

# THE EMBODIMENT OF ADAT LAW AS AN ELEMENT OF LEGAL CERTAINTY IN ADMINISTRATION OF ADAT RIGHTS

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## Article Info

Received : 5 November 2019 | Received in revised form : 8 December 2019 | Accepted : 16 December 2019

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## Abstract

*Former Adat land is formed based on the assessment of Adat Law, not because of state granting or land registration, and the Agrarian Basic Law recognizes it through provisions on conversion provisions, where former customary land rights are converted into ownership rights if the subject is an Indonesian citizen. The registration of former adat land rights aims to guarantee legal certainty, by abolishing former customary land, and being converted to ownership rights, with the issuance of certificates of land rights, which are formally subject to the system of control over land regulated in Agrarian Basic Law. Before the enactment of the Agrarian Basic Law, on customary land, only a fiscal cadastre was carried out, for the purpose of collecting land taxes, with evidence of girik, kekitir, petuk, kohir or excerpt from letter C, for adat land located in villages or Indonesian respondents for adat land in the city. From the point of proof of former adat land rights, consisting of complete written evidence, incomplete written evidence or no written evidence at all, carried out in 2 two) the procedure for registering former adat land rights is a conversion confirmation procedure only for complete written evidence and procedure for recognition of rights followed by conversion, for written evidence that is incomplete or non-existent at all. Legal uncertainty in registering former adat land rights is due to legal actions or events that have occurred since the enactment of the Basic Agrarian Law until the last rights holder is not recorded in the land book in the village or kelurahan, so the community or village head does not know the land history, legal subject the object of the plot of land and the legal relationship that occurs relating to the control of the land. In overcoming this legal uncertainty, using normative juridical methods, the principle of adat law was reduced to legal principles, which were used as parameters for head of adat or village heads in determining legal certainty regarding the legal status of adat land, legal subjects, land objects, legal relations relating to control of adat land as well as in the management of land book administration in the village or kelurahan that is open to the public ..*

**Keywords:** Principle of Adat Law, Legal Certainty and Land Registration

## I. INTRODUCTION

Land registration is carried out by the Government with the aim of providing assurance and legal protection for landowners and other parties who use data or public documents from the results of land registration.<sup>1</sup> The field of land in the entire territory of Indonesia, is divided into 2 (two) parts, namely (1) the field of land that has been registered, and as proof of the issuance of certificates of land rights, and (2) areas of land that have not been registered, which is wrong one is former adat land, which was previously only carried out land registration in the form of a fiscal

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<sup>1</sup> Indonesia, *Undang-Undang tentang Peraturan Dasar Pokok Agraria (Law regarding Basic Agrarian Law)*, UU No. 5 tahun 1960, LN No. 104 Tahun 1960 (Law Number 5 Year 1960, SG No 104 Year 1960), art. 19 para. (1), said: untuk menjamin kepastian hukum oleh Pemerintah diadakan pendaftaran tanah di seluruh wilayah Republik Indonesia menurut ketentuan ketentuan yang diatur dengan Peraturan Pemerintah.

cadaster, the purpose of which is only to collect land taxes, which are imposed on former adat land in the village called petuk, pipil, girik, kekitir or now known as kohir, while the tax on former adat land rights in the city is called Indonesian verponding. The evidence issued by the fiscal cadaster, is not proof of rights, but only as proof of tax payment, which is used as a basis for land registration through conversion and is also used as a basis for legal actions to transfer rights to former adat land rights from those whose names are listed in kohir with third parties.

Since the entry into force of the Agrarian Basic Law, adat land rights have been converted (because of the law) into equal land rights according to the provisions of the conversion provisions stipulated in the Agrarian Basic Law. Conversion of customary property rights is not limited to the period of administrative registration, so that at any time landowners can register their rights voluntarily, unless there are legal actions or events on land that have the status of adat rights.<sup>2</sup> Adat land that is not required to be registered, since the enactment of the Agrarian Basic Law is called "former adat ownership rights."

Registration of former adat land rights from the point of proof, divided into 3 (three) strengths of evidence, namely written proof complete, written evidence incomplete and no written evidence,<sup>3</sup> and the implementation of the registration is carried out through 2 (two) procedures, namely: (1) Confirmation of conversion, whose activities are to confirm the conversion into ownership rights, and (2) Recognition of rights, whose activities are to assert that the land is former customary property rights and confirm the conversion to right of ownership. For former adat land ownership, which has complete written evidence, the registration is carried out through confirmation of conversion, whereas if the written evidence is absent or incomplete, the registration is carried out through a rights recognition procedure followed by confirmation of conversion. Legal uncertainty in registering former adat land rights can be caused and legal actions on former adat land rights are carried out after the enactment of the LoGA until the last rights holder, not reported to be recorded in the mutation column in the village or kelurahan book, so that the rights holders the latter is not recorded in the land book in the village or kelurahan, and the complete history of the land is unknown, the subject is not known to master the physical land, and there is no known or no ownership dispute or dispute regarding the object of the land or dispute regarding the legal status of the rights on the land. Registration of former adat land that does not have written evidence at all or incomplete written evidence, proof of this is done with proof of testimony of the last right holder with 2 (two) witnesses, made in the form of a statement deed that the applicant (the last right holder) and its predecessor predecessor has mastered land for 20 (twenty) consecutive years or more in good faith, and witnessed by 2 (two) witnesses, regulated in the provisions of Land Registration.<sup>4</sup> Weaknesses of the underhanded deed made in the form of unilateral statements, do not have the strength of perfect or complete evidence, and only have the strength of free evidence in the sense that the strength of the evidence is submitted to the judge's judgment, unless the signature and contents of the statement are acknowledged and contain the truth, have the power of perfect proof such as

<sup>2</sup> Arie Sukanti Hutagalung *et al.*, *Hukum Pertanahan Di Belanda dan Indonesia*, (Denpasar: Pustaka Larasan, 2012), p. 193

<sup>3</sup> Indonesia, *Peraturan Pemerintah tentang Pendaftaran Tanah (Government Regulation regarding Land Registration)*, PP No. 24 tahun 1997, LN No. 59 Tahun 1997 (Government Regulation Number 24 Year 1997), art. 24 para. (1) dan (2)

<sup>4</sup> *Ibid.*, art. 24 para. (2)

authentic deed whereas other parties only have free evidence.<sup>5</sup> Provisions on how to obtain ownership rights over immovable objects through expiration or overdue (*verjaring*) for 20 (twenty) years, constitute provisions of the Civil Code, which are not known in adat law. Since the enactment of the Basic Agrarian Law, the provisions of the net are not valid and what is used is the institution of the abolition of land rights or in literature called *Rechtsverwerking* which is an institution known in adat law.<sup>6</sup> Tax collection evidence known as *kohir*, is not proof of rights, but is used as a basis for registering former adat land rights either through conversion or recognition of rights followed by conversion and / or used as a basis in legal actions on former adat land.

