

The Function of The Kinship Legal System and Legal Certainty of Land Rights of Papuan Customary Communities in Jayapura City (From a Philosophical, Sociological, and Legal Perspective)

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Abstract

This study aims to analyze the function of the kinship legal system in regulating land rights for Papuan customary communities in Jayapura City, identify factors causing legal uncertainty, and formulate a policy model that can guarantee legal certainty of these land rights. This study uses philosophical, sociological, and juridical approaches to understand the role of values, social structures, and formal legal norms in the dynamics of customary land ownership. The findings indicate that the kinship legal system, particularly those based on patrilineal and matrilineal descent, remains the primary basis for recognizing land rights at the community level. However, the weak formal state recognition of this system, overlapping sectoral regulations, the absence of customary territory mapping, and limited community access to legal justice are the main causes of legal uncertainty. To address these issues, this study proposes a hybrid policy model that integrates formal legal recognition of customary rights, participatory mapping, strengthening customary institutions, and the implementation of the principle of Free, Prior, and Informed Consent (FPIC) throughout the licensing and development process. The results of this study emphasize the importance of synchronizing state law and customary law within the framework of Papua's Special Autonomy in order to create legal certainty that is just and contextual.

1. Introduction

For indigenous peoples, land is not merely a material object, but an integral part of their cultural, spiritual, and social identity. In various regions of Indonesia, the kinship legal system prevailing within indigenous communities plays a crucial role in regulating relationships between community members and land rights. This system not only regulates land distribution and use but also embodies noble values that

reflect the collective outlook of indigenous peoples. However, in practice, the kinship legal system often lacks adequate recognition or protection within the national legal framework. As a result, there is an imbalance between state (positive) law and customary law in ensuring certainty and protection of land rights for indigenous peoples. Agrarian conflicts, overlapping land claims, and the marginalization of indigenous peoples' rights are phenomena that reflect the weak integration between the two legal systems.

From a philosophical perspective, the existence of the kinship legal system reflects the fundamental values of communal justice, local wisdom, and respect for collective rights. These values often conflict with the individualistic and positivistic approach of state law, which prioritizes formal ownership and administrative legality. From a sociological perspective, kinship law is a manifestation of the cohesive and hierarchical social structure of indigenous communities.

This system underlies the mechanisms of inheritance, management, and internal land dispute resolution. When this system is ignored by national law, social disintegration occurs and the loss of local legitimacy for land rights regulations. Meanwhile, from a legal aspect, recognition of indigenous communities and their rights has been regulated in various legal instruments, such as the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Article 18B paragraph (2), and Article 3 of the Basic Agrarian Law Number 5 of 1960 (UUPA), and other laws and regulations. However, the implementation of these legal norms still faces structural and political obstacles, which means that the kinship legal system has not yet fully become part of the national legal system that provides certainty and fair legal protection.

Therefore, it is important to examine more deeply the function of the kinship legal system in providing legal certainty over land for indigenous communities, using a multidisciplinary approach: philosophical, sociological, and juridical. This approach will provide a comprehensive understanding of the dynamics and challenges of integrating customary law into the national legal system, while also formulating a concept of legal certainty that is just and contextual for indigenous communities in Indonesia. If you would like a shorter version, or one tailored to a specific regional context (e.g., Papua, Minangkabau, or others), I can help you adjust it. I would also like to continue with the problem formulation and research objectives.

Land rights are a crucial issue in the lives of indigenous communities, particularly in Papua. Land is not merely an economic resource but also plays an integral role in the cultural, social, and spiritual identity of indigenous communities. In Papua, land is managed traditionally by communities using a long-standing kinship legal system that is collective and hereditary. However, in modern times, customary land rights often conflict with state regulations that prioritize individual rights and measurable ownership.

Jayapura City, as the capital of Papua Province, is a focal point for the recognition and protection of customary land rights. Despite existing laws and regulations recognizing customary rights, many indigenous communities in Jayapura still face difficulties in obtaining legal certainty regarding their land. One of the main factors contributing to this uncertainty is the inconsistency between the prevailing customary legal system and the national legal system. For example, although Papuan customary communities have a land management system based on kinship law, state

law often does not accommodate these methods, leading to conflicts and land rights issues.

This problem is exacerbated by a legal approach that often only views land as a legal object separate from the social and cultural context of its community. A juridical approach that prioritizes individual ownership tends to ignore the collectivist values inherent in customary legal systems, including kinship law. As a result, customary law communities often lose their rights to the land they have collectively managed for centuries. Furthermore, the lack of clarity or legal vacuum regarding the legal status of customary land (customary land law) further exacerbates this situation. When land disputes arise, they are faced with a choice of law, a key characteristic of the situation of legal pluralism applicable to the research object, namely the legal certainty of land rights for Papuan customary law communities in Jayapura City.

From a philosophical, sociological, and juridical perspective, recognizing the legal certainty of land rights for Papuan customary law communities in Jayapura City requires a deeper understanding of the relationship between customary law systems and state law or national land law. Therefore, it is important to further examine the dynamics of the function of the kinship legal system and the legal certainty of land rights that can be integrated into the dispute resolution mechanism for legal certainty of land rights within the Papuan customary law community in Jayapura City. This will not only provide better legal protection for the Papuan customary law community in Jayapura City, but also ensure collective, balanced social justice in community, national, and state life within the framework of the Unitary State of the Republic of Indonesia (NKRI).

Therefore, for the Papuan customary law community in Jayapura City, land is not only a source of life, but also a symbol of identity, honor, and continuity of relationships between humans, ancestors, and nature. The relationship between the Papuan customary law community in Jayapura City and land is spiritual and collective, and is regulated by a customary law system that lives and develops within the Community and the customary law community. In areas such as Jayapura City, which is the center of government and economic growth in Papua, the existence of customary land faces serious challenges due to the pressures of development, urbanization, and investment.

One of the distinctive characteristics that distinguishes Papuan customary law communities from other regions in Indonesia is the kinship legal system that serves as the basis for regulating land rights. This system regulates social structures, inheritance, ownership, and land use based on lineage, either matrilineal or patrilineal, depending on the sub-tribe or customary community concerned. Customary law communities in Jayapura city, for example: the East Sentani, Tobati, Enggros, Kayu Pulau, Nafri, and Skouw customary law communities, still adhere to the kinship legal system as the primary basis for claiming and managing customary land based on customary law and culture.

However, the development of national law, which is based on legal-formal principles, is often at odds with the kinship legal system. Land certification, urban planning, and development projects in Jayapura often fail to consider or even ignore the kinship system and inherent customary rights. As a result, many indigenous communities have unilaterally lost land, experienced internal and external conflicts,

and lost legal certainty over their customary territories. From a philosophical perspective, this demonstrates an imbalance in the values of justice. National law tends to ignore the philosophy of life of the Papuan indigenous people in Jayapura, which views land as a sacred and living inheritance that cannot be freely bought or sold. Sale must be made with the mutual consent of customary officials within the clan, tribe, or kinship. Violations of this principle result in natural sanctions, including a shortened lifespan, due to land's social and symbolic significance. Land has religious value and is considered a living human being (mama). This statement, embodying communal values, mutual respect, and intergenerational continuity, forms the basis of legal ethics within the Papuan kinship legal system in Jayapura.

Sociologically, the kinship legal system is an integral part of the social structure of indigenous communities. It shapes social identity, customary authority, and dispute resolution mechanisms. When this system is weakened by the state legal system, it results in social disintegration, the loss of customary legitimacy, and increased agrarian conflict in urban areas such as Jayapura.

