

Implementation and Problems of Customary Land Procurement in the Development of Plasma Oil Palm Plantations in Kampung Lama Pakobuk

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Abstract

The absence of a legal mechanism regarding the release of customary land for private interests has weakened legal protection for the rights of indigenous peoples. Furthermore, the land acquisition process is often carried out without implementing the principle of Free, Prior and Informed Consent (FPIC). This research is normative legal research with a qualitative approach, supported by a case study of the High Court Decision Number 175/PDT/2022/PT PRB. Data was obtained through literature review, legal analysis of related laws and regulations, and documentation of court decisions related to customary land disputes. The results of the study show that the implementation of land acquisition in Kampung Lama Pakis Pakobuk does not reflect agrarian justice. The imbalance in bargaining position between corporations and indigenous peoples, weak supervision of local governments, and minimal formal legal recognition of customary areas are the main problems identified. Therefore, it is necessary to reconstruct agrarian law that operationally accommodates customary rights in the national legal system. The government also needs to form a special institution to monitor and mediate land acquisition conflicts based on community participation, so that future customary land acquisition can be carried out fairly and sustainably.

Keywords: Agrarian Justice; Indigenous Peoples; Land Acquisition; Ulayat Land; Plasma Oil Palm Plantation.

Abstrak

Ketiadaan mekanisme hukum mengenai pelepasan tanah ulayat untuk kepentingan pribadi telah melemahkan perlindungan hukum terhadap hak-hak masyarakat adat. Lebih jauh, proses pengadaan tanah seringkali dilakukan tanpa melaksanakan asas Free, Prior and Informed Consent (FPIC). Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kualitatif, yang didukung oleh studi kasus Putusan Pengadilan Tinggi Nomor 175/PDT/2022/PT PRB. Data diperoleh melalui telaah pustaka, analisis hukum terhadap peraturan perundang-undangan terkait, dan dokumentasi putusan pengadilan terkait sengketa tanah ulayat. Hasil penelitian menunjukkan bahwa pelaksanaan pengadaan tanah di Kampung Lama Pakis Pakobuk belum mencerminkan keadilan agraria. Ketimpangan posisi tawar antara korporasi dan masyarakat adat, lemahnya pengawasan pemerintah daerah, dan minimnya pengakuan hukum formal atas wilayah adat menjadi permasalahan utama yang teridentifikasi. Oleh karena itu, perlu dilakukan rekonstruksi hukum agraria

yang secara operasional mengakomodir hak ulayat dalam sistem hukum nasional. Pemerintah juga perlu membentuk lembaga khusus untuk memantau dan memediasi konflik pengadaan tanah yang berbasis pada peran serta masyarakat, sehingga pengadaan tanah adat di masa mendatang dapat dilaksanakan secara adil dan berkelanjutan.

Kata Kunci: Keadilan Agraria; Masyarakat Adat; Pengadaan Tanah; Tanah Ulayat; Perkebunan Kelapa Sawit Plasma.

Introduction

Customary land is a form of communal ownership that is recognized in the customary law system in Indonesia.¹ The existence of customary land reflects the attachment of customary law communities to their territory which is inherited from generation to generation. However, in practice, legal recognition of customary land still faces many obstacles. This condition affects the process of land acquisition for development purposes, including plasma oil palm plantation projects.

The procurement of customary land for the construction of plasma oil palm plantations is a crucial issue in agribusiness-based development. The program is intended to improve the well-being of indigenous peoples through partnerships with companies. However, its implementation often causes conflicts due to differences in understanding between the state legal system and customary law. Therefore, it is important to examine how customary land procurement is carried out in the context of such development.

One of the areas that experience this problem is Kampung Lama Pakobuk in Riau Province. The construction of plasma oil palm plantations in this region involves the procurement of customary land owned by customary law communities. This process raises significant legal and social problems. This problem becomes relevant to be studied in depth.²

In the case of Kampung Lama Pakobuk, the procurement of customary land caused disputes between indigenous peoples and plantation companies. The dispute has reached the judicial stage, as reflected in the High Court Decision Number

¹ Boedi Harsono, *Indonesian Agrarian Law: The History of the Formation of UUPA, Its Content and Implementation*, (Jakarta: Djambatan, 2003), p. 2

² High Court Decision No. 175/PDT/2022/PT PBR

175/PDT/2022/PT PBR. This decision is an important foothold in understanding the dynamics of the recognition and implementation of customary rights in the national legal system. Therefore, this study uses the case study as the main focus.

The implementation aspect of customary land procurement includes the stages of land identification, deliberation, and cooperation agreements. In practice, this stage often does not involve the community fully. This non-involvement leads to information inequality and inequity in the distribution of benefits. This situation needs to be analyzed through a legal and social approach.

Another problem that arises is the incompatibility of formal legal procedures with customary law values. Many customary land procurement processes are only based on the approval of a small number of people. Customarily, such decisions must be agreed collectively through customary institutions. This shows the importance of alignment between state law and customary law.

In addition, it is not uncommon for economic or political pressures to affect indigenous peoples' decisions to release their land. The power imbalance between companies and indigenous peoples exacerbates the bargaining position of local communities. In this case, land procurement is no longer based on the principles of voluntariness and justice. Therefore, there needs to be a study on legal protection in this process.