## II. EMBODIMENT OF THE PRINCIPLE OF CUSTOMARY LAW IN THE REGISTRATION OF EXISTING LAND OF CUSTOMARY RIGHTS

Pancasila as the philosophy of the Indonesian nation or the view of the Indonesian people who place a bond of togetherness in the balance of the relationship between individuals and society as the core of Indonesian society's social life, based on family principles. . Brief Hidayat with the concept of the state of Pancasila law, has expressed his opinion, which says that one of the characteristics of the state law of Pancasila is a family state, where in a family country there is recognition of individual rights including property rights or human rights, but still prioritizing national interests (shared interests) above the individual's interests.<sup>7</sup> Pancasila as the philosophy of the Indonesian nation was contained in the opening of the 1945 Constitution, which contained the main points of mind, which embodied the ideals of the law (*rechtsidee*), which controlled the basic laws of the state both written and unwritten. Adat law is a national law based on Pancasila, expressed by several expert opinions, namely: Mohammad Koesnoe interpreted that the law that controls basic law is adat law in the form of universal and abstract principles of law and applies to all Indonesian people.<sup>8</sup> Arief Sidharta said the principle of adat law as an embodiment of reconciliation (legal ideals) as well as a principle of national law that functions as a test stone in the formation of legal norms.<sup>9</sup> Friedrich Carl von Savigny, a figure from the legal history school said that law is not made but grows and develops with society or law is part of the people's soul (*volgeist*). The concept of law as a reflection of the people's soul is expressed in adat law abstract and universal basic and legal principles.<sup>10</sup> Adat law functions as the main source of the formation of national land law, to obtain material in the form of conception, principle and legal institution, to be formulated into a norm of written legal norms, which are based on the adat law system.<sup>11</sup> Confirmation is made into the

<sup>5</sup> Kitab Undang Undang Hukum Perdata (*Burgerlijk Wetboek*), translated by R Subekti dan R Tjitrosudibio, (Jakarta: PT. Pradnya Paramita, 1992), art. 1875.

<sup>6</sup> Supreme Court of Republic of Indonesia, "Decision No. 620K/SIP/1970."

<sup>7</sup> Arief Hidayat dan Airlangga Surya Nagara, *Negara Hukum Pancasila* (Suatu Model Ideal Penyelenggaraan Negara Hukum), (makalah), yang disampaikan pada Semiloka Pendidikan Pancasila dan Konstitusi, Jakarta: 2011, hlm. 8

<sup>8</sup> Joeni Arianto Kurniawan (editor), *Mohammad Koesnoe Dalam Pengembangan Gagasan Hukum Indonesia*, (Jakarta: Epistema Institute HuMa, 2013), pp. 113-114

<sup>9</sup> Arief Sidharta, *Ilmu Hukum Indonesia*, (Bandung: FH Universitas Katolik Parahyangan, 2011), p. 46, ditegaskan bahwa cita hukum berfungsi sebagai asas umum yang mempedomani, norma kritik (kaidah evaluasi) dan fakta yang memotivasi dalam penyelenggaraan hukum (pembentukan, penemuan dan penerapan hukum) dan perilaku hukum.

<sup>10</sup> F Sundari dan M.G Endang Sumiarni, *Hukum yang Netral Bagi Masyarakat Plural: Studi Pada Situasi Di Indonesia*, (Bandung: Karya Putra Darwati, 2010), pp. 13-14

<sup>11</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang Undang Pokok Agraria, Isi*

basis of adat law in the formation of national land law, so the determination of rights to land rights, is based on a systematic of adat law.<sup>12</sup>

Determination of the birth or formation of former land rights is based on the principle of adat law that is abstract and universal and applies to all Indonesian people, namely: (a) concrete principles; (b) visual principle; (c) the principle of light; (d) communal principles; (e) *religius magis principles*; and (f) *institutions for the abolition of adat land rights*. *The application of principles of adat and universal adat law principles is concretized in the form of legal principles, which are applied in determining ownership of former adat land rights, namely:*

**a. Concrete principle ;**

Concrete means clear, real and tangible. Concrete principle is the mindset of the Indonesian people who use *pancaindrea*, which is followed by a sign of binding or *panjer*. Legal relations in adat law are determined by the results of sensory work, which can be seen from various concrete events in adat law, namely: (1) an Indonesian person who takes rattan in the area of adat rights, and finds a honeycomb located high on a shady log and the person wants to have the bee hive, so that the log is made or a sign is installed, to show the other person that the beehive is already there and so that the other party does not disturb it.<sup>13</sup> and (2) adat law recognizes the existence of previous rights (*voorkeurs recht*), *namely the rights granted to someone to cultivate land, where the person is prioritized over other people . This previous right is also called the right to choose, which occurs on a plot of land which is land of ulayat. The person who has the previous right, namely the person who first gave the mark of the land or the last person who sought the land.*<sup>14</sup> The concrete principle or mindset by using the senses, followed by the giving of a binding sign, occurs not only in land transactions but also in other legal relations, legal actions or events in adat law must be open, not hidden, can be seen, known and heard by people other. The principle of openness is one of the guarantees of legal certainty for the ownership of former adat land rights and also determines the validity of an act or legal entity or transaction of former adat land rights. The application of concrete principles in the ownership of land rights by controlling the land physically and working on and utilizing the land, for the welfare of themselves and their family.

**b. Visual principle;**

Visual means can be seen, visible, open, and not hidden. The visual principle in the application of ownership and control of former adat land rights is manifested in the form of openness, clear light and not hidden or known by the public regarding physical data and juridical data on former adat land. Openness in customary law is one element of protecting legal certainty for ownership of land rights, which can be constructed in various legal actions or events in adat law. The public archive of land registration results is open to the public, in the sense that the physical and juridical data in the land office are open to the public and the public can obtain the data in the form of a land registration certificate. The first land registration activity for objects of former adat land rights, in the physical and juridical data collection phase, must be announced to provide an opportunity for the community to file an objection or

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*dan Pelaksanaannya, Jilid I Hukum Tanah Nasional*, (Jakarta: Djambatan, 2008), p. 205

<sup>12</sup> *Ibid.*, hlm. 177-178

<sup>13</sup> Mahadi, *Uraian Singkat Hukum Adat Sejak RR Tahun 1854*, (Bandung: Alumni, 2003), p. 139

<sup>14</sup> Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, (Bandung: Alfabeta, 2013), p. 323

objection before being authorized by the authorized city / district land office.<sup>15</sup>

**c. Clear principle;**

The legal action is clearly intended to be an act carried out with the knowledge of the head of the fellowship and adat law community or adat head or village head. In the land registration system to maintain a balance between individual and community interests, then any legal action or legal event relating to land tenure, must be carried out before the Land Deed Officer or before an authorized public official or before the adat head or village head. The principle of light is to provide legal certainty that legal actions carried out are in accordance with the applicable legal order. In adat law, an act is declared valid if the action is carried out while the light is not dark, and this light nature guarantees that the action has been placed in the legal order. Actions clearly mean an act carried out with the knowledge of the head of the fellowship and the adat law community. Jurisprudence in the form of a court ruling has confirmed that land transactions that are not carried out before an authorized official are illegal transactions, so that the parties do not get legal protection.<sup>16</sup>

**d. Communal Principle;**

The communal principle places balance or harmony between individual interests and the public interest. Application and realization of communal principles in the control and ownership of former adat land rights, namely: (1) land must be controlled physically and used or used effectively for personal, family and community welfare; (2) the land that is controlled and utilized, does not conflict with the public interest or regulations that apply to the adat law community or village / kelurahan where the land is located; and (3) the land must not be left without being controlled, without work or without being utilized, or abandoned, which results in the disruption of the public interest or the land being of no use to individuals, families and the community; and (4) abandoned land, which is controlled and carried out by other people continuously, giving birth to the right of ownership for the person who works the land, and for the original owner to lose the right to reclaim the abandoned land.

