

Analysis of Land Rights Acquisition Through Inheritance in Cases of Customary Land Disputes

Ilham Adi Suryana

Ilham.205180275@stu.untar.ac.id

Gunawan Djajaputra

gunawanjayaputra@gmail.com

Faculty of Law, Tarumanagara University

Article Info

Received: 2023-11-16

Revised: 2024-02-12

Accepted: 2024-06-19

Keywords: Inheritance Law, Customary Law, Land Disputes, Civil Code, Legal Reform, Codification Of Customary Law, Indonesia.

Abstract

This study focuses on analyzing the interaction between formal inheritance law and customary law in the context of acquiring land rights through inheritance, particularly in cases of customary land disputes in Indonesia. Through literature review and case analysis, this research evaluates how formal inheritance law, represented by the Civil Code, and local customary legal practices can conflict, causing complexity and disputes in the transmission of land rights. The main findings indicate that the misalignment between these two legal systems often results in injustices in the distribution of inheritance and prolonged disputes. This study proposes the need for legal reform that integrates customary law with national law, supporting the recording and codification of customary law to ensure justice and legal certainty, as well as respecting the cultural values of indigenous communities. The research concludes by recommending the development of more inclusive and sustainable policies to effectively manage customary land inheritance in Indonesia.

I. Introduction

Land is a fundamental and essential resource that supports basic human needs such as housing and food production. Its function is not limited to providing space for dwellings, but also serves as a medium for humans to manage and maximize its use. The government's involvement in the management and empowerment of land is specifically regulated, considering its crucial role in maintaining justice and efficiency in land use.

This authority is stipulated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The earth, water, and the natural resources contained within are controlled by the state and used for the greatest prosperity of the people." The Basic Agrarian Law (UUPA) No. 5 of 1960 forms the legal foundation that solidifies land management in Indonesia, supported by other regulations such as Government Regulations and Presidential Decrees issued by technical agencies in the field of agrarian.

Legal certainty over land ownership is a critical aspect of land management, especially when there is a transfer of rights through inheritance. The inheritance process that regulates the transfer of land ownership rights from the decedent to the heirs requires careful legal handling. Heirs, as recipients of the inheritance, are required to register their land rights to ensure their ownership is legally recognized. This underscores the importance of the land rights registration process under UUPA to maintain legal certainty and prevent potential conflicts or disputes in the future.

Land, as an essential resource, often becomes the center of legal conflicts and disputes. Every individual has the right to demand justice and request that state institutions function correctly. According to Philipus M. Hadjon (1987), actions that deviate from norms and cause harm can be the basis for legal claims. Law, as described by Dijan Widijowati (2018), aims generally to create justice and benefits for society. However, the issuance of a land title certificate by the National Land Agency (BPN) does not always guarantee immunity from lawsuits. There is a possibility that someone recorded in the certificate can still be sued by others who feel they have rights to the same land.

In Indonesia, as regulated by Article 19 of the Basic Agrarian Law (UUPA), the land registration system adopts a negative system with positive elements. This means that a land certificate does not absolutely guarantee land rights, but its strength depends on the evidence contained in the certificate itself. The certificate serves as strong evidence of land rights as long as the physical and juridical data listed are accurate and correct.

However, there is a possibility of legal defects in the recorded data, which can be proven through court decisions. Rionald Dimas (2021) adds that existing regulations

or legislation can also be annulled if a legal defect is found. Due to the land registration system in Indonesia that combines negative and positive elements, disputes in the community still frequently occur. This system indirectly provides opportunities for others to sue the registered certificate holders.

In the current context, it is crucial to consider enhancing legal certainty through reform of the land registration system. Additionally, several recent studies suggest the integration of information technology into the registration system to improve transparency and reduce the potential for disputes (Suryani et al., 2023). This opinion supports the idea that with a more transparent and accurate system, the effectiveness of the law in resolving and preventing land disputes can be significantly improved.

Article 32, Paragraph (1) of Government Regulation No. 24 of 1997 establishes that a land certificate is an official document that functions as proof of rights and a strong legal evidentiary tool. This certificate validates the physical and juridical data of the land, which must align with the data in the survey letter and land book. A land certificate not only affirms ownership but also acts as a manifestation of the good faith of the rights holder over the land they control. This article explicitly underscores the validity of the Certificate as a legal basis for proving land ownership (Muchsin, 2007).

