

## Women Impoverishment Through the Transfer of Ulayat Land Rights

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### Abstract

Indonesia has ratified the Convention on the Elimination of All forms of Discrimination Against Women in 1984. However, the fact remains that women are still often subordinated, including customary land rights such as cases in Lombok, Minangkabau, Riau, and others that prioritize investment that would bring economic benefits adat authorities in which do not involve women. Moreover, the dispute over the ulayat land's function impacts families' poverty, including women. Therefore, scientific work with a normative approach using secondary data had sought to compile some of the results of previous empirical research that had raised the case of the transfer of customary land rights. It recommends ways to overcome them by reforming specific regulations regarding the procedure of transferring customary land rights to state rights and equitable ownership rights, and with a gender perspective.

**Keywords:** women's rights; customary land; gender perspective.

### Abstrak

Indonesia telah meratifikasi Konvensi Penghapusan Segala bentuk Diskriminasi Terhadap Perempuan pada tahun 1984. Namun, faktanya tetap bahwa perempuan masih sering di bawahan, termasuk hak atas tanah adat seperti kasus di Lombok, Minangkabau, Riau, dan lainnya yang memprioritaskan investasi yang akan membawa otoritas manfaat ekonomi adat di mana tidak melibatkan perempuan. Apalagi perselisihan tentang fungsi lahan Ulayat berdampak pada kemiskinan keluarga, termasuk perempuan. Oleh karena itu, karya ilmiah dengan pendekatan normatif menggunakan data sekunder telah diupayakan untuk menyusun beberapa hasil penelitian empiris sebelumnya yang telah mengangkat kasus pengalihan hak atas tanah adat. Ini merekomendasikan cara-cara untuk mengatasinya dengan mereformasi peraturan khusus mengenai prosedur pengalihan hak atas tanah adat ke hak-hak negara dan hak kepemilikan yang adil, dan dengan perspektif gender.

**Kata kunci:** hak perempuan; tanah adat; perspektif gender.

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## Introduction

There are women in indigenous communities who naturally own the right to control, use, and manage communal land; some do not. However, as communal land rights, *ulayat* land cannot be owned privately and traded, with certain exceptions for the indigenous community's welfare, including women and their descendants. However, in reality, the state sometimes asks for part of the *ulayat* land for development purposes. Also, for some reason, certain indigenous people are forced to sell their customary land after it has been decided by deliberation so that the land can be owned individually. To acquire some of the customary lands, generally, it is not easy because it is necessary to approach the customary elders and members of the customary law communities

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concerned according to local customs. However, in fact, not a few *ulayat* lands have changed their function. For example, customary land in Minangkabau (West Sumatra) which was previously not tradable, can now be used by other people, even foreign people or institutions, as long as “*adat diisi limbago dituang*”, (Fatmi, 2018). It means that outsiders must go through negotiation for a consensus process. Unfortunately, the deliberation process did not involve women whose position *nota bene* in Minangkabau was as *bundo kaduang*, those who have the power over the *ulayat* land. That is why Minangkabau women become economically independent and can support themselves and their children. Therefore, the transfer of rights and functions of the *ulayat* land to other people/ institutions will cause impoverishment problems. Traditionally in Minangkabau, using or utilizing *ulayat* land does not mean owning it. Therefore, there is a traditional adage “*kabau pai kubangan tingga*” (Fatmi, 2018), which means that when it has been used or utilized, the *ulayat* land will return to the customary owner.

Meanwhile, in Riau, the impoverishment of women also occurs due to conflicts over the transfer of customary rights which have resulted in frequent disputes in the Kuok state, Kuok District, Kampar Regency, because there is *ulayat* land granted to the Piliang tribe, Datuk Paduko Jo Besar. The cause is economic problems; *ninik mamak* want to get their own benefit without thinking about their nephews because they feel that they have full control over *ulayat* land.

Meanwhile, in Riau, the impoverishment of women also occurs because of conflicts over the transfer of customary land rights that caused frequent disputes in the Kuok state, Kuok District, Kampar Regency due to the existence of customary land that was donated to the Piliang tribe, *Datuk Paduko Jo Besar*, due to economic factors, namely the desire of *ninik mamak* to gain their own benefits without thinking of their nephews because *ninik mamak* feels they have the authority to control *ulayat* lands fully.

The tribes of the indigenous peoples in Kuok Riau seem to be similar to those in Minangkabau (matrilineal), but differ in control over their *ulayat* land management. The Piliang Tribe’s *ulayat land*, located in Kuok Village, Kuok District, Kampar Regency, is used for rubber and oil palm plantations. The result is taken by the *ninik mamak* or the *pengulu (datuk)* and the nephews in the communities. Meanwhile, investors’ oil palm land clearing is carried out using a profit-sharing system.