The concept of plasma in oil palm plantations should guarantee a mutually beneficial partnership. But in reality, most indigenous peoples suffer losses. The promised gains are not worth the loss of land rights and control of their living space.

This condition shows that there is an inequality in the implementation of the policy.³ The mismatch between the promise of welfare and the reality on the ground reinforces the importance of evaluation of customary land procurement. This evaluation needs to be carried out taking into account participatory approaches and social justice principles. Indigenous peoples must be the subject, not the object of development. Therefore, transparency in every stage of the process is very necessary.

³ Muhammad Isnur, *Agrarian Justice in the Middle of Palm Oil Investment*, (Jakarta: Indonesian Legal Aid Foundation Foundation (YLBHI), 2018), p. 61

From a legal perspective, the procurement of customary land should refer to the Basic Agrarian Law and its derivative regulations. However, in many cases, the implementation of these regulations does not accommodate the peculiarities of customary law. Customary law is often positioned as subordinate to state law.⁴ This situation makes it difficult to effectively protect customary rights.

The disharmony between the two legal systems raises the need for policy reformulation. The government needs to make regulations that recognize and strictly regulate customary land procurement procedures. In addition, the role of customary institutions must be formally recognized in the legal mechanism. In this way, substantive justice for Indigenous peoples can be realized.⁵

Implementation issues are also closely related to oversight and accountability. Currently, there is no strong monitoring mechanism for the procurement of customary land at the local level. As a result, many violations go undisclosed or are not legally acted upon. Therefore, there needs to be a community-based supervision system involving customary institutions.

As an alternative solution, it is necessary to develop a dialogue approach between indigenous peoples, governments, and companies. This approach aims to build trust and mutual understanding in the land acquisition process. In addition, there must be legal guarantees for the rights of indigenous peoples outlined in written agreements. Thus, all parties can carry out their roles and responsibilities in a balanced manner.

The involvement of academics, NGOs, and the media is also an important factor in overseeing this process. They act as external supervisors and providers of critical information for indigenous peoples. This multi-stakeholder support will strengthen the community's position in the legal negotiation and advocacy process. Therefore, strengthening Indigenous peoples must be part of a long-term strategy.⁶

Based on these various problems, it is important to conduct an in-depth analysis

⁴ Abdul Halim Barkatullah, *Customary Land in the Perspective of National and International Law*, (Makassar: Hassanudin University Press, 2021), p. 48

⁵ N. Askin, *Agrarian Conflict in Legal and Sociological Perspectives*, (Bandung: Alumni, 2016), p. 92

⁶ Elsam (Institute for Community Studies and Advocacy), *Indigenous Peoples' Rights to Customary Land*, (Jakarta: Elsam, 2003), p. 51

of the implementation and problems of customary land procurement in Kampung Lama Pakobuk. This research is expected to provide a comprehensive overview of the legal, social, and political dynamics in land acquisition for the construction of plasma oil palm plantations. In addition, the results of this study are expected to contribute to the formulation of fair and inclusive agrarian policies. Thus, the development process can run without ignoring the rights of indigenous peoples.

Based on this background, this study will focus on examining the implementation of the procurement of customary land in the construction of plasma oil palm plantations in Kampung Lama Pakobuk and the obstacles in the process of implementing and procuring customary land in Kampung Lama Pakobuk.

Research Methods

This research uses a normative juridical method, which is legal research that relies on the study of applicable legal norms. This type of research was chosen because the main focus of the study is to analyze positive legal provisions.⁷ Related to the procurement of customary land and its implementation problems in the context of plasma oil palm plantation development. This approach allows researchers to explore the normative aspects of agrarian law and customary law that interact with each other in practice. This research also relates laws and regulations to real practices as reflected in court decisions.

The data sources in this study consist of secondary data which includes primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations such as Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and High Court Decision Number 175/PDT/2022/PT PBR. Secondary legal materials include doctrine, legal literature, scientific journals, and legal expert opinions that discuss customary land and the construction of plasma oil palm plantations. Tertiary legal materials are used as a complement to strengthen analysis, such as legal dictionaries and legal encyclopedias.

⁷ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2006), p. 52

The approaches used in this study are the statute *approach* and the case approach.⁸ The legislative approach is used to assess the suitability of positive legal arrangements for the protection of Indigenous people's rights in the procurement of customary land. Meanwhile, the case approach is used to examine concrete implementation through a study of the High Court Decision Number 175/PDT/2022/PT PBR which is the focus of this study. With these two approaches, it is hoped that the analysis can cover both theoretical and applicable aspects as a whole.

Results and Discussion

Implementation of Customary Land Procurement in the Development of Plasma Oil Palm Plantations in Kampung Lama Pakobuk

The development of plasma oil palm plantations is part of a strategy to improve the rural economy based on partnerships between companies and communities. In this context, the procurement of customary land is the main foundation because the land used is customary territory. This process often gives rise to complex social, legal, and cultural dynamics, especially due to the difference in perspectives between state law and customary law. Therefore, it is important to comprehensively understand how customary land procurement is carried out, including the rights of the customary law communities involved. This study will begin by examining the social background of the people of Kampung Lama Pakobuk as the context of the research locus.

