



Corporate vs Community Head to Head: The Complexity of Land Tenure Conflict in Indonesia

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Abstract: At the end of 2018, residents replanted the land with thousands of banana trunks. In January 2019, Pakel residents were reported by P.T. Bumi Sari; the police summoned 11 residents. In 2020, residents established a command post and planted it for six months. However, in 2020 PT Bumi Sari said it had pocketed the latest Right to Cultivate, which entered some of the villages included in their Right to Cultivate (HGU). However, a copy document is not owned by the head of the town and residents in Pakel village. This research is a field research or empirical legal research. This research is intended to analyze about the reclaiming carried out by the Pakel community, whether it is justified. Furthermore, this research also analyzes whether PT Bumi Sari's control of land in Pakel village is against the law. This research concluded that reclaiming by Pakel residents is the right of Pakel residents as with the purpose of the formation of the Basic Agrarian Law (UUPA), which is to bring prosperity, happiness, and justice to the State and the people, especially to the peasants. Right to Cultivate of P.T. Bumi Sari does not comply with the laws and regulations stipulated in the UUPA. and Government Regulation of the Republic of Indonesia Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Rights.

Keywords: Land Tenure Conflict; Reclaiming; Against the Law; Agrarian Conflict

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A. Introduction

The basis of agrarian rules can refer to Article 33 paragraph (3) of the 1945 Constitution. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is issued, known as UUPA, as National Agrarian Law. One of the main objectives of the UUPA. is to lay the foundations for providing legal certainty regarding land rights¹.

Ahmad Zuber (2013) explained that the agrarian and natural resource conflicts in Indonesia spread across 98 cities and regencies, and in 22 provinces. The conflict area is 2,043,287 hectares. The biggest contributors to conflicts are the plantation and forestry sectors. In Java, agrarian conflicts mostly involve the forestry sector. Public lawsuits against control of Perhutani areas, such as in West Java, Banten, Central Java, and East Java, there are about 6,800 villages in conflict with the boundaries of the Perhutani area in Java².

Several leading causes cause conflicts over land to increase. For example, the increasing demand for land, but in Indonesia, the availability of land is limited, and the existence of land mafia. According to data from the Consortium for Agrarian Reform (*Konsorsium Pembaharuan Agraria*, or KPA), at least 241 cases of agrarian conflict occurred throughout 2020. The total cases occurred in 359 regions in Indonesia and affected 135,332 families. Most agrarian conflicts happened in the plantation sector, which was 122 cases. The number of agricultural conflicts increased by about 28 percent compared to the previous year, with only 87 points³. The issue of indigenous peoples is more controversial than that of labour, even in the post-1998 climate of political and legal change known as the Reformasi Regime⁴.

Agrarian conflicts also occurred in Pakel village, Banyuwangi district, while the incident began when in 1925, before Indonesia's Independence, there were around 2946 residents of Pakel, Kec. Licin, Kab. Banyuwangi,

¹ Sipta Karomah, "Konflik Pertanahan Antara Masyarakat Desa Pakel Dengan Perhutani KPH Banyuwangi Barat." *Novum: Jurnal Hukum* 7, No. 3 (2020): 150–163. <https://doi.org/10.2674/novum.v7i3.32678>

² Ahmad Zuber, "Konflik Agraria di Indonesia," *Sosiologi Reflektif* 8, No. 1 (2013): 147–158, <http://ejournal.uin-suka.ac.id/isoshum/sosiologirefleksif/article/view/517/458>

³ Muhyiddin. "Konflik Agraria Masih Tinggi, Ini Pemicunya Menurut Praktisi." *REPUBLIKA* (April 2021). Retrieved from <https://www.republika.co.id/berita/qs6jj7320/konflik-agraria-masih-tinggi-ini-pemicunya-menurut-praktisi>

⁴ Adriaan W. Bedner and Stijn Van Huis, "The Return of the Native in Indonesian Law Indigenous Communities in Indonesian Legislation," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 164, No. 2–3 (2008): 165–193, <https://doi.org/10.1163/22134379-90003655>.

which seven residents, namely represented; Doelgani, Karson, Senen, Ngalmun, Martosengari, Radjie Samsi, and Etek, applied for the Opening of the Senkang Sengkan, Kandang and Keseran Forests in Pakel, Licin Banyuwangi. 4 years later, namely on 11 January 1929, the Regent of Banyuwangi, R.A.A.M. Noto Hadi Suryo, granted the request of Doelgani et al. for the clearing of 3000 hectares of forest.

