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The State's Business upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State

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Abstract: The indigenous populations of Indonesia have experienced the deprivation of their rights to their ancestral lands since the era of Dutch colonialism. This article seeks to analyse the occurrence of the rights of indigenous peoples to their ancestral territories, and the state's right claim over indigenous customary lands. This study is a qualitative method with a socio-legal research approach, focusing on theoretical and empirical work, combining doctrinal and non-doctrinal analysis for data interpretation. The findings indicate that the transfer of collective rights from indigenous communities to state authorities is rationalized through the omission of acknowledgment of unwritten customary law and the imposition of a positive legal framework centred on individual rights rather than collective rights. In contrast, the state acknowledges indigenous land rights to a restricted and contingent extent, contingent upon indigenous communities substantiating their rights within the framework of the state's legal system, maintaining occupation of their ancestral lands, and ensuring that such rights do not impede the state's business and economic interests.

Keywords: Dutch Colonial, economic interests, indigenous peoples, land rights, customary law

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Abstrak*: Masyarakat adat di Indonesia telah mengalami perampasan hak-hak mereka atas tanah leluhur sejak era kolonialisme Belanda. Artikel ini berusaha menganalisis terjadinya proses ini dan menilai apakah, setelah mencapai kemerdekaan, pemerintah telah berhasil memulihkan hak-hak masyarakat adat atas wilayah leluhur mereka, atau apakah negara telah mempertahankan kedaulatan atas tanah adat. Penelitian ini menggunakan metodologi tinjauan literatur, mengadopsi perspektif normatif historis, dan menggunakan analisis deskriptif untuk interpretasi data. Temuan penelitian menunjukkan bahwa pengalihan hak-hak kolektif dari masyarakat adat ke otoritas negara dirasionalisasi melalui penghilangan pengakuan terhadap hukum adat yang tidak tertulis dan penerapan kerangka hukum positif yang berpusat pada hak-hak individu dan bukan pada hak-hak kolektif. Sebaliknya, negara mengakui hak-hak atas tanah adat secara terbatas dan kontinjen, tergantung pada masyarakat adat yang membuktikan hak-hak mereka dalam kerangka sistem hukum negara, mempertahankan pendudukan tanah leluhur mereka, dan memastikan bahwa hak-hak tersebut tidak menghambat kepentingan bisnis dan ekonomi negara.*
Kata Kunci: *Kolonial Belanda, kepentingan ekonomi, masyarakat adat, hak atas tanah, hukum adat*

Introduction

About 7,500 to 10,000 indigenous people who live in 16 communities on Rempang Island, Batam, and the Riau Islands have been forcibly evacuated by the central government to safeguard the investor's interest in the area. The territory was first occupied for more than a hundred years by the indigenous people long before the Republic of Indonesia declared itself independent. The indigenous people's claim in Rempang can be substantiated through the official recognition provided by P. Wink, a Dutch official, in his essay titled "*Verslag van een bezoek aan de Orang Darat van Rempang*"[1]. Nevertheless, the state officials asserted that Rempang Island was unilaterally appropriated as state-owned territory.[2]

The government employed the police, army, and the BATAM Area Management Agency to forcibly remove the indigenous population from their ancestral land, as part of their efforts to transfer them into an apartment block.[3]

[1] Dedi Arman, 'Kisah Orang Darat (Orang Hutan) Ditengah Kemajuan Batam', *Balai Pelestarian Nilai Budaya Kepulauan Riau* (blog), 12 June 2020, https://kebudayaan.kemdikbud.go.id/bpnbkepri/kisah-orang-darat-orang-hutan-ditengah-kemajuan-batam/.

[2] Kompas Cyber Media, 'Sengketa Rempang, Warga Adat, dan Kesadaran Poskolonial', KOMPAS.com, 12 September 2023, https://nasional.kompas.com/read/2023/09/12/16300041/sengketa-rempang-warga-adat-dan-kesadaran-poskolonial.

[3] 'Polisi tangkap 43 warga Rempang yang demo tolak investasi China', Benar News, accessed 13 September 2023, https://www.benarnews.org/indonesian/berita/konflik-rempang-09122023140433.html.

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Physical clashes were inevitable, leaving a number of indigenous people injured and dozens arrested by the police. The official argued that lands have been designated for National Strategic Project Area and granted the rights to Chinese investors as part of prompting the foreign investment project within the region.[4]

The current case also occurs to the Balik tribe, an indigenous community residing in the Sepaku District of North Penajam Paser Regency, East Kalimantan Province, is currently facing the imminent risk of expulsion from their ancestral territory.[5] This community has approximately 200 households.[6] The residential neighborhood was found to be non-compliant with the provisions of the IKN Development neighborhood Spatial Plan, according to the Indonesian Capital Development Authority.[7]

The historical phenomenon of displacing indigenous populations from their traditional areas in favour of economic investors and developmental projects has been extensively documented.[8] The Amungme community in Papua saw displacement due to the government's allocation of mining concessions to the Freeport mining company.[9] Similarly, in Sumatra, some Anak Dalam tribes were displaced from their indigenous territories due to the encroachment of palm oil corporations that acquired commercial utilisation rights from the government.[10]

The Indonesian state's policy of protecting the interests of investors over the recognition and protection of customary land is a legacy of Dutch colonial policy. During the colonial regime, the *Agrarisch wet* became a legal standard for the colonial administration in protecting land concession rights for foreign

[4] Alifian Asmaaysi, 'Proyek Rempang Eco-City: Jejak Tomy Winata dan Investor China', Bisnis.com, 11 September 2023, https://ekonomi.bisnis.com/read/20230911/47/1693517/proyek-rempang-eco-city-jejak-tomy-winata-dan-investor-china.

[5] Akbar Ridwan, 'Nestapa masyarakat adat di Ibu Kota Nusantara', https://www.alinea.id/, 2024, https://www.alinea.id/nasional/nestapa-masyarakat-adat-di-ibu-kota-nusantara-b2hOV9L3Z.

[6] Redaksi Redaksi, 'Nasib Suku Asli Balikapan di Tengah Pembangunan IKN', Suarakaltim.id, 2024, https://kaltim.suara.com/read/2024/03/16/190000/nasib-suku-asli-balikapan-di-tengah-pembangunan-ikn.

[7] Yolanda Agne, 'Deretan Masyarakat Adat Yang Terkena Penggusuran Oleh Otorita IKN - Nasional Tempo.Co', 2024, https://nasional.tempo.co/read/1846098/deretan-masyarakat-adat-yang-terkena-penggusuran-oleh-otorita-ikn.

[8] Muhammad Mutawali, 'Customary Law of Dou Donggo Bima from the Perspective of Islamic and Indonesian Positive Law', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (29 June 2022), p. 1–27

[9] Abrash, 'The Amungme, Kamoro & Freeport: How Indigenous Papuans Have Resisted the World's Largest Gold and Copper Mine', Quarterly Magazine, Cultural Survival, 2001, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/amungme-kamoro-freeport-how-indigenous-papuans-have.

[10] Hans Nicholas Jong, '"Hungry" Palm Oil, Pulpwood Firms behind Indonesia Land-Grab Spike: Report', Mongabay Environmental News, 15 February 2021, https://news.mongabay.com/2021/02/palm-oil-pulpwood-firms-behind-indonesia-land-grab-agrarian-conflict-spike-report/.

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investment. The concession land right was a right that permitted private enterprises to have the right legally to use, control, and manage lands under the *erfpachtrecht* (the right to lease) of indigenous lands for 75 years.[11] This legal permission was stated in the Dutch colonial agrarian law as quoted by Klaveren that: "*Volgens regels bij algemeene verordening te stellen, worden gronden afgestaan in erfpacht voor niet langer dan vijf en zeventig jaren*," (According to rules to be set by general ordinance, the land is relinquished on a long lease for no longer than seventy-five years).[12] Consequently, the policy had severely affected indigenous collective rights, especially on indigenous communal land rights and forest zone that traditionally used, exploited, or utilised its resources by the natives.[13]

The *Agrarisch wet* was initiated by Utrecht law scholars such as G.J Nolst Trenite (1927), Izak A. Nederburgh (1934), and Eduard H. s'Jacob (1945). They argued that all uncultivated (virgin) lands and communal rights to lands (*beschikkingsrecht*) belonged to the Netherland East Indies (NEI) State's land property.[14] For the Utrecht scholars, the Colonial State shall only recognise *eigendomrecht* (a private ownership land) that has been certified or legalised under the European private legal system, while others are considered the State's land property.[15]

This legal construction, however, was criticised by Leiden Law scholars van Vollenhoven and his followers. They argued that such interpretations on the land property in the colony territory were based on a misunderstanding of the nature of the indigenous peoples' right to land, which the native had both 'public' and 'private' law as a legal basis for their customary land tenure system.[16] Vollenhoven disapprovingly noted: "the Dutch administration only supports those rights that fit well into the European categories; the rest is imagined claims or rights which only exist in the imagination of the indigenous population".[17]

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[11] N. A. Klaveren, *The Dutch Colonial System in the East Indies* (London: Springer, 2013).

[12] N. A. Klaveren, *The Dutch Colonial System,* p. 213.

[13] Alec Gordon, 'The Collapse of Java's Colonial Sugar System and the Breakdown of Independent Indonesia's Economy', in *Between People and Statistics: Essays on Modern Indonesian History Presented to P. Creutzberg*, ed. Francien Anrooij (Dordrecht: Springer Netherlands, 2012).

[14] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Myths and Stereotypes about Adat Law: A Reassessment of van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2–3 (2011), p. 167–95.

[15] A. D. A. Kat Angelino, *Colonial Policy: Volume II the Dutch East Indies* (The Netherlands: Springer Science & Business Media, 2012).

[16] Chairul Fahmi, 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia', *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)* 5, no. 2 (2020), p. 105.

[17] C. van Vollenhoven, *Orang Indonesia dan tanahnya (De Indonesier en Zijn Ground)*, ed. Upik Djalins, trans. Soewargono (Yogyakarta: Sajogyo Institute, 2013), p. 102.

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From the Dutch colonial ruler's perspective, the Agrarian Law of 1870 was considered as a legal basis for the NEI State in developing their business and securing foreign investors.[18] As the primary legal source for economic development on agriculture and plantation, securing and occupying lands on a large scale was essential, and no matter how it was arranged, the land shall be available for the business expansion.[19] Otherwise, the colonial officials should have to negotiate annually with thousands of owners of separate minuscule plots, which would have made the planters unprofitable.