Kampung Lama Pakobuk is located in an area that is still strong in maintaining traditional values and communal social structure. The people live in a kinship system based on collective ownership of land, including customary land that is inherited from generation to generation. These social characteristics reinforce the position of land as a symbol of community identity and sovereignty. Therefore, external intervention on customary land, including in the form of oil palm investment, must take into account this social structure. This understanding

⁸ Lexy J. Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2019), *Ibid.*, p. 6

underlies the explanation of the concept of customary rights in Indonesian customary law.

Customary rights are the collective rights of customary law communities over certain areas that have been used for generations. In customary law, customary land cannot be traded freely because it is attached to the communal existence of the community. This right includes the right to regulate, manage, and benefit from land by applicable customary norms. The existence of customary rights shows the recognition of the legal system that lives in society. Furthermore, it is important to see how this right is recognized in Indonesia's national legal system.⁹

National law recognizes the existence of customary rights through Article 3 of the Basic Agrarian Law (UUPA) of 1960. This article states that the implementation of customary rights must be recognized as long as the reality still exists and does not contradict national interests laws and regulations. This recognition provides a legal basis for indigenous peoples to defend their land amid development. However, in practice, this recognition is often not followed by concrete legal protection. This is important when discussing the plasma oil palm plantation system that often uses customary land as the basis for partnerships.

Plasma oil palm plantations are a pattern of cooperation between core companies and plasma farmers that aim to improve the welfare of the surrounding community. In this scheme, companies provide capital, technology, and markets, while communities provide land, including customary land. This system is designed as an inclusive strategy to encourage community participation in economic development. However, the implementation of this pattern often raises problems when the land used has the status of customary. Therefore, an understanding of the general procedures of land acquisition is crucial in this context.

The procedure for land acquisition for the public interest is regulated in Presidential Regulation No. 71 of 2012. This regulation stipulates stages such as planning, preparation, implementation, and submission of land acquisition results. However, this scheme is more aimed at land owned by individuals who have land

⁹ Endriatmo Soetarto, "Reconstruction of Customary Rights in Community-Based Development." *Journal of Society and Culture* 17, no. 3 (2015): 445–460.

rights certificates. In the case of customary land, this mechanism is not entirely relevant due to the status of collective rights governed by customary law. Therefore, it is necessary to further study the limitations of regulations related to the procurement of customary land for private interests.¹⁰

National regulations have not expressly regulated the mechanism for the release of customary land rights for non-state development. This creates a legal vacuum that is prone to abuse by parties interested in customary lands.¹¹ In practice, the release of customary land is often carried out through partnership agreements without adequate formal legal reinforcement. As a result, indigenous peoples are vulnerable to loss of rights without fair compensation. This situation demands an active role from the government in the procurement of customary land.

The government, both central and regional, has a responsibility to oversee the process of acquiring customary land so as not to harm indigenous peoples. Supervisory, facilitation, and mediation functions must be carried out to ensure that the procurement process is fair and transparent. However, in many cases, the government only acts as a document validator, not a protector of the rights of indigenous peoples. The government's absence in this substantive role exacerbates the inequality of bargaining positions between the public and companies. Therefore, the form of cooperation in the plasma system needs to be studied technically.

Plasma cooperation is usually outlined in a written agreement between the company and the land-owning community. This agreement covers the sharing of produce, management of the plantation, and the terms of the contract. However, many indigenous peoples do not understand the content of the agreement due to limited legal and economic literacy. As a result, deals often benefit companies and harm society. To avoid conflict, mapping customary territories is a crucial stage before the agreement is made.

The mapping of customary territories aims to legally identify the boundaries of customary lands controlled by the community. This process can involve the

¹⁰ Martiati, Rina. "Agrarian Conflict between Palm Oil Companies and Indigenous Peoples in Sumatra." *Journal of Law and Development* 47, no. 2 (2021): 210–229.

¹¹ N. Askin, *Agrarian Conflict in Legal and Sociological Perspectives*, (Bandung: Alumni, 2016), p. 101

participation of the public, NGOs, and governments to ensure the validity of the data. Legal customary territory maps are the basis for protecting land rights and avoiding overlapping claims. Without a recognized map, indigenous peoples risk losing their land rights in plasma projects. Therefore, the approval process from indigenous peoples must be a mandatory stage.

The *Free, Prior and Informed Consent* (FPIC) principle is an international standard that emphasizes the importance of free, pre-emptive and informed consent from indigenous peoples before a development project is carried out. FPIC ensures that the community truly understands the social, economic, and cultural impacts of the release of customary land. Without the application of this principle, land procurement is prone to ignoring the aspirations of communities and violating their collective rights. In practice in Kampung Lama Pakobuk, this principle is not carried out optimally. The non-fulfilment of the FPIC principle reinforces the inequality of bargaining position in the negotiation process.¹²

Indigenous peoples often do not have an equal bargaining position when dealing with large companies in the procurement of customary land. Factors such as low legal literacy, economic dependence, and lack of institutional protection cause negotiations to take place unevenly. Companies take advantage of this loophole to offer agreements that are substantially detrimental to society.¹³ As a result, customary rights that should be protected become objects of exploitation. This condition is reflected in the High Court Decision Number 175/PDT/2022/PT PBR.