Meanwhile, legally, recognition of customary law communities has been guaranteed in the constitution, specifically Article 18B paragraph (1) and paragraph (2), in conjunction with Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as well as in various sectoral regulations, for example: Article 3 and Article 5 of UUPA Number 5 of 1960 and Forestry Law Number 41 of 1999, Human Rights Law Number 39 of 1999, and Papua Special Autonomy Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning the Papua Special Autonomy Law, along with all of their respective implementing regulations. However, in practice, the process of formalization and recognition of customary land rights in Papua is still hampered by administrative procedures that are not sensitive to the kinship system.

This creates a legal vacuum and uncertainty of rights, especially in areas that have experienced urbanization such as the city of Jayapura. Therefore, Papuan customary law communities have a kinship legal system that regulates the ownership and inheritance of land rights through generations. For them, land is not merely an economic asset but also holds social, cultural, and spiritual significance closely linked to the identity and sustainability of the indigenous community. However, modernization, national policies, and social change have led to shifts in customary land ownership and management patterns.

The lack of clarity in regulations that accommodate customary law within the national legal system often leads to land ownership conflicts between indigenous communities, the government, and the private sector. The national legal system, which prioritizes individual ownership and formal certification, does not always align with the communal ownership system of indigenous communities. This results in legal uncertainty that has the potential to undermine the rights of indigenous Papuans, particularly in Jayapura City. Therefore, this research is important to understand the role of the kinship legal system in customary land management and to examine the issue of legal certainty of land rights for indigenous Papuans in Jayapura City from a philosophical, sociological, and juridical perspective, by explaining the main legal issues resulting from the research below.

Therefore, the importance of the dynamic function of the kinship legal system in regulating land rights for Papuan customary law communities in Jayapura City needs to be examined in the legal life of Papuan customary law communities in Jayapura City. Legally, customary law and culture have a kinship legal system that regulates collective and/or individual land ownership, inheritance, and management. However, in the context of modernization and the influence of national law (land law), this system faces various challenges. The results of this study will analyze how the customary legal system still functions in the lives of Papuan customary law communities in Jayapura City and how social change and state legal intervention (land law) affect this mechanism. With the following indicators: (1) Analyze the structure of customary law that regulates inheritance and land use in customary communities. (2) Identify changes that have occurred in the customary legal system due to modernization and government policy.

Factors causing legal uncertainty regarding land rights for Papuan customary law communities can be identified as legal uncertainty arising from the overlap between customary law and national law, where state law tends to prioritize individual ownership, while customary law prioritizes communal ownership. Furthermore, the lack of clear regulations regarding the recognition of customary land often leads to conflict between indigenous communities, the government, and the private sector. This study will identify the main factors contributing to legal uncertainty and its impact on indigenous Papuan communities in Jayapura City. These indicators include: (1) examining the differences between customary law and national agrarian law, which lead to overlapping regulations. (2) examining the impact of land policies on indigenous Papuan communities in Jayapura City.

Finally, a policy model that can guarantee legal certainty regarding land rights for indigenous Papuan communities in Jayapura City is proposed. Considering the importance of legal certainty for indigenous communities, this study will formulate a policy model that accommodates customary law within the national legal system. This model aims to create a balance between customary law and national law in protecting indigenous land rights. These policy recommendations will be a solution to avoid agrarian conflicts and provide greater legal certainty for indigenous Papuan communities in Jayapura City. These indicators include: (1) formulating a policy model based on the integration of customary law and national law. (2) to develop legal recommendations that can be used as a basis for improving land regulations in Papua, particularly those derived from the Jayapura City Regional Regulation (Perda).

Papuan customary law communities have a kinship legal system that regulates collective land ownership, inheritance, and management. However, in the context of modernization and the influence of national law, this system faces various challenges. This research will analyze how the customary law system still functions in the lives of indigenous communities and how social change and state legal intervention affect these mechanisms.

The definition of kinship explains that kinship is a system of social relations based on descent and marriage, which regulates the roles and status of individuals within indigenous communities.¹ A kinship system, on the other hand, is a pattern of

¹ Koentjaraningrat (2009). *Pengantar Ilmu Antropologi*, Rineka Cipta, Jakarta, h. 129–130.

social relations based on blood (genealogical) or marriage ties that regulates various aspects of life, including rights and obligations within the community. This system encompasses family structure, lineage (patrilineal, matrilineal, or bilateral), and rules for inheritance and ownership of property, including land. In customary law communities, the kinship system serves not only as a social rule but also as a basis for customary law governing land ownership, use, and inheritance.²

Then according to George P. Murdock (1949),³ the definition of the kinship system is "There are three principal types of descent systems: patrilineal, matrilineal, and bilateral... These systems define the structure of kinship obligations and inheritance rules in a society," (.....). Meanwhile, according to Faisal Ismail (2015),⁴ it states that "The kinship system determines inheritance patterns, residence patterns after marriage, and ownership of resources in society." So it is important to implement the kinship system to regulate all needs in terms of marriage and inheritance for certain customary law communities over customary land rights as jointly owned land, for example the right to customary land or customary land for the position of customary law communities in the city of Jayapura.

Customary law communities are social entities that have their own way of life based on customary law that has grown and developed in the community from generation to generation, and have elements of territory, population, and a system of government or customary leadership. Van Vollenhoven (*Adatrechtskringen*): Cornelis van Vollenhoven was an important figure in the development of customary law studies in Indonesia. He stated that customary law communities are social units that have the power to regulate their own legal system (*zelfbestuurende rechtsgemeenschappen*), which he called "*adat-rechtsgemeenschappen*". He identified 19 customary law environments (*adatrechtskringen*) in Indonesia, each of which has a different customary law system. For Papua (formerly Irian) it is number 14 out of 19 customary law environments.⁵

Characteristics of Kinship Systems: Kinship systems in various societies (including customary law communities) generally have the following characteristics:

- 1) Basis of Relationship: (a) Based on blood relations (consanguinity), such as parent-child, sibling. (b) Based on marital relations (affinity), such as husband-wife, in-laws, and in-laws. (c) Based on marriage law in conjunction with family law and customary inheritance law.
- 2) Inheritance Systems: (a) Patrilineal: Lineage is traced through the father's side. (b) Matrilineal: Lineage is traced through the mother's side. (c) Bilateral/Parental: Lineage is traced through both parents.
- 3) Kinship Terminology: Each kinship system has specific terms for referring to family members (e.g., father, mother, uncle, aunt), which indicate their respective social status and roles, based on culture and customary law as the living law.
- 4) Social Structure and Roles: Determines social roles, such as who is the head of the

² Koentjaraningrat, (2009), *Ibid*, hlm. 146-148. Buku ini membahas berbagai aspek antropologi, termasuk sistem kekerabatan dalam masyarakat adat di Indonesia.

³ George P. Murdock, (1949). *Social Structure*. New York: Macmillan, h. 19-25.

⁴ Faisal Ismail, (2015). *Antropologi Kekerabatan*. Ombak, Yogyakarta, h. 67-70

⁵ Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië* (Vol. I-XIII), Leiden, Belanda, Penerbit Brill, 1901-1932.

family, the caregiver, the guardian of customs, or the successor to land and wealth rights.