**e. Religius Magis Principle;**

*The religius magis principle is the principle of a balance between spiritual and material interests, the balance between the rights and obligations of the parties. The application of this principle in the ownership and control of former adat land rights is that land rights must pay attention to social functions or elements of togetherness, and if the land is needed for the public interest, the landowner will receive fair and just compensation as a form of material balance and immaterial. Use and use of land, not only for the personal interests of the owner but also contain elements of togetherness, in the sense that landowners not only have authority over their land but also contain an obligation to use and use their land so as not to harm the public interest.*

**f. Removal institutions adat land rights ;**

Institutions for the abolition of land rights or the abolition of rights require the return of land, in accordance with the principles adopted in adat law that land is a common property of indigenous people that must be used for the benefit of the community or members and may not be used, but not prohibited land in national land

<sup>15</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid I Hukum Tanah Nasional, hlm. 496

<sup>16</sup> Mahkamah Agung, Putusan Nomor 598K/Sip/1971 tanggal 18 Desember 1971 jo Putusan Nomor 601K/Sip/1972 tanggal 14 Maret 1973

law. This institution is essentially if someone owns the land but for a certain period of time allows the land to be neglected and the land is used by another person in good faith, then the person who leaves the land is not worked can no longer demand the land return from that other person.<sup>17</sup> This institution is known in adat law as a consequence of the existence of nomaden living patterns from indigenous peoples, always moving to a place of residence by clearing forests or thickets and leaving them if they feel they are not yielding and cannot be utilized.<sup>18</sup>

### III.CONSTRUCTION OF THE LAW FOR THE OCCURRENCE OF ADAT OWNERSHIP RIGHTS

Recognition or occurrence of former adat land in the context of civil rights, not gifts from the state and not because of land registration, but is determined by adat law. and the recognition of former adat land rights is declarative without any constitutive determination.<sup>19</sup> The Basic Agrarian Law provides recognition of adat land through the provisions of conversion provisions, where former adat land rights are converted into ownership rights, if the subject of the rights holders since the entry into force of the Agrarian Basic Law until the time the request for conversion is submitted is an Indonesian citizen.<sup>20</sup> The Land Law, provides recognition of Adat property rights, where it is stipulated that property rights can occur based on adat law, in terms of: (a) the physical possession of land carried out openly; (b) controlled in good faith; (c) is continuously utilized: and (d) is not disputed by the adat law community, kelurahan / desa or what is called by another name.<sup>21</sup> The land registration system, does not give birth to ownership of former adat land rights, and only has a causal relationship with legal certainty for holders of land rights, and by registering former adat land rights, formally the former adat land rights are deleted and converted become property rights subject to state law, namely the system regulated in the Agrarian Basic Law.

<sup>17</sup> Arie S Hutagalung, Penerapan Lembaga “*Rechtsverwerking*” Untuk Mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah (Studi Kajian Sosio yuridis), Hukum dan Pembangunan Nomor 4 Tahun XXX, Oktober-Desember 2000, hlm. 337

<sup>18</sup> Christiana Tri Budhayati, Jaminan kepastian Kepemilikan Bagi Pemegang Hak Atas Tanah Dalam Pendaftaran Tanah menurut UUPA, Jurnal ilmu Hukum; Refleksi Hukum, Volume 2, Nomor 2, April 2018, hlm. 132

<sup>19</sup> Kurnia Warman, Memastikan Pengakuan Hak Atas Tanah Adat Dalam RUU Pertanahan, Makalah, disampaikan dalam FGD “Mengkritisi RUU Pertanahan” Kerjasama Badan Keahlian DPR RI dan Fakultas Hukum UGM, Yogyakarta, 21 Februari 2019, dan lihat Indonesia, Undang Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok Pokok Agraria, Pasal 5, Ketentuan Ketentuan Konversi Pasal II dan Pasal VI.

<sup>20</sup> Indonesia, UndangnUndang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok Pokok Agraria, Pasal 5 dan Ketentuan Konversi Pasal II, yang berbunyi: (1) Hak hak atas tanah yang memberi wewenang sebagaimana atau mirip dengan hak yang dimaksud dalam Pasal 20 ayat 1 seperti yang disebut dengan nama sebagai dibawah. Yang pada mulai berlakunya undang undang ini, yaitu hak *agrarisch eigendom*, milik, yasan, andarbeni, hak atas *druwe*, hak atas *druwe* desa, pesini, *grant sultan*, *landerijenbezitrecht*, *altijddurende erfpacht*, hak usaha atas tanah bekas partikelir dan hak hal lain dengan nama apapun yang akan ditegaskan lebih lanjut oleh Menteri Agraria, sejak mulai berlakunya undang undang ini menjadi hak milik tersebut dalam Pasal 20 ayat 1, kecuali jika yang mempunyainya tidak memenuhi syarat sebagai yang tersebut dalam pasal 21; dan (2) Hak hak tersebut dalam ayat 1 kepunyaan orang asing, warga negara yang disamping kewarganegaraan Indonesianya mempunyai kewarganegaraan asing dan badan hukum yang tidak ditunjuk oleh Pemerintah sebagai dimaksud dalam Pasal 21 ayat 2 menjadi hak guna usaha atau hak guna bangunan sesuai dengan peruntukkan tanahnya, sebagai yang akan ditegaskan lebih lanjut oleh Menteri Agraria.

<sup>21</sup> Dewan Perwakilan Rakyat Indonesia, Rancangan Undang Undang Pertanahan, Pasal 27 ayat (1) dan ayat (4)

In adat law, the highest land tenure rights are communal rights, which are the source of ownership of individual or private land rights. Adat rights apply to all land of the region, both those that have been abused by someone and those who have not or have not been abused. In the area of customary rights there is no land as "*res nullius*"<sup>22</sup> Ulayat rights as the highest land tenure rights contain 2 (two) aspects, namely (1) civil legal aspects, namely all land within the territory of adat law communities belongs to members of adat law communities. Customary rights are not proprietary rights in a juridical sense but rather belong to the adat law community, so that the right of ownership of land that is privately controlled by members of the adat law community is possible; and (2) public aspects, namely. the task or authority to manage, regulate and lead the control, maintenance, designation and use of shared land, both those intended for the common interest and the interests of its citizens.<sup>23</sup>

Based on the content and authority of the Ulayat rights, adat land can be divided into 2 (two) main parts, namely adat land of individuals and communal land or ulayat rights. The relationship between ulayat rights and individual rights, has a reciprocal relationship that expands and deflates, and by Ter Haar it is called "Theory of Ball" where according to this theory, the relationship between ulayat rights and individual rights is reciprocal which means stronger individual rights over a piece of land, the weaker the ulayat rights to the land and conversely the weaker individual rights to a piece of land, the stronger the ulayat rights to the land.<sup>24</sup> The concept of tenure over adat land, has an arrangement or hierarchy consisting of :<sup>25</sup> (a) Ulayat rights of adat law communities, as the highest land tenure rights, which are based on civil law and aspects of public law; (b) Right of adat head and adat elders, originating from communal rights and purely aspects of public law. The adat heads carries out the duties and authority granted by the adat law community, to give rights to adat land rights individually or individually; and (c) Rights to land as individual rights, which directly or indirectly derive from communal rights and aspects of civil law.

The subject of ulayat rights is the adat law community, which is an alliance of adat law based on the similarity of the place of residence (territorial) or based on genealogical, or a combination of territorial and genealogical, known as various regional names concerned such as tribes clan, village, nagari and so on.<sup>26</sup> Maria SW Sumardjono, as quoted by Zuman Malaka, said that the boundaries of adat law communities are juridically a group of people who are bound by their adat law as citizens of a legal alliance, because of the similarity of their residence or their descent. The main characteristics of adat peoples are those who constitute a group of people who have: (1) wealth inherent regardless of individual wealth; (2) certain boundaries and (3) certain authority.<sup>27</sup> The adat law community, whether territorially or genealogically, as a legal subject, which owns land within the territory of adat law communities and technically juridical is called possession rights not ownership rights.

