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The Epistemology of Land in an Adat Perspective: Philosophical Aspects of Human Relations With Land in the View of Mohammad Koesnoe

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Abstract
The spirit of agrarian law reform in Indonesia has been proposed since 2001, but to date it has not been realized. On the one hand, the existence of adat law as the basis for the formation of national agrarian law as stated in the UUPA needs to be questioned again, whether it actually uses adat law as its raw material, or whether it still uses colonial law. The discussion in this article aims to contribute ideas related to the reform of agrarian law in Indonesia which is based on customary law regarding land. The direction of this reform is based more on the views of adat law expert, Mohammad Koesnoe. The type of research in this article is legal research using a conceptual approach and also a statute approach, and analyzed using historical, systematic and grammatical interpretation methods. The research results show that customary law is still relevant to use as a basis for legal reform in Indonesia while still referring to the rechtsidee of the Indonesian nation as stated in Pancasila. Therefore, agrarian reform in Indonesia should refer to the original law of the Indonesian people, namely adat law.

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Introduction

Since immemorial antiquity, land has been a very important basic need for human life and is one of the natural resources which are a very important means for the development needs of the government and society itself.[1] Land is an object that is needed in the life of the state, individuals, and society. The land is very important for humans because, with the land, humans can meet their daily needs and can support various kinds of activities. Activities in this case function to provide welfare for human life such as building shelters and farming.

[1] Agus Sekarmadji, 'Pendaftaran Tanah Bekas Tanah Partikelir' (2023) 6 Notaire 1 <https://e-journal.unair.ac.id/NTR/article/view/41814>.

In the agrarian scope, the land is part of the earth, which is called the surface of the earth. The land is the main source of human life that has been gifted by God Almighty. For the land to be used optimally for the prosperity and welfare of the people, the law regarding land in Indonesia is regulated in the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations. From an agrarian perspective, the formation of agrarian law in Indonesia is based on *adat* law provisions regarding land. This provision is clearly stated in Article 5 of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations. Why is *adat* law used as the basis for the formation of agrarian law in Indonesia and not other laws? Several views on this *adat* law have been studied by well-known Indonesian *adat* law experts, one of whom is Mohammad Koesnoe.[2]

Koesnoe is a professor at the Faculty of Law, Airlangga University. He is also a visiting professor at the Catholic University of Nijmegen in the Netherlands. He is one of the experts in the field of *adat* law who prioritizes and exalts Indonesian *adat* law as the basis for fostering national law.[3] His views regarding *adat* law, which are the result of studies and research related to *adat* law, have resulted in two definitions, namely: *firstly*, in the view of ordinary people that custom is equated with habits when confronted with real behavior that is usually done to solve a problem in society. In general, the habits that are carried out are the same as those in the realm of reality in the community concerned or what is known as the empirical realm; *secondly*, in the expert's view custom or law is something abstract that is in normative values that live, are lived, and practiced and which is the background for real action in the physical experience of society, or it can also be said as something abstract and stated as a principle and rule that is normative

[2] Especially in Koesno's view which emphasizes an understanding that the formation of norms must be based on normative aspects, not only on empirical aspects. Norm is an idea, namely the *sollen* scope so that it can only be translated into the empirical realm *(sein)* through the actualization of sollen as its prescriptive power. This normative standard is a standard of legal science based on social awareness or social reflection, not as a social phenomenon (see RR Lyia Aina Prihardiati, 'Teori Hukum Pembangunan Antara Das Sein dan Das Sollen' (2021) 5 HERMENEUTIKA : Jurnal Ilmu Hukum <https://jurnal.ugj.ac.id/index.php/HERMENEUTIKA/article/view/4898>).

[3] Abdurrahman, *Kedudukan Hukum Adat Dalam Rangka Pembangunan* (Alumni 1978) 111.

regarding community relations according to the adopted culture.[4] Thus, Indonesian customs which in reality appear to be diverse in their minds are in principle the same.[5]

There was a view at the beginning of 2018 to make changes to the agrarian law contained in the provisions of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations, but before going too far to make changes, it is necessary to study more deeply related to the philosophical basis human relations with land in the conception of land law. The discussion in this article aims to be able to contribute ideas related to agrarian reform in Indonesia, so that it can become a comprehensive rationale, especially with more reference to the views of Mohammad Koesnoe.

Method Research

The making of this article is based on normative legal research. The approach used is the conceptual approach by connecting it with the laws and regulations that are entered as a statute approach.[6] The concept used to answer this problem is the concept of *adat* law regarding land and is related to the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations. Then, for the collection of legal materials, it also used the serial selection of sample units proposed by Lincoln and Guba[7] and by Bogdan and Biklen[8] known as the collection of legal material that rolls like a snowball or known as the snowball technique. The legal material analysis technique used in this study is adapted to the type of research used, namely legal research. Thus, the legal material analysis technique used is in the form of interpretation, and philosophical teachings regarding understanding something or an interpretation.[9]

[4] Zulherman Idris and Miftahur Rachman, 'Identifikasi Hukum Adat (Perspektif Bahagian Kajian Sosiologi Hukum)' (2021) 6 Journal Equitable 121 <https://ejurnal.umri.ac.id/index.php/JEQ/article/view/3269>.