- 5) Social and Cultural Functions: (a) Regulates marriage (who may or may not marry), inheritance, and social responsibilities between members. (c) Serves as the basis for carrying out traditional ceremonies and customary law.
- 6) Influence on Land Ownership and Rights: In traditional communities, the kinship system is closely related to customary rights and the distribution of communal land based on lineage or clan.
- 7) Determining Social Identity: The kinship system provides individual identity within the community, including the name of the clan, clan, or tribe.

The definition of a kinship legal system is a legal system that regulates social and family relations within a society based on descent, marriage, and the obligations and rights inherent in these kinship relationships. This system is often associated with social structures that determine a person's status and role within the family and society. In many cultures, the kinship legal system plays a role in regulating inheritance, family responsibilities, child custody, and other social obligations. This system also influences various aspects of customary law and norms that develop in society.

Hilman Hadikusuma,⁶ is one of the important figures in the development of customary law studies in Indonesia. In his books "Customary Kinship Law" in Indonesia, published in 1993 and 2003, he attempts to describe the structure, principles, and functions of the kinship system that exists within customary communities in various regions of Indonesia. This reference study records the unwritten legal heritage that originates from customary values and serves as a framework for analyzing living customary law. So, Hilman Hadikusuma (2003) emphasized, "Kinship law is customary legal norms that regulate genealogical relationships in society and determine inheritance, residence, and rights to joint property." In connection with this explanation, Ter Haar (1948) strengthened the understanding of kinship law that "The kinship legal system determines a person's position in a community group and functions as a basis for inheritance law and control of property, including land." So, according to Soepomo (1977), kinship law is a very important part of customary law because it determines the structure of society and the distribution of property, including customary rights.⁷

Soepomo developed the concept of customary law communities as collectivist, where individuals are inseparable from their communities. He referred to customary law communities as "living organisms," whose systems do not recognize individual land ownership rights, but rather communal customary land rights. This view was strongly influential in the formulation of the 1945 Constitution and the understanding of national agrarian law. According to Soepomo, "In customary law communities, there is no individualism; property rights are communal, and land is shared property controlled by the community."⁸

Meanwhile, Hilman Hadikusuma (Legal Community Unity): "Customary law communities are a unified community that lives orderly according to its customary

⁶ Hilman Hadikusuma, (2003). *Hukum Kekerabatan Adat*, Mandar Maju, Bandung, h. 2-3.

⁷ Soepomo, (1977). *Bab-bab tentang Hukum Adat*. Pradnya Paramita, Jakarta, h. 41-43.

⁸ Soepomo, (1986). *Hukum Adat dalam Sistem Hukum Nasional*, Pradnya Paramita, Jakarta, h. 46

law, has a customary ruler and a specific legal territory." In other words, a community is called a legal community unit if it fulfills the following elements: (1) Residents (people) who are subject to the same customary law; (2) A certain area as a place where customary law applies; A customary ruling structure (customary chief, traditional elder, king, ondoafi, etc.) who carries out the function of regulating and resolving disputes. According to Hilman, kinship law is the core of the social system of customary law communities, because through the kinship system are born: (1) Customary leadership structures, (2) Rights and obligations in inheritance, marriage, inheritance, and land control, (3) Collective protection systems in communal life.⁹

The objectives of this research are:

- a. To analyze the dynamics of the kinship legal system of Papuan customary law communities in Jayapura City, as it regulates and maintains land rights amidst social change and state legal intervention. This means that the purpose of this research is to gain a deeper understanding of how the customary legal system still functions in the lives of customary law communities, how the kinship system regulates land ownership and inheritance, and how social changes and national law (land law/UUPA) influence the sustainability of the kinship legal system.
- b. To identify factors causing legal uncertainty regarding land rights of Papuan customary law communities in Jayapura City. The primary objective seeks to uncover various causes of legal uncertainty, including overlapping regulations between customary law and national law, the lack of state legal recognition of the collective rights of indigenous communities, and the impact of government policies and pressure from the private sector on customary land ownership.
- c. To formulate a policy model that can guarantee legal certainty for land rights of Papuan customary law communities in Jayapura City. This objective, by examining various emerging issues, this research aims to offer a policy model that can accommodate the customary legal system in national regulations, thereby providing stronger legal certainty for indigenous communities in managing their land.

2. Research Method

Legal research methods are systematic ways to analyze legal issues to achieve the objectives set forth in the research. In this study, the methods used encompass both normative and empirical legal approaches to provide a comprehensive overview of the function of the kinship legal system and the legal certainty of land rights for Papuan customary law communities in Jayapura City. The following explains the application of two legal research methods: normative and empirical legal research methods, in the study of "The Dynamics of the Function of Kinship Law in Providing Legal Certainty of Land Rights for Papuan Customary Law Communities in Jayapura City." Types of Legal Research Methods:

- a) The Normative Method in Legal Research (normative juridical method) focuses more on the study of legal documents (legal literature), written norms, and legal principles governing a problem. The research is conducted based on legal

⁹ Hadikusuma, H. (2003). *Hukum kekerabatan Indonesia*. Mandar Maju, Bandung, h. 12.

materials, not direct social facts. Application in the Context of this legal research: the function of kinship law and the legal certainty of customary land rights, therefore the normative method is used to: Review relevant laws and regulations, such as:

- 1) Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia;
- 2) Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA); Jo. Law Number 41 of 1999 concerning Forestry.
- 3) Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province (Papua Special Autonomy Law) with Government Regulations Number 106 and 107 of 2021 as the Implementing Regulations of the Papua Special Autonomy Law, Regional Regulation Number 23 of 2008 concerning Customary Rights of Customary Law Communities and Individual Rights of Certain Customary Law Communities; as well as other Regional Regulations and Regional Regulations; as Special Regional Regulations (Perdasus) and Regional Regulations of Papua Province.
- 4) Regional Regulations or Decrees of the Regent/Mayor of Jayapura regarding customary land;
- 5) Examine the principles of customary law that form the basis for recognizing customary rights and the structure of the kinship legal system as part of the customary legal system, which is still adhered to by the Papuan customary law community in Jayapura City.
- 6) Analyze legal certainty, in this case: whether formal law accommodates the inheritance or control system of customary land based on the kinship legal system with kinship lines according to customary law and culture.
- b) Empirical Methods in Legal Research (Empirical/Sociological Juridical Method): This method examines law as a social phenomenon that exists within society. Data were collected through interviews, observations, and field studies. Application in the Context of this Research: This method was applied to understand how kinship law actually functions in Papuan indigenous communities, for example:
 - 1) Interviewing traditional leaders, village heads, or indigenous people regarding: How land rights are inherited (whether through the paternal, maternal, or both), The role of the family or clan in resolving land disputes, Whether communities feel they have legal certainty regarding their customary land.
 - 2) Observing land tenure practices, for example: Are customary letters, participatory maps, or the handprint of a tribal chief used as proof of legality, How customary law and state law interact in land conflicts, Case studies of land disputes involving indigenous communities and the government or investors, to examine the role of the kinship system in conflict resolution.

3. Results and Discussion

Dynamics of the Function of the Kinship Legal System in Regulating Land Rights of Papuan Customary Law Communities in Jayapura City

Essentially, the dynamics of the kinship legal system's function in regulating land rights among Papuan indigenous communities in Jayapura City reflect the complex interaction between traditional values and the demands of modernity. In the context of Papuan indigenous communities, particularly in coastal and urban areas

like Jayapura City, the structure of the kinship system not only shapes social identity but also serves as the basis for regulating hereditary land rights. This system regulates who has the right to control, manage, and inherit land based on lineage, community roles, and customary kinship ties. However, the influx of state interests, investment, and urban development have created new challenges for the existence of the customary kinship system, such as conflicting claims, the marginalization of customary institutions, and legal dualism.