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<sup>22</sup> Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya: Jilid 1: Hukum Tanah Nasional, hlm. 186

<sup>23</sup> *Ibid.*, hlm. 182

<sup>24</sup> Tolib Setiady, Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan), hlm. 312-313

<sup>25</sup> Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid I Hukum Tanah Nasional, hlm.183, 294

<sup>26</sup> Zuman Malaka, Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat dan Hukum Islam, Al-Qanun, vol. 21, Nomor 1, Juni 2018, hlm. 116

<sup>27</sup> *Ibid.*, hlm. 116 dan lihat Undang Undang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok Pokok Agraria, Pasal 3

The adat heads as a personification of the power of all adat law communities, based on the authority delegated by the adat law community, has the authority to regulate the use and designation of all land within the territory of adat law communities.<sup>28</sup> The right of individual or individual rights to adat land originates from the land with adat law communities, based on the decision of the adat head. Individual rights are an embodiment of the element of togetherness, where the right to adat land not only gives authority to the rights holder but the obligation to cultivate and work the land for the welfare of himself and his family, so that if the land is not cultivated or abandoned, then the right to land returns to ulayat rights or it can be said that individual rights are tied to ulayat rights. Bushar Muhammad said the rights of individuals to land are limited by ulayat rights where each community member (adat law community) has rights; (1) collecting forest products such as rattan, wood and so on; (2) hunting wild animals that live in the territory of the communion; (3) extracting products from trees that grow wild; (4) open the land and then work the land continuously; and (5) try to take care of a fish pond.<sup>29</sup>

Maria SW Sumardjono said that legal construction, land rights according to customary law as a source of formation of the Basic Agrarian Law consist of Ownership Rights or "Owning" and Usage Rights or "Using".<sup>30</sup> Classification of adat land rights into ownership rights and usage rights, which distinguishes them from property rights, namely rights without time and usage rights and other rights with a certain period of time, in line with the recognition of conversion provisions and rights to land rights stipulated in the Law Agrarian Principles, namely:

- a. The construction of land rights according to the Basic Agrarian Law is differentiated into Ownership Rights, namely "owning" with no time period and Building Use Rights, Business Use Rights and Usage Rights, namely "to use" which is marked by a certain period of time;<sup>31</sup>
- b. Former adat land is converted to ownership rights, if the rights holders are Indonesian citizens at the time of the entry into force of the Agrarian Law, namely

<sup>28</sup> Tolib Setiady, *Intisari Hukum Adat Indonesia: Dalam Kajian Kepustakaan*, hlm. 316, menegaskan bahwa yang menjadi objek dari hak ulayat atau hak masyarakat hukum adat, dapat diperinci meliputi: tanah (daratan); (2) air (perairan) seperti misalnya kali, danau, pantai beserta perairannya; (3) tumbuh tumbuhan yang hidup secara liar (pohon buah buahan, pohon pohon untuk kayu petukangan atau kayu bakar dan lain sebagainya); dan (4) binatang binatang yang hidup di atas lingkungan ulayat (hidup liar, bebas dalam hutan).

<sup>29</sup> Bushar Muhammad, *Pokok Pokok Hukum Adat*, Jakarta: PT. Balai Pustaka 2013, hlm. 107.

<sup>30</sup> Maria SW Sumardjono, *Mengkritisi RUU Pertanahan*, (makalah), disampaikan dalam Forum Grup Diskusi Kerjasama Badan Keahlian DPR RI dan Fakultas Hukum UGM, Yogyakarta, 21 Februari 2019, hlm. 11

<sup>31</sup> Indonesia, Undang Undang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok Pokok Agraria, Pasal 20 ayat (1) berbunyi Hak Milik adalah hak turun temurun, terkuat dan terpenuh yang dapat dipunyai orang atas tanah, dengan mengingat ketentuan dalam Pasal 6; Pasal 28 ayat (1) berbunyi: Hak Guna Usaha adalah hak untuk mengusahakan tanah yang dikuasai langsung oleh negara dalam jangka waktu sebagaimana tersebut dalam Pasal 29, guna perusahaan pertanian, perikanan atau peternakan; Pasal 29 ayat (1) berbunyi: Hak Guna Usaha diberikan untuk jangka waktu paling lama 25 tahun; Pasal 35 ayat (1) berbunyi: Hak Guna Bangunan adalah hak untuk mendirikan dan mempunyai bangunan bangunan atas tanah yang bukan miliknya sendiri, dengan jangka waktu paling lama 30 tahun; Pasal 41 ayat (1) berbunyi: Hak Pakai adalah hak untuk menggunakan dan atau memungut hasil dari tanah yang dikuasai langsung oleh negara atau tanah milik orang lain, yang memberi wewenang dan kewajiban yang ditentukan dalam keputusan pemberiannya oleh pejabat yang berwenang memberikannya atau dalam perjanjian dengan pemilik tanahnya, yang bukan perjanjian sewa menyewa atau perjanjian pengolahan tanah, segala sesuatu asal tidak bertentangan dengan jiwa dan ketentuan ketentuan undang undang ini.

*Agrarische Eigendom*, property, andarbeni, rights to *druwe*, rights to village *druwe*, *pesini*, *grants sultan*, *landerijen bezitrechts*, *altijddurendu erfpacht*, business rights to former private land and other rights that are determined by the Minister of Agrarian Affairs, including permanent *golanolan*, *pekulen* and *sanggan* rights. Customary land rights that are converted into usufructuary rights for the period specified in the granting of rights, namely *Veruchtgebruik*, *Gebruik*, *Grant Controleur*, *Bruikleen*, *Bantuik*, *Anggaduh*, *Crooked*, *Lungguh*, *Pituwas* and other rights stipulated by the Minister of Agrarian Affairs, including *gogolan*, *pekulen* and *sanggan* which are non-permanent.<sup>32</sup>

The subject of this paper is about adat land ownership rights, which are born from the recognition of adat law, and to determine the formation of individual or individual rights to former adat land rights, the procedure for the occurrence of adat ownership rights based on adat law, namely:

- a. Opening forest land or shrub land which begins by giving a sign that it will open land in the form of a cross or rattan or bamboo which is mounted on a tree or in the form of a wooden branch tied with rattan or palm fiber rope which is enforced on dry land (grasslands, shrubs, bushes) and visible from a distance. The giving of a sign gives birth to the right to seek a plot of land or the Right to Open Land.<sup>33</sup>
- b. Forest land or shrubs that have been opened with signs installed and used as cultivation land planted with secondary crops and other crops, then use rights or the right to cultivate land are formed. The right to use land or the right to collect land products given to residents outside the fellowship, who have obtained permission to work on the land and have met certain conditions, only applies to one crop.<sup>34</sup>
- c. Forest land or shrub land which has been opened with a sign installed, then cultivated by planting palawija atu or other plants continuously for more than one harvest, then ownership rights are formed. Ownership rights in land in Cirebon (West Java) are if community members of the legal community alliance are working on a plot of land continuously and the land is within the *ulayat* rights area,<sup>35</sup> and cultivated for several harvests. Land to work continuously and plant trees on the land, and if the right to work the land is not more than one harvest, then the community members only get the right to use the land or not the property but the right to use or collect the yield for one harvest.<sup>36</sup>
- d. Land that has been granted with ownership rights, then abandoned into shrub land or forested again, then his property is lost and what remains is the main right (previous right) to try to regain the land, and this main right becomes lost if the land is forested back to being the *ulayat* rights of the village (clan, nagari, country). The previous right or named the right to choose, is the right given to someone to cultivate the land of thicket which is land from communal land, where the person takes precedence over other people. People who have prior rights, namely: (a) the person who first gave the land mark; (b) the person who last sought the land. Land that is no longer attempted by a person, returns to *ulayat* rights and after the

<sup>32</sup> *Ibid*, Ketentuan Ketentuan Konversi II dan VI

<sup>33</sup> H Hilman Hadikusuma, Pengantar Ilmu Hukum Adat Indonesia, Bandung: Mandar Maju, 2003, hlm.