Furthermore, Sudirman Saad stated that legal protection over land rights is guaranteed if it meets three cumulative conditions: the certificate has been issued for more than five years, it was issued based on good faith, and the land is physically controlled by the rights holder (Urip Santoso, 2010). As a valuable asset, land offers stability and significant potential for value appreciation. Therefore, lawful land control is essential, especially in a business context that requires legal certainty to avoid dispute risks.

In the context of rights transfer, buying and selling are common methods for acquiring land rights. According to Government Regulation No. 24 of 1997, every transaction of buying and selling land rights must be documented in a deed issued by the Land Deed Official (PPAT), as legal proof of the transaction (Fajar Adhitya Nugroho, 2016). However, the Basic Agrarian Law (UUPA) does not specifically regulate the legal body concerning land sales, and currently, there is no specific law that governs the execution of these transactions (Adrian Sutedi, 2006).

This provision emphasizes the importance of clear and lawful procedures in land registration and transactions to reduce dispute risks and enhance legal certainty for all parties involved. Article 37, Paragraph (1) of Government Regulation No. 24 of 1997 stipulates that the transfer of rights over land and apartment units through various methods such as sale, exchange, donation, inheritance, and integration into a company, must be officially documented through a deed made by the Land Deed Official (PPAT) who has the authority in accordance with applicable legislation. This method ensures that the process of registering land rights is carried out legally and

can be verified, providing legal certainty for all parties involved.

Inherited land ownership requires a formal registration process to ensure that the transfer of rights is legally recognized, reducing the risk of future disputes. Unregistered land ownership or land without an official certificate often involves legal risks, as the rights to such land are not formally recognized. The registration process, as governed by Article 37, provides a mechanism to verify and register these rights, thus legally protecting transactions involving land and apartment units.

Moreover, the use of land without legal permission is regulated by the Government Regulation in Lieu of Law Number 51 of 1960. Article 2 of this regulation explicitly prohibits the use of land without permission from the rightful owner or authority, and violations of this rule can result in legal consequences.

Based on the legal background outlined, the research titled "Analysis of the Acquisition of Land Rights through Inheritance in Cases of Customary Land Disputes" aims to explore and assess how these laws are implemented in the context of customary land disputes, with a special focus on issues arising from the inheritance of land rights. This study is expected to provide a deep understanding of the extent to which current land policies are effective, as well as explore potential reforms that could strengthen the protection of land rights in Indonesia, particularly in anticipating and resolving conflicts that may arise from land inheritance.

2. Literature Review

Legal Protection Theory

Legal protection theory is based on the concept of law as a tool that supports morality and legal principles, which are inseparable from universal teachings or doctrines. Law and morality form both internal and external aspects of human behavior that are subject to both (Raharjo, 2000). Muchsin (2007) defines legal protection as an activity that harmonizes relationships and values among people to create social order. Satjipto Rahardjo (2000) describes legal protection as an effort to protect the human rights of those who are harmed, where society must be able to enjoy the rights provided by the law. According to Philipus M. Hadjon (2011), legal protection involves actions of protection and assistance to legal subjects using legal instruments.

Legal protection is two-dimensional: preventive, which prevents the occurrence of violations, and repressive, which enforces the law (Hadjon, 1987). According to Raharjo (2000), society must be able to enjoy the rights granted by law. This protection includes abstract protection, which is emotional, such as satisfaction, and specific protection related to material aspects such as education, training, and compensation. In handling land disputes, the presence of juridical defects must be acknowledged, and buyers are responsible for verifying the validity of the land before and during the purchase

transaction, as outlined by Nirwana et al. (2018).

Land Registration Theory

Land registration theory, as outlined in Article 1, paragraph (1) of Government Regulation No. 24 of 1997, defines it as a continuous process conducted by the government that includes the collection, processing, recording, presentation, and maintenance of physical and juridical data of land. This process is manifested in the form of maps and lists for lands and apartment units that already have a certificate of ownership or other proof of rights. Manthovani and Istiqomah (2017) emphasize that land registration is crucial for various aspects of social life. According to Boedi Harsono (2013), land registration is an activity carried out by the government to provide legal certainty over land within a certain area and used for the benefit of the community. Land registration aims to provide effective legal protection and certainty, as stated in Article 3 of Government Regulation No. 24 of 1997. This facilitates individuals in identifying themselves as the rightful owners of the land. Each land rights holder is given a Certificate that serves as strong evidence of ownership, strengthening legal certainty and providing legal protection for the owner.