Although not precisely the same, another similar thing also occurs in the Sasak tribe community as the Lombok islands’ original inhabitants. They have a long history of managing *ulayat* land as part of village assets, but the government bureaucracy has begun to intervene and confuse customary authority in the village. The impoverishment of women also occurs because of the confiscation of communal lands which have been regulated under customary jurisdiction for centuries. In many places in Lombok, conflicts between informal-traditional adat leaders and government officials mostly revolve around taking over communal lands, the *ulayat* lands of indigenous people. (Rozaki, 2016) The transfer of rights to customary land in Lombok will never involve

women, because according to previous research from (Ulyan Nasri, 2018), patriarchal customs in Lombok are very gender-biased.

Apart from the examples mentioned above, there are still many impoverishments of women in indigenous communities in Indonesia due to no longer having land ownership resources, because the land has been released. As the results of Lamhot Herianto Sigiro's empirical research on Ulayat Land in Parbuluan Subdistrict, Dairi District, in Batak, there have been many relinquishment of customary rights due to facilitating the procedure for relinquishing customary rights there by the customary community. There are also many other disputes related to customary lands whose origins have impoverished women and children, such as the long customary forest dispute between the Pagu tribe in North Halmahera Maluku against PT NHM, PT WBN with the Sawai tribe, and Aketajawe Lolobata National Park with the Tobelo in tribe, which deemed to have violated the rights of indigenous peoples because they have limited and prohibited indigenous peoples from accessing customary rights over customary forest areas. This of course results in indigenous peoples becoming poor and without a source of livelihood. In fact, in a 2013 Constitutional Court decision on a lawsuit filed by the Alliance for Indigenous Peoples of the Archipelago (AMAN), it was explained that customary forests are not state forests. Customary forests are forests within the territory of customary law communities and state authority is limited to the extent that the authority is covered by customary forests. It is evident that the existing regulations cannot significantly prevent the problem of transferring customary land rights over indigenous peoples' impoverishment in general and especially women. Likewise, the results of sociological research on "poverty of Dayak Benawan women in West Kalimantan" by Nicodemus (Niko, 2019) shows the multidimensional causes of women's poverty. According to him, the low land ownership resources in the agricultural sector is also the cause of poverty for women, especially those who work as farmers but do not own their own land.

It shows the vulnerability of women's condition in indigenous communities regarding the ownership of ulayat/customary/communal land in Indonesia. The rights of indigenous peoples, their understanding and views on customary land have been explained in the meaning of Customary Land Law in the Basic Agrarian Law (UUPA). Therefore, these rights should be fought for through the right legal channels. Customary law regarding land has a special position in the UUPA. It can be seen in Article 3 of Law Number 5 Year 1960 which states that "Customary rights and similar rights of customary law communities as long as according to reality still exist and are following developments ....". However, it turned out that the implementation was not as expected. Ulayat land, which should have been a property must be preserved for reflecting the prestige of a people, is now decreasing with the transfer of customary land. The rights of the people, families, and especially women's rights to the land will also be lost/reduced, resulting in lost/reduced opportunities to obtain the welfare of the family, women, and children in the community.

Regarding the description above, this paper aims to identify the phenomenon of the impoverishment of women in indigenous communities (especially in Minangkabau, Riau, and Lombok) due to changing communal land. To overcome these women's poverty, researchers would recommend normatively to reform the provisions of the Agrarian Law related to customary land due to the transfer of land rights that are more just and gender-appropriate.

## Research Problems

From this background explanation, it is necessary to identify the transfer of customary land rights in various regions related to women's impoverishment, especially in Minangkabau, Riau, and Lombok. Then, it can be recommended to reform the equitable provisions of agrarian law and gender perspective to overcome the impoverishment of women due to the transfer of customary land rights.

## Research methods

This research used the normative method, which includes research on the principles of customary law and indigenous peoples' rights, agrarian/customary land, and women's rights (Soekanto, Sri Mamudji, 2011). It analyzed the study results qualitatively because this research produces descriptive data in the form of written or spoken words from people and behaviors observed by indigenous peoples (Moleong, 2007; Soekanto, 1987). The secondary data used empirical research reports from several previous research related to *ulayat* land; the concept of *ulayat* land in the UUPA linked to the Rights of Indigenous Peoples/the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and women's rights in the Convention on the Elimination of All forms of Discrimination Against Women (hereinafter abbreviated as CEDAW or the Women/Women Convention). It was argued that the concept of *ulayat* lands should be reformed from a gender perspective (*The United Nations Development Fund for Women/UNIFEM*), because from the evidence of data on the impoverishment of women as a result of the transfer of customary land rights, it turns out that women and children are the most suffering. Therefore, by using John Rawls's theory of Justice which pays attention to those who have the least opportunity to achieve the prospects of welfare, income and authority, according to L.M. Gandhi Lapian (2012) who explains that "feminist studies are born to fight for justice for oppressed women, this study also applies not only to the principle of certainty in law but more to the principles of justice and fairness", is recommended for reform. Regulations related to *Ulayat* land regarding the transfer of customary land rights to State rights and ownership rights must be gender-equitable.