<sup>34</sup> Bushar Muhammad. Pokok Pokok Hukum Adat, hlm. 109

<sup>35</sup> Hetty Sofyati, Laporan Perumusan Asas Asas Hukum Adat Dari Hasil Monografi Hukum Adat Jawa, Badan Pembinaan Hukum Nasional, Departemen Kehakiman dan HAM RI, 2000, hlm. 133

<sup>36</sup> *Ibid*, hlm. 108

land becomes a land of thicket, and wants to be cultivated again, the person who first has the right to the land is the person who last sought the land rights; and (3) people whose land borders the land of thicket.<sup>37</sup>

In adat law, forest land or shrubs that are given a cross or other sign, to show the other party that the land already has and so that the other party does not disturb it, and this shows that the adat law community views and enforces a legal relationship between someone with the land as concrete. The terms of the right to open land, the right to cultivate land or use rights, ownership rights to land, prior rights or select rights, constitute a legal relationship between a person and his land, and in adat law the legal relationship is determined by the five senses or concrete. The concrete way of thinking as part of the Indonesian legal awareness, is the principle in giving birth to a balance between individual interests and the interests of the community and the sign in adat law is not always the same throughout Indonesia, there are legal actions made by witnesses and legal actions authorized by the head village or adat heads, as a sign that the legal actions are clear and strong against third parties. Decision of adat head or village head / adat village or adat institution, as an acknowledgment of the property of someone or individual on land that is inhabited or controlled and worked on or used, is a manifestation of a concrete mindset. Decisions of adat leaders or village heads on acknowledgment to a person or individuals of ownership rights have been confirmed in several opinions, namely: (a) One characteristic of ulayat rights is that the leadership of the alliance can determine whether to declare and use certain areas of land parcels for public interest and the rights of these individuals may not be placed;<sup>38</sup> (b) Adat rights in its basic form are a right of alliance over land inhabited, while its implementation is carried out either by the alliance itself or by the head of the alliance on behalf of the alliance;<sup>39</sup> and (c) Adat rights contain two (elements), namely the ownership element, meaning that all members of the adat law community have the right to use land in their territory and an element of authority to regulate, plan and lead their use. This task or authority is delegated to the adat head who has the right to give individual rights to land.<sup>40</sup>

#### IV. ADAT DECISION AS RECOGNITION OF ADAT LAND OWNERSHIP RIGHTS

Ter Haar said the rules of adat law were manifested in the decisions of adat law functionaries or adat law which were adat decisions by adat law officials.<sup>41</sup> The decision of the adat head gives a concrete form (*gestaltung*) to those who live in the village community as a sense of justice for the people.<sup>42</sup> The decision of the village head and in some adat law communities is known as a certificate of land, which provides evidence of ownership and use of land. Former adat land was born, transferred and deleted based on adat law, except after the enactment of land registration provisions, where all legal acts or land transactions must be carried out before the authorized

<sup>37</sup> Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, hlm. 323

<sup>38</sup> C Dewi Wulansari, *Hukum Adat Indonesia : Suatu Pengantar*, Bandung: PT. Refika Aditama, 2014, hlm. 81.

<sup>39</sup> Bushar Muhammad, *Pokok Pokok Hukum Adat*, hlm.. 105.

<sup>40</sup> Hairan, *Kedudukan Tanah Ulayat Dalam Perspektif Konstitusi Indonesia (Undang Undang Dasar Negara Republik Indonesia tahun 1945)*, *Jurnal Universitas Widya Gama Mahakam Samarinda*, vol 9, Nomor 1 tahun 2017, hlm. 43

<sup>41</sup> H Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, hlm. 34

<sup>42</sup> R Soepomo, *Bab Bab Tentang Hukum Adat*, Jakarta: PT. Pradnya Paramita, 1996, hlm. 66-67

Land Deed Official.<sup>43</sup>

The basic concept of acquiring former adat land is based on adat law in the form of abstract and universal principles of legal principles as a whole and inseparable unit, and the basic concept of ownership of former adat land rights can be formulated in the principles of adat law, that is:

- a. The establishment or birth of ownership rights on adat land, starting with opening forest land or thickets with the provision of signs (giving boundaries for a plot of vacant land), cultivating or utilizing or cultivating the land continuously for the welfare of himself and his family, giving birth to previous rights select rights), and after a certain period of time can obtain ownership rights to land. The realization of concrete principles is one element of legal certainty in the ownership of former adat land rights, namely physical control of land and working on or utilizing the land continuously and in certain periods can obtain ownership rights. This legal principle is an embodiment of the concrete mindset adopted by the people of Indonesia.
- b. Individual rights to former adat land rights derive from joint rights (communal rights) that must be physically controlled and endeavored for personal, family and community welfare, with conditions namely (1) if the land is needed for the public interest or interest of the community, then the rights are deleted and return to joint rights and to the right-holders are given proper and fair compensation); and (2) if the land is not physically controlled, not cultivated or worked or left alone or abandoned, so that it does not benefit the person, family and community, then the land is abolished and enters communal rights, and the original rights holder loses the right to sue return to land rights, if it has been physically controlled and done by someone else. This principle of law is a manifestation of communal principles and *religius magis*.
- c. The birth, transition or abolition of adat land rights, must be carried out by involving the village head or adat village or adat institution or with other titles or authorized public officials. The function of the village head is to guarantee the correctness of the legal status of the land, the subject of the rights holder, the object of the land and legal actions carried out before the enactment of land registration, in accordance with the prevailing legal order and the presence of the village head representing the community as a manifestation of the publicity principle. The function of other public officials in legal actions on former adat land rights, to provide legal certainty that legal actions carried out are in accordance with the applicable legal order. This legal principle is an embodiment of the principle of light in adat law.
- d. Legal actions or transactions on objects of former land rights of customary land must be carried out simultaneously between payment of prices and juridical and physical land surrender, carried out before the village head or by another designation or authorized public official. The principle of this law is the realization of the principle of light and cash in the faithful legal deeds of the transfer of land rights;<sup>44</sup>

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<sup>43</sup> Indonesia, Peraturan Pemerintah Nomor 37 tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, yang telah diubah dengan Peraturan Pemerintah Nomor 24 tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, Pasal 2 ayat (1) dan (2)

<sup>44</sup> Nico Ngani, *Perkembangan Hukum Adat Indonesia*, Yogyakarta: Pustaka Yustisia, 2012, hlm. 60.

The decision of the Adat head, equated with the decision of the village head or adat village or adat Institution or with another name, which has the function of providing legal certainty regarding the legal status of the land, the legal subject of the rights holder, the legal relationship between the subject and object with legal order and representing the public element (village community), in realizing openness in ownership of former adat land rights. The land of adat rights of birth originates from adat law, so the role of the village head or by other designation has the duty and authority to carry out physical verification and documents on ownership of former adat land rights. The results of document and physical land verification including land use and utilization, the village head issued a statement witnessed by 2 (two) witnesses and justified by the holder of the final right, which contained: (1) description of legal documents owned (land history) documents that are owned in full, incomplete or none at all since the entry into force of the Basic Agrarian Law until the date the deed is made; (2). Deed of statement must be made with an authentic or legalized deed before the authorized public official; (3) a description of the legal subject that controls the physical land and the period of physical control of land including the predecessor's predecessor; (4) the use and utilization of the land by the subject of the rights holder; (5) a description of the existence or absence of objections or objections or claims through a court over the object of the former land rights of adat land; (6) a description of the existence or absence of a dispute or case or seizure of the object of the land of former adat rights by the competent authority; (7) the object of the former land rights of customary lands which are controlled physically and used by the subject of the rights holders do not conflict with the provisions of the adat law community or the village or kelurahan where the land is located.