[5] Mohammad Koesnoe, *Hukum Adat Sebagai Sebuah Model Hukum: Bagian 1 (Historis)* (Mandar Maju 1992) 83.

[6] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana-Prenadamedia Group 2015) 93-95,126.

[7] Yvonna S Lincoln and Egon G Guba, *Naturalistic Inquiry* (Sage 1985) 201.

[8] Robert C Bogdan and Biklen Kopp Sari, *Qualitative Research for Education: An Introduction to Theory and Methods* (Allyn and Bacon Inc 1982).

[9] Jazim Hamidi, *Hermeneutika Hukum Teori Penemuan Hukum Baru Dengan Interpretasi Teks* (UII Press 2005) 43.

This research was carried out through four steps, namely: First, the step of collecting legal materials, carried out with a literature study which begins with collecting all legal materials related to the problem, classifying them, then arranging them systematically so that it is easier to read and study them. Second, the analysis step is done by using deductive reasoning which begins with examining legal materials, namely statutory regulations, judges' decisions, legal doctrine, and opinions of jurists as general provisions, to then be applied to the problems under study to produce answers to legal issues. To carry out the analysis, authentic, grammatical, systematic, and teleological interpretations are carried out. Third, after analyzing the legal materials, a conclusion can be drawn which is the answer to the formulation of the problem under study. Fourth is the provision of prescriptions, meaning the science of law that carries or is full of values. Because the science of law is advocating, not just suggesting that there is.[10]

Diversity of *Adat* Laws in Indonesia

The law cannot be separated from human life, so the discussion of law cannot be separated from the discussion of human life. Humans live in groups as a unit of society and this society is born and develops with diverse cultures and legal values. This diversity is generally referred to as plurality, which naturally also applies to the set of values believed by the community. Community life continues to develop, starting from small community groups, tribes, nations, and countries, including later the international community whose rules cannot be avoided by everyone. The presence of the state further strengthens the existence of legal diversity because the state with its authority in regulating the life of the state also forms the law. This law is commonly referred to as state law. At the same time, within a group of people's lives, a legal system other than state law applies, namely *adat* law, namely law built through tradition, generally in the form of unwritten or also included in this case, religious law up to state law. This collectively applicability to different legal systems is known as

[10] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Kencana 2015) 9.

legal diversity or legal pluralism.[11]

The term *adat* law was first introduced scientifically by Christian Snouck Hurgronje in 1893, in his book *De Atjehers* (which means the people of Aceh). The term *adat* law which means *adat* rules has long been known in Indonesia. During the reign of Sultan Iskandar Muda (1607-1636) Aceh Darussalam, who ordered the creation of the Makuta Alam law book, the term *adat* law was used. Then the term *adat* law is mentioned in the book *Hukum Safinatul Hukkam Fi Takhlisil Khassam* (Arch for all Judges in resolving all confused people) written by Jalaluddin bin Syeh Muhammad Kamaludin son of Kadhi Baginda Khatib Negeri Trussan on the orders of Sultan Alaiddin Johan Syah (1781 -1795). In the preamble of the book of procedural law it is said that in examining a case, the Judge must pay attention to *Sharia* Law, *adat* law, and *adat* and *Reusam* (customs). Then that term was recorded by Snouck Hurgronje when he conducted research in Aceh (1891-1892) using the Dutch term *Adatrecht* to distinguish between customs or establishments and *adat* that have legal sanctions.[12] Since then, the term *adatrecht* which was later translated as *hukum adat* became famous, especially since it was formulated by Van Vollenhoven so that it became a science of *adat* law.[13]

According to Snouck Hurgronje, *adat* and *adat* law are intermingled with each other.[14] *Adat* covers all areas of the life of members of indigenous peoples concerning decency and

[11] Sahrina Safiuddin, 'Hak Ulayat Masyarakat Hukum Adat Dan Hak Menguasai Negara Di Taman Nasional Rawa Aopa Watumohai' (2018) 30 Mimbar Hukum 96–110 <https://jurnal.ugm.ac.id/jmh/article/view/16681>.