In the 1960s, after Indonesia's independence, the Pakel residents consisting of 7 representatives made an express request for replanting in the 1929 certificate area at the Pakel location. Still, the proposal did not get a response or answer Banyuwangi Regent. The land above the 1929 deed area at the Pakel site belongs to the plantation of PT Sari Bumi.

In 1985 the Decree of the Ministry of Home Affairs, Number SK.35/HGU/DA/8 dated December 13, 1985, stated that P.T. Sari Bumi only has a Cultivation Right with an area of 1,189.81 Ha, which is divided into two certificates, namely 1. Klancing H.G.U. Certificate covering an area of 190.26 Ha. 2. Songgon HGU certificate covering an area of 999.55 Ha. National Land Agency (BPN) Banyuwangi number 280/600.1.35.10/II/2018, dated February 14, 2018, states that Pakel Village is not included in the PT Bumi Sari HGU.

At the end of 2018, residents replanted the land with thousands of banana trunks. In January 2019, Pakel residents were reported by PT Bumi Sari; the police summoned 11 residents. In 2020, residents established a command post and planted it for six months. However, in 2020 PT BUMI SARI said it had pocketed the latest H.G.U., which entered some of the villages included in their H.G.U. However, a copy of the document is not owned by the town and residents in Pakel village.

On September 24, 2020, Pakel residents carried out reclaiming by establishing seven fighting posts and one prayer room on Pakel land. In April 2021, farmers' crops were damaged. On March 17, 2021, Pakel residents reported the destruction to the East Java Regional Police regarding the destruction (article 170 of the Criminal Code) of the East Java Police. However, the report was rejected because the land was still in dispute.

In previous research, for example, research by Fat'hul stated that the management of plantation businesses on customary rights gave rise to various land disputes, one of the disputes that arose was the neglect of the rights of indigenous peoples in granting business rights to plantation companies that were given authority to the government, by the State in

carrying out the concept of the right to control the state⁵. The granting of permits in the form of HGU to plantation companies on the customary rights of indigenous peoples can give rise to prolonged land conflicts. Herawan said there are several factors that cause agrarian conflicts, namely: (1) inequalities in ownership of agricultural land; (2) there is unclear regulation of land rights; (3) change physically; and (4) overlapping land ownership⁶. In line with this, Mukmin (2016) explained that agrarian conflicts arise because: first, the unequal distribution of utilization of existing agrarian resources. Second, the expansion of territory by a group. Third, is the existence of economic activities in part of the community. Fourth, there is a population density that demands the provision of more extensive land⁷.

It will become a serious problem, when agrarian conflicts drag on without a solution, according to Adonia Ivone protracted land disputes and no good settlement can cause the aggrieved party to file a lawsuit in court⁸. Although there is a wide opportunity to sue through the courts, ordinary people tend to avoid it, besides that there is an assumption in the community that filing a lawsuit through the court is relatively expensive, takes a long time and is even convoluted. Meanwhile, according to Husen, it is necessary to reconceptualize land tenure relations in the context of investment, not through relinquishment or transfer of rights, but through a use/lease agreement between the company and the landowner for a certain period of time with compensation to the community⁹. With this model, the community ownership relationship will not be broken, and after the end of the use agreement, the land will be returned to the community.

This research tries to find out the characteristics of conflicts that develop along with the development of community life by answering the following research questions. The formulation of the problem in this study is as follows; How is the law on reclaiming the perspective of Agrarian Law? And is the control of plantation land in Pakel Village, Licin District, Banyuwangi Regency by PT Bumi Sari an act against the law?

⁵ Abby, Fat'hul Achmadi, "Sengketa Pertanahan Hak Masyarakat Adat Dengan Hak Guna Usaha (HGU) Perkebunan Sawit Di Kalimantan Selatan." *Al-Adl: Jurnal Hukum* 8, No. 3 (2016): 45-64. <http://dx.doi.org/10.31602/al-adl.v8i3.675>

⁶ herawan Sauni, "Konflik Penguasaan Tanah Perkebunan," *University of Bengkulu Law Journal* 1, No. 1 (2016): 45-67.