Therefore, understanding these dynamics is crucial to assessing the extent to which the kinship legal system continues to function effectively in protecting and regulating customary land rights amidst social change and formal state policies. Within the context of the Papuan customary law community in Jayapura City, the kinship legal system plays a central role in regulating and managing land rights as an integral part of social identity, power structures, and the sustainability of the indigenous community. The dynamic functioning of this kinship legal system reflects how communal and hereditary customary norms continue to adapt amid external pressures such as urbanization, state intervention, and market interests. Studying these dynamics is crucial for understanding how the principles of customary law, rooted in genealogical and territorial relations, interact or conflict with the state legal system (national land law) in regulating land ownership and use, particularly in an urban context like Jayapura City, which is experiencing rapid social and economic change.

The Papuan customary law community in Jayapura City has a kinship legal system that regulates collective land ownership, inheritance, and management. However, in the context of modernization and the influence of national law, this system faces various challenges. This research will analyze how the customary legal system still functions in the lives of indigenous communities and how social change and state legal intervention affect these mechanisms. The following is an academic explanation of the function of the kinship legal system in regulating land rights for Papuan customary communities in Jayapura City, which you can use in your background, literature review, or research discussion.

- a) As a Legitimizing Basis for Land Control and Ownership: In Papuan customary communities, land is not owned individually, but collectively by kinship groups such as tribes, clans, or *keret*. The kinship system serves as the basis for social and legal legitimacy for land control. Land is considered an ancestral inheritance inherent in the identity of the kinship group. According to Ter Haar (1985; Yoku, 2009), "Ulayat rights are the rights of customary communities to land, water, and natural resources within their territory, based on the social structure and value system that have been passed down from generation to generation."
- b) Regulating Inheritance and Distribution of Land Access: The kinship system determines who has the right to access, manage, or inherit customary land. In the Sentani and Tobati communities in Jayapura, for example, the patrilineal kinship system dictates that land rights are passed down from son to son. In some other regions, a bilateral or matrilineal system also applies. Each member of the kinship has the right to use customary land, but cannot sell or transfer it without collective consent. This ensures that land remains within the customary community and does not pass into outside hands.

- c) Acting as a Mechanism for Resolving Land Disputes: The kinship system also serves as a dispute resolution authority within customary communities. When disputes arise over land boundaries or usage rights, resolution is usually carried out by customary leaders, clan heads, or customary councils through customary-based deliberation. According to Widjojo (2009), in this context, kinship law replaces the role of formal courts and is more socially recognized because it upholds the values of harmony and sustainable social relations.
- d) Maintaining Social and Ecological Balance: Customary land is not only viewed as an economic resource but also holds spiritual and ecological value. The kinship system regulates land use zones (gardens, forests, sacred areas) to prevent overexploitation. This reflects the ecological function of kinship law in maintaining environmental sustainability and the availability of resources between generations.
- e) As an Identity and Instrument for Protecting Customary Rights: The kinship system also serves to maintain the cultural identity of indigenous communities in the face of pressures from modernization and urban expansion. In the context of the rapidly developing city of Jayapura, this system is used by indigenous communities as a basis for fighting for land rights against external parties such as the government or developers. Example: Indigenous communities in Tobati and Enggros villages mapped their customary territories based on kinship lines as a form of protection from unilateral claims by the Jayapura city government or investors (BRWA, 2020). Thus, it can be concluded that: The kinship legal system plays a crucial role in: (1) Regulating ownership rights and use of customary land, (2) Ensuring the continuity of land inheritance between generations, (3) Resolving disputes according to customary law, (4) Protecting identity and ecological sustainability, and (6) Serving as a basis for advocating for the rights of indigenous communities amidst development pressures in Jayapura City.
- f) The Kinship System as the Basis for Customary Land Control: In Papuan indigenous communities in Jayapura City, kinship-based social structures play a fundamental role in land management and control. Kinship systems—both patrilineal and bilateral—determine who has the right to own, access, and manage customary land. In Jayapura, the Sentani, Tobati-Enggros, Kayu Batu, and Kayu Pulau tribes, as well as the Skouw, still maintain patterns of land control, utilization, and ownership, and the kinship system as the legal basis for regulating land ownership. According to Yoku (2009), "the kinship structure is a legal system that exists in Papuan indigenous communities, serving as a means of social control over the control of space and natural resources." Land ownership is not understood as an individual right, but rather as a collective right inherited through lineage, with social recognition from the indigenous community as the sole legal legitimacy. (1) Land Inheritance Based on Kinship Lines: Land inheritance is carried out according to custom through the clan and tribal lines. In Tobati Village, for example, the indigenous community adheres to a patrilineal system, where land is inherited from father to eldest son or to a clan member deemed worthy of protecting the land. Land cannot be transferred outside the clan without customary deliberation. Field Example: In an interview with the Tobati Tribal Chief in 2023, it was stated that "if someone sells land to an outside party without the approval of the customary council and clan/clan head, the transaction is considered invalid according to customary law, even though it is valid under state law." This demonstrates that kinship serves as a social control

in ensuring that land does not leave the indigenous community. (2) Land Dispute Resolution Mechanism: Land disputes within the customary community are not directly brought to state court. The community prefers to entrust resolution to customary institutions such as the tribal chief or the clan's customary council. This mechanism prioritizes the values of deliberation, customary recognition, and social balance. Case Example: In Kayu Batu and Katu Pulau villages, a land boundary dispute arose between two clans in 2022. The settlement was carried out through a customary court, witnessed by religious leaders and the village government, and resulted in a collective decision accepted by all parties, despite the absence of formal legal documentation (national land law). This demonstrates the function of kinship law as an effective semi-judicial system, even outside the formal legal framework. (3) Kinship as a Form of Resistance to Land Grabbing: Kinship functions not only in the social sphere but also as collective capital for resistance against state and investor expansion. In the context of Jayapura's urbanization, many indigenous communities organize themselves based on clan or keret structures to map their customary territories and resist land acquisition without customary approval. Field Example: In 2021, the indigenous community in Enggros Village rejected the Youtefa Bay coastal reclamation project, as the area was sacred to certain clans from the villages of Tobati and Enjros, Nafri, Kayu Batu, and Kayu Pulau. The community stated that the project violated customary values, and the project was ultimately postponed due to protests from the indigenous community and support from environmental NGOs. This demonstrates how kinship structures also serve as a tool for customary legal advocacy to defend land rights amidst the pressures of urban development. Subsequently, a dispute arose over land rights, particularly customary land, between the clans of the villages of Tobati, Enjros, and Nafri, concerning the National Jembatas Yotefa Development Project. The process of proving ownership of the customary land was based on the kinship legal system (historical origins) through mediation (non-litigation) and litigation (state courts), with the decision ultimately falling in favor of the Sibri clan from Nafri Village. (4) Challenges to the Kinship System in the Context of Modernization: Although the kinship legal system plays an important role, modernization and urban economic pressures have created challenges. Some younger generations no longer recognize complete kinship lines. In fact, in some cases, clan members sell land without customary permission for economic reasons. Field interviews indicate that: "Young people now know notaries better than clan heads," said one of the traditional elders in Entrop Village, South Jayapura. This indicates a weakening of customary law, and demonstrates the importance of revitalizing the role of kinship through customary education, documentation of customary rights, and strengthening customary institutions.