According to J. Griffth: legal pluralism in its concept can be divided into strong legal pluralism and weak legal pluralism. A condition is said to be strong legal pluralism if each of the various legal systems is autonomous and its existence does not depend on state law, if the existence of one legal system depends on recognition from state law then such a condition is called weak legal pluralism (J Griffth, 'What Is Legal Pluralism?' (1986) 24 Journal of Legal Pluralism 1-55). In theory, Maria S.W. Sumardjono, quoting Becker, stated that: legal pluralism can be interpreted in a narrow sense and a broad sense. In a narrow sense, its meaning is based on dual-system theory, which is marked by the joining of the Western legal system with the *adat* law system. In this case, there are two legal systems, each of which is autonomous, coexisting, and interacting in certain events. In this narrow sense, it is also marked by the dominance of state law over *adat* law (state law pluralism). In a broad sense, legal pluralism refers to a real situation, namely the existence of various legal systems that are obeyed and their existence does not depend on state law. Particularly in the Indonesian context where the recognition and adoption of *adat* law are not only through laws and regulations but also jurisprudence, it seems that Indonesia tends toward weak legal pluralism or state law pluralism (Maria SW Sumardjono, 'Pluralisme Hukum Di Bidang Pertanahan', *Konferensi Internasional tentang Penguasaan Tanah dan Kekayaan Alam di Indonesia yang Sedang Berubah: Mempertanyakan Kembali Berbagai Jawaban* (Yayasan Kemala, 11-13 October 2004)).

[12] Snouck Hurgronje, *De Atjehers* (Batavia 1893) 357.

[13] Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Mandar Maju 2003) 9.

[14] Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia* (Citra Aditya Bakti 2006) 231.

habits.[15] To differentiate the two, Snouck Hurgronje includes the term *Adatrecht* which is used to refer to a sanctioned social control system (called *adat* law), simply to differentiate other social control systems that do not have sanctions (called *adat*).[16]

In principle, the terminology of *adat* law comes from the word *adatrecht* used by Snouck Hurgronje and used as a technical juridical terminology by van Vollenhoven. Then, the terminology of *adat* law known in the Dutch East Indies era was governed by the provisions of Article 11 *Algemene Bepalingen van Wetgeving voor Indonesia* (AB) with the term *godsdientige wetten*, *volksinstelingen en gebruiken*, the provisions of Article 75 paragraph 3 *Reglement op het Beleid der Regeling van Nederlands Indie* (RR) with the terminology *Instellingen en gebruiken des volks*, then according to the provisions of Article 128 *Wet op de Staatsinrichting van Nederlandsch Indie* or *Indische Staatsregeling* (IS) the term *godsdientige wetten en oude herkomsten* is used and based on the provisions of the *Staatsblad* Year 1929 Number 221 *jo.* Number 487 was last used in *adatrecht* terminology (based on the conclusion of the Seminar on *Adat* Law and the Development of National Law in 1976 organized by the National Legal Development Agency (Badan Pembinaan Hukum Nasional). Then *adat* law is defined as original Indonesian law that is not written in the form of legislation of the Republic of Indonesia which here and there contains elements of religion.

The term "*Adat* Law" comes from the Arabic words, *"Huk'm"* and *"Adah"*.[17] *Huk'm* (plural: *Ahkam*) means *"suruhan* or order;*" or "provisions."* For example, in Islamic Law (*Syari'ah* law), there are five kinds of orders called *"al-ahkam al-khamsah"* (the five laws), namely *fardh* (mandatory), *haram* (prohibition), *mandub* or *sunnah* (recommendation), *makruh* (reproach) and *jaiz*, *mubah* or *halal* (permissibility). Meanwhile, *Adah* or *adat* means *"customs"* namely community behavior that always occurs. So, *adat* law is customary law.[18]

[15] J Prins, *Adat En Islamitische Plichtenieer in Indonesia* (Derde Druk, Graven Hage 1954) 16.

[16] Budiono (n 14).

[17] The word "*adat*" comes from the Arabic language, namely "*Adah,*" an act that is done repeatedly or habitually. *Adat* is defined as a habit that, according to the assumption of society, has been formed before or after the existence of society. In Europe (Netherlands) *adat* law and customary law have the same meaning, which is called "*gewoonte recht,*" namely customs or customs that are legal that deal with statutory law *(wet-tenrecht).* But in the history of legislation in Indonesia, the terms "*adat*" and "*kebiasaan*" were distinguished, so "*hukum adat*" is not the same as "*hukum kebiasaan.*" "*Kebiasaan*" that are justified (recognized) in legislation are "*hukum kebiasaan,*" while "*hukum adat*" is customary law outside of statutory.

[18] Hadikusuma (n 13) 8.

If seen from a national perspective, the view of national *adat* law according to Koesnoe[19] is reflected in the three documents contained in the Preamble, Body, and Explanation of the 1945 Indonesian Constitution. The Preamble contains the law and its forms, the Body contains the system, and the Explanation is the basics. These three documents are a refinement of the concept of *adat* law. This can be found in the elucidation of the Indonesian Constitution where the national *rechtsidee* binds the nation and state of Indonesia. The *Rechtsidee* is a modern adoption of the idea of Indonesian people's law which originates from the cultural values of the Indonesian nation, namely *adat* law.