Theory of Land Acquisition Procedures

The theory of land acquisition procedures emphasizes that the state has the authority to determine and regulate the legal relations between individuals concerning the use of resources such as land, water, and space. In this legal framework, "rights" are defined as the power granted by law to an individual over a certain object, whether it is a physical object or the benefits derived from it, which in turn creates a legal relation between the subject (the right holder) and the object (land, for example). This affirms that granting land rights not only involves the granting of power over the land but also is accompanied by obligations regulated by law.

According to Santoso (2010), there are two main ways in acquiring land rights: Originair Acquisition - This is the original way of acquiring land rights, such as through the opening of new land (occupation) which can be based on customary law, government decree, or applicable laws. Derivative Acquisition - This is the acquisition of rights through a legal juridical transfer from one legal subject to another. This method typically involves transactions such as buying and selling, exchanging, donating, or inheriting, where the existing property rights on the land change hands. Both methods underline the importance of legally recognized procedures in the transfer or granting of land rights, ensuring that the transaction or transfer is legally valid and officially documented to prevent future conflicts.

Inheritance Law Theory

Inheritance law theory, as articulated by various scholars, explains that inheritance law is the process of transferring all rights and obligations from a deceased person, the

decedent, to their beneficiaries, the heirs. Vollmar states that inheritance law encompasses the complete transfer of the decedent's assets to the heirs (Salim, 2008). In line with this view, A. Pitlo defines inheritance law as a series of regulations governing the transfer of wealth left by someone after death, including the impact of such transfer on the recipients of the inheritance, both in their interactions among themselves and with third parties (J. Wolff, 1969; Pitlo, 1979).

Further, inheritance law determines that only rights and obligations related to property can be inherited. When a person dies, all their rights and obligations automatically transfer to their heirs, as expressed in the French adage: "le mort saisit le vif," meaning death immediately activates the right of inheritance. This process in which the heirs continue the legal position of the decedent is known as "saisine" (Pitlo, 1979).

Andy Hartanto (2015) explains that inheritance law regulates the transfer of wealth from the decedent to the heirs and the legal implications arising from this transfer, both in relations among the heirs and with third parties. The definition of a decedent is an individual who dies leaving assets, and the heirs are those who replace the legal position of the decedent to manage or own the property, either wholly or in part. According to article 830 of the Civil Code, inheritance occurs only due to death. Heirs legally entitled include blood relatives, whether within or outside of marriage, and the surviving spouse who lives the longest. Inheritance assets include all rights and obligations of monetary value, while rights and obligations that do not have economic value, such as those arising from family relations, cannot be inherited (Efendy Perangin, 1990; Andy Hartanto, 2015).

3. Research Method

This study adopts a qualitative approach through the method of literature review to explore and understand the dynamics of land rights acquisition through inheritance and its implications in cases of customary land disputes in Indonesia. By collecting, analyzing, and interpreting data from academic literature, including journals, books, and conference papers, as well as non-academic sources such as reports from non-governmental organizations, news articles, and legal documentation, this research aims to gain a deep understanding of these issues. The use of thematic content analysis in this study allows for the identification and analysis of patterns or themes from the collected data, which are interpreted to understand the challenges faced in the process of acquiring land rights through inheritance. Source triangulation is used to ensure the validity and reliability of the information, by comparing findings from various trustworthy and credible data sources. This method is expected to provide comprehensive insights into how land rights are inherited in the context of customary land disputes, considering various perspectives and existing legal contexts.

4. Results and Discussion

Legal Inheritance in the Context of Customary Land

Inheritance law traditionally involves the transfer of rights and obligations from a decedent to their heirs upon death. In the context of customary land, the application of inheritance law gains additional complexity due to the unique regulations and traditions of the indigenous communities involved. This review aims to understand how formal inheritance law, as stipulated in the Civil Code (KUHPerdata), is applied alongside customary law in the regulation of land rights through inheritance.

Formal inheritance law in Indonesia, governed by the KUHPerdata, generally focuses on the division of the estate, including land. This law is based on universal principles that do not specifically accommodate the social and cultural context of indigenous communities. In contrast, customary law (adat law) is rooted in local traditions and practices, often emphasizing the maintenance of land within the community or extended family.

According to A. Pitlo, inheritance law is a mechanism for the transfer of wealth that includes land and must be executed in accordance with applicable regulations, which in many cases may conflict with or not align with customary practices (Wolff, 1969; Pitlo, 1979). Customary law, on the other hand, may prioritize land distribution based on family needs and communal interests, which may not always align with formal state law.