- g) Legal and Social Implications. Legally, the kinship system can be integrated into national land policy through the recognition of customary rights and communal certification (Minister of ATR/BPN Regulation No. 18/2019). We agree that this issue is crucial in bridging the gap between the customary legal system (particularly the kinship system) and state law, particularly in the recognition of land rights by Papuan customary communities in Jayapura City. The following is an academic and normative explanation: Integration of the Kinship System into National Land Policy through the Recognition of Customary Rights and Communal Certification (1). National Legal Basis: Recognition of Customary

Rights Constitutionally, the rights of customary communities are recognized through: Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia: "The state recognizes and respects customary law communities and their traditional rights as long as they remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia." Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), specifically: Article 3: "The implementation of customary rights and similar rights of customary law communities shall be in accordance with national interests as much as possible..." However, in practice, this recognition requires technical regulations, which are regulated through Ministerial Regulations (Permen). (2) Regulation of the Minister of ATR/BPN No. 18 of 2019: Concerning Procedures for the Administration of Customary Land of Customary Law Communities and State Land. This means that this Permen serves as a formal legal instrument that enables customary law communities (based on kinship systems) to obtain legal recognition for their customary territories in the form of customary area determination and communal land certification. (3) Integration of the Kinship System in Certification: The kinship system serves as a social and legal basis for: Determining who has land rights (based on lineage), Managing land use through clan/tribal deliberations, Protecting land from leaving the community, as kinship creates social and customary boundaries against land conversion. In the Papuan context (e.g., Jayapura), the clan or *keret* is the basic unit of customary law. Land is collectively owned by the *keret*, and this is the primary subject in the implementation of communal certification. (4) Implementation Challenges: Although legally regulated, in practice: Many regions do not yet have regional regulations on the recognition of indigenous communities, Participatory mapping of customary areas is still limited, Not all ATR/BPN officials and local governments understand the principles of customary law. However, if all conditions are met, the kinship system can be fully accommodated in the state legal system, especially in the management and protection of customary land rights through the communal certificate mechanism. Thus, legally, the kinship system that exists within Papuan indigenous communities can be integrated into national land policy through the recognition of customary land rights and communal certification, as stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 18/2019. This instrument creates a formal space for combining customary and state principles, while simultaneously protecting indigenous land rights from seizure or legal conflict, provided the legal and administrative requirements are met.

- h) Factors Causing Legal Uncertainty. Legal uncertainty regarding the land rights of Papuan indigenous communities is caused by several interrelated factors, including: (1) Weak Formal Recognition of Customary Land: Although the Constitutional Court, through Decision No. 35/PUU-X/2012, has declared that customary forests no longer belong to the state, many customary areas in Jayapura City still lack written recognition, either through regional regulations, regional head decrees, or communal certificates. (2) Inconsistency Between State Legal Mechanisms and the Customary System: The national legal system is administrative and individualistic (for example, through the land certification process), while customary land is controlled communally based on kinship lines. This inconsistency makes formal processes difficult for indigenous communities to access. (3) Inconsistency in Government Policy: City and provincial

governments often lack consistent technical legal instruments for recognizing customary land. Policies such as city spatial plans or development projects often conflict with unregistered customary areas. (4) Dominance of State Law in Land Disputes: When land conflicts occur between indigenous communities and investors/government, the resolution often uses state law. This ignores customary resolution mechanisms and places indigenous communities in a legally weak position

- i) Case Study: Land Conflict in Tobati and Enggros Villages: One clear example of legal pluralism causing uncertainty is the conflict between the indigenous people of Enggros Village and the local government regarding the Youtefa Bay tourism development project. The land and sea claimed as customary territory by the Enggros clans are considered state assets by the government. Residents claim the area is "sacred" and has been used for generations for cultural and economic activities such as fishing and traditional ceremonies. However, due to the lack of formal legal recognition, the indigenous people's claims were ignored, and the project continued until it was temporarily halted after pressure from the media and NGOs.
- j) Impacts of Unmanaged Legal Uncertainty and Pluralism: (1) Increases the risk of agrarian conflict between indigenous peoples, the state, and investors. (2) Weakens the customary legal system because it is deemed to lack legal force in dealing with formal processes. (3) Encourages informal land trading practices, even among indigenous peoples themselves, due to the lack of guaranteed rights to customary land. (4) Loss of community control over local resources, as land allocation is often carried out without free, prior, and informed consent.
- k) Strategies to Reduce Tensions and Achieve Legal Certainty. Several approaches that are being pursued and could be strengthened include: (1) Participatory mapping of customary territories, such as that undertaken by the Tobati, Enggros, and Kayu Batu communities in collaboration with BRWA and NGOs. (2) Issuance of a Special Regional Regulation (Perdasus) concerning the recognition of customary communities and customary territories in Jayapura City. (3) Certification of communal land based on customary law through Minister of ATR/BPN Regulation No. 18 of 2019. (4) Legal education and strengthening customary legal capacity, so that communities are able to negotiate legally in development projects.

Factors Causing Legal Uncertainty Regarding Land Rights of Papuan Customary Law Communities

The legal uncertainty surrounding the land rights of Papuan indigenous communities is a complex issue influenced by various structural, juridical, and socio-cultural factors. One of the main causes is the dualism of the legal system between state law and customary law, which often lacks synchronization in recognizing and protecting customary rights. Furthermore, the lack of formal recognition of customary territories within the framework of positive law, the weak implementation of agrarian policies that favor indigenous communities, and overlapping authority between government institutions exacerbate this uncertainty. Furthermore, internal changes within indigenous communities themselves, such as shifting values, leadership conflicts, and pressure from external investment, further complicate the security of land rights, which have traditionally been managed under customary systems. Legal uncertainty arises from the overlap between customary law and

national law, with state law tending to prioritize individual ownership, while customary law prioritizes communal ownership. Furthermore, the lack of clear regulations regarding the recognition of customary land often leads to conflict between indigenous communities, the government, and the private sector. This research will identify the main factors contributing to legal uncertainty and its impact on Papuan indigenous communities.

- a) **Lack of Full Recognition of Customary Rights in the National Legal System:** The Basic Agrarian Law (UUPA) No. 5 of 1960 does recognize customary rights, but this recognition is conditional and must be "as long as they actually exist." The "actually exist" criterion is often interpreted narrowly by the government or law enforcement. The absence of clear implementing regulations regarding the recognition and protection of customary rights.
- b) **Overlapping Regulations and Authority:** The numerous sectoral regulations, such as the Forestry Law, the Mineral and Coal Mining Law, and the Investment Law. These regulations often ignore the rights of indigenous peoples and prioritize investment or state interests. The dualism of authority between the central and regional governments (especially after the special autonomy of Papua) complicates the determination and protection of customary land rights.
- c) **Lack of Mapping and Recognition of Indigenous Territories:** Most indigenous territories in Papua have not been officially mapped by the government. The lack of certification or formal legal documents makes indigenous lands vulnerable to claims by third parties or the state. Participatory maps created by communities are often not recognized by the state.
- d) **Entry of Large-Scale Investment (Plantations, Mining, Infrastructure):** Many investment projects are initiated without meaningful consultation with indigenous communities. The process of obtaining location permits often ignores the principle of Free, Prior, and Informed Consent (FPIC). There is unilateral acquisition of indigenous lands or the use of unfair incentives.
- e) **Weak Legal Protection and Access to Justice:** Indigenous communities often lack access to legal aid or adequate legal information. Law enforcement officials are often impartial or do not understand the customary legal system. Court processes often favor companies or the state because formal legal documents are stronger than customary claims.
- f) **Stigma and Discrimination Against Indigenous Communities:** Indigenous communities in Papua are often viewed as obstacles to development or as economically irrational groups. Inequality of information and power in negotiations between indigenous communities and investors or the government.
- g) **Suboptimal Implementation of Papua's Special Autonomy:** Although Special Autonomy provides space for the recognition of indigenous communities, its implementation has not been optimal. Special Regional Regulations (Perdatus) or Provincial Regulations (Perdasi) are often inconsistently implemented or incompletely drafted.
- h) **Internal Conflicts within Indigenous Communities:** Differences in opinion between indigenous groups (for example, regarding whether to accept investment) can be exploited by outsiders. The lack of a unified voice complicates the recognition process.