According to van Vollenhoven, *adat* law is a whole rule of positive behavior which on the one hand has sanctions (hence it is called "law") and, on the other hand, is not codified (hence it is called "*adat*"). This is proven by the research by Cornelis van Vollenhoven divided Indonesia into 19 *adat* law environments *(rechtsringen).* An area that has uniform outlines, patterns, and characteristics of *adat* law is called *rechtskring.* Each *adat* law environment is further divided into several sections called *Kukuban Hukum (rechtsgouw).* The *adat* law environment is as follows:[20]

1. Aceh (Aceh Besar, West Coast, Singkel, Semeuleu);
2. Land of Gayo, Alas dan Batak areas;
   a. Gayo Land (Gayu Lues),
   b. Alas Land
   c. Batak Lands (Tapanuli): (1) North Tapanuli: Batak Pakpak (Barus), Batak Karo, Batak Simalungun, Batak Toba (Samosir, Balige, Laguboti, Lumbun Julu); (2) South Tapanuli: Padang Lawas (Tano Sepanjang), Angkola, Mandailing (Sayur Matinggi); (3) Nias (South Nias).
3. Land of Minangkabau (Padang, Agam, Tanah Datar, Limapuluh Kota, Tanah Kampar, Kerinci);
4. Mentawai (Pagai People);
5. South Sumatera:
   a. Bengkulu (Renjang);
   b. Lampung (Abung, Paminggir, Pubian, Rebang, Gedungtataan, Tulang Bawang)
   c. Palembang (Anak Lakitan, Jelma Daya, Kubu, Pesemah, Semendo)
   d. Jambi (Orang Rimba, Batin, dan Penghulu)

[19] Koesnoe (n 5) 81; loaded in M Syamsudin, 'Perkembangan Konsep Hukum Adat Dari Konsepsi Barat Ke Konsepsi Nasional: Sebuah Tinjauan Historis' (1996) 5 Jurnal Hukum 70–80.

[20] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Liberty 2008) 133; H. Noor Ipansyah Jastan dan Indah Ramadhansyah, *Hukum Adat,* h.76-78 dalam Stefanus Laksanto Utomo, *Hukum Adat* (Rajawali Press 2016) 172–173.

   e. Enggano
6. Melayu Land (Lingga-Riau, Indragiri, East Sumatra, Banjar People);
7. Bangka and Belitung;
8. Kalimantan (West Kalimantan Dayak, Kapuas, Hulu, Pasir, Dayak Kenya, Dayak Klemanten, Dayak Landak, Dayak Tayan, Dayak Lawangan, Lepo Alim, Lepo Timei, Long Glatt, Dayak Maanyan, Dayak Maanyan Siung, Dayak Ngaju, Dayak Ot Danum, Dayak Penyambung Punan);
9. Gorontalo (Bolaang Mongondow, Boalemo);
10. Toraja Land (Central Sulawesi, Toraja, Toraja Baree, West Toraja, Sigi, Kaili, Tawali, Toraja Sadan, To Mori, To Lainang, Banggai Islands);
11. South Sulawesi (Bugis People, Bone, Goa, Laikang, Ponre, Mandar, Makasar, Selayar, Muna);
12. Ternate Islands (Ternate, Tidore, Halmahera, Kao, Tobelo, Sula Islands);
13. Maluku Ambon (Ambon, Hitu, Banda, Uliasar Islands, Saparua, Buru, Seram, Kei Islands, Aru Islands, Kisar);
14. Irian;
15. Timor Islands (Timor Islands, Timor, Central Timor, Mollo, Sumba, Central Sumba, East Sumba, Kodi, Flores, Ngada, Roti, Sayu Bima)
16. Bali and Lombok (Bali Tanganan-Pagrisingan, Kastala, Karrang Asem, Buleleng, Jembrana, Lombok, Sumbawa);
17. Central Java, East Java and Madura Island (Central Java, Kedu, Purworejo, Tulungagung, Jawa Timur, Surabaya, Madura);
18. Kingdom Region (Yogyakarta and Surakarta);
19. West Java (Priangan, Sunda, Jakarta, Banten).

Philosophy of Land Relations with Humans

What is the meaning of land and how does it relate to the Indonesian nation as a nation that originates from the native population as natives of the earth? In other words, the Indonesian people have their philosophy regarding land. This is because the Indonesian people make arrangements regarding land by following the rules of land law whose substance is the people's philosophy of man and land. This rule is continuously internalized and practiced by the people in their daily lives from generation to generation, from ancient times to the present in solving human problems with land.[21] The philosophy of the Indonesian nation toward land in the provisions of the UUPA is used as the basic view of the Indonesian people regarding land. The basic views of the Indonesian people regarding the Indonesian nation and the land are simple and manifest in folklore as a

[21] Mohammad Koesnoe, *Prinsip-Prinsip Hukum Adat Tentang Tanah* (Ubhara Press 2000) 4.