Following Indonesia's declaration of independence from Dutch colonial rule in 1945, the government proceeded to implement the Basic Agrarian Law (referred to as BAL) Number 5 of 1960 [State Gazette 1960, No.104]. This law asserts that any land that is not registered or lacks sufficient ownership documentation is deemed to be the property of the State.[20] This claim similar what did the Dutch colonial claimed under the *Agrarisch wet* (Agrarian Law) of 1870, which embedded principle of *domainverklaring* (free state domain).[21] The regime argues that the State was a right to control all lands under the Indonesian territory. This right is stated legally in Article 33 Para 3 of the 1945 Indonesian Constitution (Indonesia, 1945). The problem occurs when the State has overlapped claims on the same lands with indigenous peoples' claim over their traditional land or territory. The State uses civil law system, while indigenous refers to a customary law system. Ironically, the Constitution does not provide sufficient interpretation of the meaning and substance of the State's claim over the land and natural resources.[22]

This study draws on a socio-legal research method.[23] Socio-legal studies is the study of legal ideas, practices and institutions in their social, cultural and historical contexts.[24] Its methodology is a combination of legal research and social studies of law.[25] Law is not merely a black letter or a doctrinal method. Rather, it

[18] Jeffrey Neilson, 'Domein Verklaring: Colonial Legal Legacies and Community Access to Land in Indonesia', *Georgetown Journal of International Affairs* (blog), 25 November 2020, https://gjia.georgetown.edu/2020/11/25/domein-verklaring-colonial-legal-legacies-and-community-access-to-land-in-indonesia/.

[19] Jan Luiten van Zanden and Daan Marks, *An Economic History of Indonesia: 1800-2010* (London & New York: Routledge, 2013).

[20] Jeffry Neilson, 'Domein Verklaring'.

[21] Fahmi, 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia'.

[22] Siti Rahmah, et.al., "Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh Province," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024), p. 556–78.

[23] Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (USA: Bloomsbury Publishing, 2005).

[24] Naomi Creutzfeldt, *Routledge Handbook of Socio-Legal Theory and Methods* (New York: Routledge, 2019).

[25] Muhammad Siddiq-Armia, *Penentuan Metode Dan Pendekatan Penelitian Hukum*, ed. Chairul Fahmi (Indonesia: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022).

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is an instrument of social control. It originates and functions in a society and for society. [26] The need for a new law, a change in existing law and the difficulties that surround its implementation cannot be studied in a better manner without the sociological enquiry.[27] It proposes to understand the existing legal provisions from the historical development of legal doctrines.[28]

The study found that the shifting of land rights from communal owned by indigenous to the state land property had been occurred since the Dutch colonial regime after implemented agrarian law that based on the European legal system. This legal system was merely recognised land rights based on land title, while indigenous legal system based on communal recognition by all its members and other indigenous groups. The study also found that the Indonesian modern constitution has secured any lands under its territorial shall be controlled by the State, and uses optimally for the State welfare. This legal doctrine has marginalised indigenous right to land that were inherited from their ancestors, and had inhabited the land before the existence of the modern Indonesian state.

Customary Land Rights Based on Adat Law's Perspective

The early discussion on indigenous peoples' rights to their traditional land in Indonesia had been discussed by Cornelis van Vollenhoven. In his work paper on "*De Indonesier and Zijn Ground"*, literally translated as Indonesian people and their lands. Vollenhoven argued that Article 62 of the East Indies Constitution 1854 and the Agrarian Law of 1870 had violated the rights of indigenous peoples to control their land or territory.[29] He further claimed that Indonesian indigenous have a right to own, control and manage their traditional lands, in which he named as "*beschikkingsrecht,"* or translated to Indonesian as *hak ulayat*, equivalent to collective rights or communal rights.[30] This right means that all peoples have equal rights and mutual benefits to utilise the land. Vollenhoven also insisted that *beschikkingsrecht* is a right of disposal or right of avail, which being indissolubly bound up with the key concept of rural community. This type of land has religiously rooted and reflects the fundamental connection to the indigenous peoples as a group to the deities and spirit of the land they inhabited.[31]

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[26] Ismail and Nofiardi, "Shifting Inheritance Patterns in the Minangkabau Tribe in Negeri Sembilan, Malaysia," *El-Usrah: Jurnal Hukum Keluarga* 7 No.1 (2024), p. 298.

[27] Terry Hutchinson, 'Doctrinal Research: Researching the Jury', in *Research Methods in International Law: A Handbook*, ed. Deplano Rossana and Tsagourias Nicholas (UK: Edward Elgar Publishing, 2021).

[28] Paul Cliteur and Afshin Ellian, *A New Introduction to Legal Method* (USA: Routledge, 2022).

[29] Vollenhoven, *Orang Indonesia dan tanahnya (De Indonesier en Zijn Ground)*.

[30] Vollenhoven, *Orang Indonesia dan tanahnya*.

[31] Cornelis van Vollenhoven and J. F. Holleman, *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht van Nederlandsch-Indië (Vol. 1, 1918, Vol. 2, 1931)*,

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Barend J. Ter-Haar, a disciple of Vollenhoven, classified the Indonesian indigenous right to land into two categories. First, personal rights, in which every member of indigenous people's society has a right to own the land based on their effort, such as purchasing, inheritance, endowments, or clearing the virgin land – this right is called *eigendomsrecht* (privately-owned right). Second, it calls *communaal bezitsrecht* or collective right or communal right to land – this right belongs to indigenous institution or group and is used as economic resources for all society members under their autonomous authority and rules.[32]

The right to land for indigenous peoples also reflects socio-political rights by controlling the whole village territory. Vollenhoven asserted that '*beschikkingsrecht'* is recognised as the social-political right of the society, and it is not permitted to be purchased for any reason by any person.[33] For the indigenous, this right is collectively owned and is considered the highest right above the land.[34] As a collective right, this land belongs to a tribe or a village or some of *dorpenbond* (villages) in one county, but it is not allow to owned individually.[35] This right is a fundamental right of indigenous society that is free to access or utilise the land, water, forest, and other resources within its territory for the benefit of its members.

In the modern Indonesian legal system, this collective right to the land is known as "*hak ulayat.*"[36] This term initially came from Minangkabau (West Sumatera) tradition. Franz von Benda-Beckmann [37] asserts that the concept of *hak ulayat* has been used to denote the highest form of property relationship exercised by and vested in the social level or governmental institutions. As a complex system, there are several levels of collective land property in Minangkabau, including:

(1) *Tanah Ulayat Nagari*. This land and its resource are controlled by *Ninik Mamak*[38] and the village council or Kerapatan Adat Nagari (KAN). This

Koninklijk Instituut Voor Taal-, Land- En Volkenkunde, Leiden: Translation Series 20 (The Hague: Nijhoff, 1981).

[32] Berhard Ter Haar, *Asas-Asas Dan Susunan Hukum Adat (Beginselen En Stelsel Van Het Adatrecht)*, trans. Soebakti Poesponoto (Djakarta: Pradnja Paramita, 1960).

[33] C. van Vollenhoven, *Suatu kitab hukum adat untuk seluruh Hindia-Belanda*, Seri terjemahan karangan-karangan Belanda 27 (Jakarta: Bhratara, 1972).

[34] Birgitte Feiring, 'Indigenous Peoples' Rights to Lands, Territories, and Resources', *International Land Coalition*, 2013, p. 94.

[35] Vollenhoven and Holleman, *Van Vollenhoven on Indonesian Adat Law*.

[36] Sri Hajati, et. al., *Buku Ajar Politik Hukum Pertanahan* (Indonesia: Airlangga University Press, 2020).

[37] Franz Von Benda-Beckmann, 'The Level of Meaning: Systems of Property Relationships in Minangkabau', In *Property in Social Continuity*, vol. 86, Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabau, West Sumatra (Brill, 1979), p. 137–214.

[38] Saifullah and F. Yulika, *Pertautan Budaya-Sejarah Minangkabau dan Negeri Sembilan* (2017), p. 23–24.

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land becomes the primary economic resource for all peoples who inhabitant the village territory. This land including rice-field, grassland, valley, and river, and forest area;

(2) *Tanah Ulayat Suku.* This right belongs to all members of a particular tribe whose control and use are regulated by tribal leaders. This land is a reserve land for a certain tribal within the village area *(Nagari*), and its control and arrangement is carried out by such of tribal leader based on consensus agreements with tribal members following the Minangkabau customary law;

(3) *Tanah Ulayat Pusaka Tinggi.* This land belongs to a family from a tribe. This land prohibits being purchased. In contrast, it supports all family members' livelihood under controlling the mother lineage system (matrilineal legacy).

Customary Land Right under Islamic Law's perspective

In Islam, the notion of ownership is discussed with great caution, which provides protection by establishing rules and regulations to offer guidance to owners and other individuals.[39] Additionally, land right encompasses not only social and legal dimensions but also acquires political policy. The idea pertains to many assertions, freedoms, authorities, and protections associated with the possessions or assets that an individual possesses.

The idea of land ownership in Islam is based on the doctrine that Allah SWT possesses ownership over all things in both the heavens and on earth. Allah SWT, in His capacity as the supreme proprietor, bestows to human beings the authority (*istikhlaf*) to govern and administer this divine possession in accordance with His divine decrees.[40] While Allah is the ultimate owner of everything, Islam nevertheless acknowledges the concept of individual ownership. The concept of "property" holds significant importance within the framework of Islamic law, specifically in relation to the principle of *hifdzu al-mal*.[41]

Nevertheless, land is not the outcome or final product of anyone's work, but rather a valuable bestowal from Allah s.w.t., in which every member of the community has equal entitlement to hold and utilize.[42] Therefore, if not utilized appropriately, it is regarded as a detriment to the community and should not be accepted. In the event that a landowner fails to meet their obligation, their land will be returned or seized by the State Authority. The State Authority retains the

[39] Siti Mariam Malinumbay S. Salasal, 'The Concept of Land Ownership: Islamic Perspective', *Buletin Geoinformasi* 2, no. 2 (1998), p. 285–304.

[40] Anver M. Emon and Rumee Ahmed, *The Oxford Handbook of Islamic Law* (United Kingdom: Oxford University Press, 2018).