## Discussion

## Identification of the phenomenon of indigenous people (especially women) who have become poor (in Minangkabau, Riau, and Lombok) due to their changing functions

### Minangkabau

Minangkabau is an ethnic group with a matrilineal kinship system, growing and developing in West Sumatra, which draws a female genetic line (matrilineal). Minangkabau women have more responsibility for their descendants compared with men's role as husbands. Therefore, the title of honor for Minangkabau women is *bundo kanduang*. As a *bundo kanduang* there are other strategic implications as the owner of a *rumah gadang* (a traditional house where people live), where all the rooms are allocated to women, not men. Likewise, the inheritance of *ulayat* land or also known as a sacred *pusako* (legacy) is given to women, not to men and the children to follow their mothers. *Ulayat* land is a highly valued inheritance that cannot be pawned, let alone be traded. It can only be pawned if these four things happen: 1) *rumah gadang katirisan*-it costs a lot to repair *rumah gadang*; 2). *mayat tabujua diateh rumah*-it costs money for organizing the deceased body; 3). *mambangkik batang tarandam* means-there is a transfer of the title of sako; 4). *gaduh gadang indak balaki*-people need money. Other than the four things above, the ancestral land (*tanah pusaka*) in Minangkabau cannot be made (Yuhelna, Isnaini, Yanti Sriwahyuni, 2018). The position of a man/husband/father in his family who is called *mamak* is only responsible for his relatives.

Women act as custodians of wealth. He must be in his hometown to protect the wealth. Therefore, *ulayat* land in Minang is strategic business land for women. Women farmers in Minangkabau will not manage other people's land, but their own *ulayat* lands. He has authority over the land he owns. It is not surprising that with agricultural management like that, women in Minangkabau are known as tough farmers, farmers who can afford to pay for the education of the children who are under their responsibility. The resilience and seriousness of women in farming are constructed with *Bajulo-julo*, a tradition of women's cooperation in working on agricultural land. Besides, there is also the *baiyo-iyo* tradition, a tradition of discussion about agriculture among women who discuss agriculture and its empowerment. These tradition is seen as a form of agreement for women to work to manage or own land, but the right to control lies in men's hands. Here is clearly seen the separation between owning and controlling.

*Ulayat* land in Minangkabau, originally called *wilayat*, comes from the Arabic word 'wilayatun', which means a large area controlled by a group of people who are an alliance genealogical and territorial. Before converting to Islam, the customary adage said "*tanah nan sabingkah, ilalang nan saalai, capo nan sabatang pangulu nan punyo*". The term used is "*punyo*", which comes from the word "*mpu*" which means "administrator" and "*nyo*" means "it", so the whole meaning is "administer it". As the right of an association, the customary right is a right that lies in the field of public law, which contains:

- a. the power of the partnership to administer and regulate the allocation, supply, and reserve of all land parcels in the fellowship area (authority to determine the master plan);
- b. the power of the association to administer and determine the legal relationship between the members of the association and certain land parcels in the fellowship area (authority to grant permits/rights to land);
- c. the power of the association to administer and regulate legal relations between members of the association or between members of the association and outsiders concerning land parcels in the fellowship's territory (transaction permits relating to land);

Supervision of the *ulayat* of the clan land or valued heirloom property is the task of the head of the clan called the *tungganai* (elder *mamak rumah*) in the *jurai*. However, facts found in the field (as quoted from research conducted by Yuhelna, Isnaini, Yanti Sriwahyuni); it is *ninik mamak/mamak* as the head of inheritance who sells and pawns *tanah pusako* in *Gunung Sarik* village. Meanwhile, as clan members, women do not receive their rights and obligations without going through a procedure or an argument.

Apart from these cases, other cases resulted in customary land changing its function/rights, as in the research that has been carried out by (Silvia Hanani, 2011). According to her, the conversion of agricultural land after selling this *ulayat* land is very high in suburban areas. For example, in Agam District, almost all of its areas that are the outskirts of Bukittinggi have changed agricultural land's function to non-agricultural land. Likewise, in West Pasaman District, there was a change in the function of communal land from agricultural land owned by the community to the investor in the period 1990-2007 to a palm oil plantation covering an area of 12,328 hectares, which was controlled by this investor.

The transfer of function or customary land rights either because it was sold out, or only partially sold in Minangkabau, has made women lose their rice fields as their economic source. They do not even get their rights from the sale of the customary land and cause them to lose their source of welfare. As a result, many Minang women are begging for *sadaqah*, washing workers, laborers, and cultivators of other people's land. Divorce is common. This can be said to be the poverty of rural communities, especially women, which occurs in Minangkabau. The following are various poverty indicators for rural women in Minangkabau which are quoted indirectly from Silvia Hanani's research, as below:

- a. The High Number of Malnutrition

In West Sumatra, in 2000, for example, it had increased by 300 percent from the previous year. Initially, 2,825 people, increased to 8,598, and 33 died. Until now, these figures are still high.