⁷ Mukmin Zakie, "Konflik Agraria Yang Tak Pernah Reda," *Legality: Jurnal Ilmiah Hukum* 24, No. 1 (2017): 40, <https://doi.org/10.22219/jihl.v24i1.4256>.

⁸ Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Ulayat Pada Kawasan Hutan," *Sasi* 27, No. 1 (2021): 102, <https://doi.org/10.47268/sasi.v27i1.504>.

⁹ Husen Alting, "Konflik Penguasaan Tanah di Maluku Utara: Rakyat Versus Penguasa dan Pengusaha," *Jurnal Dinamika Hukum* 13, No. 2 (2013): 266-282.

B. Method

This research is a field research or empirical legal research, namely research whose object is about the symptoms or events that occur in society¹⁰. This research has a legal sociology perspective. This research is part of daily experience in social life using social science methods¹¹. Meanwhile, in the view of B. Arief Sidharta, legal sociology research is empirical research that seeks to determine and explain the influence of social processes and people's behavior on the formation, application of jurisprudence and social impact of the rule of law, and the influence of the rule of law on social processes and people's behavior¹². As for the location of this research, it is in Pakel Village, Banyuwangi Regency.

C. Result and Discussion

1. Reclaiming in Indonesia Agrarian Law (Case of Pakel Village Banyuwangi)

Pakel Village is one of the villages in Banyuwangi Regency; Pakel Village is about 20 km from the sea, located at an altitude of approximately 590 meters above sea level. Geographically, Pakel Village is located at the foot of Mount Kukusan. Agricultural products are the source of life for the Pakel residents. There are about 2,760 inhabitants of Pakel Village. Of the total land area of 1,309.7 ha, the village can only manage an area of 321.6 ha. Meanwhile, P.T. Bumi Sari occupies an area of 271.6 ha, and Perhutani Forest Management Units (KPH) Banyuwangi Barat has a Village Forest Management Rights (H.P.H.) covering an area of 716.5 ha. It is called an agrarian society with no power over its agricultural resources.

Pakel village consists of 4 hamlets: Durenan Hamlet, Kraja Hamlet, Sadang Hamlet, and Taman Glugo Hamlet. The Pakel village boundary was based on the minutes of the Pakel village boundary on Wednesday, February 28, 2018; a boundary demarcation between Pakel village and Kluncing village and Pakel village and Bayu village was carried out, according to the letter of the Pakel village head number 590/13/429422.06/2018 as shown on Table 1.

¹⁰ Koentjaraningrat, *Metodologi Penelitian Masyarakat* (Jakarta, Gramedia Utama, 1990).

¹¹ Soetandyo Wignjoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya* (Jakarta, eLSAM dan HuMa, 2002).

¹² Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung, Mandar Maju, 2000).

TABLE 1. The Borderlines of Pakel Village

Border Area	Location of Borderline
Northern border	Patrang river
Eastern border	Harimau Putih village
Southern border	Balak village
Western border	Balak village

In 1925, before Indonesia's independence, there were around 2946 residents of Pakel, Licin District, Banyuwangi Regency, which were represented by seven residents, namely; Doelgani, Karso, Senen, Ngalimun, Martosengari, Radjie Samsi, and Etek, applied to the Clearing of Sengkan, Kandang and Keseran Forests in Pakel, Licin Banyuwangi. Four years later, namely on January 11, 1929, the Regent of Banyuwangi, R.A.A.M. Noto Hadi Suryo, granted the request of Doelgani et al. for the clearing of 3000 hectares of forest. meaning that the village community at that time had done reclaiming.

Reclaiming is a form of social movement motivated by the emergence of groups or corporations that are economically profitable for certain groups trying to claim or, more precisely, looting of the rights to natural resources owned by the people.

Reclaiming carried out by the Pakel community is an act that the State should protect in Article 28 C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely, to fight for their rights collectively on land that P.T. Sari Earth claims. The purpose of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or referred to as (UUPA). The UUPA is a tool to bring prosperity, happiness, and justice to the State and the people, especially the peasants, in realizing a just and prosperous society.