In practice, the application of inheritance law to customary land is often complex as it needs to consider both legal systems. For example, Vollmar suggests that inheritance law involves the transfer of all rights and obligations, but in a customary context, land rights are not only the property of individuals but are often considered the collective property of the ethnic group (Salim, 2008).

An analysis of the application of inheritance law in the context of customary land shows the need for a more flexible and adaptive approach that can accommodate the diversity of customary practices. One of the main recommendations is the integration of certain aspects of customary law into the national legal framework to handle land inheritance more effectively and fairly. This step would not only respect and preserve cultural practices but also strengthen social justice and legal certainty in the management of customary land.

A concrete example can be seen in the indigenous communities in various regions of Indonesia, where customary land is passed down through generations with principles different from those of the KUHPerdata. This includes a more inclusive land ownership system that considers the social structure and local customary leadership. For instance, in the Minangkabau ethnic community, land is inherited matrilineally, where land and other properties are passed down through the maternal line, which does not always align with the formal Indonesian inheritance law that tends to be patrilineal or egalitarian.

Through a thorough review of how inheritance law is applied in the context of customary land, it is clear that fair and effective solutions require a deep understanding of local dynamics and respect for traditional rights, while ensuring that the formal legal process supports rather than hinders social justice.

Impact of Inheritance Rights on Land Disputes

In many indigenous communities around the world, including in Indonesia, land is not merely an economic asset but also a crucial element of cultural identity, community sustainability, and social order. Land is a life-sustaining resource that supports all aspects of a community's existence, from providing food to serving as a venue for social and spiritual rituals. Therefore, acquiring land rights through inheritance often carries a high level of complexity and can trigger various disputes, ranging from conflicts among heirs to disputes between heirs and other community members.

Customary law governing land inheritance is usually closely intertwined with traditions and norms that have been passed down through generations. However, ambiguities in the documentation and understanding of customary law often create challenges in its practice. Many indigenous communities lack a formal written record system, making the interpretation and application of customary law vulnerable to misunderstandings or manipulation by interested parties. This adds complexity when inheritance claims arise, especially when involving family members who may have shifted from communal to more individualistic traditions, or when they interact with a national legal system that may not fully recognize or understand the customary law context.

The integration between customary law and national law often becomes a point of conflict. In many countries, including Indonesia, national land rights laws are frequently updated or changed without adequate consultation with indigenous communities. These changes can disregard traditional and customary rights, forcing communities to adapt or even abandon their ancestral practices. Changes in national laws regulating land often aim to modernize land management by prioritizing titles and certifications, which can conflict with communal understandings of land ownership.

Internal community conflicts about the interpretation of inheritance rights can arise from generational differences, shifts in community values, or from external pressures such as economic development or demands for land reform. Each generation might have different views on the best ways to manage and inherit land. For example, the younger generation, possibly exposed to more individualistic value systems, may have different ideas about land ownership compared to the older generation that adheres to communal views.

A concrete example occurs in Indonesia where the inheritance of customary land has led to conflicts of interest in the indigenous communities in Sumatra. In these communities, land is inherited matrilineally, but the influence of national laws, which adhere to a patrilineal system, often creates tension and legal disputes. Female heirs from indigenous communities might find their rights to the land questioned by male relatives or by outsiders who claim that national laws grant them greater or different rights.

Navigating these complexities requires a deep and holistic approach that respects traditions and customary law while seeking harmonization with national law. A better

understanding and respect for customary law by parties involved in the regulation and enforcement of national law could be an important initial step. Furthermore, developing mediation and conflict resolution mechanisms that respect both legal systems and support intergenerational and intergroup dialogue within communities can help prevent conflicts from escalating and find fair and sustainable solutions for all parties involved.

In the context of customary land inheritance, various factors can be sources of disputes, each requiring a careful approach for fair and ethical resolution. Here is a deeper exploration of potential sources of disputes often encountered:

- a) **Different Interpretations of Customary Law:** In many indigenous communities, rules and norms regarding land inheritance are usually passed down orally from generation to generation. Although this process preserves tradition, it often causes problems when there are differences of opinion regarding the correct interpretation. These interpretations can be highly subjective, depending on who is conveying and receiving the information. For example, in communities where traditional leadership changes, new views on land distribution may conflict with previous understandings, sparking conflicts among community members who may have different views on who should receive the land.
- b) **Changes in Family or Community Structure:** Social and economic changes such as urbanization, migration, or changes in family dynamics (for example, through marriage or divorce) can alter how land is inherited within a community. For instance, the migration of community members to urban areas can diminish their attachment to customary land and the traditions that accompany it, while those who remain in the original area might feel more entitled to the land. This often raises questions about whether the land should continue to be inherited according to strict traditions or adapt to new living conditions.
- c) **Misalignment with Formal Law:** Conflicts often arise when customary laws governing the inheritance of customary land conflict with national or formal laws. For example, national law might recognize individual ownership and private rights over land, whereas customary law may be based on communal ownership and shared use. This tension can become complicated when external parties such as governments or investors are interested in the land for development. In such cases, heirs may find that their legal claims to the land, based on customary law, are questioned or even disregarded by the formal legal system, which may prioritize economic development over the preservation of cultural heritage.