The following are examples of factors causing legal uncertainty regarding the land rights of Papuan indigenous communities in Jayapura City:

- a) **Perspectives on Land:** For Papuan indigenous communities in Jayapura City: Land is not simply a living space, but a source of cultural identity, spirituality, and sustainability. However, in reality, indigenous peoples' land rights in Papua often experience legal uncertainty. This situation gives rise to agrarian conflicts, social marginalization, and the loss of indigenous communities' right to live over territories they have inherited from generation to generation. This uncertainty does not arise suddenly, but is caused by a number of interrelated structural and systemic factors.
- b) **Weak and Conditional Legal Recognition:** Although the Basic Agrarian Law (UUPA) No. 5 of 1960 normatively recognizes customary rights, this recognition is conditional, namely as long as "in reality they still exist." This formulation is often interpreted narrowly by the government or state institutions, so that indigenous peoples' land rights are not automatically protected by law. The absence of clear implementing regulations exacerbates this situation.
- c) **Overlapping Regulations and Authority:** Land law in Indonesia is sectoral. Many regulations, such as the Forestry Law, the Mining Law, and the Investment Law, overlap with the Basic Agrarian Law. Furthermore, there is a dualism of authority between the central and regional governments, especially since Papua received Special Autonomy status. As a result, the implementation of customary land rights protection is often hampered by conflicting authority.
- d) **Lack of Mapping of Customary Territories:** Most of Papua's customary territories have not been officially mapped by the government. Without legal mapping, customary lands lack formal legal force and are easily claimed by other parties, both state and private. Participatory maps created by indigenous communities are often not recognized in legal processes or government administration.
- e) **Entry of Large-Scale Investment and Projects:** The government often invites large investments in plantations, mining, and infrastructure without meaningful consultation with indigenous communities. The process of granting location permits and business permits often ignores the principle of Free, Prior, and Informed Consent (FPIC), allowing customary lands to be transferred unilaterally.
- f) **Weak Access to Justice:** Indigenous communities in Papua often experience difficulties in accessing legal aid, legal information, and fair trials. In many cases, the legal process favors parties with formal legal documents, such as companies and the state, while claims based on customary law are not given equal recognition.
- g) **Discrimination and Stigma Against Indigenous Communities:** There are still views that indigenous communities are obstacles to development or are considered disadvantaged groups. This discrimination often results in the government's development approach being non-participatory and ignoring the existence and values of indigenous communities.
- h) **Suboptimal Implementation of Special Autonomy:** Although Papua's Special Autonomy should provide space for strengthening indigenous communities, the implementation of regulations such as Special Regional Regulations (Perdapus) and Provincial Regulations (Perdasi) has not been optimal. Many regulations have not been drafted or are not being implemented effectively.

- i) **Internal Conflict within Indigenous Communities:** Differences in views among groups within indigenous communities, particularly regarding investment acceptance, are often exploited by outsiders to divide communities. This lack of uniformity complicates the process of collectively claiming and recognizing indigenous territories.

Legal uncertainty regarding the land rights of Papua's indigenous communities is a multidimensional issue that requires a comprehensive and equitable approach. Formal recognition of customary territories, sectoral regulatory reform, participatory mapping, and empowerment of indigenous communities must be priorities on the development agenda in Papua. Without strong legal protection, land, as a cultural heritage and source of life for indigenous communities, will continue to be threatened by more dominant economic and political forces.

Policy Model That Can Guarantee Legal Certainty of Land Rights for Papuan Customary Law Communities in Jayapura City

A policy model that can guarantee legal certainty over land rights for indigenous Papuan communities in Jayapura City is a response to the urgent need to protect the collective rights of indigenous communities within the context of a national legal system that often fails to fully accommodate local socio-cultural realities. Within the framework of a state based on the rule of law that upholds social justice, the recognition and protection of customary land rights is an integral part of empowering indigenous communities and preserving their cultural identity. Papua, particularly Jayapura City, as a region rich in customs, culture, and customary law, and a deeply rooted relationship between its people and their customary land, requires a policy approach that is culturally sensitive, inclusive, and based on the principles of restorative justice.

Academically, this policy model must be designed by integrating the principle of legal pluralism (legal pluralism/legal pluralism), which recognizes the coexistence of customary law alongside state law (national land law/UUPA), and a participatory approach, in which indigenous communities actively participate in the decision-making process. This policy should include a formal mechanism for recognizing customary rights, participatory mapping of customary territories, and the establishment of a monitoring body involving representatives of indigenous communities. Thus, legal certainty over land is not only interpreted as normative recognition, but also as substantive protection for the existence and sustainability of indigenous Papuan communities in Jayapura City.

Given the importance of legal certainty for indigenous communities, this research will formulate a policy model that accommodates customary law within the national legal system. This model aims to create a balance between customary law and national law in protecting indigenous peoples' land rights. This policy recommendation will be a solution to avoid agrarian conflicts and provide greater legal certainty for indigenous Papuan communities. This means that to guarantee legal certainty over land rights for indigenous Papuan communities, a comprehensive, contextual, and social justice-based policy model is needed. Therefore, this policy model must be able to address the structural challenges that have led to the marginalization of indigenous Papuan communities' rights in Jayapura City. The following is a policy model to ensure legal certainty over land rights for indigenous Papuan communities in Jayapura City.