In the Japanese colonial era in 1942-1945, the Japanese Colonial Military Government encouraged people to use state lands to plant rice, cotton, and jatropha, meeting Japan's needs in the Pacific war. There were many processes for reclaiming indigenous peoples, including customary law society (*Masyarakat Hukum Adat* or MHA), over their lands previously claimed by the Dutch Colonial Government. Then restore community control over their lands. However, the reclaiming process was not accompanied by a change in the status of their legal rights to these lands.¹³

¹³ Tim Inkuiri Nasional Komnas HAM. *Hak Masyarakat Hukum Adat Atas Wilayahnya di Kawasan Hutan*. (Jakarta, Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2016).

When the New Order fell, the peasants again expressed their aspirations. They are demanding back their previously taken lands in the reclaiming movement. Not infrequently, the reclaiming is accompanied by physical tension and destructive efforts.¹⁴

Based on the facts on the ground so far, the reclaiming movement carried out by the Pakel residents was able to bring about good changes, including increasing social and economic welfare. It is evidenced by a grouping structure of farmers in control of several points on land that PT Sari Earth claims. To be used as land for several crops such as planting corn, chili, banana trees, etc. It was pretty practical for the Pakel residents, which could not be cultivated and occupied. The land allegedly still village land was claimed or more accurately controlled by force by PT Bumi Sari without any regulations legalizing it from the relevant agencies.

The Reclaiming efforts were carried out by Pakel residents, namely the existence of an authentic 1929 deed given by the Banyuwangi Regency Government (Regent). The 1929 original deed was issued since the Dutch East Indies era known as (*Eigendom Verponding*), which was made based on law. First the Dutch, then the Dutch legal inheritance system is still maintained on the recognition of ownership. Decision No.34/TUN/2007 the term *eigendom* verponding is used to designate a property right to land.

Based on a juridical basis, the reclaiming movement can be seen from the various existing favorable legal regulations. One of the most fundamental regulations is from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states “*earth, water and the natural resources contained therein are controlled by the state and used to their fullest for the prosperity of the people.*” According to the Constitutional Court (M.K.), the meaning of being controlled is that the people collectively have a mandate to the State to carry out policies and actions for management, regulation, management, and supervision for the greatest prosperity of the people.

Article 33, paragraph (3) of the 1945 Constitution concludes that the greatest prosperity of the people is the basis for the control of land by the State. This provision contains the main idea that land for individuals, communities, and the State requires authority or power, strength or ability, and skills to fulfill these objectives¹⁵. According to A.P. protections, indirectly Article 2 paragraph 4 of the UUPA states that “*The controlling right of the*

¹⁴ Asshiddiqie Jimly, “Konstitusi Tanah Dan Air,” in *Konstitusi Tanah Dan Air* (Jakarta: Van Hoeven, 2004).

¹⁵ Winahyu Erwiningsih, “Pelaksanaan Pengaturan Hak Menguasai Negara Atas Tanah Menurut UUD 1945,” *Jurnal Hukum* 16, No. Edisi Khusus (2009): 118–136.

State above, its implementation can be authorized to autonomous regions and customary law communities, just as necessary and not contradicting the national interest, according to the provisions of the regulations. Government”.¹⁶

The Basic Agrarian Law (UUPA.) rejects the concept of *staatsdomein* or state property rights over land. In the General Elucidation of Part II (2) of the UUPA, it explains that Article 33 paragraph (3) of the 1945 Constitution does not give the State the right to own land but only gives the right to control over the land. According to the general explanation, the State is given the authority or mandate by the Indonesian people to control the earth, water, and space, including the natural resources contained therein¹⁷.

The right of ownership to land is a right that is limited by communal rights, in the sense that the rights of community members (individual rights) to have complete control over the land. The nature of absolute power controls one's property, such as managing one's house, livestock, and other objects. However, it is still limited by the following rights:¹⁸ *first*, the customary rights of the legal community, and *second*, other interests that own the land. The third is establishing law.

Therefore, in this case, the people in the Pakel community, which consists of peasants and the poor, reclaiming is a form of correct action according to democracy, the constitution, and the breadth of reform. So, on behalf of the people, by the people, and for the people's sovereignty over the earth, water and natural resources contained therein must be returned to the people. It is for the sake of justice and the prosperity of the people, especially the prosperity of the farmers.

Reclaiming has a relationship that can not be separated from these two aspects, namely physical and non-physical aspects, which have social value for people's lives. Physically, the object reclaimed by Pakel residents has a 1929 certificate due to the application to (7) the representative.