- b. The Turmoil of Domestic Violence

The most dominant reason stated by domestic violence victims (KDRT) is that this case was due to economic or poverty factors. The number of domestic violence in

West Sumatra is always increasing, even according to mass media reports, the number of domestic violence in this area from 2010 to 2011 increased by 300 cases. The victims of that domestic violence are still mostly women and children.

c. Trapped Commercial Sex Workers

The poverty indicator for rural women is also evident from how they earn a living. Becoming a Commercial Sex Worker (CSW) is a form of rural women's work to cover poverty, even though they know that work is against morality. The reality today, although there are no exact figures, turns out that prostitution is a woman's job in areas that adhere to this matrilineal system. From the survey, several data strongly indicated that women's involvement as prostitutes was inseparable from the structural poverty that befell them. They do not have economic assets, including customary land that must empower their economy according to *adat*.

d. Educational Dropout

With the loss of production assets in *ulayat* land, women also do not have high participation in their children's education. Therefore, it is not surprising that the dropout rate is quite high in this area. The dropout rate from primary and secondary school in West Sumatra currently reaches 7,682 people (BPS West Sumatra 2011). The indicator is very clear from the phenomena developing in the field: the increasing number of street children, beggar children, etc.

Those were some examples of women's lost rights in Minangkabau that still happen to this day. Due to the absence of clarity on women's power regarding *ulayat* lands, the tradition of hard work and collective work has disappeared from Minang women's lives. This has resulted in a low Gender-related Development Index (GDI) in Indonesia. Such conditions violate the provisions of Article 22 of the Universal Declaration of Human Rights (UDHR) that in fact "Every person as a member of society has the right to social security and the realization of economic, social and cultural rights ...". The Article 14 concerning the Convention on the Elimination of All Forms of Discrimination Against Women/CEDAW (The Convention on the Elimination of all Forms of Discrimination Against Women) which has been ratified by Indonesia with Law No.7 of 1984 stated:

States Parties shall pay attention to the special problems faced by women in rural areas and the role that rural women play in the survival of their families in the economic sector, including their work in the economic sector not valued in money, and shall enact regulations. to ensure the implementation of the provisions of this Convention for women in the regions.

Therefore, it is proven *de jure* on the ratification of CEDAW, meaning that the State has fulfilled the rights of women in indigenous peoples, especially in their survival, but the *de facto*/in fact impoverishment and marginalization of women still occurs. So that by identifying the problems in Minangkabau, cultural changes/movements that have taken root in the Minang customary community which are centered on *ninik mamak* without involving *bundo kanduang*, are proven to have resulted in the sale of customary land, thus impoverishing women.

## Riau

According Elfiandri (Sarjana, 2011), the structure of Riau society can be divided into three groups: *first*, based on maternal ethnicity (matrilineal), this community group is more dominant in mainland Riau areas such as Sengerih, Lubuk, Pelabi, Medang, Piliang, Melayu, Connection, Pitopang, and Kampar Petalangan people make a living from rubber forests and as fishermen; *second*, based on patrilineal descent, this community structure dominates the Riau Islands or coastal areas. Meanwhile; and the *third* is a mixed community structure based on an agreement dominated by migrants. The *ulayat* land dispute in Riau taken as an example is *Ulayat* Land, which is not for sale/grant, in the Kenegarian Kuok of the indigenous peoples of the Piliang tribe (matrilineal) (Sarjana, 2011).

The division of *ulayat* lands in Kenegarian Kuok are:

- a. *Ulayat* tribal land, is ownership rights over land and natural resources on it. It is the collective property of all members of a particular tribe whose control and use are regulated by the tribal leaders. The tribal lands in the Kuok state consist of the Malay, Caniago, Patopang, Domo, and Piliang tribes.
- b. The *ulayat* clan land is the communal land found in the Kuok state. Ownership rights to a plot of land and natural resources on and in it are the property rights of all clan members consisting of *jurai/ powik* whose control and the chief *mamak* controls utilization.

The tribes of the indigenous peoples in Kenegarian Kuok seem to be similar to those in Minangkabau (matrilineal) but differ in control over the management of customary land that is not handed over Bundo Kaduang. Because in the Piliang Tribe located in Kuok Village, Kuok District, Kampar Regency, the *ulayat* lands of the Piliang Tribe are used for the rubber, oil palm, and plantation products are taken by the *ninik mamak* or the *pengulu (datuk)* and the nephews who are in the alliance. Meanwhile, investors' oil palm land clearing is carried out using a profit-sharing system.