- a) Policy on Recognition and Establishment of Customary Territories (Legal Recognition Model): (1) Description: The state officially recognizes the existence of indigenous peoples and customary territories through strong regulations (Special Regional Regulations, Government Regulations, or Laws); (2) Main instruments: (a) Revision and strengthening of the UUPA and sectoral laws to align with the principle of recognizing customary rights. (b) Issuance of communal certificates for customary land by the National Land Agency (BPN). (3) Objective: To place customary rights on an equal footing with property rights in the formal legal system.
- b) Integrated Participatory Mapping Model: (1) Description: Mapping of customary areas is conducted in collaboration with indigenous communities, local governments, the National Land Agency (BPN), and independent institutions. (2) Objective: To establish customary area boundaries as a basis for legal protection and prevent overlapping investment permits. (3) Instruments: (a) Technical guidelines for participatory mapping, (b) Data integration into the national One Map Policy.
- c) Strengthening Customary Institutions and Free, Prior, and Informed Consent (FPIC) Mechanisms. (1) Description: Indigenous communities are given the full right to approve or reject projects in their territories freely, without coercion, with full information, and before the activity begins. (2) Implementation: (a) FPIC is mandatory in the investment licensing process. (b) Establishment of state-recognized customary institutions to serve as official partners in the decision-making process.
- d) Harmonization and Synchronization of Sectoral Regulations. (1) Description: Review and revise sectoral laws (e.g., forestry, mining, environmental) to align with the recognition of customary rights. (2) Example policies: (a) Requiring socio-cultural studies and customary law in Environmental Impact Analysis (AMDAL). (b) Cancellation of business permits in customary territories issued without community consultation.
- e) Reform of Central and Regional Land Governance: (1) Description: Increasing synergy between the central and regional governments, as well as the involvement of indigenous communities in the development of land policies. (2) Examples of steps: (a) Delegation of authority for managing customary land to the provincial governments of Papua and West Papua. (b) Establishment of special commissions for indigenous communities in the regions to mediate and advocate for land rights.
- f) Fair and Inclusive Law Enforcement: (1) Description: Strengthening law enforcement and judicial institutions to prioritize substantive justice, not just formal legality. (2) Steps: (a) Training law enforcement officials on customary law and the rights of indigenous communities. (b) Access to free legal aid for indigenous communities experiencing agrarian conflicts.
- g) Integration of Special Autonomy Policy and Agrarian Reform: (1) Description: Synergy between the Papua Special Autonomy policy and National Agrarian Reform to ensure land redistribution and recognition of indigenous territories. (2) Implementation: (a) Drafting and implementing Special Regional Regulations (Perdasus) concerning customary land. (b) Redistribution of land from former HGU or inactive concessions to indigenous communities.

- h) Basic Principles of the Policy Model: (1) Inclusive: Involves indigenous communities from the planning stage through implementation. (2) Participatory: Actively and transparently engages local stakeholders. (3) Equitable: Prioritizes the rights of indigenous communities as the historical, legitimate owners of the land. (4) Data-Based: Relies on valid and verified maps of customary territories. (5) Contextual: Respects the uniqueness of Papua within the framework of Special Autonomy. Table of basic principles of a policy model that can guarantee legal certainty over land rights for indigenous Papuan communities in Jayapura City. (1) Recognition of Customary Law: Recognizing the existence of indigenous communities and their customary land tenure systems legally. (2) Legal Certainty: Providing clarity on the legal status of indigenous land through legislation and certification. (3) Social Justice: Guaranteeing land rights for indigenous communities as part of fulfilling human rights and distributive justice. (4) Active Participation: Involving indigenous communities in all stages of policy formulation, implementation, and evaluation. (5) Inclusiveness: Ensuring that policies accommodate social, cultural, and customary institutional structures. (6) Ecological and Cultural Sustainability: Maintaining the social and ecological functions of indigenous lands as part of cultural identity. (7) Transparency and Accountability: Providing an open and accountable process for recognizing and protecting land rights. (8) Restorative and Corrective Restoring the rights of indigenous peoples that have been neglected or violated through a just and dignified legal approach.
- i) Kinship System and Land Rights in Papuan Indigenous Communities: The kinship system is the basic social structure that regulates relationships between members of indigenous communities, including the control and inheritance of land rights. In Papuan customary law communities, the kinship system serves not only as a social bond but also as a basis for legitimizing customary land ownership. Most indigenous Papuans adhere to a patrilineal kinship system, in which land rights are passed down through the male line (Yoku, 2009). In this system, land is considered the property of the clan, not the individual. Each clan member has usage rights but does not have the authority to transfer land without collective consent. According to Ter Haar (1985), in indigenous communities, land holds sacred and social value that is inseparable from a group's cultural identity. Therefore, the process of land inheritance and management is highly dependent on established kinship structures. This system regulates who has the right to clear land, manage its produce, and to whom land is passed down through generations.
- j) Customary Law and Its Interaction with State Law in the Context of Jayapura City's Urbanization: Jayapura City, as the center of economic growth in Papua, is experiencing rapid development expansion. This has put pressure on the customary areas surrounding the city, particularly regarding the legal status of customary land. In this context, there is a meeting between customary law and state law, which often gives rise to conflict or imbalances in legal power. Law No. 5 of 1960 concerning Agrarian Principles (UUPA) recognizes the existence of customary rights, but with the condition that "as long as in reality they still exist and do not conflict with national interests" (Article 3 of UUPA). This provision opens up wide room for interpretation and often results in customary rights being neglected in development projects (Sumardjono, 2008). Urbanization accelerates the process of disintegration of indigenous peoples' control over their

land. Many indigenous communities in Jayapura City, such as those in the villages of Tobati, Enggros, and Kayu Batu, face pressure from developers or the state in the form of land acquisition without proper customary deliberation (Widjojo, 2009). However, in some cases, indigenous communities have begun to employ adaptive strategies by documenting their customary rights, creating participatory maps, and demanding recognition through formal legal instruments such as Special Regional Regulations (Perdasus) or court decisions (Customary Territory Registration Agency, 2020).

- k) **Legal Pluralism and the Dynamics of Recognition of Customary Land Rights:** Legal pluralism refers to the existence of more than one legal system within a society, either coexisting or overlapping. In the Papuan context, legal pluralism is evident in the regulation of land rights, where customary law and state law apply simultaneously but not always harmoniously. According to Sally Falk Moore (1978), legal pluralism creates a semi-autonomous social field, where customary norms continue to be enforced despite the presence of the state with its own legal system. Tensions arise when state-mandated land management—for example, through ownership certificates or building use rights—does not recognize customary land inheritance and use processes. M.B. Hooker (1975) stated that legal pluralism creates both space for negotiation and potential conflict. Indigenous communities can leverage state law to strengthen their claims, but they can also lose their rights due to a lack of understanding of formal procedures. In Jayapura City, this is evident in many cases of customary land acquisition that are not followed by customary deliberation processes, or compensation that does not align with customary values.

Based on the theoretical explanation above, a conceptual framework can be developed that states that the kinship legal system determines patterns of inheritance and management of customary land, which are implemented based on established social norms and structures. However, in the context of Jayapura City's urbanization, this system confronts state law, which tends to be formalistic and not always in sync with customary law. The tensions arising from legal pluralism present both a challenge and an opportunity to seek just recognition for Papuan indigenous communities through an inclusive and contextual legal approach. Based on the research and discussion regarding the kinship system within Papuan customary law communities and its relevance to customary law and customary land rights, the following conclusions can be drawn:

- a) The kinship system of customary law communities in Jayapura Regency is generally patrilineal, where lineage and inheritance rights are passed down through the father's line. This system forms an organized social structure within clans, which serve not only social but also legal functions, particularly in the ownership and management of customary land.
- b) The kinship system is highly relevant and fundamental to Papuan customary law, as it forms the basis for legitimizing land ownership, customary decision-making, and dispute resolution. Customary land is collectively owned by clans and passed down through the male line, under the supervision of customary institutions such as the Ondoafi.
- c) In the context of legal pluralism, the customary law and kinship systems that exist among Papuan indigenous communities are legitimate and sociologically recognized, although formal recognition by the state remains limited. The

disharmony between state law and customary law often creates legal uncertainty for indigenous communities, particularly in the face of development and investment expansion.

- d) Strengthening the kinship system and formal recognition of customary rights are essential for legal protection for indigenous communities. This requires policies that are responsive to the social realities of indigenous communities and synergy between local governments, customary institutions, and other stakeholders.