The decision contained a dispute case between indigenous communities and palm oil companies related to the procurement of customary land in Kampung Lama Pakobuk. Legal facts show that the process of land release is not carried out transparently and does not involve the entire community. The Court considers that the transfer of land rights does not meet the principles of justice and

¹² Fatimah Husein, "Implementation of Free, Prior and Informed Consent in Oil Palm Plantation Practices," *IUS Legal Journal*, Vol. 9, No. 2 (2021): 176–188.

¹³ Otto Soemarwoto, *Sustainable Development: Between Concept and Reality*, (Jakarta: Pustaka Siswa, 2001), p. 78

participation.¹⁴ This decision is an important precedent in assessing the practice of customary land procurement in Indonesia. One of the main drawbacks in such cases is the unclear redress mechanism.

The absence of a standard formula to determine the value of customary land compensation causes the compensation provided to be arbitrary and unfair. Companies often only award compensation on the basis of the economic value of the land, without taking into account the inherent cultural and social value. This exacerbated public dissatisfaction with the plasma project. Disproportionate compensation can trigger resistance and horizontal conflicts between citizens. This condition also affects the social dynamics in the Pakobuk Old Village.

The procurement of customary lands that do not pay attention to the socio-cultural structure of indigenous peoples leads to internal conflicts. Some residents who felt aggrieved began to question the legitimacy of the agreement that had been made. This conflict is not only vertical between the community and the company, but also horizontal between community members. In addition, the loss of access to natural resources such as forests and rivers worsens the economic conditions of the community. This social impact continues to extend in the implementation phase of the plasma project.¹⁵

In addition to social conflicts, people also experience alienation from land which has been a source of life and cultural identity. Oil palm plantation projects have replaced local ecosystems that were previously used for traditional gardening, hunting and medicine. This transformation accelerates the loss of local knowledge and gives rise to dependence on the company's economic system. This condition is not anticipated in project planning, which focuses too much on the economic aspect alone. Therefore, it is necessary to review the provisions of agrarian law related to communal land.

Law Number 5 of 1960 jo. Regulation of the Minister of ATR/BPN Number 18 of 2019 provides space for communal land registration. This regulation is the

¹⁴ High Court Decision Number 175/PDT/2022/PT PBR

¹⁵ Endriatmo Soetarto, "Reconstruction of Customary Rights in Community-Based Development," *Journal of Society and Culture*, Vol. 17, No. 3 (2015): 445–460.

entrance to the legalization of customary rights in the national agrarian system. However, its implementation is still limited because not all people know the registration procedure or have access to land services. This inequality shows the need for stronger policy affirmations from the state. In addition to the legal aspect, a philosophical understanding of customary rights is also important to be strengthened.

From a progressive legal perspective, customary rights are a manifestation of the diversity of legal systems that live in society. Customary law should not be positioned as subordinate to state law but as an equal partner within the framework of legal multiculturalism. Recognition of customary rights is a form of recognition of the social and cultural existence of indigenous peoples. Therefore, the development approach must be based on the principles of restorative and participatory justice. This thinking is in line with the principles of international law on the rights of indigenous peoples.

The United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) affirms that the state is obliged to respect, protect, and fulfil the rights of indigenous peoples to land and natural resources. UNDRIP also requires FPIC approval in any policy that affects customary territories. Although not legally binding, this document has become a global ethical standard in the management of customary territories. The application of UNDRIP principles in Indonesia still needs to be strengthened through integration into national regulations. One of the important actors in bridging this interest is the company through its social responsibility.¹⁶

Palm oil companies must carry out *Corporate Social Responsibility* (CSR) as a form of social responsibility to the surrounding community. In the context of customary land, CSR should be directed at economic empowerment, cultural preservation, and community involvement in decision-making. However, CSR implementation is often symbolic and does not answer structural problems. CSR should also not be used as a tool of legitimacy for the violation of Indigenous

¹⁶ Rina Martiati, "Agrarian Conflict between Palm Oil Companies and Indigenous Peoples in Sumatra," *Journal of Law and Development*, Vol. 47, No. 2 (2021): 210–229.

peoples' rights¹⁷. This is proven in the implementation of customary land procurement in the Pakowuk Old Village.

The initial process in Kampung Lama Pakobuk showed that negotiations were carried out with only a handful of traditional leaders without the involvement of the community as a whole. This creates information inequality and social exclusion in the decision-making process. The wider community only learned of the agreement after their land began to be cultivated by the company. This non-disclosure violates the principles of openness and accountability in the management of shared resources. This condition has an impact on the implementation stages of the plasma agreement.

At the implementation stage, the community is only involved in the labour process without having control over the management of the plasma plantation. This subordinative involvement does not reflect the spirit of an equal partnership. In addition, the non-transparent distribution of results raises suspicion and distrust of the company. The community began to feel that they were being used as a complement to the project. The lack of supervision from third parties worsened the implementation of the agreement.

Monitoring and evaluation of plasma projects in customary territories is still very weak. Neither local governments nor supervisory agencies have an effective system for assessing compliance with agreements. As a result, various violations are left unpunished, which encourages the practice of impunity. This weak control triggered protests from the community. These protests developed into open agrarian conflicts.