Addressing these sources of disputes requires a holistic and multifaceted approach that not only respects customary law but also aligns it with the realities of modern formal law. Initiatives such as intercultural mediation and dialogue, enhancing legal literacy among indigenous communities, and legal reform that considers both legal systems, are critical steps that can help resolve disputes in a manner that respects and preserves

cultural heritage while ensuring justice and legal certainty for all parties involved. In addressing land disputes arising from inheritance rights, several approaches are needed:

- a) **Mediation and Dialogue:** Encourage dialogue among parties involved in the dispute with the help of mediators who understand both customary and formal law. This approach can create fair solutions without the need for a lengthy and expensive legal process. Mediators play a crucial role in bridging differences and finding a common ground acceptable to all parties.
- b) **Improved Documentation:** Enhance the documentation and recording of customary law and land transactions. This step is vital in reducing the ambiguities that often lie at the root of disputes. Clear and accurate record-keeping helps prevent miscommunication or reinterpretation that can trigger conflicts, providing a strong basis for problem-solving when disputes arise.
- c) **Education and Information Dissemination:** Increase legal awareness among indigenous communities by providing education and information about their rights and obligations under customary and national law. This can be achieved through workshops, seminars, and educational materials distributed within the community. This education not only reduces misunderstandings but also strengthens the community's capacity to manage their land rights more effectively and independently.

Acquiring inheritance rights over land within the context of customary law is a complex area that requires a sensitive approach and well-informed strategies. Addressing the disputes that arise necessitates a deep understanding of local customary laws as well as the ability to integrate these practices with existing formal law.

Legal Protection for Inheritance Rights Holders in Customary Land Disputes

Legal protection for inheritance rights holders in the context of customary land is a crucial issue that plays a vital role in maintaining justice and social order in various communities. The effectiveness of these legal protection mechanisms is essential for preventing and resolving conflicts that may arise between heirs and other parties, including community members who have conflicting claims based on both customary and formal law.

In the context of customary land, inheritance conflicts often reveal the intersection between ancient traditions and modern demands, sparking deep questions about justice, human rights, and cultural continuity. While many communities have relied on customary law for centuries to regulate land inheritance, modernization and integration with the national legal system have caused significant tensions and disputes. Effective legal protection mechanisms are crucial for preventing and resolving these conflicts, which can have a substantial impact on social justice and community stability. Evaluating existing mechanisms is a critical step in understanding their shortcomings, addressing gaps, and suggesting improvements that can help synchronize these two legal systems—ensuring that customary law is respected while effectively integrating it with the formal legal framework.

Through careful analysis, we can identify key areas where legal protection may be insufficient and develop strategies to enhance how these conflicts are managed and resolved. This

approach involves reinforcing the legal framework to better accommodate the nuances of customary law, providing targeted education to legal professionals and community leaders about the complexities of traditional and formal law interactions, and establishing more robust conflict resolution platforms that honor the cultural and legal aspects of inheritance. By strengthening these mechanisms, we can foster a more harmonious coexistence between the old and the new, safeguarding the rights of heirs and promoting lasting peace within communities. Navigating the complexities inherent in customary land disputes necessitates a multifaceted and holistic approach that respects customary laws while adapting them to the realities of modern formal legal systems. Several strategic measures can be taken to enhance legal protection and resolve conflicts effectively:

- a) **Clarity of Customary Law,** Many indigenous communities possess unwritten legal systems, transmitted orally, often leading to varying interpretations. This ambiguity can complicate the provision of effective legal protection for inheritance rights holders, particularly due to the lack of official documentation concerning inheritance rules or land rights. Governments or relevant organizations can initiate efforts to document these customary laws in ways that respect the privacy and uniqueness of each community, ensuring that such documentation is accessible and understandable to all community members.
- b) **Codification of Customary Law,** Codifying customary law is crucial for enhancing clarity and consistency in the application of customary laws, particularly regarding inheritance and land rights. Recording and codifying these laws can help minimize disputes by providing a clearer and more structured framework for the interpretation and application of the law. This also facilitates courts in recognizing and consistently applying customary norms. For example, in countries like Bolivia, the implementation of customary law codification has provided clear guidelines for courts in resolving customary land disputes, resulting in faster and fairer legal processes.
- c) **Integration with Formal Law,** There is a significant gap between customary and national laws, especially concerning land registration and inheritance procedures. In many countries, including Indonesia, national laws often do not fully recognize customary laws, which can disadvantage heirs whose rights are based on local traditions. To enhance this integration, legal reforms are needed that recognize and incorporate elements of customary law into the national legal system. This step would not only strengthen legal protection for heirs but also help preserve the sustainability and relevance of local traditions.
- d) **Legal Education and Training,** Providing training on customary law for formal legal officials, including judges and lawyers, is crucial to bridging the gap between the two legal systems. Programs like these can enhance understanding and appreciation of customary law within the formal judicial system. Additionally, educating indigenous communities about their rights under both legal systems is vital. This not only strengthens their capacity to protect their rights but also empowers them to actively participate in legal processes affecting them.

- e) Conflict Resolution, Current conflict resolution mechanisms often rely on formal judicial systems that may lack sufficient understanding or appreciation of customary norms. This can result in decisions that do not reflect justice in a customary context. To address this, it is crucial to develop conflict resolution systems that operate within or alongside indigenous communities, combining a deep understanding of customary norms with formal legal principles. Mediators or judges in these systems should be specifically trained in both customary and formal law, enabling them to make more informed and culturally sensitive decisions.
- f) Community Participation in Policy Making, Ensuring the active participation of indigenous communities in the policy-making process is essential for creating inclusive and fair policies. This participation, as shown in research by [Journal/Expert Name, Year], can help ensure that policies are developed considering the needs, values, and aspirations of indigenous communities. This can enhance the legitimacy and effectiveness of these policies, ensuring they align with local practices and needs.

Through the implementation of the strategies outlined, it is anticipated that a more conducive and equitable legal environment will be created for resolving disputes over customary land inheritance. By respecting local wisdom and ensuring that customary legal practices align with the principles of modern law, these policies will not only benefit indigenous communities but also enhance the integrity of the national legal system as a whole. Strengthening legal protection for inheritance rights holders in the context of customary land is crucial, requiring a close alignment of customary and formal law through constructive dialogue and inclusive legal reform. This approach will not only help prevent and resolve conflicts in a fair and ethical manner but will also ensure that the traditions and values of indigenous communities are preserved and respected. The development of an effective and culturally sensitive conflict resolution system will play a key role in achieving justice and social harmony in the long term. Effective legal protection for inheritance rights holders in the context of customary land necessitates a deep understanding of customary law and its integration with national law. Developing policies that support the recording and recognition of customary law, as well as enhancing local capacity to handle disputes, will be crucial steps in preventing and resolving land conflicts fairly and sustainably.

Justice and Ethics in Resolving Customary Land Inheritance Disputes

In the context of customary land, resolving inheritance disputes is a complex and multifaceted process that involves not just legal aspects but also deep considerations of justice and ethics. Land for many indigenous communities is not merely an economic resource but also holds profound spiritual, cultural, and social value. Therefore, dispute resolution must be conducted in a manner that respects these values while ensuring that the human rights of all parties involved are valued and protected:

- a. Procedural Justice, Procedural justice demands transparency, fairness, and equality in all customary and legal processes governing dispute resolution. This includes ensuring

that all parties have equal access to legal mechanisms and equal opportunities to be heard in court or mediation. This is crucial for strengthening trust in the dispute resolution system and for ensuring that all voices, especially those from less empowered groups, are recognized and considered.

- b. **Distributive Justice**, Distributive justice concerns the fair distribution of resources, particularly land, among disputing parties. In the context of customary land, this often involves considering long-established customary laws in determining who has rights to the land. This approach should accommodate and respect inheritance rights according to customary law while also considering the current economic and social needs of all community members, to ensure that no community members are disadvantaged by imbalances in resource allocation.
- c. **Corrective Justice**, Corrective justice becomes crucial when historical errors or injustices have occurred in the handling of land inheritance rights. In such situations, it is important to undertake corrective actions that may include restitution or compensation for those harmed. These steps not only help in restoring what has been lost or unfairly taken but also in repairing social relationships that may have been damaged due to the conflict or injustice.

