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Customary land utilization arrangements for the construction of micro hydro power plants in West Sumatra

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Abstract: This research investigates the legal framework governing the use of traditional land for the development of small-scale hydroelectric power generation in West Sumatra. The construction of PLTMH is prioritized in remote areas that have not been reached by PLN. In the process of constructing the MHP, land use is required. However, the location planned for the development is on customary land owned by indigenous people. For the Minangkabau people, the use of customary land has its own rules; on the other hand, there are national legal rules about land, electricity, and investment laws. Data was collected through a normative legal research approach, which is a research method that relies on the study of applicable legal norms. The main focus of this approach is to examine legal materials as the main data source, especially laws and regulations relevant to the research topic, such as regulations that apply nationally and regulations that apply at the regional level, especially in the West Sumatra region.

Keywords: *Customary Land, Investment, Micro hydro power plant.*

1. Introduction

PLTMH are small hydroelectric facilities designed for deployment in isolated regions beyond the reach of the national electricity grid (PLN). In the construction of PLTMH, land is needed, while the location of the construction of PLTMH is located on the customary land of customary law communities, including in West Sumatra. West Sumatra is an area with great potential for PLTMH development because there are 5 lakes, namely Lake Singkarak (13,011 Ha), Lake Maninjau (9,950 Ha), Lake Diatas (3,150 Ha), Lake Dibawah (1,400 Ha), and Lake Talang (1.02 Ha). In addition to the lakes, there are also 3,033 rivers, including the main river and the tributaries. With many water sources in West Sumatra, this has the potential to build PLTMH because the main source of PLTMH is a river flow with a certain height, so that areas that have not been reached by PLN can meet their electricity needs.

Minangkabau customary land, prevalent in remote areas, is frequently targeted for MHP construction. However, its use is governed by unique rules prohibiting sale and allowing external access only under the 'ulayat filled lumbung dituang' principle, and after the customary land is no longer used by outsiders, the land returns to the community. Customary law is called "Kabau Tagak Guangan Tingga". On the other hand, there is a national land law that regulates land rights. While the UUPA in Articles 3 and 5 acknowledges customary land rights, it stipulates that these rights must not conflict with national objectives. In addition to the national land law, there are rules on investment and electricity related to this PLTMH.

Given these circumstances, research is required to determine the appropriate regulations for utilizing customary land in West Sumatra for PLTMH development.

2. Research Methods

The methodology of this research falls under normative legal studies. This means that this method is dedicated to the study of legislation and applicable legal principles as a basis for analyzing the legal

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issues raised. For this investigation, primary and secondary legal resources were employed. Primary legal materials in this research include all legal products related to the utilization of customary land in MHP in West Sumatra. These legal products include regulations issued by the Central Government and regulations issued by the Regional Government of West Sumatra. These regulations become the legal basis that regulates the procedures, authority, and restrictions in the use of customary land as part of the development of renewable energy infrastructure in the region. Meanwhile, secondary legal materials consist of various literature that discuss the utilization of customary land in the context of MHP development in West Sumatra. This literature can be in the form of books, scientific articles, results of previous research, as well as the opinions of experts who provide conceptual and theoretical understanding of customary rights and their relevance in development. This secondary legal material serves to enrich the analysis of applicable regulations, as well as provide an academic perspective that supports a more in-depth and comprehensive interpretation of the law.

3. Results and Discussion

3.1. The Concept of Customary Land in Minangkabau

Etymologically, the word customary is synonymous with the meaning of territory, region, clan, and nagari. The term hak ulayat in UUPA Article 3 signifies the state's recognition of traditional community rights. Though not defined, the article implies that Hak ulayat is respected and valid provided it continues to exist and doesn't contradict national interests or higher legislation. Van Vollenhoven stated that hak ulayat, which is a land right, is a right found only in Indonesia, a right that cannot be broken up and has a religious basis.

Hak ulayat affirms that land and natural resources in a particular area are not owned by individuals, but by indigenous communities collectively. The term "beschikkingsrecht" introduced by van Vollenhoven refers to the right of tenure or the right to regulate and manage, emphasizing that indigenous peoples have the authority to determine how the land and natural resources in their territory are used [1].