Some residents voiced their rejection of the plasma agreement because they felt deceived and did not get the benefits as promised. This protest shows a crisis of trust in companies and state institutions. Agrarian conflicts become inevitable when the initial procurement process is not carried out inclusively and fairly. In addition, this conflict also has an impact on social relations within the indigenous community itself. In situations like this, the role of third parties becomes very important.

¹⁷ Made Dwi Krisnayana, "Corporate Social Responsibility and Customary Land Disputes in Indonesia," *Journal of Legal Dynamics*, Vol. 18, No. 3 (2018): 378–387.

Non-Governmental Organizations (NGOs) and academics are present to assist the community in the process of advocacy, mediation, and the preparation of legal strategies. Their involvement is a counterbalance in the unequal relationship between the company and society. In addition to providing legal assistance, they also assist in the process of collecting evidence, training paralegals, and preparing maps of customary territories. This effort also strengthens the capacity of the community to fight for their rights. However, legal-formal obstacles in obtaining recognition of customary land are still the main obstacles.

Indigenous peoples face difficulties in accessing certification or the formal legality of their customary lands. Bureaucratic procedures and administrative requirements are often incompatible with customary institutional structures. This has caused many customary lands to remain in a gray legal status. This lack of legality weakens the legal position of the community in dealing with investors. For this reason, it is necessary to conduct a comparative study with other regions that have succeeded in arranging the procurement of customary land more fairly.

The establishment of a community-based customary land procurement task force can be a solution to ensure accountability and community participation. This agency functions as a facilitator, supervisor, as well as a liaison between the community, companies, and the government. With a representative mechanism, this agency can strengthen social control over development projects in customary territories. This proposal is in line with the spirit of decentralization and strengthening community-based institutions. Evaluation of the performance of local governments is an important element in encouraging the effectiveness of this idea.¹⁸

Local governments are often unresponsive to indigenous peoples' grievances and tend to side with investor interests. This indecisive attitude causes people to feel ignored by state institutions. In the context of Kampung Lama Pakobuk, the role of the government is more administrative than substantive. As a result, the land acquisition process takes place without protection of the rights of customary law

¹⁸ Daniel S. Lev, *Law and Politics in Indonesia: Continuity and Change*, (Jakarta: LP3ES, 1990), pp. 175–180.

communities.¹⁹ The absence of this country is further exacerbated by the presence of liberal policies such as the Job Creation Law.

Law Number 11 of 2020 concerning Job Creation raises concerns regarding the potential commercialization of customary land. The simplification of licensing in this law opens up space for the entry of large investments without adequate participatory procedures. Although it aims to encourage economic growth, this law has the potential to override the principles of social justice and the protection of indigenous peoples' rights. Therefore, a critical evaluation of its implementation is urgently needed. From here, the author presents an analysis of the practice of acquiring customary land in Kampung Lama Pakobuk.

The author considers that the procurement of customary land in Kampung Lama Pakobuk has not been carried out fairly and participatoryly. The lack of community involvement in the planning and implementation process leads to a loss of control over their land. Plasma agreements reflect more corporate dominance than parallel partnerships. The socio-cultural structure of indigenous peoples does not receive adequate protection in this process. This situation requires a renewal of the approach in the national agrarian legal system.

A more pro-community agrarian law reconstruction is needed, by making the principle of recognition of customary rights an operational norm in land acquisition. These efforts should include the drafting of regulations based on social justice, recognition of cultural values, and environmental sustainability. The country needs to strike a balance between the importance of economic development and the protection of indigenous peoples. The principles of participation, fairness, and respect for the diversity of local laws must be the basis of any customary land acquisition. Thus, development can run in harmony with social values and the human rights of customary law communities.

Problems of Procurement of Customary Land in The Development of Plasma Oil Palm Plantations in Kampung Lama Pakobuk

¹⁹ *Ibid.*

One of the main obstacles in the procurement of customary land in Kampung Lama Pakobuk is the absence of complete documentation of ownership history. Customary land is hereditary and managed based on collective memory and customarily determined natural boundaries. The absence of written evidence causes difficulties when people have to show proof of ownership in the legalization process. This opens up space for the company to claim that the land does not have clear legal ownership. This problem is exacerbated by the limited access of the community to the mechanism of official customary land registration.

Inequality of access to legal information between companies and indigenous peoples is also a serious problem in the process of acquiring customary land. People often do not know their legal rights due to low legal literacy and lack of assistance from legal aid institutions. Meanwhile, the company comes with a legal team that understands the legal loopholes to make the acquisition process easier. As a result, people often sign documents without understanding the long-term implications. This problem also gives rise to internal conflicts that make it more difficult to complete land acquisition fairly.