[41] Dudang Gojali, 'The Position of Islamic Law in the Legality of Land Ownership in Indonesia', *Baltic Journal of Law & Politics* 15, no. 4 (2022), p. 1169–1178.

[42] S. Salasal, 'The Concept of Land Ownership: Islamic Perspective'.

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authority to seize or reclaim land, including any individual's land, and transfer it to another party who would utilize it more effectively and contribute to the overall welfare of the community. Hence Islamic teaching has replaced the feudalist ownership structure with a communalist-religious ownership system under the sole authority of the head of state.[43] This change is based on the belief that justice rests on the will to fulfil the ideals of the public good.

For instace, in Aceh region, the term *hak ulayat* does not exist. The land rights in Aceh refer to the Islamic law system. The basic principle of land ownership in Islam is vested solely in God's (Allah s.w.t.). It means lands are initially free for everyone and a universal gift from God, which is everyone can make an effort to utilise or own it.[44] Yet, Islamic jurisprudence classifies land ownership into three types, (i) privately owned property, (ii) property owned by the community (collective rights), and (ii) property owned by a religious institution (*baytul mal*).[45] Hence, community property rights are equivalent to the concept of *hak ulayat.* There are several communal rights to land in Aceh, including:

(1) Undeveloped forested terrain (*tanoh rimba*)
(2) Forest land characterized by a distinct type of plant (*tanoh uteun*)
(3) Forest land used for dryland agriculture where timber coppices can be used for fuelwood or shrubs (*tanoh tamah*)
(4) Land with wooded or grassy areas that is frequently used for animal pasture (*tanoh padang*)
(5) Lowlands with a persistent water source, such as peatlands or swamps. (*tanoh paya*)
(6) Fertile lowland by a shallow river stream (*Sarah*)
(7) Land located at the river's entrance (*Sawang*)
(8) The land was formed by river-borne silt (tanoh jeued) (*tanoh jeued*).[46]

In contrast, in Java Island, indigenous collective rights are controlled by a king. The king was the supreme leader who had absolute power over his society. He was the sovereign authority to all lands, including forests and its resources under its kingdom territory. For instance, the kingdom of Mataram, in which the king had the right to determine who could cultivate forests' resources in his

[43] Ridwan Ridwan, 'Land Ownership Reform in Islam', *Asian Social Science* 15, no. 2 (2019), p. 164.

[44] Siti Mariam Malinumbay S. Salasai, 'The Concept of Land Ownership: Islamic Perspective', *Buletin Geoinformasi* 2 (1998), p. 285–304.

[45] M. A. Gulaid, *Land Ownership in Islam (A Survey)*, 14 (2001), available at http://ierc.sbu.ac.ir/File/Book/land%20ownership%20in%20Islam_47302.pdf, p. 19.

[46] IDLO, 'Customary Right to Land' (Banda Aceh: International Development Law Organization, 6 February 2008), http://www.idlo.org/DOCNews/Customary%20right%20to%20land.pdf.

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territories.[47] Then, when the *Vereenigde Oost Indische Compagnie* (VOC) attempted to exploit the forest resources, especially timbers within the kingdom's territory, they must have the king's license to do so.[48] This permission was called 'concessionaire' rights from the king of Mataram to the VOC who wanted to exploit the forest resources. However, the people are allowed to manage and cultivate the land that aims to support their lives in some conditions, which they shall share the cultivation with the royal family and pay the tax for using the land. In some cases, the king occasionally gifts or grants the land to his officers for privately owned, and they descended to the heirs of the family as private land property. Similarly, the cultivators may have the same right to own the land privately after a long period of occupying or cultivating the land.[49]

The Dutch Colonial Policy on Indigenous Land Rights

The colonisation in Indonesia occurred after the Dutch East India Company (*Vereenigde Oost Indische Compagnie*; VOC) settled its "empire" in 1602 on Java Island, located in Batavia (Jakarta). At the beginning of its arrival, the VOC became a trading partner with indigenous kingdoms across the archipelago. But later, they attacked and conquered the kingdoms and claimed that all the territories were controlled under the VOC authority. The VOC authority also obligated indigenous peoples (natives) to pay taxes on their lands, including agricultural products.[50]

After almost 200 years of ruling the power, the VOC collapse in 1799.[51] The Dutch royal family took over the power and established the Netherlands East Indies (NEI) State in the early 1800s.[52] In its role as a newly established landlord across the archipelago, the NEI (Netherlands East Indies) introduced the colonial law, which mirrored the legal system of the Netherlands through the application of the concordance principle.[53] The legal system in question is commonly known as the positivist law system, which encompasses the

[47] H. Hidayat, *Forest Resources Management in Indonesia (1968-2004): A Political Ecology Approach* (2016), p. 36.

[48] H. Hidayat, *Forest Resources Management*, p. 36.

[49] T. S. Raffles, *The History of Java* (2018), p. 166.

[50] M. C. Ricklefs, *A History of Modern Indonesia Since C.1200* (New York: Macmillan International Higher Education, 2008).

[51] K. Unoki, *Mergers, Acquisitions, and Global Empires: Tolerance, Diversity and the Success of M&A* (2012), p. 52.

[52] Ricklefs, *A History of Modern Indonesia Since C.1200*.

[53] The 'concordance principle' meant that the legal system either the civil law or the commercial law that implement in NEI State shall be equivalent to the law that implemented in the mother land of the Netherlands See Herman Slaats, 'The imposition and radiation of Dutch law in Indonesia', in J. de Moor (ed.), *Our laws, their lands: land laws and land use in modern colonial societies* (1994), p. 101.

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Napoleonic codes as well as the Roman-Dutch law system.[54] In the years 1847-48, the NEI government enacted a series of legislative measures, namely the "*Algemene Bapalingen van Wetgeving"* (General Provisions of Legislation), *Reglement op de rechterlijke Organisastie en Het Beleid der Justitite* (Regulation of Judiciary and the Policy of Justice), *Burgerlijk Wetboek* (Civil Law), *Wetboek van Koophandel* (Commercial Code), and *Agrarisch Wet/besluit* (Agrarian Law).[55] The aforementioned laws were enacted prior to the establishment of the colonial constitution known as the *Regeringsreglement* (The Dutch East Indies colonial state's constitution), sometimes abbreviated as R.R., which was ratified by the Dutch Parliament in 1848.[56] The following section will elaborate on the colonial regime's policies relates to the land tenure system in the Indonesian colony country.

1. The Early Period of the Colonial Occupation

After the NEI established its power, the colonial authority forced indigenous kingdoms to accept and acknowledge the NEI State's sovereignty. This recognition was called '*Korteverklaring,'* or a short declaration, which briefly and consistently set out the local authorities' obligations and loyalty to the Dutch colonial authority.[57] When kings or region chiefs of 'native nations' signed the declaration, they would be allowed to maintain their power within the territory under some circumstances, which mainly should work for the Dutch colonial interest.[58] Otherwise, the native chiefs would be accused of the NEI State's enemy and their position simply replaced by others.[59] Klinken noted that around 340 local rulers signed this submission declaration to the Dutch colonial across the Indonesian archipelago.[60]

In 1806, King Lodewijk Napoleon appointed Herman Willem Daendels as the Governor-General (G.G) of the East Indies territory, which is now known as Indonesia. Under his regime, the pressure of enforced cultivation on indigenous peoples was increased to support the finances of the colonial state.[61] Daendels also implemented the land taxes policy *(landrente or landelijk stelsel)* by appointing village heads as the taxes collectors.[62] As a representative of the Dutch colonial,

[54] Simon van Leeuwen, *Commentaries on the Roman-Dutch Law* (The Netherlands: A. Strahan, 1820).

[55] Angelino, *Colonial Policy*.

[56] P. M. Marzuki, *an Introduction to Indonesian Law* (2011), p. 3.

[57] R. Cribb, *Historical Atlas of Indonesia* (2013), p. 124.

[58] John M. Brownlee, 'Colonial Knowledge and Indigenous Power in the Dutch East Indies', *Southeast Asian Studies* 2, no. 1 (1998).

[59] Christian Snouck Hurgronje, *The Achehnese*, vol. I (Leiden: E.J. Brill, 1906).

[60] Klinken, 'Kembalinya Para Sultan: Pentas Gerakan Komunitarian dalam Politik Lokal', in J. S. Davidson and D. Henley (eds.), *Adat dalam politik Indonesia* (2010), p. 166.

[61] See Angelino, *Colonial Policy*.

[62] N. A. Klaveren, *The Dutch Colonial System in the East Indies* (2013), p. 96.

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they can forcibly take the lands of someone who does not pay taxes. The Dutch carried out this policy by arguing that the colonial authority had all lands in the colonial territory, and they had the power to rent it out (*verpachten*) to anyone who could pay rent and taxes from the lands.[63]

When the British colonial occupied Java Island in 1811, all the NEI territories also turned to the British's authority. Sir Thomas Stamford Raffles was appointed as the G.G, and he ended the Daendel's initiation of slavery and land taxes and liberalised the land tenure for indigenous society. Raffles also implemented the liberalisation of the colony's economy and stopped the compulsory cultivation system in Java and Madura islands.[64] Furthermore, Raffles asserted that the indigenous rulers have limited entitlements to the territories, primarily in the form of a specified portion of the agricultural yield. This arrangement ensured that the farmers retained the essential and non-transferable rights to the land.[65] He announced that "the lands, after being surveyed and estimated, were to be parcelled out among the inhabitants of the villages, in the proportions established by custom or recommended by expediency".[66] Regrettably, the British relinquished their authority in Java subsequent to the Napoleonic conflict, leading to the signing of the Anglo-Dutch treaty in 1814. Subsequent to the ratification of the aforementioned treaty, the Dutch successfully re-established their dominion over their colonial possession in Java, as well as other constituent regions within the archipelago.[67]

In 1816, king Willem-I appointed Baron van der Capellen as the new G.G in NEI. Capellen's main concern was to manage the Dutch economy's interest by monopolising all spice products and markets within the East Indies territory, including coffee, tobacco, cocoa, and sugar cane. The Capellen regulation also prohibited non-Dutch enterprises from acquiring the product alongside the planters from other European countries.[68] Furthermore, the individual in question terminated land agreements that had been implemented by Raffles, compelling the native authorities to reimburse the funds they had previously obtained through the continued exploitation of the cultivators.[69] Ultimately, the implementation of this program resulted in an uprising among the indigenous population of Java, under

[63] Klaveren, *The Dutch Colonial System in the East Indies*, 2013.