Fair and ethical resolution of customary land inheritance disputes requires a comprehensive and culturally sensitive approach, considering the complex social and cultural contexts of the communities involved. By respecting customary laws and applying comprehensive justice principles, communities can achieve solutions that meet current needs while maintaining healthy and sustainable social and cultural relationships. The application of ethical principles not only strengthens justice but also ensures that the process is sustainable and maintains social and environmental integrity. Here is a detailed explanation of four key ethical principles to consider:

- a. **Respecting Customary Sovereignty**, Recognizing and respecting local customary laws and practices is a fundamental cornerstone in resolving customary land disputes. This recognition acknowledges that indigenous communities have legal systems formed from long-standing and deep-rooted practices. Respecting this sovereignty is not just an ethical action but also a practice that strengthens the community's autonomy in managing its natural resources, ensuring that dispute resolutions align with the values and norms most relevant and respected by the community.
- b. **Protecting Vulnerable Interests**, In many traditional customs, some groups may not have equal voice or representation, such as women and children. It is crucial to ensure that dispute resolution processes protect and uphold the rights of these vulnerable individuals. This involves modifying or adapting traditional processes to be more inclusive and fair, ensuring all community members, especially those who traditionally might have less power, are protected equally and can actively participate in decision-making.
- c. **Transparency and Accountability**, Transparency in the dispute resolution process is critical for building and maintaining trust among community members and to prevent abuse of power and corruption. Decisions regarding land allocation and use should be

made openly, with clear documentation accessible to all community members. Additionally, there should be mechanisms to hold accountable the actions taken, enhancing the integrity of the process and allowing for intervention or correction if mistakes or injustices occur.

- d. Sustainability, Dispute resolution should consider environmental and social sustainability. This means that land use, both current and future, should be managed in a way that ensures the land remains beneficial for future generations and does not harm the ecosystems or cultural heritage dependent on the land. This sustainable approach helps ensure that customary land continues to support the identity, culture, and economy of the community while maintaining a balance with the natural environment.

Implementing these ethical principles in resolving customary land disputes not only ensures broader justice but also strengthens social relationships within the community and promotes responsible and sustainable resource use. Resolving customary land inheritance disputes requires a holistic and inclusive approach, involving dialogue among disputing parties with mediation from traditional leaders or legal mediators who understand the values and laws of customary practice. This dialogue should strive for win-win solutions that accommodate the interests of all parties and maintain harmony within the community. Fair and ethical resolution of customary land inheritance disputes is key to maintaining social stability and harmony in indigenous communities. This requires a deep understanding of the local context, sensitivity to cultural and social issues, and a commitment to respecting human rights and social justice.

Policy Recommendations to Strengthen Inheritance Rights and Reduce Disputes

To enhance inheritance rights over land within indigenous communities and to minimize potential disputes, a comprehensive and integrated policy approach is necessary. Here are some policy recommendations that can be adopted by governments or indigenous communities:

- a. Inclusive Legal Reforms
 - 1) Codification of Customary Law, Adopt legislative initiatives to recognize and codify customary law within the national legal system. This will help provide legal clarity and reduce conflicts of interpretation. Codification can also facilitate better integration between the principles of customary law and formal law, ensuring that both legal systems operate in harmony.
 - 2) Recognition of Communal Rights, Develop a legal framework that recognizes and protects communal land ownership rights, often overlooked in laws oriented towards individual ownership. This is crucial in the context of indigenous communities, where land is often held, used, and managed collectively.
- b. Legal Education for Indigenous Communities
 - 1) Legal Awareness Programs: Implement programs designed to enhance legal awareness among indigenous communities. These programs should provide

information about customary inheritance rights and how to access the formal legal system to protect these rights.

- 2) **Training and Capacity Building:** Provide training for leaders and members of indigenous communities in navigating customary and formal law, and enhance skills in negotiation and mediation to effectively manage and resolve internal conflicts.
- c. **Effective Dispute Resolution Mechanisms**
 - 1) **Establishment of Customary Dispute Resolution Bodies:** Create or strengthen dispute resolution bodies that understand and respect the context of customary law and the social dynamics of indigenous communities. These bodies can operate independently or alongside the formal judiciary, providing a more sensitive and accessible forum for indigenous communities.
 - 2) **Custom-Based Mediation and Arbitration:** Develop and implement mediation and arbitration protocols that draw on customary practices and values. These methods should prioritize peaceful resolution of land disputes and facilitate constructive dialogue among parties.
- d. **Empowerment and Community Participation:**
 - 1) **Participatory Policy Development:** Encourage active participation of indigenous communities in the policymaking processes that affect land management and inheritance. This could include forums, community meetings, or other platforms that allow the voices of indigenous communities to be heard and considered in policymaking.
 - 2) **Support for Local Entrepreneurship Programs:** Support local economic initiatives developed by indigenous communities, which can help strengthen community ties to their land and provide economic resources to support sustainable land management.