The dispute over the transfer of *ulayat* land rights in Kuok Village occurred because it was not utilized or managed according to the existing rules as follows:

- a. His nephew's son was not brought in for a deliberation, which resulted in a dispute. In that case, Ibarahim datuk Paduko Jo Besar decided himself to donate *ulayat* land to the oil palm investor, PT. Simas Jaya, without bringing his nephew's son in a deliberation.
- b. The carelessness of *ninik mamak (datuk)* and her nephews.
- c. Economic factors, meaning that disputes over *ulayat* lands occur because of the desire of *ninik mamak* to gain their own benefits without thinking of their nephews;

By giving the land to oil palm investors, Tando, who is the representative of PT. Simas Jaya, conducted by Ibrahim *datuk Paduko Jo* (Dodi, 2011). Apart from donating the communal land, Datuk Ibrahim also often received *Pancuong Ale* (grant money) from Tando, who is also a representative of PT. Simas Jaya. The *pancuong ale* (grant money) from PT. Simas Jaya was taken and enjoyed by Datuk Ibrahim himself. On this basis, the



son of this Piliang tribe's nephew has demanded a lot of Datuk Ibrahim to return the money he has enjoyed individually to the tribes for the interests and needs of the Piliang tribe. However, Datuk Ibrahim reported *Datuk Musa* to the police because he had used Datuk Ibrahim's stamp for documents regarding the customary needs of the Piliang tribe without Datuk Ibrahim's prior approval. So, the transfer of customary land rights in Kuok Village is actually more about the misuse of the authority of the *ninik mamak* in guarding their ulayat lands, which harm/impoverish their nephews, including women. This is because the matrilineal genealogical social structure in the Piliang tribe certainly affects women's rights. Women's rights to speak out in the transfer of customary rights in Kuok Village also do not involve them as a condition in deliberation.

This case that occurred in Riau, is not much different from that in Minangkabau. The exclusion of parties, especially women in decision-making over the transfer of their customary land rights, should not have happened. Article 14 of CEDAW has regulated the need to pay attention to women's particular problems in rural areas and their role in their families' survival in the economic sector. Besides, Article 9 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) also states that:

Custom society and indigenous people have the right to become part of a community or nation, following the traditions and customs of that community or nation. No discrimination whatsoever may arise due to the enjoyment of the right.

## Lombok

Lombok is different from the two communities exemplified above because its genealogical structure is patrilineal, where women are bound to be subordinated. Therefore, the case of customary land in Lombok is different from that in Minangkabau, West Sumatra, and Riau. However, the result is the same, that is the impoverishment of women. The land conflict that occurred in Lombok occurred due to the practice of negotiating *ulayat*/customary land. This is the result of research conducted by Rozaki (2016) in Lendang Nangka village, Masbagik District, East Lombok Regency, West Nusa Tenggara Province. The object of his research is about the social origins of his villages which are related to the traditional village of the Sasak people as indigenous people, with a long history of managing *ulayat* lands. This is what makes the location of this research relevant for "testing" the depth of the meaning of a number of articles in Law no. 6 of 2014, about the village. This is particularly related to village assets, related to the policy response of the regional government and village administration, because since the colonial era until the independence of Indonesia, there have been claims of ownership of village assets, especially communal land which has been inherent in the customary law community unit.

Village assets in the form of communal land are marginalized through reclaiming. The crisis of conflict in village assets in the form of land as cultivated land for a source of livelihood in East Lombok, can be divided into three phases (Rozaki, 2016):

- a. During colonialism, there was a land conflict between the indigenous Sasak people in Sembalun, the area at the foot of Mount Rinjani's slopes, and the Dutch East Indies government. The indigenous people of Sembalun are known to have powerful customary beliefs in regulating the structure of harmony between humans, nature, and the creator through the Wetutelu traditional belief system. They began to build the first settlement on the slopes of Mount Rinjani's foot, since the 13th century known as the village of Baleg. The Dutch East Indies government claimed control of *ulayat* land unilaterally by issuing Decree Number 15 *Staastblad*/Number 77, dated March 12, 1941, making the forest in the Mount Rinjani as an area for the Marga Satwa Reserve and limiting the activities of residents in the area (Rozaki, 2016).
- b. During the New Order era; there was a marginalization of land conflicts between community members and the New Order government, namely by ignoring the redistribution of assets for villagers' welfare through *land reform*, as mandated by the UUPA of 1960. The New Order believed that economic policies through industrialization strategies could encourage economic growth and provide new opportunities for villagers absorbed in the growing industrial sector, thus seeing the customary law community as an obstacle to the development policies they carry out. Therefore, development is carried out with a repressive and coordinative approach to stability and security to conquer the critical political aspects by issuing Law no. 5 of 1979 concerning village government. This is where the beginning of the diversity of village government structures in Indonesia. This law eliminates other aspects of cultural diversity and locality in society. In many places in Lombok, conflicts between informal-traditional *adat* leaders and government officials have largely revolved around the expropriation of communal lands, the *ulayat* lands of indigenous people (Rozaki, 2016).