[64] Klaveren, *The Dutch Colonial System* p. 87.

[65] D. W. Welderen Rengers, *The Failure of a Liberal Colonial Policy: Netherlands East Indies, 1816–1830* (The Netherlands: Springer Science & Business Media, 2013).

[66] D. W. Welderen Rengers, *The Failure of a Liberal*.

[67] Weber, Kreisel and Faust, 'Colonial Interventions on the Cultural Landscape of Central Sulawesi by 'Ethical Policy': The Impact of the Dutch Rule in Palu and Kulawi Valley, 1905—1942', 31 *Asian Journal of Social Science* (2003), p. 398.

[68] J. F. Davis, *The Asiatic Journal and Monthly Register for British India and Its Dependencies* (1825), p. 95.

[69] See Sanderson Beck, 'Indonesia and the Dutch 1800-1950', in *South Asia, 1800-1950*, vol. 20 (Australia: World Peace Communications, 2008).

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the leadership of Prince Diponegoro, a prominent figure within the Javanese elite. The conflict commonly referred to as the Java War, spanning from 1825 to 1830, resulted in the loss of approximately 8,000 European lives and over 200,000 Javanese casualties. The Dutch allocated an annual budget of five million guilders for the expenditures associated with the war.[70]

2. The Forced Cultivation System

The Java-war (1825-1850) had severely exhausted the Dutch finances. Accordingly, the NEI State introduced a new economic policy, called the forced cultivation system (*cultuurstelsel*) or well-known as 'Culture System". This system was initiated by Johannes van den Bosch, in which the colonial regime forced the indigenous peasants in Java to grow tropical export products.[71] This project was entirely controlled by a governmental-administrative enterprise, in which the Netherland Trading Company (*Nederlandsche Handel Maatschappij* or NHM) monopolised all the agriculture products.[72] Meanwhile, the NHM was owned by King William I, who has the company's dominant shareholder.[73]

Under this system, indigenous peoples in Java were forced to put aside part of their land, which villagers would reserve a fifth to a third of their arable land for export crops, and the colonial regime had strictly prohibited the peasants from using their land to cultivate crops intended for their sustenance, such as rice (paddy). In contrast, the cultivation shall be based on the colonial government-designated export crops values, including coffee, cane sugar, tobacco, tea, pepper, and other products demanded by the European markets.[74] The regime also tended coffee bushes on 'virgin' lands or unused lands declared government domain, and all harvesting had to be sold to the government at a lower price.[75]

Additionally, the Java indigenous peasants were compelled to fulfil their obligation of paying land tax, which amounted to approximately 40% of the primary agricultural produce. Individuals who lacked land ownership were compelled to engage in labour for Dutch plantations without receiving any form of remuneration, or alternatively, they were subjected to enslavement under the

[70] See A. Phillindigenous peoples and J. C. Sharman, *International Order in Diversity: War, Trade and Rule in the Indian Ocean* (2015), at 186–187.

[71] See Cornelis Fasseur, *The Politics of Colonial Exploitation: Java, The Dutch, and the Cultivation System* (USA: Cornell University Press, 2018).

[72] Van Niel, 'Measurement of Change under the Cultivation System in Java, 1837-1851', *Indonesia* (1972), p. 89.

[73] Van Niel, p. 89.

[74] See Cornelis Fasseur, 'The Cultivation System', in R.E. Elson (ed.), *The Politics of Colonial Exploitation* (1992); B. Moore and H. van Nierop, *Colonial Empires Compared: Britain and the Netherlands, 1750–1850* (2017).

[75] B. Waites, *Europe and the Third World: From Colonisation to Decolonisation c- 1500–1998* (1999), p. 91.

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colonial agricultural system.[76] One colonial administrator wrote, as quoted by Brown, illustrated that: "On the roads as well as the plantations, one does not meet people but only walking skeletons, which drag themselves with great difficulty from one place to another, often dying in the process"[77]

Fasseur asserted that *cultuurstelsel* as transition points to the official *racial* classification in the Dutch East Indies.[78] This exploitation was a kind of class society discrimination, in which the Dutch colonisers placed the indigenous, unlikely human due to their colour differences. He expressed that: "...combined with all sorts of compulsory services, emphasized the seemingly unbridgeable gap which existed between Europeans and "natives." Let us quote J.C.Baud, one of the architects of this new colonial policy: "language, colour, religion, morals, origin, historical memories, everything is different between the Dutch and the Javanese; we are the rulers; they are the ruled."[79]

Ultimately, the success of the 'forced cultivation system' had gained tremendous revenue for the Dutch colonial, which produced about 1,250 million guilders from the *cultuurstelsel* system.[80] This profit was mainly used to build the home country, restructure the debt, reform the tax system, and invest in the domestic economy, such as building national railways and water canal systems in the Netherland kingdom.[81] In contrast, indigenous peoples were not merely exploited freely and also had seriously encroached upon Javanese indigenous land rights.[82]

3. The Liberalism Era and Land Concession Policy

The emergence of the European liberal and democratic movement in 1848 had influenced the political situation in the Netherlands. King William II proposed the constitutional reform[83] and this proposal was followed up by Thorbecke (head commission of the Dutch new constitution reform). As a result, the new Constitution permitted the Dutch Parliament to adopt a certain law in the East

[76] N. A. Klaveren, *The Dutch Colonial System in the East Indies* (2013), p. 116.

[77] C. Brown, *A Short History of Indonesia: The Unlikely Nation?* (2003), p. 86.

[78] Cornelis Fasseur, 'The Cultivation System'.

[79] Cornelis Fasseur, 'Cornerstone and Stumbling Block: Racial Classification and the Late Colonial State in Indonesia', in Robert Cribb (ed.), *The Late Colonial State in Indonesia: Political and Economic Foundations of the Netherlands Indies, 1880-1942* (1994), p. 31-33.

[80] Arbanur Rasyid et al., 'Local Wisdom Recognition in Inter-Ethnic Religious Conflict Resolution in Indonesia from Islah Perspective', *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023), p. 13–26.

[81] Moore and Nierop, *supra* note 333; B. Yun-Casalilla et al., *The Rise of Fiscal States: A Global History, 1500-1914* (2012), p. 63.

[82] C.Fasseur, 'Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia', in *The Revival of Tradition in Indonesian Politics*, ed. Jamie Davidson and David Henley (New York: Routledge, 2007).

[83] Refer to: C.W. van der Pot, *Handboek van het Nederlandsche Staatsrecht* (Zwolle: N.V. Uitgevers-Maatschppij W.E.J. Tjeenk Willink, 1948), p. 75-76.

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Indies territory (Indonesia).[84] In 1856, the Parliament reformulated some new provisions of the colony constitution (*regelingsreglement*; R.R), especially regarding the possibility of foreign entrepreneurs to lease lands and resources (concession rights) under the Dutch colonial territory in Indonesia.[85]

This liberal approach was contrasted to the conservative one. For conservatives, the State's control over all economic sectors is a fundamental principle in the colony territorial. In contrast, for liberalists, the best way to boost the NEI State's economy was by attracting foreign capital and providing them land concession in agriculture and plantation sectors.[86] Consequently, the new liberal regime had granted land concession rights to foreign firms across the NEI State's territory. For instance, in Sumatera (the Deli kingdom) island, the European-based company invested its capital in plantation sectors, such as the HVA (*Handelsvereeniging* Amsterdam) and the NHM (*Nederlandsche Handel Maatschappij*). These Dutch companies focused on banking and planting industries and occupied thousands of hectares of land concession rights.[87]

Several non-Dutch companies also expanded their business in the Dutch colonial territory. Harrisons & Crosfield Company, the London-based company, was established in 1844 and focused on planting and trading coffee, tea and rubber. Among these pioneering consortiums was the France-Belgian SOCFIN (*Societe Financiere*) cooperation. In 1909, this company was a leading industry in palm oil cultivation in Sumatra. This company also held land concessions permit across the Malaysian peninsula and became the most significant single supplier for the world market.[88] Other foreign investors, including the Japanese, Germans, and Swiss, had played relatively minor roles. Hence, the companies relied on indigenous peoples' land, territories, and resources to expand their business during the Dutch colonial era.

Right of Indigenous on their Land Property under Current Modern Indonesia

Indonesia holds the distinction of being the most expansive nation within the Southeast Asian region. The archipelago has a total of 17,499 islands, spanning a combined land area of 1,919,440 square kilometres, and boasting a rich abundance of natural resources.[89] Therefore, the 1945 Constitution ensures

[84] R. D. Congleton, *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy* (2010), p. 447.

[85] Klaveren, *The Dutch Colonial System in the East Indies*, 2013.

[86] A. L. Stoler, *Capitalism and Confrontation in Sumatra's Plantation Belt, 1870-1979* (1995), p. 16.

[87] A. L. Stoler, *Capitalism and Confrontation*, p. 16.

[88] A. L. Stoler, *Capitalism and Confrontation*, p. 19.

[89] Nations Ensyclopedia, 'Location, Size, and Extent - Indonesia - Located, Area', 2021, https://www.nationsencyclopedia.com/Asia-and-Oceania/Indonesia-LOCATION-SIZE-AND-EXTENT.html.

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that the State has the power and the right to control all these assets. Article 33 Para 3 of the Constitution states: "land, water, and natural resources therein are controlled by the State and shall be used to the greatest benefit of the peoples".[90]

The problem occurs when the State has overlapped claims on the same lands with indigenous peoples. This contradiction over the claim is due to both parties used different legal sources. The State uses civil law system, while indigenous refers to a customary law system. Ironically, Article 33 (3) of the Constitution does not provide sufficient interpretation of the meaning and substance of the State's claim over the land and natural resources.

The Constitution norms are normally interpreted by various sectoral laws, such as Law No.5 of 1960 on Basic Agrarian Law (BAL), Law No.5 of 1967 [revised into Law No.41/1999 on Forestry], and Law No.4 of 2009 [revised into Law No.3 of 2020] on Mining of Mineral and Coal. In addition, Law No.1 of 1967 on Foreign Investment, Law No. 39 of 2014 on Plantation, and many others. Most of these laws interpret the meaning of Article 33 [3] based on partial and sectoral interests, which commonly ignored the interest of indigenous when it affected the peoples' rights.