The deed of statement made by the Head of the Village or as other names, is the basis for the applicant (final right holder) to submit an application for registration of adat land rights for the first time both systematic and sporadic land registration through the City / Regency Land Office that is. Deed of statement made by the village head or as another name is an embodiment of the principle of adat law in providing legal certainty regarding ownership of former adat land rights.

## **V. LEGAL CERTAINTY THROUGH THE REALIZATION OF CLEAR AND VISUAL PRINCIPLES IN THE ADMINISTRATION OF LAND ADMINISTRATION BOOKS IN VILLAGES**

The application of universal principles of adat law that are universally applicable to all Indonesian people and an embodiment of legal certainty in the ownership of former adat land rights is carried out through the administration of land book management in the village or kelurahan from a manual system that supports online computerized based systems. , with the aim that the physical and juridical data of former adat land rights are open to the public and can be known or accessed by the community. Visual and concrete principles in the application of ownership and control of former adat land rights are manifested in the form of openness, clear-cut and not hidden or known by the public regarding physical data and juridical data on former adat land . Openness in adat law is one element of protecting legal certainty for the ownership of an object, which can be constructed in various legal actions or events in adat law. Legal relations in adat law are determined by the results of sensory work, which can be seen from various concrete events in adat law. Concrete and visual principles or mindset by using senses, followed by giving a binding sign, occur not

only in land transactions but also in other legal relations, the principle of openness is one guarantee of legal certainty for ownership of former customary land rights and also determines the validity of an act or legal entity or transaction of former adat land rights.

Before the enactment of the Agrarian Basic Law, the land of the former adat land rights in each village or kelurahan was recorded in the village or kelurahan land book or the register of agricultural products. In Indonesian society the land of the former adat land rights is known as a letter of quotation letter C. issued by the village based on the quote from the village letter C signed by the village head and the village stamp. Basically there are 2 (two) types of book administration for recording land in each type of village or kelurahan office, namely:<sup>45</sup>

- a. Letter C book is a land book that contains data on land ownership data containing: (1) name of owner; (2) serial number of owner; (3) number of persil parts; (4) village class; (5) matters related to land tax consisting of land area of hectares (ha) and are (da) and the value of taxes (rupiah) and cents (s); (6) the cause of the change and (6) concerning the village head namely signature and stamp.
- b. The village kerawangan book is a book that shows on the object of the land, which contains namely; (1) the location of the land or the location of the land; (2) land area; (3) land boundaries or plot of land; (4) afternoon numbers; and (5) persil number.

The two village land books function as state documents can be used as a juridical basis and reference to any changes in ownership rights to land or the transfer of ownership rights from the right-holders to other parties. The original Letter C is in the village office or kelurahan while the excerpts from the letter C are in the form of girik, tax quotations, property issued to the landowner as proof of tax payment. Quotation of Letter C or girik as proof of tax payment, is used as one of the legal documents in the registration of former adat land rights and can also be used as evidence in legal actions on the object of former adat land rights. Managing land administration manually can give rise to legal uncertainty, namely the quote letter C is not proof of rights, inaccurate physical data because measurements have not been carried out *rechts cadastre* or land registration in order to guarantee legal certainty, letter C is easily lost or damaged, land transaction transactions under the hands of the objects of the former adat land parcels which are not recorded in book C, so that the history of an former adat land rights is unclear, and the manual system is not open to the public or does not fulfill the principle of publicity. Ownership of former adat land rights and also determines the validity of an act or legal event or transaction of former adat land. In demonstrating the principle of openness in realizing legal certainty in the ownership of adat land, the governance of land administration in the village or kelurahan needs to be changed from a manual system to an internet-based system through real-time online systems, where the system This makes it easy for the community to obtain information about juridical and physical data data on the object of former adat land rights. Juridical basis in internet or electronic land administration in the village or kelurahan administration, has been regulated in the Law on Information Technology and electronics, namely:

- a Electronic information is one or a set of electronic data, including but not limited to

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<sup>45</sup> Tedjo Asmo Sugeng, Fungsi Buku Letter C Desa, Dalam Kaitannya Dengan Buku Kerawangan Desa Sebagai Landasan Yuridis dan Alat Bukti Awal Atas Pengakuan Kepemilikan Hak Atas Tanah, Jurnal Ilmiah Fenomena, Volume XV, Nomor 2, November 2017, hlm. 1670

writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them;<sup>46</sup>

- b. Electronic documents are any electronic information that is created, forwarded, transmitted, received or stored in analog, digital, electromagnetic, optical or the like, which can be seen, displayed and or heard through a computer or electronic system, including but not limited to writing, sound, pictures, design maps, photos or the like, letters, signs, numbers, access codes, symbols, or perforations that have meaning or meaning or can be understood by people who are able to understand them;<sup>47</sup>

Electronic information and electronic documents constitute an extension of valid evidence as stipulated in the applicable law in Indonesia and do not apply to :<sup>48</sup>

- a. Letters which according to the law must be made in written form (including but not limited to securities, valuable letters and letters used in the process of law enforcement in civil, criminal and state administration); and
- b. Letters and documents which according to the law must be made in the form of notary deeds or deeds made by deed-making officials.

A new electronic information and / or electronic document is considered valid as long as the information contained in it can be accessed, displayed, its integrity is guaranteed and can be insured so as to explain a situation.<sup>49</sup> Normatively, electronic information and electronic documents can be used as valid evidence as long as the operation of the electronic system is safe, and meet the minimum requirements, namely:<sup>50</sup> (a) Able to re-display electronic information and / or electronic documents in full in accordance with the retention period stipulated by statutory regulations; (b) Can protect the availability, integrity, authenticity, confidentiality and accessibility of electronic information in the operation of the electronic system; (c) Can operate in accordance with procedures or instructions in the operation of the electronic system; (d) Equipped with procedures or instructions announced in language, information or symbols that can be understood by the parties concerned with the operation of the electronic system; and (e) Having a sustainable mechanism to maintain the novelty, clarity and accountability of procedures or instructions.

Furthermore Edmon Makarim said that based on the functional *equivalent approach*, namely to equate functionally that an information or electronic document is the same as proof of writing if it meets at least three bases, namely:<sup>51</sup> (a) Such

<sup>46</sup> Indonesia, Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, yang telah dirubah dengan Undang Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik, Pasal 1 angka 1

<sup>47</sup> *Ibid.*, Pasal 1 angka 4.

<sup>48</sup> *Ibid.*, Pasal 5 ayat (2) berbunyi Informasi elektronik dan/atau dokumen elektronik dan/atau hasil cetaknya sebagai dimaksud pada ayat (1) merupakan perluasan dari alat bukti yang sah sesuai dengan hukum acara yang berlaku di Indonesia. Pengecualiannya diatur dalam . Pasal 5 ayat (4)

<sup>49</sup> Edmon Makarim, *Notaris dan Transaksi Elektronik: Kajian Hukum tentang Cybernotary atau Electronic Notary*, Jakarta: Rajawali Press, 2012, h;m. 33-35

<sup>50</sup> Indonesia, Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, yang telah dirubah dengan Undang Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Lembaran Negara Republik Indonesia, Nomor 251 Tahun 2016, Tambahan Lembaran Negara RI nomor 5952, Pasal 16 ayat (1).