Likewise, in East Lombok, specifically, the government continued the Dutch East Indies government, stating unilaterally that the Mount Rinjani area was declared Mount Rinjani National Park (TNGR) through the 1990 Indonesian Minister of Forestry Declaration. As a result, the community could no longer access land management for growing cloves, cocoa, coffee, durian, vanilla, wood. It was easy for the government to practice the negotiation of customary land to make and change the status of customary land to state land and concessions to companies through land-use rights (HGU). From 1988-1999, PT Sembalun Kusuma Emas (SKE), under Mrs. Tien Soeharto's leadership, obtained HGU concessions on communal land rights, but not all were utilized. Since 1995, residents of four villages in Sembalun District have been working on an unused 225 hectare land for PT. The SKE was for planting crops until a riot broke out in 2013 when the company recapitulated the land cultivated by residents and asked residents to stop working on the land. As a result, many people become poor, forcing them to send their women and children to work abroad to support daily family needs.

- c. During the Reformation era; the condition is more complex because it involves a wider variety of actors, including citizens, the central government, local governments, investors, or private companies. In the pattern of conflict, some confront community members with the government, community members, and corporate investors, between central and regional governments, and between local governments and corporate investors. This reform era has intensified the commercialization of land for investment, which sometimes collides with each other's interests, thus creating an uncertain investment climate in the regions, as in PT's case. Eco Solution Lombok (ESL). In 2013, under the Regent Sukiman Azmi leadership, PT. ESL, a company owned by a Swedish investor, obtained an investment permit in the 339 hectare Tanjung Ringgit forest area, with an investment value of Rp. 5 trillion. At that location, PT. ESL plans to build an environmentally friendly hotel. When there was a change of district head, from Sukiman to Ali Bin Dahlan, in October 2014, Regent Ali Bin Dahlan revoked the permit and granted permits to four new companies, namely PT. Palamarta Persada, PT. Lombok Saka, PT. Tanah Hufadan PT. Ocean Blue on the land in principle permit and environmental service management business permits previously owned by PT. ESL.

Therefore, a conflict arose in the public involving PT. ESL, the central government with the Regent of East Lombok, Ali Bin Dahlan. Tension after tension occurred in Lombok. The conflicts that occurred generally resulted in land changing hands and functions. The land had become the environment, the source of life, the source of everything, from the spiritual space to the economic space, most people's cultures had disappeared. Without land, farmers lose their social identity. Various attempts to separate or alienate peasants from land that has been a source of livelihood are real practices of violations of civil and political rights and economic, social, and cultural rights as stipulated in the International Covenant and ratified in 2005 by the Indonesian government. When farmer families increasingly lose control of land as their production base, this implies a weakening of their survival. Their families experience spiritual, social, and economic shocks in community ties (Rozaki, 2016).

They suffer from a downturn because of the land problems that they have almost no help but to rise through their own family environment (including women) to survive. As a result of this poverty, there are phenomena: a). The increasing number of female workers (TKW) and TKI (Indonesian workers); b) the increase in the number of early marriages. This is because it is characterized by rural Sasak cultural customs and gender-biased religions. Women's access to and participation in the decision-making process at various levels, from the family environment to government institutions is fragile. The family and community environment is very patriarchal, so that ownership and control of assets, even though women are more productive in work and produce much wealth, the woman's wealth is called her ownership in the sang (Makinudin, 2005).

The portrait in East Lombok due to the conflicts over customary/*ulayat* lands has been going on for decades. Access to justice for the community to develop themselves through an independent village economy is increasingly being neglected. The impact is that the farming family experiences poverty. The reality of poverty in the farmer family in this village ultimately leads to women being the spearhead in overcoming the burden on the family's economy. The impact is that the farming family experiences poverty. The reality of poverty in the farmer family in this village ultimately leads to women being the spearhead in overcoming the burden on the family's economy. The impact is that the farming family experiences poverty. The reality of poverty in the farmer family in this village ultimately leads to women being the spearhead in overcoming the burden on the family's economy.

Cases of transfer of customary land rights by the State, as happened in Lombok, should be carried out according to Article 8 paragraph 2 UNDRIP as follows:

The State provides an effective mechanism to prevent and compensate for, among other things: (a) any action which has a purpose or results in the loss of their integrity as distinct groups of people, or of their cultural values or ethnic identities; (b) any act which has the purpose of or results in the deprivation of them from their land, territory or resources; (c) any form of displacement of the population which has the purpose of or results in violating or reducing any of their rights.