myth.[22] Koesnoe stated that the myth of the relationship between humans and land (in a broad sense) starts from two phenomena that have different characteristics from one another in principle.[23] The first thing is the sky and the second is the earth (or it can be interpreted as land). Heaven is the father of the universe and Earth is the mother. The marriage of heaven and earth can be interpreted the same as the marriage of a man and a woman. From this marriage, children are produced, namely what is interpreted as everything that exists on earth, including inanimate objects, plants, and all kinds and types of animals, some of which are of the human type. Thus, the relationship between humans and everything that exists on earth is a sibling relationship. The relationship between humans and humans, as well as humans and what is in the environment to live and live their lives is a relationship as brothers. All are children of one parent from father and mother (heaven and earth). As a child in a family, the relationship between them is mutual love, caring for each other's existence and safety, and helping each other. These attitudes and activities carried out by children from the heaven and earth families are the results of the same affectionate upbringing and care as well as care from their mothers which are formulated in the principles of life and living life as outlined in the form of natural provisions along with their facilities and implementation.

From the people's philosophical view of the environment, the term land environment where humans live and live is then called by various terms that reflect an inner attitude and show the closeness of the relationship between the people and

[22] When referring to the philosophy of this nation, sometimes the substance cannot make sense and it is not easy to grasp the meaning contained therein. Therefore, a philosophical and hermeneutical study is needed to obtain a rational understanding. Koesnoe said that, when examined further, the myths related to the land, these illogical delusions are the result of the ability to think very abstractly and feel the totality that is faced more deeply. Within this framework, there are deep human meanings and values. The myth itself contains two aspects, namely the inner side and the outer side. In other words, every myth always has a substance aspect which is its mind or soul, and an external aspect or form. The inner aspect is an aspect that is difficult to understand its real substance and intent, while the external aspect is open to study to be given a logical interpretation. This is because the external aspect is related to the values and conditions of the society where the myth exists. Thus, it can be said that the values and circumstances of life in society contribute to the content and form of the myth's appearance. To understand this, researchers are required to be able to master the art of understanding, namely hermeneutics. Through this method, it will be possible to demythologize the myth in question (the relationship between land and humans) so that it is possible to understand the views of the people regarding existing agrarian resources, which are now the basic legal views regarding agrarian resources in the territory of the Republic of Indonesia. The basis of this view is now known as the basis of view according to custom (See ibid 4–5).

[23] ibid 6–7.

the land environment. The intimate relationship between the people and the land and environment in which they live is known as *"pertiwi"* (motherland). Returning to the concept mentioned above, the environmental land where they live and reside is referred to as the mother of the people concerned. Thus, the relationship with the land, the environment, and the people is likened to the relationship between a mother and her children, a relationship full of mutual affection and affection. The term is often expressed by the abbreviation *"pertiwi."* Other terms are commonly used, namely *"tanah-air"* and also *"tanah tumpah darah"* (land of spilled blood). These terms show the relationship and assessment of the Indonesian people toward the land where they live. In other words, the specificity of this relationship describes the land in which someone was born and then lives their life until they are buried and returns to that land.

According to Koesnoe's view[24], the term *"ibu pertiwi"* comes from the meaning of mother as land, while the people are likened to children who have been born for generations, nurtured and cared for by the surrounding land as their mother. So that the people can remain in their existence on the land of the environment concerned by following the traditions passed down by their ancestors. In the view of the people, the land, environment, and residence of the people are a place where the seeds of all of them exist and are stored. The seed comes from the sky as the father through a marriage between the sky as the father and the earth as the mother. The human seed is placed in the mother's womb (on the earth). In the womb of the earth, from the seed, it grows until it reaches the form of a human being. It was there that they were born and there the blood spilled and the navel of human life was stored there. Therefore, the earth is truly a mother who conceives, gives birth to, and cares for humans. This birth from the womb of his mother is called the homeland of the human being concerned. The human in his life depends on his mother to be able to live and survive in life. This view then gave birth to a basic view of how the relationship between the people and their homeland as their mother and their relationship with others or their siblings should be. The relationship is the mother-child relationship or father-mother-child relationship or simplified by the

[24] ibid 10–11.

parent-child relationship. In the view of the people, this is a relationship that originates from natural provisions. This relationship is thanks to the operation of nature.

This relationship, which originates from the natural provisions of nature, between humans and their environment, gives birth to legal relations that contain rights as well as obligations. Obligations and rights are two things that are very difficult to separate. Some even liken it to the two sides of a coin that cannot be separated. Where there are obligations, on the other hand, they will have rights. The obligation between humans and the land environment is the obligation to protect, defend, maintain, and maintain the sustainability, welfare, and honor of the land where they live and all its contents.