Minangkabau refers to a region with a strong social and cultural identity, located around West Sumatra. Minangkabau refers to the cultural identity, while West Sumatra denotes the boundaries of the administrative region. The Minangkabau region covers an area larger than just West Sumatra, including the western parts of Riau and Jambi [2].

Minangkabau has an arrangement, according to the mother line, called matrilineal. Fellowship in Minangkabau society begins from *the paruik*, . [1] According to Muhammad Radjab, the matrilineal system has the following characteristics: 1) Offspring are counted according to the maternal line, 2). Tribes are formed according to the maternal line 3). Each person is required to marry an outsider of his tribe (*exogamy* 4). Revenge is an obligation for all tribes 5). Power within the tribe, according to theory, lies in the hands of the mother, but rarely, 6). The one in power is his brother, 7). Marriage is matrilocal, i.e., the husband visits his wife's house; and 8). Rights and inheritance are inherited by the mamak to her nephew and from the mother's brother to the child of her sister [3].

Minangkabau custom distinguishes property into two types, namely non-physical property, such as traditional titles, and physical property, such as rice fields, gold, and other jewelry. The general opinion says that property in Minangkabau is divided into high inheritance, low inheritance, livelihood property, and *suarang property* [3].

In Minangkabau tradition, customary land and customary rights are viewed as distinct concepts, and both have different terminology. Minangkabau customary law terminology defines communal land as land owned by customary community units such as kaum, suku, and nagari. Meanwhile, ulayat rights indicate that customary law communities have control and authority over the areas where they live. The authority possessed by indigenous peoples allows them to utilize their customary lands and natural

[1] *Paruik* is a legal alliance that in Indonesian can be equated with family. It's just that the family here must be interpreted as a large family calculated from the maternal line, while the husbands of the *members of the paruik* are not included in it.

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resources for their survival. Thus, the concept of communal land is not only limited to the land on the surface, but also everything that grows and is contained in the earth [4].

Ulayat comes from the Arabic word which means territory, but what is commonly used in Minangkabau is the jungle that has not been cleared, including swamps and swamps. The mastery of this custom is different between Bodi Caniago and Koto Piliang. In the Koto Piliang area, the king or traditional ruler is the number one person who masters the custom. The community can use the ulayat on the condition that they first ask permission from the head of the shoot. Meanwhile, in Bodi Caniago, the customary is divided according to tribe [5]. In Agam, there is the custom of Bodi Caniago; in Tanah Datar and Limapuluh City, there is the custom of Koto Piliang [6]. There are three types of customary land, namely [7]:

1. Ulayat nagari, which is forest land outside the protected forest area (nature reserve) or state forest, and does not include areas that have become tribal customs or tribal customs.
2. Tribal customs, namely, forest land made into state forest areas and nagari customs, have not become the customs of a tribe within the tribe.
3. Tribal customs, which are forests that have been separated from the power of nagari customs, tribal customs, and are not included as land owned by individuals (individuals).

In Minangkabau, customary land is also called high heirloom land because the first owner is no longer known. According to custom, to utilize high inherited land, four principles apply, namely [8]:

1. The principle of separation, which is the separation between the soil and the vegetation and the buildings on it. There is a fatwa in the custom related to this, namely: the land of the pusako has high water that can be drinked, the produce is allowed to be enjoyed, and the land remains. Therefore, based on this basis, the land of the high pusako cannot be transferred to another party.
2. The communal principle, which means that the land of pusako tinggi is jointly owned by all members of the tribe, but its management or utilization is left to each *bauntuak gang*.
3. The principle of primacy, namely in the inheritance of high pusako land, nephews who have a direct blood relationship (maternal lineage) get top priority over nephews with customary relationships or other types of relationships.
4. The unilateral principle, namely the inheritance of high-pusako land, only applies to one maternal (matrilineal) lineage.

3.2. Micro Hydro Power Plant (PLTMH)

Microhydro or Microhydro Power Plant (MHP) is a form of hydroelectric power plant that operates on a small scale. MHP utilizes the energy of water flow from rivers or irrigation channels to drive turbines, which then produce electricity. The capacity of electricity generated by MHP ranges from 5 kilowatts to 1 megawatt per unit, making it very suitable for meeting the needs of electrical energy in remote or rural areas that have not been reached by the national electricity grid [9].