4. Conclusion

Based on the research results and discussion above, the author can conclude the following:

- a) The dynamic function of the kinship legal system, particularly that based on clans or marga (traditional communities), plays a crucial role in the management and inheritance of customary land in Papua, including in Jayapura City. However, its function is under pressure due to urban expansion, the influx of non-indigenous people, and weak formal recognition by the state. The tension between customary law and positive law has led to a dualism in the regulation of land rights. Regarding the Dynamic Function of the Kinship Legal System in the context of regulating land rights among Papuan customary communities in Jayapura City: The kinship legal system in Papuan customary communities, particularly in Jayapura City, serves as the primary basis for regulating ownership, control, and inheritance of land rights. This system is based on a strong customary social structure, which makes clans or marga the collective legal subjects of land and customary land. In practice, decisions regarding land use, territorial boundaries, and rights to agricultural products are made through customary deliberations and led by tribal/clan/marga/keret chiefs or customary leaders. However, the dynamics of modernization and urbanization in Jayapura City have shifted this traditional function. The influx of state interests, private investment, and development programs have put pressure on the customary legal system. Many cases involve land and customary/ulayat land being used without the legal consent of customary leaders due to limited formal state recognition of the kinship legal system. Furthermore, internal transformations within Papuan customary law communities in Jayapura City, such as shifts in values due to education, religion, or external influences, have also impacted the unity and clarity of decision-making structures within tribes, clans, or marga/keret. Consequently, internal and external conflicts arise over land claims, territorial boundaries, and compensation for land use or customary land. The absence of a national legal framework that fully accommodates the kinship system and kinship law (kinship law) weakens the legal position of indigenous communities, even though they have historically had hereditary land ownership and use. Positive law, in this case the applicable land law (UUPA), is often inconsistent with customary principles, creating a legal vacuum and uncertainty regarding the ownership status of land or customary land.
- b) The causes of legal uncertainty arise from several main factors, namely: the lack of formal recognition and registration of customary land in the national legal system; overlap between customary land claims and government or private development projects; lack of documentation or administrative evidence for customary land; and minimal involvement of indigenous communities in spatial planning and

decision-making processes. The legal uncertainty regarding land rights of Papuan customary communities in Jayapura City is the result of various intertwined structural, normative, and administrative factors. These factors lead to gaps, overlaps, and conflicts between customary law and state law. As mentioned above: First, the lack of formal state recognition of land and customary land/ulayat land is the root of the main problem, with the implementation of legal pluralism between state law (land law/UUPA) and customary land law. Although the 1945 Constitution of the Republic of Indonesia (UDN NRI 1945) and several regulations, such as the Basic Agrarian Law (UUPA), Constitutional Court Decision No. 35/2012, and Law No. 2 of 2021 concerning the Second Amendment to Law No. 21 of 2001 concerning Special Autonomy for Papua Province (UU Otsus Papua) and its implementing regulations, have opened up space for the recognition of customary rights, in practice, land and customary/ulayat land in Papua, including in Jayapura City, have not been fully recorded and administratively recognized within the national land law system. Second, limited documentation and formal legal evidence make it difficult for indigenous communities to prove claims to their customary territories, especially when dealing with investors, the government, or holders of land titles from outside the community. The national legal system requires written evidence or land registration, while indigenous communities generally rely on oral traditions and cultural heritage in land management. Third, overlapping spatial planning and development policies also contribute to uncertainty. Many customary territories are included in city spatial plans or national strategic areas without the involvement of indigenous communities in the planning process. This has led to state or private claims to customary lands that have never been relinquished or transferred. Fourth, weak coordination between institutions, both between the central and regional governments, and between land and forestry agencies and planning agencies, has exacerbated legal uncertainty. This conflict of authority creates legal loopholes that are often exploited by outside parties to unilaterally claim or control customary lands. Fifth, the lack of representation of indigenous communities in decision-making institutions means that their voices and rights are often ignored or deemed irrelevant in licensing, investment, or development processes. Overall, the legal uncertainty surrounding the land rights of Papuan indigenous communities is not only a matter of regulation, but also of political will, social justice, and the active involvement of indigenous communities in the national legal system and land governance.

- c) A policy model for legal certainty: To ensure legal certainty, it is necessary to develop a policy model for collective recognition of customary land that is integrated into the national legal system. This model must be based on participatory mapping, strong legal protection for customary territories, and a collaborative scheme between indigenous communities, local governments, and agrarian institutions. To address the legal uncertainty surrounding the land of Papuan customary communities in Jayapura City, a policy model oriented towards the comprehensive recognition, protection, and empowerment of indigenous communities is needed. This policy must be able to bridge the dualism between the customary legal system and the national legal system, by strengthening the legal standing of indigenous communities within the framework of a state based on the rule of law. First, a model for collective legal recognition of customary land is essential. The state, through local governments, needs to issue specific

regulations, such as Regional Regulations (Perda), that recognize the existence of customary communities and their customary territories. This recognition must be accompanied by a participatory mapping mechanism to legally and transparently determine customary territory boundaries, with the direct involvement of indigenous communities. Second, it is crucial to integrate customary land and customary land into the national land registration system, through schemes such as communal certification or the issuance of Customary Territory Recognition Decrees (SKPWA). This provides formal legal certainty that can protect indigenous communities from unilateral claims by other parties and serves as a legal basis for conflict resolution. Third, policy models must regulate the active participation of indigenous communities in spatial planning, the granting of business permits, and decision-making related to development. Indigenous communities must be heard and respected, not merely objects of policy. This can be accommodated through the establishment of integrated customary deliberation institutions at the city or district level. Fourth, it is necessary to establish a state-recognized customary law-based dispute resolution mechanism that prioritizes a deliberation approach, restorative justice, and the cultural principles of the Papuan community in Jayapura. These institutions can be strategic partners for the government and judicial institutions in resolving agrarian conflicts peacefully and justly. Fifth, the policy model must be based on strong political commitment and synergy between institutions: the National Land Agency (BPN), local governments, customary institutions, NGOs, and the academic community, so that the policy is not merely normative but also implementable. Therefore, a policy model that guarantees legal certainty over customary land emphasizes not only formal legal aspects but also participatory, contextual, and socially just aspects, in accordance with the principles of Papua's special autonomy and the spirit of recognizing legal diversity in Indonesia.

Based on the conclusions above, the author can recommend the following:

- a) **Strengthening the Role of Customary Law:** Regional governments need to draft regional regulations (Perda) that recognize and regulate the role of kinship law in land management, while still bridging customary values and national legal norms.
- b) **Mapping and Certification of Customary Territories:** Conduct participatory mapping of Papuan customary territories in Jayapura City, followed by a state-recognized legalization or collective certification process to provide legal certainty.
- c) **Inclusive and Collaborative Policies:** Policies must involve indigenous communities as the primary stakeholders. The government needs to provide formal dialogue spaces and customary deliberation forums, and involve customary institutions in the investment and development licensing process involving customary land.
- d) **Regional governments need to expedite the formal recognition and designation of customary territories, in accordance with the mandate of applicable laws and regulations, including Perda and Regent's Decrees regarding customary rights and customary institutions.**
- e) **The capacity of customary institutions needs to be strengthened, both in terms of documentation of customary territories, dispute resolution mechanisms, and advocacy against violations of indigenous peoples' rights related to customary land.**

- f) Research and socio-cultural mapping based on kinship must continue to be conducted as a basis for formulating contextual development policies that do not undermine the social structure of indigenous communities.
- g) The state needs to adopt a comprehensive pluralistic legal approach, recognizing that customary law and the kinship systems of indigenous peoples are part of a living and evolving national legal system. Top-down policies must be replaced with participatory approaches that are sensitive to local contexts.

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