Relationships regulated in natural law contain not only legal obligations but also moral obligations for the people. After the birth, there is the life, growth, and development of the people themselves as children from the soil of their environment, from which they are often called *"bumi-putera"* or children of the country. There needs to be maintenance, care, and affection from the mother, namely the *"ibu pertiwi."* From their *"tanah tumpah darah,"* the people get everything they need to live and still be able to live together with all the children of the motherland. From the land where their blood spilled, people can live and develop into human beings according to their nature. If the human dies, in the view of *adat* law, his spirit is still there and lives on. Even though his body was buried in the earth where he was conceived, then he was born and raised there where he returned. In the traditional view, this is known as *"kembali ke haribaan ibu pertiwi".* By being buried in mother earth's earth, the body and spirit of the person concerned, as a child, are taken up again by his mother.[25]

The Position of *Adat* Law Regarding Land as an Effort for Legal Reform in Indonesia

When viewed from the point of view of the implementation time of agrarian regulations as stated in Law no. 5 of 1960, this UUPA regulation since it was first promulgated on September 24, 1960, until now (2023) has never been amended or revoked. In its development, after 62 years in the force, there is a thought that the UUPA needs to be updated. The background

[25] ibid 11–12.

to this UUPA reform is: *firstly*, the management of agrarian resources that has been going on so far has resulted in a decrease in environmental quality, an imbalance in the structure of tenure, ownership, use, and utilization, and has given rise to various conflicts; *secondly*, laws and regulations relating to the management of agrarian resources are overlapping and contradictory. The foundation on which the policy is based to carry out agrarian reform in Indonesia can be seen in the mandate of the Majelis Permusyawaratan Rakyat (MPR) or People's Consultative Assembly, MPR Decree of the Republic of Indonesia No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, as well as organic regulations as the implementer of the MPR Decree. The MPR's stipulation gives importance to the regulation and enforcement of agrarian law in Indonesia in the future. In the era of the industrial revolution 4.0. this agrarian reform has strategic value, because it aims to reorganize control, ownership, use, and utilization of agrarian resources, especially land in the framework of achieving legal certainty and protection as well as justice and prosperity for all Indonesian people. Economic globalization encourages land policies that are increasingly adaptive to market mechanisms but has not been followed by strengthening the access of the people and, of course, indigenous peoples to land acquisition and control. Future challenges to the UUPA also demand that it be reviewed, revised, and adapted to the needs and demands of society.

The UUPA, which has existed for several decades is associated with technological developments and also the progress of the times, as well as the enthusiasm to realize legal certainty and protection as well as justice and prosperity for all Indonesian people. Thus, it is necessary to make a legal breakthrough, especially the normalization of the rule of law. in the provisions of the UUPA.

In various kinds of literature, there are various opinions about the term agrarian reform. Some use the term *"pembaharuan agraria,"* some use the term *"penyempurnaan agraria,"* and some use the term *"pembaruan agraria."* These terms are translations of agrarian reform. Lipston, as quoted by Bonnie Setiawan,[26] mentioned that *agrarian reform*

[26] Lipston, in Bonnie Setiawan, "Konsep Pembaruan Agraria: Sebuah Tinjauan Umum", loaded in Gunawan Wirahadi and Et.al, *Prinsip-Prinsip Reforma Agraria, Jalan Penghidupan Dan Kemakmuran Rakyat* (Lepera Pustaka Utama 2001) 30.

or *land reform* is a policy of equity, at least in the desires that consist of:

1. Forced appropriation of land, usually by the state from landlords and with partial replacement;
2. Development of agriculture from these lands for the greater benefit of the relationship between humans and their land compared to before the expropriation. Especially known two ways of land reform, namely land division, and collectivization. In addition to land reform, other forms of reform are also related, namely renewal, capture, clearing, and transfer of new land, special assistance for small farmers, and progressive land taxes.

In Indonesia, the spirit of agrarian reform has existed since the 1960s, but in its development what is often buzzed with the term land reform it is a policy that is often ignored. So in practice there are still many land tenures that transgress the limit by having multiple self-identities (generally making more than one ID Card in different places), the provisions on absentee land prohibition are often ignored, the provisions on how to redeem agricultural land mortgages are not enforced and so on. Such a situation could result in a return to the situation before 1960 when poverty was increasing and people's access to land was increasingly closed.

Agrarian reform is a must to implement. The basis of agrarian reform is Article 33 paragraph (3), Article 27 paragraph (2), and Article 28 of the 1945 Indonesian Constitution and MPR Decree No. IX/MPR/2001. Joyo Winoto, the Head of National Land Agency, , in a public lecture at the Faculty of Law, Airlangga University stated that the aims of agrarian reform are :[27]

1. Rearranging the imbalance in the structure of the use, utilization, control, and ownership of land in a more just direction;
2. Reducing poverty;
3. Creating jobs;
4. Reducing land disputes and conflicts;
5. Improving people's access to economic resources, especially land;
6. Improving household food and energy security; and
7. Improving and maintaining quality of life.