Microhydro is a term derived from a combination of two words, micro meaning small and hydro meaning water. In general, this term refers to a small-scale power generation system that utilizes water energy as the main source to generate electricity. Technically, a micro hydro system consists of three main components that are interconnected and function in an integrated manner. The first component is water, which acts as an energy source by utilizing the flow or fall of water that has kinetic energy potential. The second component is the turbine, which is a mechanical device that rotates when flowed by water flows and functions to convert water energy into mechanical energy. The third component is the generator, which is connected to the turbine and functions to convert the mechanical energy into electrical energy. These three components work synergistically to produce electricity sustainably and efficiently, especially in areas that have the potential for water flow but have not been reached by the main electricity grid [10].

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3.3. Regulation of Customary Land Utilization for the Development of PLTMH in West Sumatra Before the Reform

Indigenous peoples' lands are widely used as sites for the construction of MHPs to provide electricity in remote areas. Various legal regulations, ranging from national to regional levels, regulate the use of customary land by indigenous communities in West Sumatra, especially in the context of MHP development. The following are the legal regulations on the issue:

3.4. National Land Law

After Indonesia's independence, although politically free from colonialism, the legal system in the country was still heavily influenced by the Dutch colonial heritage. This can be seen from the continued use of various laws and regulations from the colonial period, as affirmed in Article II of the Transitional Rules of the 1945 Constitution, which states that "all existing state bodies and regulations remain in force as long as they have not been replaced by new regulations in accordance with the 1945 Constitution". In the field of agrarian law, this situation lasted until the government passed "Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA)" on September 24, 1960. The ratification of UUPA became an important milestone in the history of national agrarian law because this law not only replaced the colonial land system that was characterized by legal dualism, but also established an agrarian system based on the ideology of Pancasila and the state constitution, namely the 1945 Constitution. Thus, UUPA is present as a new legal basis that reflects social justice and people's sovereignty over land as a source of livelihood and prosperity for the nation.

The UUPA's framework for land law in Indonesia is built upon the recognition and use of customary legal principles. The customary law in question is the original law of the indigenous group, not the customary law of the Foreign Eastern group. Because the UUPA is based on adat law as one of its sources of law, the existence of adat law is explicitly recognized in this law. This recognition is reflected in Article 3 and Article 5 of the UUPA.

The provisions in the UUPA show that Indonesia recognizes two different legal systems in land matters. The first is customary law, which is unwritten and lives in the practice of customary law communities. This law grows and develops in accordance with local values and wisdom that apply from generation to generation. The second is written regulations established by the government, which apply nationally and bind all citizens. Although both forms of law are recognized, UUPA explicitly stipulates that in the event of a conflict between the provisions of customary law and legal regulations established by the government, customary law must be adjusted or even overruled. This is done to safeguard the broader national interest.

The status of customary rights in national land law is still considered unclear. Although the UUPA recognizes the existence of customary land rights of indigenous peoples, this recognition is not followed by detailed arrangements in the structure of national land law. This can be seen in Article 16 of the UUPA, which lists various types of land rights that apply formally, such as "ownership rights, business use rights, building use rights, use rights, rental rights, rights to collect forest products, other rights stipulated by law, and temporary rights as regulated in Article 53". However, Hak ulayat is not explicitly listed in the list, giving rise to legal uncertainty. As a result, although sociologically ulayat rights are still exercised by indigenous peoples, their position in positive law has not yet received the same protection and recognition as other land rights that are explicitly regulated in the UUPA.

Some temporary land rights, such as mortgage rights, profit-sharing business rights, hitchhiking rights, and agricultural land lease rights, are regulated in Article 53 of the UUPA. These rights are recognized as still developing in community practice, especially in rural areas, but are considered to have characteristics that are not in line with the spirit and principles promoted by the UUPA. Therefore, UUPA regulates these temporary rights to limit their implementation, as well as encouraging their gradual abolition or replacement.