For instance, the Government adopted Agrarian Law No.5 of 1960 (*Staatblad*. 1960-104.TLN.2043). This law was initially aimed to replace the Dutch Agrarian Law and other related colonial regulations related to the land tenure system in Indonesia. In its preamble, the BAL states that: "That the Agrarian law, which is still valid today, is partly based on aims on principles of the colonial government and partly influenced by it and is thus in conflict with the interest of the people and the State in the completion of the present National Revolution and the over-all development"[91]

Accordingly, the law revoked, as follows:[92]

1. *"Agrarische Wet*, (S. 1870-55) as contained in Article 51 *Wet op de Staatsinrichting van Nederlands Indies*, (S.1925-447) [Act re Arrangement of Nederlands East Indies]
2. *"*...and the provisions contained in other paragraphs of that Article";
   a. *"Domein Verklaring* (Declaration of the State as Owner of Land) as meant in Article 1 of *Agrarisch besluit* (S.1870 No.118) [Agrarian Decree (State Gazette No.1870-118)]";
   b. *"Algemene Domeinverklaring* (General territorial Declaration) as meant in S. 1875-119a (State Gazette No. 1875-119a)";

[90] See the 1945 Indonesian Constitution, the Fourth Amendment of 2002, unofficial translation.

[91] The Department of Home Affairs, 'Basic Agrarian Law (UUPA) Act No.5 of 1960 the Basic Provisions Concerning the Fundamentals of Agrarian Affairs', Pub. L. No. 5/1960 (1976), https://zerosugar.files.wordpress.com/2014/08/law-no-5-of-1960-on-basic-agrarian-principles-etlj.pdf. See: Preamble

[92] See *The Department of Home Affairs.*

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c. *"Domeinverklaring* van Sumatera (Declaration territorial for Sumatra) as meant in Article 1 of S. 1874-94f (State Gazette No. 1874-94f)";
d. *"Domeinverklaring* van *Keresidenan* Manado (Domeinverklaring for the Regency of Manado) as meant in Article 1 of S. 1877-55 (State Gazette 1877-55)";
e. *"Domeinverklaring* van *Residentie Zuilder* en *Oosterafdeling* van Borneo (*Domeinverklaring* for the Regencies in the Southern and Eastern Parts of Kalimantan) as meant in Article 1 of S 1888-58 (State Gazette No. 1888- 58)";

3. *"Koninklijk Besluit* (Decree of the Dutch Kingdom) dated 16 April 1972 [S. 1872-117 (State Gazette No. 1872-117)] and the regulations concerning its implementation".

The abolition of several provisions from the Dutch colonial law regime was primarily related to the 'State-domain' principle. This principle claimed that land whose ownership cannot be proven considered as the State's property. However, although the Constitution of Indonesia does not claim to own the land, water, and space under its territories. The norm is similar to the Dutch *Agrarisch wet*, which regulated that the State merely recognises the *eignedomrecht* (individual land ownership legally proven by law), while unproven lands, such as communal lands, were part of the State domain. Based on the provision Article 33, paragraph (3) of the Constitution, the government developed the right of State to control all land rights, including indigenous collective rights to land. Article 3 of the BAL mentions that: "Considering of the provision in Article 1 and 2, the implementation of *hak ulayat* and other similar rights of *adat*-law communities – as long as such communities in reality still exist – must be such that it is consistent with the national interest and the State's interest and shall not be in conflict with the national Acts and other regulations of higher levels."[93]

This provision means that the Indonesian government recognises indigenous peoples' rights to their traditional land, as long as this right can be proven based on the agrarian law. Yet, the government has issued the Ministry of Agrarian regulation No. 5 of 1999 concerning land registration for indigenous collective rights to land (communal land rights). The registration of indigenous communal rights has been stipulated in Article 4, paragraph 1 of the Regulation. It stated that: "Indigenous people who have rights according to their customary law, of which the right holder wishes to be registered of their rights to lands shall follow the agrarian provisions."[94]

[93] *The Department of Home Affairs.* See Art. 3

[94] Menteri Negara Agraria, 'Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.5 Tahun 1999 Tentang Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat' (1999), https://peraturan.bkpm.go.id/jdih/userfiles/batang/BPN_5_1999.pdf.

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There are three aspects in determining communal rights to lands that shall be fulfilled as a part of the registration process. First, indigenous society (legal subject) still exists. Second, the existence of traditional (communal) lands (object of the rights) can be verified by the State authority. Third, indigenous peoples still have their original customary law as a legal basis in managing their internal affairs. These criteria are a fundamental legal basis for further examining indigenous groups' rights to communal land property.[95]

The determination of indigenous groups' existence and their rights to lands must be carried out through a verification process involving all parties. The result of this verification shall be stipulated into a regional head decision, including attaching a map of the communal boundaries of the communal lands (demarcation).[96] Nonetheless, indigenous customary rights are invalid on the land that has legally owned by an individual or a corporate.[97] In this condition, indigenous collective rights to land are deemed no longer exist unless the existence can be legally proven otherwise, and the proofing process relies on the judicial decision.[98]

The concept of registration to land ownership was initially introduced by the Dutch colonial Agrarian Act in 1870 (Article 1), called *eigendomrecht* that was merely obligated to Europeans. This concept had also been adopted into the Indonesian civil code. Article 570 of the civil code states: "Ownership is the right to have free enjoyment of the property and to dispose thereof absolutely, provided that an individual does not violate the laws of the public ordinances stipulated by those who have been granted the power to do so, in the course of using such assets, and provided that an individual does not interfere with other individuals rights; the aforementioned shall be without prejudice to expropriation in the public interest subject to the individual's right to appropriate compensation, pursuant to the legal regulations"

This provision confirms that individual land rights are protected by law. However, the Civil Code does not regulate the collective rights to lands because this right is a characteristic of indigenous peoples' land ownership and is not recognised in the civil law system.[99] Therefore, the collective rights to lands (*hak ulayat*) are regulated separately in the Agrarian Law, and the determination of the

[95] Menteri Negara Agraria, Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.5 Tahun 1999 tentang Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat. See Article 2 Paragraph 2.

[96] Menteri Negara Agraria. See Article 5

[97] Menteri Negara Agraria. See Article 3

[98] Chairul Fahmi, 'The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia', *AlterNative: An International Journal of Indigenous Peoples*, 8 (2024).

[99] Chairul Fahmi and Muhammad Siddiq Armia, 'Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms', *Journal of Southeast Asian Human Rights* 6, no. 1 (2022), p. 1–25.

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collective rights to lands must be based on certain conditions that make these rights vulnerable to being taken by and for reasons of the State's interests. [100]

In 1999, the government adopted a new forest law (No.41 of 1999) and replacing the Law No.5 of 1967. This new Forest Law came into effect in 2000 and regulated forests' management and its resources within the Indonesian territory. In contrast to the previous law, which categorised forests into merely two types: (1) The State's Forests, and (2) Private Forests, Law 41 of 1999 divides the forest's function into three categories, including (a) Conservation Forests, (b) Protection Forests, and (c) Production Forests.[101]

However, either the previous or the new one does not recognise indigenous forest territories' sovereignty. Indigenous forest itself is placed under the category of 'state-owned forests,' which means the right to control, manage and utilise the forest and its resources remain under the State authority. The categorisation of indigenous forest zone under the State Forests is mentioned in Article 1 Para 6 of Law No.41 of 1999 that "Indigenous Forest means State Forests located in the traditional jurisdiction areas." Based on this provision, indigenous rights on their customary forest land legally had been disregard, and all rights to utilise or exploit the resource within the land shall be placed under the State's recognition. There are two conditions of the State recognise the indigenous forests, as stated in Article 5 Para 3 and 4 of the Law No.41/1999, that: "The government shall determine the status of forests as intended in paragraph (1) and paragraph (2), and customary forests shall be determined insofar as they exist in reality, and their existence is recognised; If the customary communities concerned are no longer existing during the development thereof, the management right of the aforementioned customary shall be returned to the Government."[102]\

The author argues that this provision has resulted in uncertainty for indigenous people to claim their rights to communal land. On the one hand, indigenous would be able to claim their right by proving that their customary forest still exists, by means indigenous people still occupy, control, and utilise the sources from their living areas' forests. On the other hand, when the State stipulates the indigenous forest areas as the 'economic development zone,' such as mining and oil palm concession or conservation, the peoples' rights to the forest are easily lost.[103]

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[100] Lego Karjoko et al., 'Islamic Court's Approach to Land Dispute in Inheritance Cases', *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021).

[101] See Forest Legality Initiative, 'Forestry Laws and Regulations', 2016, https://forestlegality.org/risk-tool/country/indonesia.

[102] Republic Indonesia, 'UU No.41 Tahun 1999 tentang Kehutanan', Pub. L. No. 41/1999 (2000), https://jdih.esdm.go.id/storage/document/uu-41-1999.pdf. See Article 5

[103] Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia', *Jurnal Ilmiah Peuradeun* 11, no. 2 (30 May 2023): 667–86, https://doi.org/10.26811/peuradeun.v11i2.923.

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Initially, this law proposed to achieve welfare, not only for the investors but also for all peoples based on equity and sustainability, participatory, equal, and environmentally friendly.[104] Article 4 (1) of the law claimed that: "All forests within the territory of the Republic of Indonesia, including all the natural wealth contained therein, are under the State's control for people's maximum welfare"[105] Unfortunately, this norm is not really applied in practice. Presidential Decree No.16/2015 emphasised that the authority to control and manage the forest is under the Ministry of Environment and Forestry (MoEF),[106] and the MoEF is the only institution that has the right to issue a permit to use the forest, including converting forest land to settlement, logging, mining, or plantation. This Act has encouraged many transnational corporations from foreign countries to invest their capital in forestry projects and other natural resources.

This policy just also replicated the Suharto regime (1966-1997) policy of which the government licensed State Forest lands, including '*adat* forest,' to private and State-owned logging companies and industrial timber plantation companies for 20-25 years.[107] In the last few years, oil palm and timber industries have expanded significantly across the Indonesian archipelago,[108] which has resulted in land degradation and rapid deforestation. [109] In the year 2017, the production of palm oil necessitated an estimated land area of over 12 million hectares in order to yield a total output of approximately 38 million tons of palm oil.[110] This rapid growth of land acquisition for biofuel crops has led to indigenous groups who were living in or around forest territory losing their traditional forest and access to natural resources they need to sustain their livelihood.