On the other hand, there are differences in views between the old and younger generations of indigenous peoples regarding the meaning and use of customary land. The older generation prioritizes the historical and spiritual value of land, while the younger generation tends to see land as an economic asset that can be used for development. This disharmony has an impact on the uniformity of community attitudes in responding to oil palm plantation investment. This difference in perception makes it easier for companies to claim support from some of the community to speed up the acquisition process. Therefore, the internal fragmentation of the community has also weakened the negotiating position of Indigenous peoples as a whole.²⁰

In addition, the absence of recognition of custom-based dispute resolution mechanisms in formal regulations is a significant problem. Disputes that arise related to the procurement of customary land must be resolved through formal

²⁰ Rukka Sombolinggi (ed.), *Land and Indigenous Peoples: Portraits of the Problem of Customary Rights in Indonesia*, (Jakarta: AMAN Press, 2015), p. 132

channels that do not understand the customary context. Customary institutions have their structures and procedures that are recognized locally and historically in resolving internal conflicts.²¹ The inability of formal laws to accommodate this local system creates tensions between society and state institutions. Therefore, there needs to be space in positive law to integrate customary-based dispute resolution mechanisms.

The process of acquiring customary land is also inseparable from the influence of local political elites who have their interests. In some cases, the village head or figure who holds an administrative position uses his position to push the decision to release land for personal or group interests. People who do not understand the power structure tend to follow these decisions without careful consideration. This local political intervention creates inequities in the decision-making process in indigenous communities. Therefore, the dynamics of local power must be criticized so as not to hurt the principle of deliberation in customs.

The customary social structure that has been the foundation of the management of customary lands has not received adequate legal protection. The existence of customary institutions that have authority over land management is often overlooked in the procurement process by companies. As a result, the agreement is carried out personally without officially involving customary stakeholders. This undermines the social order of society and obscures the legitimacy of the decisions taken. Thus, strengthening the legal position of customary institutions is crucial in preventing illegal takeover practices.²²

Companies and the government often interpret the principle of customary deliberation as only a form of administrative formality. The deliberations that are carried out often only take place in one meeting without deepening the aspirations of the community. In fact, in custom, deliberation is a gradual process that involves many parties with consideration of cultural values. This inaccuracy of interpretation hurts the meaning of Indigenous communities' participation in decision-making. Therefore, it is necessary to have a deep understanding of the structure and process

²¹ Sudjito, *Customary Law and Customary Land*, (Yogyakarta: Liberty, 2014), p. 43

²² *Ibid.*

of customary deliberation in community involvement.

Another problem arises from the lack of synchronization of customary land maps with state administrative maps. Many customary territories have not been listed in the national geospatial information system, so their legal existence is blurred. As a result, areas claimed as customary land often overlap with zones that have been categorized as state land or lordless land. This disharmony is used by the private sector to make claims or request the conversion of land status. Therefore, the legalization of customary territory maps must be a priority agenda in development planning.

In the practice of acquiring customary land in Kampung Lama Pakobuk, customary institutions are often only ceremonially involved in the licensing process. Their role is very strategic in ensuring the social and cultural legitimacy of the use of customary land. When customary institutions are not substantively involved, the decisions taken tend to ignore the values of the prevailing customary law. This caused rejection from some people who felt that they were not represented in the negotiation process. Therefore, in the future, a formal scheme of involvement of customary institutions in all stages of licensing is needed, so that the procurement process runs more inclusive and fair.²³

Profit-sharing schemes between land-owning communities and companies in plasma plantations are often not transparent. Many community members do not understand the profit-sharing structure or production costs charged. This lack of transparency makes the public feel deceived because the results received are not as expected. In some cases, communities receive only minimal returns, even though their land is intensively managed by companies. This ambiguity shows the importance of a written agreement that is fair and easy to understand for all parties.

In the initial negotiation process, often only the company has access to technical and legal information about plasma projects. Indigenous peoples do not receive legal assistance or adequate explanations of their rights and risks. As a result, people tend to agree to agreements without fully understanding the long-term

²³ Muhammad Isnur, *Agrarian Justice in the Middle of Palm Oil Investment*, Jakarta: Indonesian Legal Aid Foundation (YLBHI), 2018, p. 61

consequences. This condition strengthens the imbalance in power relations between financiers and indigenous communities. For this reason, information transparency and openness of access are fundamental requirements in the procurement of customary land.

The absence of socialization on agrarian law, partnership agreements, and indigenous peoples' rights makes the community easily manipulated. Many citizens do not understand the significance of the legal documents they sign. In addition, the use of complicated legal language further distances people's understanding of their rights. Structured and community-based legal education is urgently needed to strengthen the bargaining position of Indigenous peoples. Therefore, legal extension agencies must be involved in every investment project in customary territories.²⁴

Local governments have strategic authority in supervising the implementation of plasma-based development. However, in practice, many local governments are passive or even allow violations that occur in the procurement of customary land. This weak supervision is often related to conflicts of interest or lack of understanding of officials of customary law. As a result, violations of the rights of customary law communities are allowed to drag on without resolution. This shows the importance of increasing the capacity and integrity of local officials in protecting customary land.

When disputes arise between communities and companies, the available settlement mechanisms are often slow and accommodating to customs. State institutions such as BPN or the general court have not been able to provide special protection to Indigenous communities. Customary mediation, which is supposed to be an alternative solution, is often not facilitated seriously. As a result, conflicts drag on and potentially escalate into social violence. Therefore, there is a need for dispute resolution institutions that respect customary law approaches and the principles of restorative justice.

