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### RESEARCH ARTICLE

#### REVITALIZATION OF THE MODEL OF LAND TENURE MANAGEMENT ACCORDING TO THE ADAT LAW OF THE DAYAK AOHEUNG TRIBE BASED ON JUSTICE VALUE

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#### Abstract

The procedure for obtaining land tenure rights under the customary law of the Dayak Aoheng tribe, a tribe that existed before the country named Indonesia, was different from national law. This raises a polemic in its enforcement in this case, the writer felt that it was interesting to study the Aoheng Dayak tribe so it is in accordance with the value of justice. The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach. Research shows that the way to maintain customary land according to customary law is done in several ways. First, by planting long-life fruit trees on certain parts of land that has been cleared. Second, by periodically according to the cycle of land succession landed again on the land. The thing that determines whether a person has the right to return to open a field where someone has been farming is the existence of Lepuun (Village Garden) on the land. It is in this context that farming practices are called shifting cultivation. This practice is certainly not the same as the national law adopted in Indonesia. this encourages the need to revitalize the spirit of customary law enforcement in national law because the State has the obligation to regulate in full and authoritative what is mandated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "the State recognizes and respects unity-the customary law community unit and its traditional rights as long as it is alive and in accordance with the development of the community and the principles of the Unitary Republic of Indonesia, which is regulated in law. " The recognition and respect must be regulated in a law that is mandated by the constitution. Herein lies the most authoritative novelty power of this research. The de facto reality of governance practices of tenure rights under customary law in the Dayak Aoheng tribal customary law community based on the value of justice reviewed and discussed in this study becomes empirical facts for normative and empirical recognition for indigenous and tribal peoples in the Unitary State of the Republic of Indonesia as State of law (Rechtsstaat).

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**Introduction:-**

Amendments to the 1945 Constitution of Indonesia are considered by the author as unable to resolve the problems faced by the Customary Law Community, due to various reasons including: First, there is a limitation of legal recognition in the form of conditions for example as contained in the Forestry Law, the law Local Government and Plantation Laws. Second, the policies in each government institution are not yet synergistic, thus creating sectoralization which in turn makes many government agencies deal with indigenous and tribal peoples using a different and partial approach in viewing the rights of indigenous and tribal peoples. Third, the absence of the most competent institutions to take care of the existence and rights of indigenous and tribal peoples as well as the creation of a comprehensive regulatory model for legal recognition of the existence of customary law communities, both in substance and implementation framework. The Dayak Aoheng tribe is one of the indigenous community entities that in the dynamics of life as part of Indonesian society also experiences the dynamics of development in this economic field. As an indigenous community entity, the Dayak Aoheng tribe has customary legal instruments in resolving various friction related to land disputes, including land disputes.

However, the absence of provisions that guarantee protection of the rights of indigenous and tribal peoples and the unavailability of legal instruments regarding mechanisms for resolving land disputes under customary law will continue to be a potential source of agrarian conflicts related to the dynamics of this development in the future. This happens because the business development activities in the economic field, especially economic development that requires a large area of land are generally located in areas that are territorial territories of indigenous peoples / traditional communities. Until now what has happened is a pattern of conflict resolution that emphasizes legalistic settlement, which generally is in the context of providing guarantees for the continuity of land ownership by investors. This approach is clear but overrides the rights of indigenous and tribal peoples to land where they have lived for centuries. Indigenous peoples are often only regarded as those who obstruct investment and development, and not as subjects whose rights have tenure rights to land. Economic laws relating to large-scale land tenure, such as the mineral and coal law and the Plantation Law do not provide adequate alternatives and legal instruments for handling land dispute resolution with indigenous and tribal peoples. Facts like this, as stated by Nurhasan Ismail that in its development the principles and norms of legislation in the Old Order period tended to be a description of the social value of collectivity, but conversely in the New Order era and until 2005 were more likely to be an explanation of social value of individuality.