### **Recommendations on Agrarian Law reform related to customary land with a gender perspective.**

From the phenomenon of communal land in Minangkabau, Riau, and Lombok, it is evident that more and more *ulayat* lands have transferred their rights. However, they still exist because there are three forms of customary law alliances in Indonesia: a). genealogical, such as tribes and lungs in Minangkabau, clans in Tanah Batak, Klebu in Kerinci; b). territories such as villages in Java and Bali, hamlets and clans in South Sumatra, and c). territorial genealogies, such as *nagari* in Minangkabau, the alliance has a clear organizational structure, has leadership, has independent assets, both tangible and intangible. One of the assets is *ulayat* land, which is generally a plot of land to which the *ulayat* rights of a customary law association are attached. The land came under their control when they wandered in search of a living, temporarily settling in the area they passed through. After establishing a religio-magical relationship between groups, the area's lands were attached with stakes. They feel entitled to the land, so other people or groups cannot enter the area without their permission. These rights are groups' rights, not individuals as argued (Bachtar, Abna, Dt. Rajo Sulaiman, 2017). According to Surojo Wignjodipuro, the alliance's right to this land is called land rights and Van Vollenhoven called '*beschikkingsrecht*', that is the environment/territory of power, which is translated into the term '*ulayat* rights'.

In the partnership over the land, each member of the association has rights to the communal land as follows:

- a. Collect forest products and catch wild animals, including fish, on the communal lands of their customary law communities;
- b. With the partnership's license, opening up certain areas of the communion's communal land to be cultivated continuously as a place to live, agricultural land, livestock, fisheries, etc. Through this method, the *nagari* children will of course, obtain special rights over the land which has been cleared, which is known as *ganggam bauntuak* (usage rights);
- c. With the partnership license, a member of the association can make agreements with outside parties in utilizing the *ganggam bauntuak*;
- d. With an alliance permit, an alliance member can transfer his/her *ganggam bauntuak* to other members of the association, such as land grants, land leases, etc.

Meanwhile, the State of Indonesia, formed from the union of customary law communities (*adatrecht gemeenschap*) into customary law territories (*adat recht kringen*), can be seen as a legal community as well. The state's right to the entire territory of the state which is now known as the "right to control the state" can be referred to as the *ulayat* rights of the state. Then, all land within the territory of Indonesia is referred to as "the *ulayat* land of the country". Therefore, the customary rights of the customary law community as described above are identical to the contents of the right to control the state as contained in the 1945 Constitution Article 33 paragraph (3) which is explained by Article 2 (1) of the UUPA which reads earth, water, and space. The sky, including the natural resources, is at the highest level "controlled by the State," as an organization of power for all the people, and explained in Article 2 (2) as follows:

The right to control of the State referred to in paragraph (1) of this article authorizes: a. regulate and administer the allotment, use, supply and maintenance of the earth, water and space; b. determine and regulate the legal relationships between people and earth, water and space, c. determine and regulate legal relationships between people and legal actions about the earth, water, and space.

In the general explanation of the UUPA, what is meant by "Right to Control the State", is that "controlled" does not mean "owned", but is the one that gives authority to the State, as the power organization of the Indonesian Nation. There is confusion in the term "controlled by the state" between Article 33 paragraph 3 and Article 33 paragraph 2 which states that production branches which are important to the state and dominate the lives of the people are controlled by the state. In this article, "controlled by the state" means directly owned and managed by the state, which is now in the form of BUMN. As a result of this confusion of meaning, as stated in the 1945 Constitution and the UUPA, there is often misunderstanding for state administrators, who view that the right to control the state over land is the same as the right of the state to the branches of production managed by State-Owned Enterprises. In other words, it is defined as state property, which is then referred to as state land.

In addition to that in the legal system in Indonesia, customary rights have also been regulated as stated in Article 1 Paragraph (1) of the Regulation of the State Minister

for Agrarian Affairs/Head of the National Land Agency (Permen Agraria/Head of BPN) Number 5 of 1999 concerning Guidelines for Solving Problems of Legal Community *Ulayat* Rights. It explains that:

*Ulayat* right is the authority that according to adat is owned by certain customary law communities over certain areas which are the living environment of its citizens to take advantage of natural resources (SDA), including land in the area their survival and life. The right arises from both outward and spiritual relationship from generation to generation, and there is no disconnection between a certain customary law community and the area concerned.

As for the Change of *Ulayat* land rights to property rights In Article 22 UUPA (1) it is explained that: According to customary law, the occurrence of ownership rights is regulated by a government regulation. (2) Apart from the method referred to above, this article property rights occur because: a. Government Determination, according to the methods and conditions stipulated by a Government Regulation; b. provisions of the Act.