[27] Joyo Winoto, *Reforma Agraria Dan Keadilan Serta Kesejahteraan Sosial, Paper Presented at the Public Lecture of the Head of the National Land Agency in Surabaya* (2007) 34.

Agrarian law reform starts from something that already exists, then changes as a product of interaction in people's lives. Therefore, legal reform must be carried out in response to demands for changes that occur in society.[28] This shows that the law is not constant in one era, place, or situation, but always changes dynamically along with changing times, places, and conditions.

As mentioned in the previous explanation, *adat* law is used as the basis for the formation of national agrarian law. Then what is meant by *adat* law and which *adat* law is used in the formulation of national agrarian regulations? This is considering that Indonesia as a pluralist country has many tribes and cultures, and each region throughout the country has its *adat* law. To answer this question, it is necessary to know what custom is and what *adat* law is. Referring to Koesnoe's[29] opinion, *adat* governs all community life. Meanwhile, *adat* law is part of the custom, namely the part that radiates awareness about what is fair and proper in the framework of social relations. In other words, *adat* law lies within the part of *adat* which explains issues of social relations only by being guided by justice and decency. Djojodiguno[30] added that *adat* law is directly a statement of the sense of justice and decency that lives within the hearts of the people themselves, *adat* law has never been enunciated as a law or codified. Soepomo[31] states that *adat* law provides guidelines for behavior in social relations. The principles of *adat* law are stated in a form that is entirely easy to recognize and easy to remember and easy to understand.

Adat law reflects the life of the people. *Adat* law is also born from the awareness of the people, in which the people generally obey *adat* law without any coercive means.[32] As an expression of the people's sense of justice and decency, *adat* law develops in line with and as fast as the development of people's lives in society. The dynamic pattern attached to *adat* law does not mean it develops wildly *(wildegroei)* without paying attention to

[28] Fitriyani Fitriyani, 'Aspek-Aspek Pembaruan Hukum Islam Dalam Hukum Keluarga Di Indonesia' (2019) 11 TASAMUH: Jurnal Studi Islam, 249–270.

[29] Mohammad Koesnoe, *Kapita Selekta Hukum Adat: Suatu Pemikiran Baru* (M Ali Boediarto ed, IKAHI 2002) 8.

[30] Djojodiguno, *Menyandera Hukum Adat* (Yayasan Fonds UGM 1950) 6–8.

[31] R Soepomo, *Bab-Bab Tentang Hukum Adat* (Pradnya Paramita 2007) 26–28.

[32] Koesnoe, *Kapita Selekta Hukum Adat: Suatu Pemikiran Baru* (n 29) 11.

what is there and ignoring everything from the past.[33]

Land has a very important role in *adat* law. This is because the land is the only object of wealth that, despite experiencing any condition, will remain in its original state. Sometimes it even becomes more profitable when viewed from an economic perspective. If a piece of land is burned, even if a bomb is dropped on it, the land will not disappear. After the fire is extinguished or after the land has been bombed, the land will reappear and remain in the form of the soil as before. Even if it is hit by a flood disaster, after the water recedes, it will grow back a piece of land that is more fertile than before. It has become a fact that land is a place for families and communities to live, provide a livelihood, become a place where people who die are buried and refers to community beliefs, becomes a place for guardian spirits and a place for the spirits of ancestors to reside.[34]

In the provisions of *adat* law, the legal community and the land as the place it occupies have a close relationship that stems from a religious-magical view. This relationship causes the legal community to obtain the right to control the land, utilize the land, collect products from the plants that live on the land, as well as hunt animals that live on the land.[35] In some literature, the relationship between the land and the legal

[33] Koesnoe stated that although *adat* law has a traditional style, *adat* law also has a dynamic nature. This dynamic and traditional nature influences each other and is an interaction that provides smoothness to the course of the development of *adat* law. Outsiders who cannot observe the movement of these developments easily state that *adat* law is static and does not change and does not follow the flow and call of the masses. Yet the change is there. It's just that these changes and developments are always accompanied by wisdom and vigilance. *Adat* law changes according to the development of society and people (ibid 13). Koesnoe added that the principles in *adat* law are appropriate, proper, harmonious and in line with the conditions of the times and a sense of justice (Mohammad Koesnoe, *Catatan-Catatan Terhadap Hukum Adat Dewasa Ini* (Airlangga University Press 1979) 37–39, loaded in Rikardo Simarmata, 'Pendekatan Positivistik Dalam Studi Hukum Adat' (2018) 30 Mimbar Hukum, 465–489 <https://jurnal.ugm.ac.id/jmh/article/view/37512>.

[34] Bushar Muhammad, *Pokok-Pokok Hukum Adat* (Pradnya Paramita 2006) 103.