In non-physical terms, the relationship between the subjects, in this case, is the Pakel residents on the land claimed by P.T. Bumi Sari has life values for the community, such as economic value and agricultural land to be used for farming. Article 6 of the HGU stated that “*all land rights have a*

¹⁶ Rachmat Trijono, “Hak Menguasai Negara di Bidang Pertanahan,” *Jurnal Badan Pembinaan Hukum Nasional* 1, No. 1 (2015): 1–175.

¹⁷ Afifah Kusumadara, “Perkembangan Hak Negara Atas Tanah : Hak Menguasai Atau Hak Memiliki,” *Fakultas Hukum Brawijaya* 20, No. 2 (2013): 262–276.

¹⁸ Novita Dewi Masyithoh, “Dialektika Pluralisme Hukum: Upaya Penyelesaian Masalah Ancaman Keberagaman dan Keberagaman di Indonesia,” *Walisongo: Jurnal Penelitian Sosial Keagamaan* 24, No. 2 (2016): 359.

social function”, it means that any land rights that exist in a person cannot be justified, that his land will be used (or not used) solely for his interests, especially if it causes harm to society.

2. Relationship between Land and Community in Customary Law

According to Koesnoe¹⁹ the definition of adat is the whole of the teachings and practices that govern the way Indonesians live in society, their education, and procedures. Meanwhile, Saafroedin Bahar formulated the definition of customary law community, namely: An anthropological community that is homogeneous and continuously inhabits a particular area, has historical and mystical relationships with their history.²⁰

In contrast to Jimly Asshiddiqie’s opinion, he distinguishes between customary law community units and communities. According to him, the customary law community unit is an organizational unit. In contrast, the customary law community must be distinguished from its customary law community as the contents of the organizational unit. The customary law community associate with a unitary community organization that governs local customary law.²¹

The relationship between humans and land has its history. According to J.B.A.F. Polak, the relationship between humans and land throughout history occurred in the following 3 (three) stages, first, the stage of humans surviving by hunting animals, looking for forest products with nomadic life characteristics. Second, humans have started to know how to grow crops. The need for land is getting tighter. Third, humans began to settle in certain places and no longer moved, began to be attached to the use of livestock to help agricultural businesses. This situation prompted the birth of a group of people who began to specialize as security guards and protect the public from security disturbances from robbers.²²

After Indonesia gained independence in 1945 and implemented a nationalization program in the late 1950s, there was no longer a need for customary law theory to defend the land against encroachment by foreign

¹⁹ Moh. Koesnoe, *Kapita Selektta Hukum Adat Suatu Pemikiran Baru* (Jakarta, Varia Peradilan IKAHI, 2002).

²⁰ Saafroedin Bahar, *Kertas Posisi Hak Masyarakat Hukum Adat* (Jakarta, Komisi Hak Asasi Manusia, 2006).

²¹ Jimly Asshiddiqie, “Arah Pembangunan Hukum Menurut UUD NRI 1945 Hasil Perubahan,” in *Arah Pembangunan Hukum Menurut UUD NRI 1945 Hasil Perubahan* (Jakarta, Badan Pembinaan Hukum Nasional, 2006), 14.

²² R Soeprapto, *Undang-Undang Agraria dalam Praktek* (Jakarta, Mitra Sari, 1966).

empires and their agents. The land is intended to serve Indonesia's economic development for the public interest²³. The factor that causes the importance of customary law is its nature, which is the only object of wealth that, despite experiencing certain circumstances, will still be permanent and economically will continue to rise in price. In addition, lands as a place to live for the community provides a living for the community, is a plan.

The shift of land ownership rights from communal to individual rights is the cause of land ownership conflicts. Communal rights are rights that have been passed down from generation to generation, including *ulayat* rights (collective rights). The characteristics of customary law communities as an order that has been obeyed from age to generation by everyday law community groups lead to the process of their *ulayat* rights²⁴. Individual rights in the UUPA. are related to collective rights over land tenure. Individual rights and collective rights are by human identity as social beings and individual beings. Individual rights in the UUPA. are regulated in article 16, while social functions are in article 6.