Palm oil companies are generally required to carry out corporate social

²⁴ *Ibid*

responsibility (CSR) to the surrounding community. However, the implementation of CSR in Kampung Lama Pakobuk is often uneven and does not involve community participation in planning. The assistance provided is more symbolic and does not answer the long-term needs of the community. This creates disappointment as well as worsens the relationship between the company and the community. Therefore, public participation in the planning and evaluation of CSR programs must be made a legal obligation.²⁵

Customary land acquisition projects often give rise to internal disputes due to overlapping claims to certain land. The unclear boundaries of customary areas between clans or extended families are a source of horizontal conflict. The absence of a standardized internal recording system exacerbates this situation. In many cases, these internal conflicts are used by outsiders to accelerate land takeovers. Therefore, community-based internal registration is important before the plasma project begins.

After the land was cooperated, the community became highly dependent on the products of oil palm plantations managed by the company. This dependence makes people lose economic independence and are unable to resist harmful corporate policies. In fact, previously the community had a sustainable agriculture and forest-based livelihood system. The loss of economic diversification increases the socio-economic vulnerability of communities. Therefore, diversification of livelihoods and alternative skills training is an urgent need.

Village heads or traditional leaders who have close ties to companies often act as facilitators of land acquisition. However, these relationships are often used for personal or group interests. This has led to public distrust of its leaders. The influence of local politics is a challenge in creating a fair and transparent procurement process. Therefore, the selection and involvement of local figures in the project must be accompanied by strict social control mechanisms.²⁶

The development of oil palm plantations is often carried out without an

²⁵ Made Dwi Krisnayana, "Corporate Social Responsibility and Customary Land Disputes in Indonesia," *Journal of Legal Dynamics*, Vol. 18, No. 3 (2018): 378–387.

²⁶ Abdul Wahid, "Criticism of National Agrarian Law: Between Legal Certainty and Social Justice," *Juridika Journal*, Vol. 33, No. 1 (2018): 55–70.

environmental impact assessment (EIA) involving the participation of indigenous communities. The community has local knowledge about the ecosystem that should be respected in planning. Their non-involvement causes the project to violate the principle of prudence in environmental management. As a result, forest degradation and reduced water quality have become new problems after development. Therefore, participatory-based environmental studies must be an absolute requirement in the procurement of customary land.

After the land was converted into a plasma plantation, the community lost access to the rivers, forests, and fields that had supported their lives. The tradition of fishing, hunting, and farming is no longer possible. This condition damages the socio-economic and cultural system that has been inherited from generation to generation. This loss is not offset by the provision of adequate alternatives from the company. Therefore, compensation for the loss of access to resources must be part of the plasma agreement.²⁷

In some cases, companies use plasma partnerships as a cover to take over customary land permanently. After a certain period, the land that was supposed to be returned to the community was not returned. Initial agreements are often drafted unilaterally without strong legal guarantees. As a result, people feel deceived and do not have a mechanism to reclaim their rights. Therefore, the cooperation contract must have an explicit property rights protection clause.

When conflicts arise, it is difficult for people to get legal aid due to financial limitations and access to legal aid institutions. This causes the resolution of problems to depend on informal mediation which is often unfair. The absence of legal advocacy also makes the community reluctant to continue disputes to the legal route. In fact, the presence of a lawyer can strengthen the position of the community in negotiations and litigation. Therefore, the provision of free legal aid services for indigenous peoples needs to be improved.

Until now, there is no standard national standard regarding the implementation of customary land-based plasma plantations. As a result, each company implements

²⁷ Fatimah Husein, "Implementation of Free, Prior and Informed Consent in Oil Palm Plantation Practices," *IUS Legal Journal*, Vol. 9, No. 2 (2021): 176–188.

a different cooperation mechanism, which is not necessarily to the principle of fairness. This inconsistency creates legal uncertainty and difficulties in enforcing people's rights. Therefore, the government needs to issue special regulations that are mandatory references in every plasma project on customary land. This is to ensure uniformity and protection of customary rights.

Indigenous peoples generally do not have written documentation of the history and boundaries of their customary territories. The absence of these archives makes public claims easily broken by formal legal arguments. Customary documentation is very important to prove the continuity of land tenure and management. Therefore, the process of documenting history and customary law needs to be facilitated by the state and academics. This is a form of recognition of the legitimate local knowledge system.²⁸

Several external actors such as land brokers and local elites also play a role in the procurement process, which actually complicates the position of the community. They speed up transactions by simplifying procedures that benefit the company. This intervention removes the principles of deliberation and consensus in customs. As a result, decisions are taken without the legitimacy of the community as a whole. Therefore, supervision of the involvement of third parties is an important element in customary land governance.

Plasma projects often marginalize local farmers who choose not to join cooperation schemes. They have difficulty accessing markets, fertilizers, and government assistance because they are considered not to support government projects. As a result, there is an inequality of treatment between plasma and non-plasma farmers. This undermines the principle of social justice in the management of natural resources. Therefore, inclusive policies must be implemented so that all farmers continue to receive protection and support.