<sup>51</sup> Edmon Makarim, *Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan dan Pelayanan Publik*, Jurnal Hukum dan Pembangunan Tahun ke 45, Nomor 4, Oktober-Desember 2015, hlm,

information is considered written if it can be stored and rediscovered; (b) Such information is considered authentic if it is stored and found and read again does not change its substance, or guarantees its authenticity and integrity, and (c) The information is considered signed if there is information explaining the existence of a legal subject responsible for it or there is a reliable authentication system that explains the identity and authorization or verification of that party.

The land administration system in the village or kelurahan is carried out on a computerized basis with electronic systems in the form of web or online systems, with log in and logout features managed by administrators authorized by the village or kelurahan. Administrators on the orders of the village head or authorized officials in accordance with the provisions applicable to the Village or Kelurahan, to manage the administration of former adat land rights, are authorized, namely: (a) Containing village land book data (letter C book), which contains data juridical and physical data of former adat land or certified land; (b) Record all changes regarding data data about the subject (the right holder), their rights and physical land in accordance with legal actions or events that occur;<sup>52</sup> (c) Record any or no dispute or seizure determination by the authorized official in the village land book data; (d) Record physical control of land or if there is a change in physical mastery based on legal facts; and (e) Making a land history of both the physical and juridical data of the land.

Online websites or systems through electronic media, regarding the administration of village or urban land administration are open to the public and public records recorded in the on line system can be used as a basis for carrying out legal actions on former adat land.<sup>53</sup> The villagers or kelurahan or other parties can see physical and juridical data, land history, whether or not there is a dispute, or no seizure of land, physical control of land, and residents can download document presented electronically and can be used as tools evidence after first being authorized by the village head or an authorized official in accordance with village regulations. Any legal actions or legal events that occur on former adat land that result in changes in physical and juridical data, must be submitted in advance to the village head or authorized official, which can then be recorded in the village land administration or kelurahan database. Through a computerized, on-line administration of village or kelurahan administration, it can produce up-to-date, accurate and published data. in guaranteeing legal certainty over land owned by adat land. The village or kelurahan

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<sup>52</sup> Indonesia, Undang Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Pasal 1 ayat (3) dan Pasal 38 ayat (1) , (2) dan (3) telah memberikan terobosan untuk memperkenankan administrasi negara membuat keputusan dalam bentuk elektronik yang mempunyai kekuatan hukum yang sama dengan keputusan tertulis, Verifikasi dan pemeriksaan dokumen oleh administrasi negara yang menjadi dasar keputusannya dapat dilakukan berdasarkan dokumen elektronik. Prosedur penggunaan keputusan berbentuk elektronik berpedoman pada ketentuan peraturan perundang-undangan yang mengatur tentang informasi dan transaksi elektronik.

<sup>53</sup> Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, telah mengeluarkan aturan hukum tentang Komputerisasi Kegiatan Pertanahan (KKP) secara elektronik, dengan pengecualian untuk sebab sebab tertentu masih dilakukan pelayanan pertanahan secara manual, sebagaimana diatur dalam Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 7 tahun 2016 tentang Bentuk dan Isi Sertifikat Hak Atas Tanah, Pasal 2 ayat (1) dan ayat (4) yang menyatakan bahwa Komputerisasi Kegiatan Pertanahan menggunakan sistem elektronik berbentuk aplikasi tersistem, terintegrasi dan dapat digunakan dengan atau tanpa jaringan serta dapat secara langsung tersinkronisasi secara otomatis. Pengecualian pelayanan pertanahan secara manual dilakukan karena sebab s ebab tertentu yaitu listrik mati, jaringan internet terganggu, sistem *down* atau kantor pertanahan yang bersangkutan belum dapat melaksanakan sistem KKP.

land administration management system can be regulated in the form of Government Regulations governing Land Registration and specifically for villages as autonomous regions are further regulated in Village Regulations and Village Head Regulations.<sup>54</sup>

## VI. CONCLUSION

The establishment or birth of former adat land rights is determined by adat law and not from the state, and this has been recognized through the conversion provisions stipulated in the Agrarian Basic Law. The concept of mastering the highest land rights according to adat law is customary rights or the rights of indigenous peoples. Adat leaders or village heads are given authority delegation from adat law communities to conduct management, regulation, use and allocation of common land for joint interests or to be given to individuals or individuals. Ulayat rights granted to individuals or individuals must be sourced from adat law in the form of principles of legal principles that are abstract and universally valid. The adat heads or village heads knows the origin of the land and legal documents regarding the registered adat land or is stored in the village or kelurahan land book (letter C book), and in this case the role of the adat head or village head or other name, must active in conducting field research and written documents (if any), to prove the mastery and ownership of former adat land rights in accordance with the principles of universally applicable adat law principles. The function of adat head or village head to provide legal certainty regarding the legal status of the land, the subject of the rights holder, the object of the land specifically for location and extent, legal actions and legal events relating to land tenure, all of which are in accordance with applicable law and the position of adat head or village head also represents members or citizens, as a manifestation of the principle of publicity. Announcement of juridical and physical data as an embodiment of the principle of openness is renewed through on-line computerized administration of village or kelurahan administration, which can produce up-to-date, accurate and publicized data, as part of the system for registering former adat land rights.

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<sup>54</sup> Indonesia, Undang Undang Nomor 6 Tahun 2014 tentang Desa, Pasal 1 angka 7, berbunyi Peraturan Desa adalah peraturan perundang undangan yang ditetapkan oleh Kepala Desa setelah dibahas dan disepakati bersama Badan Permusyawaratan Desa.

**BIBLIOGRAPHY****Books :**

- Abdurrahman, Aneka Masalah Hukum Agraria Dalam Pembangunan Di Indonesia, Seri Hukum Agraria II, Bandung: Alumni, 1978.
- Achmad Sanusi. Pengantar Ilmu Hukum dan Pengantar Tata Hukum Indonesia, Bandung: Tarsito, 2002.
- Arie Sukanti Hutagalung, Leon C.A. Verstappen, Wilbert D. Kolkman & Rafael Edy Bosko, (eds), Hukum Pertanahan Di Belanda dan Indonesia,, Denpasar: Pustaka Larasan, 2012.
- A.P. Parlindungan, Pendaftaran Tanah Di Indonesia, (Berdasarkan PP 24 Tahun 1997 Dilengkapi Dengan Peraturan Jabatan Pejabat Pembuat Akta Tanah PP 37 Tahun 1998), Bandung: Mandar Maju, 1999
- , Pendaftaran Dan konversi Hak-Hak Atas Tanah Menurut UUPA, Bandung: Alumni, 1985.
- Bachtiar Effendie, Pendaftaran Tanah di Indonesia dan Peraturan Pelaksanaannya, Bandung, Alumni, 1991.
- Bambang Daru Nugroho, Hukum Adat: Hak Menguasai Negara Atas Sumber Daya Alam Kehutanan & Perlindungan Terhadap Masyarakat Hukum Adat, Bandung: Refika Aditama, 2015
- Boedi Harsono, Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, jilid 1 Hukum Tanah Nasional. Jakarta: Djambatan, 2008.
- Bushar Muhammad, Pokok Pokok Hukum Adat, Jakarta: Balai Pustaka, 2013
- Chidir Ali, Yurisprudensi Indonesia Tentang Hukum Agraria, Jilid 1: Hak Hak Atas Tanah, Pembebasan Tanah, Pencabutan Hak Atas Tanah, Bandung: Binacipta, 1979
- C. Dewi Wulansari, Hukum Adat Indonesia: Suatu Pengantar, Bandung: Refika Aditama, 2014.
- Darji Darmodihardjo , & Shidarta, Pokok-Pokok Filsafat Hukum, Apa dan mengapa Filsafat Hukum Indonesia, Jakarta: Gramedia, 1995.
- Djamanat Samosir, Hukum Adat Indonesia: Eksistensi Dalam Dinamika Perkembangan Hukum Di Indonesia, Bandung: Nuansa Aulia, 2013.
- Djaren Saragih, Pengantar Hukum Adat Indonesia, Edisi II, Bandung: Tarsito 1984
- Edmon Makarim, Notaris dan Transaksi Elektronik: Kajian Hukum tentang *Cybernotary* atau *Electronic Notary*, Jakarta: Rajawali Press, 2012
- H Abdurrahman, Kedudukan Hukum Adat Dalam perundang-undangan Agraria Indonesia, Jakarta: Akademika Pressindo, 1994.
- Herlien Budiono, Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia, Bandung: PT Citra Aditya Bakti, 2015.
- H. Hilman Hadikusuma, Hukum Perjanjian Adat, Bandung: PT. Citra Aditya Abadi, 1994. hlm 98
- H.R. Otje Salman, Filsafat Hukum (Perkembangan & Dinamika Masalah), cet 2, Bandung: PT Refika Aditama, 2010.
- Iman Sudiyat, Asas Asas Hukum Adat: Bekal Pengantar, , Yogyakarta: Liberty, 1985.
- Kusumaatmadja, Mochtar. Hukum, Masyarakat dan Pembangunan Hukum Nasional. Bandung: Binacipta, 1976.