The requirements for customary law community units are based on the Constitutional Court Decisions Number 31/PUU-V/2007 and Number 35/PUU-X/2012, *first*, as long as according to the fact they are still alive or still exist. *Second*, following the development of society. *Third*, by the principles of the Unitary State of the Republic of Indonesia. *Fourth*, regulated by law²⁵. The same thing was conveyed by Satjipto Rahardjo quoted by Hendra Nurtjahyo and Fokky Fuad.²⁶

According to Lilik Mulyadi, the basis for customary rights as contained in Articles 3 and 5 of UUPA.²⁷ The conditions in Articles 1 and 2 of the implementations of traditional rights and similar rights of customary law communities, as long as in reality they still exist, must be such that they are under the national and State interests. it must be based on national unity and must not conflict with other higher laws and regulations.

²³ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *Asia Pacific Journal of Anthropology* 20, No. 5 (2019): 416–434, <https://doi.org/10.1080/14442213.2019.1670246>.

²⁴ Pide and A Suriyaman Mustari, *Hukum Adat Dahulu, Kini Dan Akan Datang* (Jakarta, Pranada Medi Group, 2014).

²⁵ Fitrah Akbar Citrawan, "Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau," *Jurnal Hukum & Pembangunan* 50, No. 3 (2021): 586,

²⁶ Hendra Nurtjahyo and Fokky Fuad, *Legal Standing Kesatuan Masyarakat Hukum Adat Dalam Berperkara Di Mahkamah Konstitusi* (Jakarta, Salemba Humanika, 2010).

²⁷ Lilik Mulyadi, "Pidana Adat di Indonesia : Pengkajian Asas, Norma, Teori, Praktik," *Litigasi* 17, No. 2 (2016): 3284–3313,

Based on Article 2 paragraph (2), the Regulation State Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerns Guidelines for the Settlement of Problems with the Ulayat Rights of Indigenous Peoples. The *ulayat* rights of adat law communities are deemed to exist if indigenous peoples still live. Second, there is customary land. Third, there is a customary law order.

Article 98 paragraph (1) of Law Number 6 of 2015 concerning Villages mandates that Regency/Municipal Regulations stipulate traditional Villages—Law Number 6 of 2014 concerning Villages.

However, in policies related to customary forests, some rules protect the formulation of regional legal product regulations, including:

- 1) The 1945 Constitution Article 18 B paragraph (2), Article 28 I paragraph (3). Article 33 paragraph (3) is related to Customary Law Community, cultural identity and rights of traditional communities, and land and water and wealth. Nature is controlled by the State and used as much as possible for the prosperity of the people.
- 2) Law Number 41 of 1999 concerning Forestry Law Number 19 of 2004 is related to forests and forest areas; state forests can be in the form of customary forests and customary law communities.
- 3) Constitutional Court Decision No. 35/ PUU-X/2012 related to state forest, excluding customary forest and customary law communities (M.H.A.).
- 4) Regulation of the Minister of Environment and Forestry Number P.32/Menlhk-Setjen/2015 concerning Private Forest Article 4 and Article 6 related to Customary Forests.²⁸

According to Sumardjono, as quoted by Afifah Kusumadara, the UUPA. does recognize that the law that applies to earth, water, and space in Indonesia is customary law as the original law of the Indonesian people (article 5 and General Elucidation Part III (1) of the UUPA). Thus, the UUPA. also accepts customary rights to land, which are referred to as *ulayat* rights. According to the UUPA. Customary rights are the same as *beschikkingsrecht*, which, according to Van Vollenhoven and other customary law experts, are intended as communal/collective rights of indigenous peoples to cultivate their land in its entirety.²⁹

²⁸ Yusuf Salamat, “Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah)” *Jurnal Legislasi Indonesia* 13, no. 04 (2016): 411–420.

²⁹ Kusumadara, “Perkembangan Hak Negara Atas Tanah : Hak Menguasai Atau Hak Memiliki.”

3. Against the Law Tenure of Plantation Land by PT Bumi Sari

The act against the law in a civil manner (*onrechtmatige daad*) as regulated in Article 1365 of the Civil Code or *Burgerlijk Wetboek* (BW) reads: "Every act that violates the law, which brings harm to others, obliges the person who because of his mistake to publish the loss, compensate for the loss. The meaning of breaking the law is an act that is against the law.