However, until now, the government regulation referred to in this article has not been established yet. This has resulted in converting *ulayat* or customary land to legally owned land that do not yet have clear regulations, such as application for state land to become titled land. Consequently, many of the *ulayat* lands that should have belonged to the communal community have changed their rights to property rights and state rights. Consequently, the number of *ulayat* rights is decreasing. Even though it is decreasing, the customary rights in a certain customary law community still exist, among others, it can be seen from the daily activities of customary chiefs and customary elders as the bearers of the authority to regulate control over and lead the use of *ulayat* land. In addition to being recognized as customary land, its existence is recognized by the existence of the provision of customary land. However, in its implementing regulations, it is limited. It must be regulated in such a way that it is in accordance with national and state interests based on national unity and may not conflict with laws and regulations that are higher. This is as explained in Article 5 of the UUPA,

The agrarian law applicable to the earth, water, and airspace is *adat*, provided that it is not contrary to the national interest and the interest of the State, which are based on national unity, to Indonesian socialism, to the provisions stipulated in this Act, nor to other legislation, all with due regard to elements which are based on religious law. Therefore, in order to prevent *ulayat* lands from being lost or used up, because it seems that the state still has power over them, it is necessary to immediately formulate a government regulation supported by village regulations regarding *Ulayat* land rights for customary communities related to the change in the function of *ulayat* land rights to property or land. the state, with due observance of the rights of indigenous peoples; and gender justice laws. This is important so that the rights of indigenous peoples, especially women who have slumped economically due to the transfer of customary land rights sold by *ninik mamak* without giving their rights to women in Minangkabau, Riau, as well as the transfer of customary land rights taken over by the State in Lombok, can be prevented and resolved. Therefore, the author recommends that regulations regarding

customary land that will change function into state rights and property rights should not only be completed by the Land Deed Registrar, but must also go through deliberations by customary leaders with their customary communities including vulnerable women. Thus, women in indigenous communities also receive their rights fairly and properly, so that their lives can be prosperous in their customary lands. This is in accordance with L.M. Gandhi Lopian who explained that "... to fight for justice for oppressed women, women's studies not only apply the principle of certainty in law but more to the principles of justice and fairness" (Lopian, 2012).

Therefore, the contents of the arrangement for the transfer of customary rights to state land or owned land should be made by indigenous peoples, according to the conditions of their communal communities, and taking into account the prohibition of discrimination against women, and it is proposed by researchers as follows:

In the case of the transfer of communal rights/customary land rights/collective ownership rights over the land of a customary community to individual property rights or state land, there needs to be a process that involves all indigenous peoples, including women, by regulating the share of women's rights appropriately and fairly. Thus, they can still control and not lose land for economic resources for their welfare.

This concept is in line with John Rawls's theory of justice, which has the principle of greatest equal liberty, including "freedom of speech and to defend private property" (Rawls, 2011) and UNIFEM gender perspective law principles. The law is not allowed to underestimate or ignore women's roles, marginalize women from the rights to own, access, enjoy and control family or marital assets such as land, houses and income, and non-material sources (Luhulima: 2007). Therefore, in the case of the Minangkabau and Riau communities, women who have the right to control communal land belonging to the communal land and provide the most significant benefits to their children in Minangkabau Riau, must be given the right to speak to defend communal property. Since currently, with the transfer of customary rights, they are the most disadvantaged party.

## **Conclusion**

In fact, until now, there are still ulayat lands in Indonesia, although the number is decreasing, for example in Minangkabau, Riau and Lombok. Therefore, it is fitting for customary land to exist as a characteristic of the diversity of Indonesian society. Regarding customary/ulayat/communal land, the notion of state sovereignty which determines everything, should not be implemented, customary policies should be put forward. Therefore, in matters related to grassroots behavior related to customary land rights, it is not supposed to use the general land transaction system, which is only through Land Title Registrar (PPAT), but must also be activated through the authority of the leadership of the customary law community which also involves women. To do this, before the transaction is carried out through the PPAT, it must first be agreed upon by

deliberation by the leaders and the customary law community involving women (as the disadvantaged party), especially regarding to whom certain land will be transferred of rights, and how the results of the transfer of rights are utilized by all indigenous peoples, including women, so that the control function over land transactions remains in their hands. Therefore, village regulations should not be viewed as inferior laws, but must be viewed as special laws that can deviate from general law (*lex specialis derogat lex generale*). However, in enforcing their customary law, indigenous peoples must also implement the principle of prohibiting discrimination against women and the rights of communal communities. Therefore, a region's regulations can be regulated by themselves concerning their customary land law under the sense of justice and appropriateness for all indigenous peoples but still have to pay attention to women's rights as the most disadvantaged party.

## Suggestions

The recommendations for the contents of the regulation based on the Lapan and Rawls theory mentioned above are expected to be part of a written legal instrument that is complete, clear, and guarantees legal certainty. Thus, it can erode the current phenomenon whose political vision and local political configuration still prioritize private/government and private investors' interests in obtaining land tenure permits rather than encouraging agrarian reform. In providing better access to community members in developing their livelihoods through land tenure for agriculture and plantations, it is necessary to have regulations based on justice and unity for those who are less fortunate (women). Therefore, it needs strict conditions in the relinquishment of customary rights by indigenous peoples and the involvement of all indigenous peoples including women. Guaranteed legal certainty in communal/ulayat land with a gender perspective, and its consistent implementation, can be a way out in resolving conflicts due to land disputes and effective implementation of land registration.

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