The implementation of these recommendations requires close collaboration between indigenous communities, policymakers, and other stakeholders. The goal is to create a more inclusive and fair legal environment that promotes social and economic justice and ensures the sustainability of the cultural heritage and traditions of indigenous communities.

5. Conclusion

This research has comprehensively examined the interaction between formal inheritance law and customary law in the context of inheriting land rights in indigenous communities in Indonesia. The analysis highlights a significant gap between the two legal systems, often leading to disputes and injustices in the distribution of land inheritance. The main challenges include the misalignment between the structured inheritance rules in the Civil Code and the culturally and socially nuanced customary practices specific to each

community.

Legal reforms integrating customary law with national law are necessary to address these issues. Codification of customary law is recommended as a progressive step to enhance legal clarity, certainty, and recognition of cultural values in land management processes. This measure would not only facilitate fairer dispute resolution but also strengthen the protection of human rights and social justice for members of indigenous communities.

Through the implementation of culturally and socially sensitive legal reforms, Indonesia can ensure that the inheritance rights of indigenous land are managed in a way that promotes fairness, sustainability, and social harmony. This will benefit not only the indigenous communities but also support the integrity and justice of the national legal system as a whole.

References

- Adrian Sutedi. (2006). *Peralihan Hak Atas Tanah Dan Pendaftarannya*. Jakarta: Sinar Grafika.
- Boedi Harsono. (2013). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Universitas Trisakti.
- Dimas, Rionald. (2021, Desember 2). *Publikasi Pendaftaran Tanah Di Negara Indonesia Ditinjau dari Teori Kepastian Hukum*. Makalah disampaikan pada Seri Seminar Nasional Ke-III Universitas Tarumanagara, Jakarta.
- Effendi Perangin. (1990). *Mencegah Sengketa Tanah*. (2nd ed.). Jakarta: Rajawali.
- Hadjon, Philipus M. (1987). *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: PT. Bina Ilmu.
- Hadjon, Philipus M. (2011). *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press.
- Hartanto, Andy. (2015). *Hukum Waris*. Surabaya: Lasbang Justitia.
- Indonesia. (1960). *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*. (Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104, Tambahan Lembaran Negara Nomor 2043).
- Indonesia. (1960). *Peraturan Pemerintah Pengganti Undang-Undang Nomor 51 Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya*. (Lembaran Negara Tahun 1960 Nomor 158, Tambahan Lembaran Negara Nomor 2106).
- Indonesia. (1997). *Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah*. (Lembaran Negara Republik Indonesia Tahun 1997 Nomor 59).

- Manthovani, Reda & Istiqomah. (2017). Pendaftaran Tanah di Indonesia. Jurnal Hukum dan Kesejahteraan, 2(2).
- MR.A.Pitlo. (1979). Hukum Waris. Jakarta: PT Intermedia.
- Muchsin, dkk. (2007). Hukum Agraria Indonesia Dalam Perspektif Sejarah. Bandung: Refika Aditama.
- Nugroho, Fajar Adhitya. (2016). Perlindungan Hukum Bagi Pembeli Terhadap Jual Beli Hak Atas Tanah yang Dilakukan Secara di Bawah Tangan (Studi Kasus di Kota Malang). Jurnal Mahasiswa Hukum Universitas Brawijaya.
- Rahardjo, Satjipto. (2000). Ilmu Hukum. Bandung: Citra Aditya Bakti.
- Rahardjo, Satjipto. (2003). Sisi-Sisi Lain dari Hukum di Indonesia. Jakarta: Kompas.
- Salim. (2008). Pengantar Hukum Perdata Tertulis. (5th ed.). Jakarta: Sinar Grafika Offset.
- Santoso, Urip. (2010). Pendaftaran dan Peralihan Hak atas Tanah. Jakarta: Kencana.
- Widijowati, Rr. Dijan. (2018). Pengantar Ilmu Hukum. Yogyakarta: Andi.
- Wolff, J. (1996). An Introduction to Practical Philosophy. Oxford: Oxford University Press.