According to Purwahid Patrik as quoted by Rini Demiria, the definition of unlawful acts regulated in Article 1365 of the Civil Code, there are 2 teachings, namely: first, Narrow Doctrine, namely, an act that violates the subjective rights of others or is contrary to their legal obligations. himself from the act and it must be based on the law³⁰. Second, Broad Teachings, namely, to do or not to do something that violates the rights of others or is contrary to the proper attitude of caution in social interactions with other people or goods. Based on Article 1365 of the Civil Code, there are a number of elements, namely: 1. The existence of an act; 2. The act is against the law; 3. There is an error on the part of the perpetrator; 4. There is a loss for the victim; and 5. There is a causal relationship between actions and losses.³¹

Unlawful acts have a broad meaning because illegal actions are about shows contrary to the applicable law or criminal law and civil law. Still, unlawful acts are also contrary to unwritten rules. One example: Acts against the law in a polite manner and Acts against the law in a criminal way. There are differences in acts against the law in criminal law and against the law in civil law, First, unlawful acts in criminal law are often called *Wederrechtelijk* and unlawful acts in civil law are often called *Onrechtmatige daad*. Second, the legal basis for the regulation, unlawful acts in criminal law are regulated in the Criminal Code, while unlawful acts in civil law are regulated in the Civil Code/*KUHP*er (BW), especially in Article 1365 BW.

Third, the nature of unlawful acts in criminal law is public, meaning that there are public interests that are violated (in addition to individual interests), while legal actions in the context of civil law are private in nature which are violated only for personal interests. The four elements of unlawful

³⁰ Rini Dameria, Ahmad Busro, and Dewi Hendrawati, "Perbuatan Melawan Hukum Dalam Tindakan Medis Dan Penyelesaiannya Di Mahkamah Agung (Studi Kasus Perkara Putusan Mahkamah Agung Nomor 352/PK/PDT/2010)," *Diponegoro Law Journal* 6, No. 1 (2017): 1–13.

³¹ Gita Anggreina Kamagi, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *Jurnal Lex Privatum* 6, No. 5 (2018): 57–65.

acts in criminal law are acts that violate the law, acts committed outside the limits of their authority or power and acts that violate general principles that apply in the legal field, while the elements of unlawful acts in the civil context are: the existence of an act, the act is against the law, there is an error on the part of the perpetrator, there is a loss for the victim.³²

According to Rosa Agustina, in her book *Acts against the Law*, in determining that an act can be qualified as against the law, four conditions are needed: first, it is against the legal obligations of the perpetrator. Second, Contrary to the subjective rights of others. Third, it is against decency. Fourth, it is against propriety, thoroughness, and prudence.

Meanwhile, criminal acts against the law (*Wederrechtelijk*) in the opinion of Satochid Kartanegara, in criminal law are divided into two (2); first, *Wederrechtelijk* formal, namely when an act is prohibited and threatened with punishment by law. Second, *Wederrechtelijk* Material, which is an act "possible" by *wederrechtelijk*, although it is not expressly prohibited and is threatened with punishment by law. But also, the general principles contained in the legal field (*algemen beginsel*).

According to Andi Hamzah's book, he argues that *against the law* contained in the formulation of the offense, which is the core part of the offense as *against the law specifically* ³³. Meanwhile, Soebaekti and Tjitroosudibio argue that any unlawful act will harm another person; therefore, they must replace the loss to the injured person.

Following the principle of nationality, Article 1 Junction Article 9 paragraph (2) of the UUPA reads, "*Every Indonesian citizen, both male and female, has the same opportunity to obtain a land right and to obtain the benefits and results, both for himself and for others and his family*". Furthermore, every Indonesian citizen (Pakel residents) has an equal opportunity on land to benefit from the results of the land (land in Pakel Village) in the context of establishing legal certainty for justice and mutual benefit and is not controlled by only one party (PT.Bumi Sari). Therefore, it is necessary to protect weak citizens (Pakel) against fellow citizens and legal entities with strong economic standing (PT Bumi Sari). The control of land carried out by PT Bumi Sari can also be reviewed on the provisions contained in Article 11 paragraph (1) of the UUPA, which intends to prevent the occurrence of control over the lives and work of others that exceeds the limit.

³² Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, No. 1 (2020): 53–70.

³³ A. Z. Abidin, and Andi Hamzah. *Pengantar dalam Hukum Pidana Indonesia*. (Jakarta, Warsif Watampone, 2010).