[35] This legal community right to land is known as landlord rights or ulayat rights which are mentioned in the provisions of Article 3 of the UUPA. In other literature, Cornelis van Vollenhoven calls this kind of lordship *beschikkingsrecht*. In Indonesian it can be interpreted as an environment of power. In principle, this *beschikkingsrecht* reflects the relationship between the legal community and the land, which according to consensus by legal experts in Indonesia is interpreted as *adat* rights (see ibid 103–104). There are different terms for ulayat land or ulayat environment in every region of Indonesia, for example in Java it is known as *wewengkon*; in Bali, it is known as *prabumian pajar*; South Sulawesi with the term *limpo*; in Lombok with the term *paer*; in Minangkabau with the term *ulayat*; in Kalimantan with the term *panyampeto*; in Batak with the term *golat;* and Ambon with the term *patuan* (C Dewi Wulansari, *Hukum Adat Indonesia: Suatu Pengantar* (PT Refika Aditama 2010) 81).

community has an elastic nature depending on the use of legal community members in utilizing the land.

Adat law regarding land divides the right to tenure over land into two, namely community rights over land and individual rights over land.[36] In principle, the land and the citizens of the partnership or legal community concerned can explore and exploit the land. In a broad sense, it means that it can manage agrarian resources in a broad sense. Everything can be done as long as the natural resources are still available and the legal community is still being formed. This shows an enduring relationship between agrarian resources and the legal community concerned.

As is well known, most of the forms of *adat* law are unwritten; however, this does not mean that the unwritten form cannot create legal certainty. *Adat* law as stated in the provisions of Article 5 UUPA, is used as the basis for the formation of national agrarian law. The provisions of Article 5 of the UUPA become the basis for *adat* law used in forming national agrarian law. There are at least five *adat* law requirements that can be used as the basis for the formation of agrarian law, namely: first, the *adat* law used does not conflict with national and state interests; secondly, the *adat* law does not conflict with Indonesian socialism; third, the *adat* law does not conflict with the provisions contained in the UUPA itself; fourth, the *adat* law does not contradict other laws and regulations in the agrarian sector; Finally, the *adat* law must heed elements that rely on religious law. These five requirements are cumulative requirements that must be met as the basis for *adat* law to be used in the formation of national agrarian law.

In the future, related to the renewal of agrarian law, legislators need to pay attention to aspects of Pancasila as *rechtsidee*. Pancasila must underlie all Indonesian laws and regulations, in which all regulations in the form of laws and unwritten regulations (one of which is *adat* law) and all implementing regulations are required to always follow and have a *rechtsidee* spirit adopted by the Indonesian state.[37] Thus, the legality of regulation

[36] Wulansari (n 35) 80.
[37] Koesnoe, *Kapita Selekta Hukum Adat: Suatu Pemikiran Baru* (n 29) 58.

in all forms and levels is subject to its test stone, namely Pancasila.[38]

Referring to the explanation above, it is necessary to reaffirm *adat* law is used as the basis for the formation of national agrarian law. If indeed *adat* law is the main basis for the formation of national agrarian law, it should be true that typical Indonesian *adat* law is indeed used as the basis for its formation, given that *adat* law is a reflection of Indonesian society.

Conclusion

In the view of Mohammad Koesnoe, the philosophy of the Indonesian nation toward land is in the provisions of the UUPA used as the basic view of the Indonesian people regarding land. The basic views of the Indonesian people regarding the Indonesian nation and the land are simple and manifest in folklore as a myth. In the myth of the relationship between humans and land, the first is the sky and the second is the earth. Heaven is the father of the universe and Earth is the mother. The marriage of heaven and earth can be interpreted the same as the marriage of a man and a woman. From this marriage, children are produced, namely what is interpreted as everything that exists on earth, including inanimate objects, plants, and all kinds and types of animals, some of which are of the human type. The relationship between humans and humans, as well as humans and what is in the environment to live and live their lives is a relationship as brothers. As a child in a family, the relationship between them is mutual love, care for each other's existence and safety, helping each other, and helping each other. This *adat* law conception of land for further development can still be used as a basis for reforming agrarian law in Indonesia. Even though *adat* law has a traditional character, *adat* law also has a dynamic nature. This dynamic and traditional nature influences each other and is an interaction that provides smoothness to the course of the development of *adat* law. *Adat* law changes according to the development of society and people. This is in line with one of the principles in *adat* law, which is by the conditions of the times. However,

[38] Dwinanda Linchia Levi Heningdyah Nikolas Kusumawardhani, 'Membangun Sistem Peradilan Pidana Anak Di Indonesia Berbasis Cita Hukum Pancasila' (2022) 20 Jurnal Hukum dan Dinamika Masyarakat 81–93.

adat law that is used as the basis for agrarian reform must be by the *rechtsidee* of the Indonesian nation as contained in Pancasila. Law makers need to restore the system, institutions and principles of *adat* law, so that they can be accommodated and used as a basis for changes related to agrarian law in Indonesia which are certainly in accordance with the spirit of the Indonesian nation.

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