Although the land comes from the community, most of the profits from the plasma project are enjoyed by the company. This unequal distribution of benefits creates economic disparities within communities. This injustice has led to resistance

²⁸ N. Askin, *Agrarian Conflict in Legal and Sociological Perspectives*, (Bandung: Alumni, 2016), p. 101

from the indigenous youth who feel exploited. In the long run, this can trigger social disintegration and migration out of the village. Therefore, it is necessary to formulate a mechanism for distributing fair and sustainable results.

The conversion of customary land into a plasma system leads to the loss of guaranteed land access for future generations. The hereditary rights of children and grandchildren over the land became unclear as the status of the land had changed into a formal structure. This is contrary to customary principles that guarantee the continuity of the rights of the next generation. Therefore, the plasma system must be designed with a scheme that guarantees the descendant rights of indigenous communities. The goal is that development does not damage future rights.²⁹

In the procurement of customary land, there is often tension between the principles of customary law and the norms of state law. The state still prioritizes formal legality without adequately accommodating the customary norms that live in society. This disconnection creates a conflict of interpretation and implementation difficulties in the field. For this reason, the harmonization of the two legal systems is necessary so that there is no overlap of authority. With an interlegality approach, the sustainability of development can be more guaranteed.

Plasma projects that have been running are rarely evaluated periodically by the government or companies. Without evaluation, bad practices or violations of people's rights continue without correction. A systematic evaluation is necessary to assess the success or failure of the project in the long term. In addition, the community must also be involved in the evaluation process so that their voices are accommodated. Therefore, regulations on periodic evaluation must be included in every plasma agreement.³⁰

Indigenous peoples feel that they have no legal guarantee for land protection and social rights when dealing with large corporations. Fear of criminalization or intimidation makes them reluctant to fight for their rights. This condition reflects the deficit of justice in the existing legal system. The state should be present as a

²⁹ Bagus Takwin, "Negotiation of Identity and Customary Land Rights in the Midst of Economic Development," *Indonesian Journal of Anthropology*, Vol. 41, No. 1 (2020): 23–34.

³⁰ Rina Martiati, "Agrarian Conflict between Palm Oil Companies and Indigenous Peoples in Sumatra," *Journal of Law and Development*, Vol. 47, No. 2 (2021): 210–229.

protector, not let the public deal with corporations alone. Therefore, it is necessary to strengthen state institutions that are on the side of indigenous peoples.

The development of plasma oil palm plantations has drastically changed the spatial patterns and lives of indigenous communities. Cultural values such as cooperation, agricultural rituals, and wise forest management began to disappear. This cultural marginalization causes the community's identity to weaken and is no longer passed on to the next generation. For this reason, development policies must respect local cultural values as part of sustainability. Culture should not be sacrificed for the sake of economic efficiency alone.³¹

Academics have an important role in documenting, researching, and advocating for the rights of indigenous peoples. However, their involvement in customary land conflicts is still limited and sporadic. Collaboration between universities and indigenous communities can strengthen the position of the community through research based on local needs. The role of academics is also important in formulating more contextual evidence-based policies. Therefore, strengthening academic and community synergy needs to be encouraged.

Until now, many regions do not have regional regulations (Perda) that specifically regulate the management and protection of customary land. In fact, regional autonomy gives the authority to formulate policies in accordance with local wisdom. The absence of this regulation makes it difficult for indigenous peoples to protect the law in dealing with investors. Therefore, the preparation of the Regional Regulation on customary land must be a priority legislative agenda. Thus, development policies can be more accommodating to the local context.

Based on the description above, it can be concluded that the procurement of customary land for the construction of plasma oil palm plantations in Kampung Lama Pakobuk still leaves many structural problems. These problems include interrelated legal, social, economic, and cultural aspects. The author considers that the root of the problem lies in the lack of integration of the customary law system into the national legal system operationally. To ensure justice for indigenous

³¹ Eko C. Hartono, *Environmental Law and Spatial Planning Based on Customary Rights*, (Semarang: Pustaka Undip, 2020), p. 51

peoples, community-based institutional and regulatory reforms are needed. This reform must reflect the principles of social justice, environmental sustainability, and the protection of the collective rights of customary law communities.

Conclusion

The implementation of customary land procurement in the construction of plasma oil palm plantations in Kampung Lama Pakobuk shows that the process is not fully aligned with the principles of national agrarian law, especially in the recognition of customary rights of customary law communities. Despite efforts to involve the community through deliberation, the implementation in the field is still dominated by the interests of the company, thus causing inequality in the determination of the value of compensation and the distribution of plasma results. The absence of specific technical regulations regarding the mechanism for the release of customary land has also weakened the position of Indigenous peoples in these agrarian transactions. Therefore, an agrarian law approach based on the principles of social justice and the protection of communal rights is urgently needed in every implementation process of customary land acquisition.

The main problems in the procurement of customary land in these locations include the lack of legal protection for the collective rights of indigenous peoples, weak government control and supervision mechanisms, and low community participation in the decision-making process. In addition, the absence of an officially recognized map of customary territory is a loophole used by outsiders to make unilateral claims to land. This has led to prolonged agrarian conflicts, as well as caused legal uncertainty for all parties involved. Therefore, synergy is needed between the state, indigenous peoples, and business actors to design a fair, transparent, and sustainable land acquisition scheme.

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