In agricultural business, without contradicting the principles of humane social justice. Article 12 paragraph (1) B.A.L., All joint efforts in the farming field must be based on shared interests in the context of the national interest. Then Government is obliged to prevent the existence of organizations and individual businesses in the agricultural field, which are private monopolies, article 13 paragraph (2). Private companies and government efforts that are monopolies must be prevented from harming the people.

The causes of the unrealized state land management policy are (a) Differences in perception about state land because the provisions on state land (PP No. 8 of 1953) were issued before the HGU.; (b) Differences in perception between State land and State Forest (c) ulayat land which is often considered as State land. The UUPA. itself does not define what is meant by ulayat land. In 2012, the Constitutional Court partially granted a judicial review of Law No. 41/1999 on Forestry requested by the Indigenous Peoples Alliance of the Archipelago (A.M.A.N.) and two indigenous communities, Kanegerian Kuntu and Kasepuhan Cisitu. As a result, tens of millions of hectares of customary forests previously claimed as state forests are recognized for their existence and can be managed by the indigenous peoples who occupy them.

The position of Cultivation Rights originating from the ulayat rights of customary law communities whose ownership or control is released based on the provisions of the UUPA. and Government Regulation Number 40 of 1996 and the implementation practices that have occurred so far, the land remains state land. If the term expires, the land will still be state land. However, after the issuance of the Regulation of the Minister of State for Agrarian Affairs Number 5 of 1999, the position of land with Cultivation Rights originating from customary lands of customary law communities has expired, or if the Cultivation Right has been canceled based on the provisions of the applicable laws, the land that has been released is back to the customary rights of the traditional law community³⁴

Based on the information from the relevant agencies as regulated in Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Rights Article 5 paragraph (3) in conjunction with Article 7 paragraph (1). The acquisition of Cultivation Rights, which a legal entity (PT Bumi Sari) gets, is determined by the Minister and must be registered in the land book at the land office. Still, the Decree of the Ministry of Home Affairs, Number SK.35/HGU/DA/8 on December 13, 1985, states that

³⁴ Jasmir Jasmir, "Pengembalian Status Hukum Tanah Ulayat Atas Hak Guna Usaha," *Soumatara Law Review* 1, No. 1 (2018): 92, <https://doi.org/10.22216/soumlaw.v1i1.3384>.

P.T. Bumi Sari has no HGU. in Pakel Village or P.T. Bumi Sari is not located in the Pakel Village Area. Still, P.T., Bumi Sari only has a Cultivation Right with 1,189.81 Ha, divided into two certificates, namely 1. Klancing H.G.U. Certificate covering an area of 190.26 Ha. 2. Songgon HGU certificate covering an area of 999.55 Ha. And it was also strengthened by the explanation of BPN. Banyuwangi number 280/600.1.35.10/II/2018 dated February 14, 2018, which states that Pakel Village is not included in the PT Bumi Sari HGU.

The facts above concluded that P.T Bumi Sari had committed an act that is not following the procedure by exceeding the limit of its HGU or called land grabbing of land, which is suspected to be still in the land of Pakel Village. It is not according to its designation and violates the provisions mandated in the UUPA Article 7 *jo* 17 paragraph (3). It emphasizes that the control of land, which is detrimental to the public interest, in this case, P.T. Bumi Sari, had harmful to the public interest (the livelihood of the Pakel residents). Namely, the ownership of land that has exceeded the limit, in this case, PT Bumi Sari, can be said to have committed an unlawful act—referring to article 1365 (BW). Regarding illegal actions that harm other people (Pakel residents), the control of land was carried out by PT Bumi Sari in Pakel Village, Kec. Slick Kab. Banyuwangi, by exceeding the limit of the HGU., which does not have legality from the ministry or the relevant agency, regarding the determination of PT Bumi Sari's HGU.

D. Conclusion

The reclaiming carried out by the Pakel residents is the right of the Pakel residents as with the aim of the formation of the UUPA, which is to bring prosperity, happiness, and justice to the State and the People, especially to the farming people. This means that the reclaiming carried out by the Pakel residents is justified by law. The Right to Cultivate P.T. Bumi Sari does not comply with the laws and regulations stipulated in the UUPA. and Government Regulation of the Republic of Indonesia Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Rights.

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I will not resolve a land dispute if civil groups or politicians are involved in the land disputes

Hun Sen (*A Cambodian Politician*)

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