Although on the other hand there is recognition of the existence of indigenous peoples, but the absence of legal arrangements that open space for mechanisms of resolution of agrarian disputes according to local wisdom of customary law that lives and develops on indigenous peoples for justice which is not merely legalistic shows on the one hand the absence of recognition of indigenous peoples as legal subjects in the resolution of agrarian disputes, and on the other hand pointing to an abandonment of a sense of justice that is real according to the values of life of indigenous peoples themselves. The rise of land-related disputes in the midst of the community is a sign that the community needs a fair form of resolution. Leaving disputes without resolution will hamper the creation of a productive partnership to bring prosperity to the community. Conflicts show that legal cases require access to law and social justice. therefore departing from the idea that legal development must be renewed by other sectors such as legal science and legal ideas through the process of education and academic thinking, legal reform must be approached by changing the narrow approach system (legalistic) to a more systematic, holistic approach and integrated. To be able to carry out a holistic study of law and social reality, an empirical approach is needed that allows observations of the operation of the law to be carried out.

Based on this reasoning, the writer conducted a legal research on the revitalization of the model of land tenure management according to the customary law of the Dayak Aoheng tribe based on the value of justice as the basis of empirical reality that has juridical value in indigenous communities to become for the State to regulate regulations and respect property rights. over land based on customary law with the main problem as follows:

1. Why is the governance of the Land of Ownership Rights according to the customary law of the Dayak Aoheng tribe is currently not Just ?
2. How to revitalize land tenure procedures according to the Dayak Aoheng tribal law so that it is in accordance with the value of justice?

### Method of Research:-

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach ( approach) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

### As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

### Research Result and Discussion:-

#### Reasons Why The Governance Of The Land Of Ownership Rights According To The Customary Law Of The Dayak Aoheng Tribe Is Currently Not Just

Based on the results of research conducted by the author on the Dayak Aoheng indigenous people, it was found that data on the community, how to maintain the land of ownership rights according to customary law is done in several ways.

First, by planting long-life fruit trees in certain parts of the cleared land. The longevity fruit trees planted in groups in the Aoheng Dayak tribe are called Pukung. There are two types of pukung, namely Main Pukung and Small Pukung. Main Pukung, is an indication that in that place people who open land for farming, not only farming only once on a certain land area, but farming in the area with an area several times farming. Thus, it will be found in the area other than the existence of the Main Pukung there is a Small Pukung. This Small Pukung, does not always exist in all of the land area where someone has cleared a field. Both of these types of Pukung, if the person who is farming has moved to farm in another place, is no longer called Pukung, heaving Lepuun. Called Pukung, as long as people who are farming are still farming in the same place.

Second, by periodically according to the cycle of land succession landed again on the land. The thing that determines whether a person has the right to return to open a field where someone has been farming is Lepuun on the land. It is in this context that farming practices are called shifting cultivation.

In the Dayak Aohengtribe the term nomadic farming is actually an incorrect term because the Dayak Aoheng tribe does not freely move freely. Cultivating cultivation is actually farming in a "rotational cultivation" pattern. The shifting cultivation system carried out by the DayakAoheng tribe is actually a rotation of land use, or locally known as rotational cultivation. After one to two harvests the fields will be left indefinitely, depending on the natural succession of the land. The former land will grow into thickets until it becomes a secondary forest and is a hereditary inheritance for the owner's family. Farming locations are generally outside the village area known as Umo. This area is devoted to agricultural activities, especially shifting cultivation. Swidden cultivation is a form of agricultural activity in rural communities in general and Dayak people in particular who are trying to make ends meet by planting crops that are adapted to local ecological conditions and rules, easily and cheaply. The Dayak tribe in farming is principled to the pattern of land use cycles on a local scale that is often mixed with migration

(migration). Based on the sequence of fields and after the first harvest, the Dayak Aoheng classify the fields as follows:

Within the Aoheng Dayak tribe, swidden agriculture is the economic and cultural backbone of the Aoheng Dayak community. According to Conklin, there are three main pillars in farming namely environment, culture and temporal. The environmental pillar consists of climate, edaphic, and biotic factors. Cultural pillars of cultivation are technological, social and ethnoecological factors. The temporal pillar of cultivation shows the five successive phases of farming activities, namely the phase of land clearing, logging, burning, planting and cultivation. The first three phases are more concerned with clearing vegetation that is not relevant to the needs of cultivation, while the next two phases relate to the control activities of the new and growing vegetation. Forest mosaics that are formed are characterized by certain types of plants that dominate so that the influence of community activities on diversity at the ecological level is very clearly seen. The effect of community intervention on the natural environment results in the formation of ecologically different environmental units, each of which has its own characteristics. For example, the fields (umo), secondary fields of the former fields (coca, ivut, berle'ang, ivutbootiq and ivuttu'an) are each characterized by the types of plants that dominate them. The shifting cultivation system in Aoheng Dayak community is a form of agriculture that has characteristics such as rotation of the fields, cleaning with fire, no animals attracting and fertilizing, humans are the only energy, simple processing equipment, and short periods in land use where it has to be restored as soon as possible with a long fallow period. Thus they must be skilled at managing their cultivation cycle. Implementation of shifting cultivation activities will certainly have a negative influence on the surrounding environment. Therefore, Efforts to overcome the occurrence of environmental damage around the farm location have been carried out by cultivators Aoheng in accordance with their traditions. In addition to being fed with natural succession, former abandoned fields are planted with various types of fruit trees and rattan. This reflects that they realize that the environment around the farm location must be maintained in balance.

In the farming system of the Aoheng Dayak community the land is usually cultivated two to three times the growing season. After that the fields will be given for 7 to more than 20 years to restore soil fertility. This can be understood from the research of Morisada et al in 2000 who examined land with several periods of fallow period in West Kutai that the ratio of soil after giving indicates the soil nutrient content will change according to fallow period. Overall, soil nutrient content does not need to be supplemented for up to 30 years fallow period. The research also shows that in the carbon and phosphorus soil available does not form until at least 15 years fallow, and then soil productivity is expected to recover after more than 15 years fallow. The length of fallow is a critical factor for the sustainability of Dayak farming. According to Mayer, shifting cultivation with a long fallow period can be an efficient and sustainable form of agricultural land use in areas with low fertility. Field observations show that shifting cultivators, especially the Dayak Aoheng, are familiar with a variety of positive ethics and rules concerning cultivation that allow the damage caused as explained previously. These rules not only concern the selection of land that must be really careful so that production is high and does not take care of the land, but also the efforts made to prevent forest fires and the implementation of land clearing after harvesting in a long enough time so that the land able to fertile again. Traditional shifting cultivation in areas with low population density can be activities that are in accordance with ecological principles such as in the Apo Kayan area. This system is sustainable, if the condition of low crop yields and low population density in this system in terms of social and economic still remains as desired. In this case the length of fallow is a critical factor so it is necessary to think deeper about the shifting cultivation community in areas that have limited land.

In order to prevent a cross disputes due to farming activities, there are customary rules that must be obeyed known as bekumaqadat. For example, in umaqtemikng and umaq bend, at each boundary of land owned by each cultivator a clear boundary is made in the form of trees which are deliberately left standing in line along the boundary of the field. These boundary trees are called Elakng and if the trees were destroyed during the burning of the fields which were carried out in a group then for replacements they must be planted with new trees in the form of long-lived plant species such as teluyatn wood (*Eusideroxylonzwagerii*) or kalakng (*Duriozibethinus*). This is to make it easier for the heirs of the owner of the field in the future to recognize the boundaries of the field or agroforestry (simpukng), the legacy of their parents.