- Lili Rasyidi, *Filsafat Hukum: Apakah Hukum Itu?*, Bandung: PT. Remaja Rosdakarya, 1993
- Mahadi, *Uraian Singkat Hukum Adat Sejak RR Tahun 1854*, Bandung: Alumni, 2003
- Nico Ngani, *Perkembangan Hukum Adat Indonesia*, Yogyakarta: Pustaka Yustisia, 2012
- Nurul Elmiyah, Rosa Agustina dan Erman Rajagukguk, *Hukum Adat Dalam Putusan Pengadilan*, Jakarta: Lembaga Studi Hukum dan Ekonomi FHUI, 2007.
- Rosnidar Sembiring, *Hukum Pertanahan Adat*, Depok: Rajawali Pers, 2017
- R Wiradiputra, *Agraria Hukum Tanah*, Jakarta: Djambatan, 1954
- Shidarta dan Darji Darmodiharjo., *Penjabaran Nilai-Nilai Pancasila Dalam Sistem Hukum Indonesia*, Jakarta: PT. RajaGrafindo Persada, 1996.
- Subekti, *Hukum Adat Indonesia Dalam Yurisprudensi Mahkamah Agung*, Bandung: Alumni, 1991.
- Tolib Setiady, *Intisari Hukum Adat Indonesia: Dalam Kajian Kepustakaan*, Bandung: Alfabeta, 2015

### **Article/Paper/Research:**

- Admon Saleo, Pengakuan Masyarakat Adat Tentang Hak Ulayat, (Jurnal) *Lex Privatum*, Vol II/No. 1/Januari-Maret/2014
- Arie S Hutagalung, Penerapan Lembaga "*Rechtsverwerking*" Untuk Mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah (Studi Kajian Sosio Yuridis), *Hukum dan Pembangunan* Nomor 4 Tahun XXX, Oktober-Desember 2000
- Arief Hidayat, Negara Hukum Pancasila (Suatu Model Ideal Penyelenggaraan Negara Hukum), (makalah disampaikan dalam bedah buku Teori Hukum Integratif oleh Prof Romli Atmasasmita, di Kampus Unpar, Bandung, pada tanggal 3 Mei 2012)
- B Arief Sidharta, *Ilmu Hukum Indonesia (Materi Kuliah Sistim Filsafat Hukum)*, Bandung: Fakultas Hukum Universitas Parahyangan, 2011
- , Cita Hukum Pancasila, (Bahan Kuliah Program Doktor Ilmu Hukum Unpar, 2011/2012
- , Filsafat Hukum Pancasila (Bahan Kuliah Program Doktor Ilmu Hukum Universitas Parahyangan Bandung, 2011/2012)
- Christiana Tri Budhayati, Jaminan kepastian Kepemilikan Bagi Pemegang Hak Atas Tanah Dalam Pendaftaran Tanah menurut UUPA, *Jurnal ilmu Hukum; Refleksi Hukum*, Volume 2, Nomor 2, April 2018
- Edmon Makarim, Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan dan Pelayanan Publik, *Jurnal Hukum dan Pembangunan* Tahun ke 45, Nomor 4, Oktober-Desember 2015
- Joeni Arianto Kurniawan (*editor*), Mohammad Koesnoe Dalam Pengembaraan Gagasan Hukum Indonesia, Jakarta: Epistema Institute HuMa, 2013
- Hairan, Kedudukan Tanah Ulayat Dalam Perspektif Konstitusi Indonesia (Undang Undang Dasar Negara Republik Indonesia tahun 1945), *Jurnal Universitas Widya Gama Mahakam Samarinda*, vol 9, Nomor 1 tahun 2017
- Hetty Sofyati, Laporan Perumusan Asas Asas Hukum Adat Dari Hasil Monografi Hukum Adat Jawa, Badan Pembinaan Hukum Nasional, Departemen Kehakiman dan HAM RI, 2000

- Kurnia Warman, Memastikan Pengakuan Hak Atas Tanah Adat Dalam RUU Pertanahan, Makalah, disampaikan dalam FGD “Mengkritisi RUU Pertanahan” Kerjasama Badan Keahlian DPR RI dan Fakultas Hukum UGM, Yogyakarta, 21 Februari 2019
- Maria SW Sumardjono, Mengkritisi RUU Pertanahan, (makalah), disampaikan dalam Forum Grup Diskusi Kerjasama Badan Keahlian DPR RI dan Fakultas Hukum UGM, Yogyakarta, 21 Februari 2019
- Moh Koesnoe, Ajaran Mahkamah Agung Tentang Bagaimana Seharusnya Menafsirkan Kitab Undang-Undang Dari Masa Kolonial, (Varia Peradilan, Tahun XI Nomor 126), Maret 1996
- Tedjo Asmo Sugeng, Fungsi Buku Letter C Desa, Dalam Kaitannya Dengan Buku Kerawangan Desa Sebagai Landasan Yuridis dan Alat Bukti Awal Atas Pengakuan Kepemilikan Hak Atas Tanah, Jurnal Ilmiah Fenomena, Volume XV, Nomor 2, November 2017
- Zuman Malaka, Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat dan Hukum Islam, Al-Qanun, vol. 21, Nomor 1, Juni 2018

### Legislation :

Indonesia, Undang Undang Dasar 1945

- , Undang-Undang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria,
- , Undang Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik
- , Undang Undang Nomor 6 Tahun 2014 tentang Desa
- , Undang Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan
- , Undang Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik
- , Peraturan Pemerintah Nomor 24 tahun 1997 tentang Pendaftaran Tanah
- , Peraturan Pemerintah Nomor 37 tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah
- , Peraturan Pemerintah Nomor 24 tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.
- , Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 7 tahun 2016 tentang Bentuk dan Isi Sertifikat Hak Atas Tanah
- , Peraturan Kepala Badan Pertanahan Nasional Nomor 4 tahun 2010 tentang Tata Cara Penertiban Tanah Terlantar
- Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek*), diterjemahkan oleh R Subekti dan R Tjitrosudibio, Jakarta: Pradnya Paramita, 2004

### Supreme Court Verdict

- Mahkamah Agung, Putusan Nomor 620K/SIP/1970 tanggal 30 Maret 1971
- , Putusan Nomor 598K/Sip/1971 tanggal 18 Desember 1971
- , Putusan Nomor 601K/Sip/1972 tanggal 14 Maret 1973