The movement to restore indigenous collective rights to land property had been began in the earlier Indonesian independence period.[111] However, indigenous effort to reoccupy into the ex-Dutch control over their ancestral land

[104] *Indonesia, UU No.41 Tahun 1999 tentang Kehutanan.* See Article 3

[105] *Indonesia.* See Article 4 Para 1.

[106] Initiative, 'Forestry Laws and Regulations'.

[107] Siscawati M. et al., *Overview of Forest Tenure Reforms in Indonesia* (Indonesia: Center for International Forestry Research (CIFOR), 2017), p. 5.

[108] Austin et al., 'What Causes Deforestation in Indonesia?', 14 *Environmental Research Letters* (2019) 024007; A. Mosnier et al., *Palm Oil and Likely Futures: Assessing the Potential Impacts of Zero Deforestation Commitments and a Moratorium on Large-Scale Oil Palm Plantations in Indonesia* (2017).

[109] Paul K. Gellert, 'Palm Oil Expansion in Indonesia: Land Grabbing as Accumulation by Dispossession', in *States and Citizens: Accommodation, Facilitation and Resistance to Globalization* (UK: Emerald Group Publishing, 2015).

[110] Adam Tyson, et.al., 'Deconstructing the Palm Oil Industry Narrative in Indonesia: Evidence from Riau Province', *Contemporary Southeast Asia* 40, no. 3 (2018), p. 422–48.

[111] Chairul Fahmi et al., 'Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights', *Journal of Indonesian Legal Studies* 8, no. 2 (2023).

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was considered as an *Onwettig Occupatie* (illegal action) by the State.[112] The State adopted Law No.86 of 1958 to nationalize all Dutch colonial assets in Indonesia, including all Dutch assets related to plantation industries' lands, and claimed all-ex Dutch land property belongs to the State.[113]

After the New Order (*Orde Baru*, ORBA) took power in 1966, the Republic faced an economic crisis. The inflation had reached triple digits, and government revenues and expenditure were steadily dropping. To recover from this crisis, the Suharto government applied for international aid. The Monetary Fund (IMF), the World Bank, and a consortium of Western states agreed to help but insisted that the government allow private foreign investment to invest. Many foreign investors were interested in Indonesia's extractive sectors, including oil, mining, and timber.[114] This New Order's approach to fuel economic growth through natural resource extraction became the central factor in rebuilding the Indonesian economy.[115]

Nowadays, the Indonesian indigenous peoples seek recognition over their ancestral lands and territories through several instruments, political aspirations, and legal action. Politically, indigenous groups have continued to influence the state's policies, such as lobbying the political parties or expressing their interest by strike action. Simultaneously, various efforts have been legally conducted, such as filing a lawsuit or judicial review on various regulations from the existing laws that discriminated against indigenous groups' rights.[116]

First, the case law related to the concession permits that given by the government to private companies in controlling and using coastal territories or small islands in Indonesia. This permit causes native fishers and farmers to be unable to access the areas initially a part of their traditional territories for their livelihood activities. Hence, the People's Coalition for Fisheries Justice (*Koalisi Rakyat untuk Keadilan Perikanan*, KIARA) with several NGOs[117] and other farmers on behalf of *persoolijk recht* sue the lawsuit to the Constitution Court

[112] Ikhsan, *supra* note 34, p. 147.

[113] M. Ya'kub Aiyub Kadir, 'Defining "People" and "Indigenous People" in International Human Rights Law and Its Application in Indonesia', *International Journal on Minority and Group Rights* 26, no. 3 (2019), p. 304.

[114] M. L. Ross, *Timber Booms and Institutional Breakdown in Southeast Asia* (2001), p.166.

[115] Jeff Kingston, *Asian Nationalisms Reconsidered* (London & New York: Routledge, 2015).

[116] Ova Uswatun Nadia and Chairul Fahmi, 'Compensation on Copyright Duplication in Perspective of The Concept of Ḥaq Al-Ibtikâr: A Study on PT Erlangga Banda Aceh City', *JURISTA: Jurnal Hukum Dan Keadilan* 4, no. 2 (2020), p. 77–145.

[117] The organisation that involved in this lawsuit such as Indonesian Human Rights Committee (IHCS), Pusat Kajian Pembangunan Kelautan dan Peradaban Maritim (PK2PM), Konsorsium Pembaruan Agraria (KPA), Serikat Petani Indonesia (SPI), Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), Wahana Lingkungan Hidup (WALHI), and Aliansi Petani Indonesia (API).

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regarding the government policy to grant the right of Coastal Water Concession (*Hak Penguasaan Perairan Pesisir*, HP3). The applicant challenged Art.1 (4) point 7, and 18, Art.16 (1), Art.23 (2) and (4) of Law No.27 of 2007 and asking the Court with two main questions: (1) Does the provision of the law concerning the granting of HP3 to private parties contradicts Article 33 of the Constitution? (2) Whether the government granted HP3 based on the law to the private parties without FPIC of local or indigenous peoples who have inhabited the territory contradict the constitution?

According to Court decision No.3/PUU-MK/2010, the government permitted private enterprises to control the coastal areas privately was against Article 18B and Article 28A of the 1945 Indonesian Constitution,[118] in which the concession right could diminish the traditional community rights and local wisdom on coastal areas and small islands. In addition, permitting the private sector to control and manage the Coastal and water territories could eliminate opportunities for indigenous peoples who depend on their lives on coastal areas and small islands.[119]

The Second case was related claim that indigenous forest areas are a part of the State's Forest. In 2012, AMAN, an indigenous group from Kenegerian Kuntu, and Kesepuhan Cisitu[120] challenged Law No.41/1999 to the Indonesian Constitutional Court. The focus of the judicial review on Article 1 paragraph (6), Article 4 paragraph (3), and Article 5 paragraph (1), (2), (3) of the forest law. The applicants argued that Article 1 paragraph (6), which stated that "*adat*-forest is a part of State forest," has caused the rights of indigenous peoples to forest land within their customary territorial uncertainty, and they lost access to their communal lands (forests and their resources) due to it has been claimed as the State's forest property.[121] Based on this claim, the government permits corporates to use, manage, and exploit the forest resources without paying attention to the indigenous group's rights in the forest territories.[122]

Based on decision No.35/PUU-X/2012 on *hutan adat* (customary forest). The Constitution Court argued that Art.18b para (2) and Art.28I para (3) of the 1945 Constitution is the principle in which the State has acknowledged indigenous

[118] Mahkamah Konstitusi RI, Putusan No.3/PUU-VIII/2010 tentang Uji Materi UU No.27 Tahun 2007, p. 163.

[119] Article 28A states: "Every person has the right to live and to defend his/her life and existence."

[120] Juliette Juliette and Miftakhul Huda, 'MK: "Hutan Adat" Termasuk "Hutan Hak", Bukan "Hutan Negara" Mahkamah Konstitusi Republik Indonesia', 2013, https://mkri.id/index.php?id=8475&page=web.Berita.

[121] Jamie Seth Davidson and David Henley, eds., *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge Contemporary Southeast Asia Series 14 (London: New York: Routledge, 2007).

[122] Juliette and Huda, 'MK: "Hutan Adat" Termasuk "Hutan Hak", Bukan "Hutan Negara" | Mahkamah Konstitusi Republik Indonesia'.

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groups' existence and their property in Indonesia. Thus, claiming indigenous forest zone as part of State Forests is disregard the Constitution.[123] Moreover, Art.4 para (3)[124] of the Forestry Law must be interpreted more firmly, which the State recognises and respects indigenous peoples and their traditional rights, as stated in Art.18B para (2) of the Constitution. The Court's decision to grant the applicants' demand to obtain legal recognition over their customary forest has provided access for indigenous peoples in Indonesia to reclaim their traditional land or forest rights, which had been expropriated by the State for decades, especially during the New Order Era. In Brigitta's words, "Indonesian natives had suffered marginalisation, discrimination, and dispossession, which remaining for decades."[125] The most severe discrimination on their rights to lands, territories, and resources occurred during the New Order Era (1966-1997).

Furthermore, the Constitutional Court decision No.3/PUU-VIII/2010 (Enacted on 16 June 2011) has recognised Indigenous peoples' existence and rights. Based on the interpretation of the State's right to control (*hak mengontrol*) on land as stated in Article 33 of the Constitution, this decision must be relevant to its objective to achieve the people's welfare and prosperity. Ahmad Sodiki, one of the Constitutional Court judges, said: "...if it is related to Article 33 paragraph (3) of the 1945 Constitution, then it is the state's duty in the exploitation of land, water, and natural resources contained therein are utilised for the greatest prosperity of the people (fairly and evenly). Nevertheless, this aim cannot be achieved by just enforcing such a law and ignoring social injustice. The unfair enforcement of natural resource law will threaten the existence of customary law communities who are very vulnerable to be expulsed under the doctrine of development."[126]

Based on this constitutional reference, the Judges finally concluded that indigenous traditional forest is no longer part of the State Forest. This decision has been stipulated in MK's decision number 35/PUU-X/2012. The Court remarked that "indigenous forest land is located in the indigenous jurisdiction/territorial."[127] In other words, the State Forest, as mentioned in Article 1 paragraph (6), should exclude indigenous forest territories.

Finally, the Constitutional Court's decision has brought new hope for indigenous peoples in Indonesia in reclaiming their collective right within forest land after long periods under the State's control territory. In response to this

[123] See Mahkamah Konstitusi Republik Indonesia, 'Putusan No.35/PUU-X/2012' (2012), https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf.

[124] See Art.4 Para (3) of Law No.41/1999.

[125] H.-S. Brigitta, *Adat and Indigeneity in Indonesia: Culture and Entitlements between Heteronomy and Self-Ascription Göttingen Studies in Cultural* (2013), p. 7.

[126] Achmad Sodiki, *Politik Hukum agraria* (Indonesia: Konstitusi Press (Konpress), 2013).

[127] Mahkamah Konstitusi Republik Indonesia, Putusan No.35/PUU-X/2012.

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decision, the Ministry of Agrarian Affairs also had revised Regulation No.5 of 1999 with new regulation No.9 of 2015 on the mechanism or procedure for deciding the communal lands of indigenous society and other societies living in such regions. Eventually, this regulation has provided a legal mechanism for indigenous peoples to claim their communal rights, covering more than just the right to avail or use their lands.