### **Revitalizing Land Tenure Procedures According To The Dayak Aoheng Tribal Law So That It Is In Accordance With The Value Of Justice**

There is a misunderstanding in the community that clearly harms the holders of land rights according to customary law, where the community in general does not distinguish the understanding of "Customary Land" with "customary ownership rights".

In the Indonesian Agrarian Law (UUPA), "Customary Land" is identical to Tanah Ulayat, namely common ownership rights of the partnership. This communal land is different from customary ownership rights. Customary ownership rights are ownership rights according to customary law, which are identical to ownership rights as regulated in 20 paragraph (1) of UUPA: Customary property rights are land owned by customary law communities that do not yet have any documents. Provisions regarding customary ownership rights or according to customary law can be seen in the Joint Instruction of the Minister of Internal Affairs and Regional Autonomy with the Minister of Agrarian No. Sekra 9/1 / 2 dated 5 January 1961 concerning the Implementation of Perpu No. 56 of 1960 concerning Determination of Agricultural Land Area addressed to:

1. all Governors of each district;
2. All Regents / Mayors Head of Regions; and
3. Agrarian Officials,

In point 5 letter c it is regulated that "the so-called right of ownership is the right that is hereditary, the strongest and the highest land ownership a man can have in Indonesia, as referred to in article 20 of the UUPA. In this sense, ownership rights are not necessarily recorded in the village administration book and can be proven by formal documents. The thing that determines whether a piece of land is a right of ownership is the fact that the right has been applied continuously, and there are signs of land ownership and the right is respected by the people in the community. The signs of control referred to are that the land is not absolutely in continuous cultivation. The mark of control over the land can be in the form of fruit trees, orchards and agricultural land reserves. More than that the traditional agricultural land, can be read in the same instructions, namely in point 5 letter b which states that "what is meant by agricultural land is also all plantation land, ponds or fisheries, land where livestock grazing, ex-grazing land and the forest which is a place of livelihood for those entitled. In general, agricultural land is all land that belongs to people, other than land for housing and business. If it is on a large piece of land consisting of someone's house, then the local opinion determines how much area is considered as a yard, and how much is agricultural land.

"The procedure for obtaining ownership rights under customary law in the UUPA is regulated in article 22 paragraph (1) of the UUPA that says "the occurrence of ownership rights under customary law is governed by government regulations. In the elucidation of Article 22, it is written "as an example of how customary land rights occur under land law. These methods will be arranged so that things that are not detrimental to the public and State interests occur "In article 50 paragraphs (1) it is explained that "further provisions regarding property rights are regulated by Law". However, this customary ownership right is guaranteed by article 56 of the UUPA where: "as long as the Law regarding ownership rights is because the article 50 paragraph (1) has not yet been established, then the provisions of the local customary law and other regulations concerning rights on land which gives authority as referred to in article 20, as long as it does not conflict with the soul and the provisions of this law."

#### **Article 16 paragraph (1) regulates and sorts forms of ownership of land into:**

1. Land-Ownership (HakMilik)
2. Regarding its use and procedures for processing ownership rights over further provisions in article 22 paragraph (1 and 2a); Permendagri No. 5 of 1973 concerning Provisions Regarding Procedures for Granting of Land Rights and Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities that Can Have Ownership Rights over Land.
3. Right-to-Use for Business (HakGuna Usaha)
4. Regarding its use and procedure for processing the Right to Cultivate, this is regulated further in article 28 paragraph (1, 31) Jo Permendagri No. 5 of 1973 concerning Provisions Regarding Procedures for Granting of Land Rights, Jo Permentan and Menagraria No. 11 of 1962 concerning the Affirmation of the Conversion and Registration of the Former Indonesian Rights on land.
5. Right-to-Use for Building (HakGunaBangunan)
6. Regarding its use and procedures for processing the Right to Build, this is regulated further in article 35 paragraph (1), Article 37 in conjunction with Permendagri No. 5 of 1973 concerning Provisions Regarding Procedures for Granting of Land Rights.

