesian citizens, needs to be given legal protection so that there are no conflicts related to the control and ownership of customary land (ulayat land). The customary rights contained in the Baduy Indigenous people are entrusted by the karuhun in the form of "ngasuh queen, ngajaga menak", according to the Baduy Indigenous people that the land they live on or live in is shared property to be used jointly under the knowledge of the Traditional Head or *Puun*. Constitutionally, the recognition of the existence of customary law communities (including the Baduy tribe), can be explicitly found in Article 18B paragraph (2) of the 1945 Constitution and also found its arrangements in various other laws and regulations. As a follow-up, a form of legal protection for the existence of customary rights in the Baduy Indigenous people, the Regional Government of Lebak Regency has issued Lebak Regency Regional Regulation Number 32 of 2001 concerning Protection of the Indigenous Rights of the Baduy Indigenous People. Another form of legal protection, regarding the existence of customary rights in the Baduy indigenous people can be seen in the criminal provisions regulated in Article 9 paragraph (1) Lebak Regency Regional Regulation Number 32 of 2001.

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<sup>45</sup>*Ibid.*

<sup>46</sup>*Ibid.*

<sup>47</sup>*Ibid.*

<sup>48</sup>Regional Regulation of Lebak Regency Number 32 of 2001 concerning *Protection of the Ulayat Rights of the Baduy Indigenous People*, Article 9 paragraph (1).

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