Conclution

The Indonesian indigenous peoples' right to communal lands, territories, and resources had been sifted since the Dutch established their power in the East-Indies archipelago in the early 16th century. The NEI State adopted an Agrarian Law and other related regulations, which claimed that all lands without legally registered were considered the State's domain. This policy had severely affected the indigenous peoples' property on communal lands (ancestral domain), of which all this right was unregistered and was governed by their customary legal system instead of the Dutch Agrarian law system. This policy has been continuously implemented after the Indonesian independence. The 1945 Indonesian Constitution insists that all lands and natural resources within the Indonesian territory are controlled by the State and aimed to provide welfare and prosperity for all peoples. In fact, the government merely focuses on the State's absolute right to control lands and resources and less concern to fulfil the welfare and prosperity of the peoples (indigenous). The national economic development, which mostly relied on natural resources during the New Order Era regime, had caused unregistered indigenous communal being expropriated by many extractive industries, timber and plantation companies under the State's permission. The Post-New Order regime collapsed, the government has adopted land reform policies to solve fragmentation and social discrimination over the land property. The Ministry of Agrarian and Spatial Planning issued several regulations concerning the registration process of indigenous communal land rights. But the registration process is a long process of legal bureaucracy. In addition, the overlapping rules, corruption, oligarchy, and conflict of interest between political and economic actors are among many obstacles to impose land reform in Indonesia. Furthermore, the indigenous aspiration to have a special law on indigenous peoples' rights has also encountered problems. Since it was proposed in 2009, the draft has been suspended until now by the government. The fate of indigenous peoples, especially the protection over their ancestral domains, is still experiencing conflicts of interest between indigenous people, the States, and corporations. Lastly, the Indonesian indigenous peoples' struggle to secure their traditional land remains challenging, tiring, and absorbing much energy.

DOI: 10.22373/sjhk.v8i3.19992

References

Journals and Books

A. Gulaid, Mahmoud. 'Land Ownership in Islam (A Survey)'. Jeddah: Islamic Development Bank, 2001.

Angelino, A. D. A. Kat. *Colonial Policy: Volume II The Dutch East Indies*. The Netherlands: Springer Science & Business Media, 2012.

Austin, Kemen G., et.al., "What Causes Deforestation in Indonesia?' *Environmental Research Letters* 14, no. 2 (2019). https://doi.org/10.1088/1748-9326/aaf6db.

Banakar, Reza, and Max Travers. *Theory and Method in Socio-Legal Research*. USA: Bloomsbury Publishing, 2005.

Beck, Sanderson. 'Indonesia and the Dutch 1800-1950'. In *South Asia, 1800-1950*, Vol. 20. Australia: World Peace Communications, 2008.

Benda-Beckmann, Franz von, and Keebet von Benda-Beckmann, "Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2–3 (2011). https://doi.org/10.1163/22134379-90003588.

Berhard Ter Haar. *Asas-Asas Dan Susunan Hukum Adat (Beginselen En Stelsel Van Het Adatrecht)*. Translated by Soebakti Poesponoto. Djakarta: Pradnja Paramita, 1960.

Brigitta, Hauser-Schäublin. *Adat and Indigeneity in Indonesia: Culture and Entitlements between Heteronomy and Self-Ascription Göttingen Studies in Cultural*. Germany: Universitätsverlag Göttingen, 2013.

Brown, Colin. *A Short History of Indonesia: The Unlikely Nation?* Short History of Asia Series. Crows Nest, N.S.W: Allen & Unwin, 2003.

C. Fasseur. 'Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia'. In *the Revival of Tradition in Indonesian Politics,* edited by Jamie Davidson and David Henley. New York: Routledge, 2007.

Cliteur, Paul, and Afshin Ellian. *A New Introduction to Legal Method*. USA: Routledge, 2022.

Congleton, Roger D. *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy*. England: Cambridge University Press, 2010.

Creutzfeldt, Naomi, et.al., *Routledge Handbook of Socio-Legal Theory and Methods*. New York: Routledge, 2019.

Cribb, Robert. *Historical Atlas of Indonesia*. London: Routledge, 2013.

Davidson, Jamie Seth, and David Henley, eds. *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to*

DOI: 10.22373/sjhk.v8i3.19992

Indigenism. Routledge Contemporary Southeast Asia Series 14. London; New York: Routledge, 2007.

Davis, John Francis. *The Asiatic Journal and Monthly Register for British India and Its Dependencies*. London: Black, Parbury, & Allen, 1825.

Fahmi, Chairul, 'The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia'. *AlterNative: An International Journal of Indigenous Peoples*, (2024). https://doi.org/10.1177/11771801241235261.

Fahmi, Chairul, 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia'. *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)* 5, no. 2 (2020). https://doi.org/10.22373/petita.v5i2.99.

Fahmi, Chairul, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia'. *Jurnal Ilmiah Peuradeun* 11, no. 2 (2023). https://doi.org/10.26811/peuradeun.v11i2.923.

Fahmi, Chairul, and Muhammad Siddiq Armia. 'Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms'. *Journal of Southeast Asian Human Rights* 6, no. 1 (2022).. https://doi.org/10.19184/jseahr.v6i1.30242.

Fahmi, Chairul, et.al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023). https://doi.org/10.15294/jils.v8i2.68419.

Fasseur, Cornelis. *The Politics of Colonial Exploitation: Java, The Dutch, and the Cultivation System*. USA: Cornell University Press, 2018.

Cornelis Fasseur, 'Cornerstone and Stumbling Block: Racial Classification and the Late Colonial State in Indonesia'. In *the Late Colonial State in Indonesia: Political and Economic Foundations of the Netherlands Indies, 1880-1942*, edited by Robert Cribb, 31–56. Leiden: KITLV Press, 1994.

Cornelis Fasseur, 'The Cultivation System'. In *the Politics of Colonial Exploitation*, edited by R.E. Elson. Cornell University Press, 1992.

Feiring, Birgitte. 'Indigenous Peoples' Rights to Lands, Territories, and Resources'. *International Land Coalition*, 2013, 94.

Gellert, Paul K. 'Palm Oil Expansion in Indonesia: Land Grabbing as Accumulation by Dispossession'. In *States and Citizens: Accommodation, Facilitation and Resistance to Globalization*. UK: Emerald Group Publishing, 2015.

Gordon, Alec. 'The Collapse of Java's Colonial Sugar System and the Breakdown of Independent Indonesia's Economy'. In *Between People and Statistics: Essays on Modern Indonesian History Presented to P. Creutzberg*, edited by Francien Anrooij. Dordrecht: Springer Netherlands, 2012.

DOI: 10.22373/sjhk.v8i3.19992

Hajati, Sri, Sri Winarsi, Agus Sekarmadji, and Oemar Moechtar. *Buku Ajar Politik Hukum Pertanahan*. Indonesia: Airlangga University Press, 2020.

Herman Slaats. 'The imposition and radiation of Dutch law in Indonesia'. In *Our laws, their lands: land laws and land use in modern colonial societies*, edited by Jap de Moor. Periplus-Parerga, Bd. 2. Münster Hamburg: Lit, 1994.

Hidayat, Herman. *Forest Resources Management in Indonesia (1968-2004): A Political Ecology Approach*. The Netherlands: Springer, 2016.

Hurgronje, Christian Snouck. *The Achehnese*. Vol. I. Leiden: E.J.Brill, 1906.

Hutchinson, Terry. 'Doctrinal Research: Researching the Jury'. In *Research Methods in International Law: A Handbook*, edited by Deplano Rossana and Tsagourias Nicholas. UK: Edward Elgar Publishing, 2021.

Ikhsan, Edy. *Konflik Tanah Ulayat Dan Pluralisme Hukum: Hilangnya Ruang Hidup Orang Melayu Deli*. Cetakan pertama. Jakarta: Yayasan Pustaka Obor Indonesia, 2015.

Ismail and Nofiardi, "Shifting Inheritance Patterns in the Minangkabau Tribe in Negeri Sembilan, Malaysia," *El-Usrah: Jurnal Hukum Keluarga* 7, No.1 (2024). DOI: http://dx.doi.org/10.22373/ujhk.v7i1.23998.

John M. Brownlee. 'Colonial Knowledge and Indigenous Power in the Dutch East Indies'. *Southeast Asian Studies* 2, no. 1 (1998).

Kadir, M. Ya'kub Aiyub. 'Defining "People" and "Indigenous People" in International Human Rights Law and Its Application in Indonesia'. *International Journal on Minority and Group Rights* 26, no. 3 (2019). https://doi.org/10.1163/15718115-02602006.

Karjoko, Lego, et.al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021).

Kingston, Jeff. *Asian Nationalisms Reconsidered*. London & New York: Routledge, 2015.

Klaveren, N. A. *The Dutch Colonial System in the East Indies*. London: Springer, 2013.

Klaveren, N. A., *The Dutch Colonial System in the East Indies*. The Netherlands: Springer, 2013.

Klinken, Gerry. 'Kembalinya Para Sultan: Pentas Gerakan Komunitarian dalam Politik Lokal'. In *Adat dalam politik Indonesia*, edited by Jamie Seth Davidson and David Henley. Jakarta: Yayasan Pustaka Obor Indonesia: KITLV-Jakarta, 2010.

Leeuwen, Simon van. *Commentaries on the Roman-Dutch Law*. The Netherlands: A. Strahan, 1820.

M., Siscawati, Banjade M.R., Liswanti N., Herawati T., Mwangi E., Wulandari C., Tjoa M., and Silaya T. *Overview of Forest Tenure Reforms in Indonesia*. Indonesia: Center for International Forestry Research (CIFOR), 2017. https://doi.org/10.17528/cifor/006402.

DOI: 10.22373/sjhk.v8i3.19992

Marzuki, Peter Mahmud. *An Introduction to Indonesian Law:* -. Setara Press, 2011.

Moore, Bob, and Henk van Nierop. *Colonial Empires Compared: Britain and the Netherlands, 1750–1850*. London & New York: Routledge, 2017.

Mutawali, Muhammad. 'Customary Law of Dou Donggo Bima from the Perspective of Islamic and Indonesian Positive Law'. *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (2022). https://doi.org/10.19105/al-lhkam.v17i1.6007.

Nadia, Ova Uswatun, and Chairul Fahmi. 'Compensation on Copyright Duplication In Perspective of The Concept of Ḥaq Al-Ibtikâr: A Study on PT Erlangga Banda Aceh City'. *JURISTA: Jurnal Hukum Dan Keadilan* 4, No. 2 (2020). https://doi.org/10.1234/jurista.v4i2.27.