7. Land-Using Right (HakPakai)
8. Regarding its use and procedure for processing the Right to Use, it is regulated further in Article 41 paragraph (1), Article 43, Permendagri No. 5 of 1973 concerning Provisions Regarding Procedures for Granting of Land Rights.
9. Land's Right to Rent (HakSewa)
10. Regarding its use and procedure for processing this matter is regulated further in article 44.
11. Land-Opening Right (HakMembuka Tanah)
12. About the usefulness and procedure for processing this matter is regulated further in article 46.
13. Right to Obtain Forest Product (HakMemungut Hasil Hutan)
14. Regarding its usefulness and procedures for processing this right, it is regulated further in article 46, Jo Law No. 5 of 1967 concerning Basic Forestry Provisions, Jo Government Regulation No. 21 of 1970 concerning Forest Concession Rights and Forest Product Collection Rights.
15. Other rights that are not included in the rights mentioned above will be determined by the Act and rights that are temporary as stated in article 53.

Furthermore, from the definition of article 16 (paragraph 1) of the UUPA and the laws and regulations governing the occurrence of land rights only limited to "customary land rights according to customary law" and it can immediately become ownership rights in the light of the provisions of Article 22 paragraph (1) of the UUPA. The question is the extent of the legal force of "property rights under customary law" and what are the criteria? As has been stated above that "property rights according to Customary Law" are property rights as referred to in article 20 paragraph (1) of the UUPA namely "Ownership rights are hereditary, strongest and most fully-owned rights that can be owned by people on land, bearing in mind the provisions in Article 6 ", with the criteria being work carried out according to local custom for generations. This acknowledgment is placed in article 11 paragraph (2) of the UUPA which emphasizes that "differences in the state of society and the legal needs of the people where necessary and not in conflict with national interests are considered by ensuring protection of the interests of economically weak groups", in relation to the explanation of the article 22 of the UUPA which reads "For example, the manner in which property rights occur under customary law is land clearing. These methods will be arranged so that things that are not detrimental to the public and State interests occur "By using the formula "for example" is the "land clearing" of the UUPA making it clear that the criteria for guaranteeing protection of ownership rights under customary law namely hereditary, strongest and most fully fulfilled rights that people can have on land or ownership rights based on customary law are that above According to the land, there are jobs which are carried out according to local customs. The forms of work carried out according to customary law will thus depend on local customary practices, one of which is, for example a land clearing. This is a guarantee of protection in the UUPA which at the same time reinforces that the land according to the customary law has a strong foundation insofar as there is work carried out according to local custom. The criteria for activities carried out according to local custom does not necessarily mean that the ownership rights according to the customary rights must always be worked on. For this reason, what is standard is whether land owned according to customary law is based on local "customary law" activities. It has been described about the activities of the Dayak Aoheng tribe on land, both on communal land and on land owned by private individuals according to customary law and this affirms ownership of the partnership or individuals on communal or individual land according to adat law as existential rights.

The next thing to be discussed specifically is an explanation of the provisions in the elucidation of article 22 of the UUPA which reads "The methods will be regulated so that no things that are detrimental to the public and State interests" namely about the form of agriculture with shifting cultivation. Does shifting agriculture harm the public and state interests?

The Indonesian's Country Outline (GBHN) during the New Order era that outlined development from 5 Yearly Plan (Pelita) to Pelita, including in the field of agriculture that was massive up to the period of the construction of the government of the current President, Joko Widodo with the construction of infrastructure that was also massive to support the fields of agriculture such as the construction of reservoir dams, irrigation and supporting infrastructure for agricultural development it has also not been able to reach all corners of the homeland including in the area inhabited by indigenous peoples of the Dayak Aoheng tribe in Mahakam Ulu Regency. In the midst of such a situation shifting farming is a simple form of agriculture that has not yet spread modern agricultural technology and has proven to be a form of agriculture that makes traditional Dayak tribes in Kalimantan deepen, and in particular the Dayak Aoheng community surviving as peasant communities across centuries before Indonesia became independent until today.

In 1988 a study of mobile agriculture was carried out with published research results that provided a fairly complete data on a shifting farming system that was proven to have survived as a way of agriculture that guaranteed the survival of traditional communities through simple forms of agriculture that had not yet declared technology modern agriculture. The results of this study conclude as a suggestion that the ideal shifting cultivation cycle to provide optimal results while preserving environmental impact is 25 years.

In the same year Goeswono Soepardi, Professor of IPB stated that "Farmers who move and move to surrender the recovery of the productivity of the motherland are not without reason. In the understanding of the new technological age, maintaining, let alone restoring productivity requires technological input.

By opening land and completing farming activities, in the Dayak Aoheng tribe, a person has land / land according to customary law, and thus the person has the right to control the land as well as the freedom to carry out all activities to maintain the land as ownership rights.

In the Dayak Aoheng tribe, ownership of the land is seen as an existential guarantee and the survival of life is not only the person who cleared the land, but the person and their descendants are in accordance with the prevailing customary law regarding who has the right to control the property rights under customary law.

The control of private land according to customary law is marked by the forms and conditions of cultivated land, which shows that ownership of customary land according to customary law is an existential guarantee and is alive not only the person who cleared the land, but the person and their descendants in accordance with applicable customary law.

With all the explanations about the norms and meanings of state ownership, where customary ownership or more appropriate ownership rights are recognized according to customary law, then in the UUPA the existence of justice for indigenous peoples is guaranteed in the arrangement of mastery over customary law. The arrangement of how to obtain, control and maintain the land according to customary law is a form of living law in the middle of the Aoheng Dayak tribe which is hereditary in which all people get certainty, justice and usefulness which is the goal of the law.

### **Conclusion:-**

The results of the research show that the way to maintain private land according to customary law is done in several ways. First, by planting long-life fruit trees in certain parts of the cleared land. The longevity fruit trees planted in groups in the Aoheng Dayak tribe are called Pukung. There are two types of pukung, namely Main Pukung and Small Pukung. Main Pukung, is an indication that in that place people who open land for farming, not only farming only once on a certain land area, but farming in the area with an area several times farming. Thus, it will be found in the area other than the existence of the Main Pukung there is a Small Pukung. This Small Pukung, does not always exist in all of the land area where someone has cleared a field. Both of these types of Pukung, if the person who is farming has moved to farm in another place, is no longer called Pukung, but its called Lepuun (Village Garden). the so called Pukung, as long as people who are farming are still farming in the same place. Second, by periodically according to the cycle of land succession landed again on the land. The thing that determines whether a person has the right to return to open a field where someone has been farming is Lepuun on the land. It is in this context that farming practices are called shifting cultivation. This practice is certainly not the same as the national law adopted in Indonesia.

Seeing the above, revitalization is necessary where this revitalization is carried out in the form of revitalizing the spirit of customary law enforcement in national law because the State has the obligation to regulate in full and authoritative what is mandated in Article 18B paragraph (2) of the State Constitution Republic of Indonesia of 1945 which states that "the State recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law." The recognition and respect must be regulated in a law that is mandated by the constitution. Herein lies the most authoritative novelty power of this research. The de facto reality of governance practices of tenure rights under customary law in the Dayak Aoheng tribal customary law community based on the value of justice reviewed and discussed in this study becomes empirical facts for normative and empirical recognition for indigenous and tribal peoples in the Unitary State of the Republic of Indonesia as State of law (Rechtsstaat). With normative and empirical acknowledgment, fundamental justice and authority can be upheld in a rule of law, where law is the commander of the supremacy of law, equality

before the law, application of the principle of legality (due Process of Law), prevention of abuse of power (Abuse of power), implementation of an impartial Judiciary, protection of Human Rights and the realization of Welfare Rechtsstaat.

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