Phillips, Andrew, and J. C. Sharman. *International Order in Diversity: War, Trade and Rule in the Indian Ocean*. England: Cambridge University Press, 2015.

Raffles, Thomas Stamford. *The History of Java*. BoD – Books on Demand, 2018.

Rahmah, Siti, et.al., "Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh Province," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024). https://doi.org/10.22373/sjhk.v8i1.16898.

Rasyid, Arbanur, et.al., "Local Wisdom Recognition in Inter-Ethnic Religious Conflict Resolution in Indonesia from Islah Perspective," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023). https://doi.org/10.31958/juris.v22i1.8432.

Rengers, D. W. Welderen. *The Failure of a Liberal Colonial Policy: Netherlands East Indies, 1816–1830*. The Netherlands: Springer Science & Business Media, 2013.

Ricklefs, M. C. *A History of Modern Indonesia Since C.1200*. New York: Macmillan International Higher Education, 2008.

Ross, Michael L. *Timber Booms and Institutional Breakdown in Southeast Asia*. England: Cambridge University Press, 2001.

Saifullah, Saifullah, and Febri Yulika. *Pertautan Budaya - Sejarah Minangkabau dan Negeri Sembilan*. Padang: ISI Padangpanjang, 2017.

Siddiq-Armia, Muhammad, *Penentuan Metode Dan Pendekatan Penelitian Hukum*. Edited by Chairul Fahmi. Indonesia: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022.

Sodiki, Achmad. *Politik hukum agraria*. Indonesia: Konstitusi Press (Konpress), 2013.

S.Salasai, Siti Mariam Malinumbay. 'The Concept of Land Ownership: Islamic Perspective'. *Buletin Geoinformasi* 2 (1998).

Stoler, Ann Laura. *Capitalism and Confrontation in Sumatra's Plantation Belt, 1870-1979*. USA: University of Michigan Press, 1995.

DOI: 10.22373/sjhk.v8i3.19992

Tyson, Adam, Helena Varkkey, and Shofwan Al Banna Choiruzzad. 'Deconstructing the Palm Oil Industry Narrative in Indonesia: Evidence from Riau Province'. *Contemporary Southeast Asia* 40, no. 3 (2018).

Unoki, Ko. *Mergers, Acquisitions and Global Empires: Tolerance, Diversity and the Success of M&A*. London & New York: Routledge, 2012.

Van Niel, Robert. 'Measurement of Change under the Cultivation System in Java, 1837-1851'. *Indonesia*, no. 14 (1972). https://doi.org/10.2307/3350734.

Vollenhoven, C. van. *Orang Indonesia dan tanahnya (De Indonesier en Zijn Ground)*. Edited by Upik Djalins. Translated by Soewargono. Yogyakarta: Sajogyo Institute, 2013.

Vollenhoven, C. van. *Suatu Kitab Hukum Adat Untuk Seluruh Hindia-Belanda*. Seri terjemahan karangan-karangan Belanda 27. Jakarta: Bhratara, 1972.

Vollenhoven, Cornelis van, and J. F. Holleman. *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht van Nederlandsch-Indië (Vol. 1, 1918, Vol. 2, 1931)*. Koninklijk Instituut Voor Taal-, Land- En Volkenkunde, Leiden: Translation Series 20. The Hague: Nijhoff, 1981.

Von Benda-Beckmann, Franz. 'The Level of Meaning: Systems of Property Relationships In Minangkabau'. In *Property in Social Continuity*, 86:137–214. Continuity and Change in the Maintenance of Property Relationships Through Time in Minangkabau, West Sumatra. Brill, 1979. https://www.jstor.org/stable/10.1163/j.ctvbqs80r.10.

Waites, Bernard. *Europe and the Third World: From Colonisation to Decolonisation c- 1500–1998*. New York: Macmillan International Higher Education, 1999.

Weber, Robert, Werner Kreisel, and Heiko Faust. 'Colonial Interventions on the Cultural Landscape of Central Sulawesi by "Ethical Policy": The Impact of the Dutch Rule in Palu and Kulawi Valley, 1905—1942'. *Asian Journal of Social Science* 31, no. 3 (2003). https://www.jstor.org/stable/23654726.

Yun-Casalilla, Bartolomé, Patrick K. O'Brien, Patrick O'Brien, and Francisco Comín Comín. *The Rise of Fiscal States: A Global History, 1500-1914*. England: Cambridge University Press, 2012.

Zanden, Jan Luiten van, and Daan Marks. *An Economic History of Indonesia: 1800-2010*. London & New York: Routledge, 2013.

Internet Data

Abrash. 'The Amungme, Kamoro & Freeport: How Indigenous Papuans Have Resisted the World's Largest Gold and Copper Mine'. Quarterly Magazine. Cultural Survival, 2001. https://www.culturalsurvival.org/publications/cultural-survival-quarterly/amungme-kamoro-freeport-how-indigenous-papuans-have.

Agne, Yolanda. 'Deretan Masyarakat Adat Yang Terkena Penggusuran Oleh Otorita IKN - Nasional Tempo.Co', 2024.

DOI: 10.22373/sjhk.v8i3.19992

https://nasional.tempo.co/read/1846098/deretan-masyarakat-adat-yang-terkena-penggusuran-oleh-otorita-ikn.

Arman, Dedi. 'Kisah Orang Darat (Orang Hutan) Ditengah Kemajuan Batam'. *Balai Pelestarian Nilai Budaya Kepulauan Riau* (blog), 12 June 2020. https://kebudayaan.kemdikbud.go.id/bpnbkepri/kisah-orang-darat-orang-hutan-ditengah-kemajuan-batam/.

Asmaaysi, Alifian. 'Proyek Rempang Eco-City: Jejak Tomy Winata dan Investor China'. Bisnis.com, 11 September 2023. https://ekonomi.bisnis.com/read/20230911/47/1693517/proyek-rempang-eco-city-jejak-tomy-winata-dan-investor-china.

Benar News. 'Polisi tangkap 43 warga Rempang yang demo tolak investasi China'. Accessed 13 September 2023. https://www.benarnews.org/indonesian/berita/konflik-rempang-09122023140433.html.

Ensyclopedia, Nations. 'Location, Size, and Extent - Indonesia - Located, Area', 2021. https://www.nationsencyclopedia.com/Asia-and-Oceania/Indonesia-Location-Size-And-Extent.html.

IDLO. 'Customary Right to Land'. Banda Aceh: International Development Law Organization, 6 February 2008. http://www.idlo.org/DOCNews/Customary%20right%20to%20land.pdf.

Indonesia, Republic. UU No.41 Tahun 1999 tentang Kehutanan, Pub. L. No. 41/1999 (2000). https://jdih.esdm.go.id/storage/document/uu-41-1999.pdf.

Initiative, Forest Legality. 'Forestry Laws and Regulations', 2016. https://forestlegality.org/risk-tool/country/indonesia.

Juliette, Juliette, and Miftakhul Huda. 'MK: "Hutan Adat" Termasuk "Hutan Hak", Bukan "Hutan Negara" Mahkamah Konstitusi Republik Indonesia', 2013. https://mkri.id/index.php?id=8475&page=web.Berita.

Mahkamah Konstitusi Republik Indonesia. Putusan No.35/PUU-X/2012 (2012). https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf.

Mahkamah Konstitusi RI. Putusan No.3/PUU-VIII/2010 tentang Uji Materi UU No.27 Tahun 2007 (n.d.). https://mkri.id/public/content/persidangan/putusan/putusan_sidang_Nomor%203%20PUU%20pesisir%202010-TELAH%20BACA.pdf.

Media, Kompas Cyber. 'Sengketa Rempang, Warga Adat, dan Kesadaran Poskolonial'. KOMPAS.com, 12 September 2023. https://nasional.kompas.com/read/2023/09/12/16300041/sengketa-rempang-warga-adat-dan-kesadaran-poskolonial.

Menteri Negara Agraria. Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.5 Tahun 1999 tentang Pedoman Penyelesaian

DOI: 10.22373/sjhk.v8i3.19992

Masalah Hak Ulayat Masyarakat Hukum Adat (1999). https://peraturan.bkpm.go.id/jdih/userfiles/batang/BPN_5_1999.pdf.

Mosnier, Aline, et.al., 'Palm Oil and Likely Futures: Assessing the Potential Impacts of Zero Deforestation Commitments and a Moratorium on Large-Scale Oil Palm Plantations in Indonesia'. Jakarta: Center for International Forestry Research, 2017. https://www.jstor.org/stable/resrep16235.

Neilson, Jeffrey. 'Domein Verklaring: Colonial Legal Legacies and Community Access to Land in Indonesia'. *Georgetown Journal of International Affairs* (blog), 25 November 2020. https://gjia.georgetown.edu/2020/11/25/domein-verklaring-colonial-legal-legacies-and-community-access-to-land-in-indonesia/.

Nicholas Jong, Hans. '"Hungry" Palm Oil, Pulpwood Firms behind Indonesia Land-Grab Spike: Report'. Mongabay Environmental News, 15 February 2021. https://news.mongabay.com/2021/02/palm-oil-pulpwood-firms-behind-indonesia-land-grab-agrarian-conflict-spike-report/.

Redaksi, Redaksi. 'Nasib Suku Asli Balikapan di Tengah Pembangunan IKN'. Suarakaltim.id, 2024. https://kaltim.suara.com/read/2024/03/16/190000/nasib-suku-asli-balikapan-di-tengah-pembangunan-ikn.

Ridwan, Akbar. 'Nestapa masyarakat adat di Ibu Kota Nusantara'. https://www.alinea.id/, 2024. https://www.alinea.id/nasional/nestapa-masyarakat-adat-di-ibu-kota-nusantara-b2hOV9L3Z.

The 1945 Constitution of The Republic of Indonesia. 'Indonesia: The 1945 Constitution of the Republic of Indonesia', 1945. http://www.wipo.int/wipolex/en/text.jsp?file_id=200129.

The Department of Home Affairs. Basic Agrarian Law (UUPA) Act No.5 of 1960 the Basic Provisions concerning the Fundamentals of Agrarian Affairs, Pub. L. No. 5/1960 (1976). https://zerosugar.files.wordpress.com/2014/08/law-no-5-of-1960-on-basic-agrarian-principles-etlj.pdf.