Based on the previous description, it can be concluded that although UUPA recognizes the existence of customary rights owned by customary law communities, such recognition is not absolute,

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but conditional. This means that recognition of customary rights only applies as long as the rights still exist in reality and do not conflict with national interests and applicable laws and regulations. In practice, this provision puts customary rights in a vulnerable position, especially when faced with development projects or state policies that are considered more urgent. Furthermore, the absence of strict procedures in national land law makes it difficult for indigenous peoples to obtain legal certainty over their land through registration. In the absence of such clear regulations, customary law communities cannot have clear evidence about their customary lands.

3.5. Investment Law

The construction of PLTMH is also related to investment if the development activities are funded by investors. Prior to the reform, the investment law prohibited foreign investors from investing in public power transmission and distribution. The FDI Law, which was in effect before the reform, stipulated that public power transmission and distribution was a sector closed to foreign investors. This means that the legal basis for investment in the electricity sector is subject to the Domestic Investment Law.

The PMDN Law does not specifically regulate the use of customary land for investment. However, Article 19 of the PMDN Law stipulates that:

Companies, both national and foreign, are obliged to use Indonesian experts unless the necessary positions cannot be filled with Indonesian national personnel; then, foreign experts can be used.

3.6. Electricity Law

After UUPA was enacted in 1960 as the foundation of national agrarian law, the government continued to develop regulations that support the development of strategic sectors, including the electricity sector. One of the important policies in this field is the issuance of "Government Regulation No. 36 Year 1979 on Electricity Control", which was enacted on December 17, 1979. In this regulation, it is stipulated that electricity entrepreneurs are state-owned enterprises, private businesses, and cooperatives that have electricity permits. Electricity business carried out by the private sector and cooperatives can be intended for the public, and can also be for their own purposes. Electricity business for the public interest is an electricity business that provides uses for the benefit of the community, while electricity business for its own needs provides uses for its own interests for state businesses, private businesses, and cooperatives.

If the electricity entrepreneur, for his own benefit, has excess electricity, then the excess can be sold to SOEs in the electricity sector. To be able to obtain an Electricity Business License application, electricity entrepreneurs must:

a. Settlement of land and asset ownership issues should be a top priority before business activities commence.
b. Compensation to land and asset owners affected by the business must be completed first.[2]

On December 30, 1985, the government promulgated Law No. 15 of 1985 on Electricity as a further step in regulating and managing the electricity sector in Indonesia more comprehensively. This law gives special authority to the Power of Attorney Holder and Electricity Business License Holder to conduct activities, such as:

1. Go into a public or individual place and use it for a while.
2. Using the ground, passing above or under the ground.
3. Passes over or under buildings built above or below ground.
4. Cutting down or cutting vegetation that gets in the way.

Owners of land and building rights affected by electricity activities will receive compensation, but this does not apply to state land. The compensation is charged to the Electricity Business Power of Attorney and the Electricity Business License Holder for the Public Interest. The electricity activity can

[2] Article 6 of Government Regulation No. 36 of 1979 concerning Electricity Control.

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only start after the compensation is completed. The procedure for payment of compensation is subject to applicable laws and regulations.

Thus, according to the previous explanation, the pre-reform situation shows that there are no rules that specifically regulate renewable energy, and there are also no specific rules on the use of customary land for electricity development. This regulation only regulates in general that land that is used, either directly or indirectly affected by the development of electricity, will receive compensation for the land, buildings, and plants.

3.7. Forestry Regulations

After Indonesia's independence in 1945, regulations specifically governing forestry were not yet available. This condition caused the management of forest resources in Indonesia not to have a strong and directed legal basis. It was only on May 24, 1967, that the government promulgated "Law Number 5 of 1967 concerning Basic Provisions of Forestry". The basis for considering the promulgation of the Forestry Law is that the existing forestry regulations are a colonial legacy that is no longer suitable for the demands of the revolution. Thus, the existence of a law containing fundamental provisions on forestry that is national in nature is indispensable, as a basis for making laws and regulations in the field of forests and forestry.

The 1967 Forestry Law (Law No. 5 of 1967) was passed after the UUPA and became the legal basis for forestry management in Indonesia at that time. In this Forestry Law, forest classification is based on ownership status, which is only divided into two types: state forest and private forest. State forests are forest areas located on land that is not encumbered by property rights by any party. In other words, no individual, group or legal entity has a property right over the land. Therefore, the control and management of state forests is entirely in the hands of the state. Meanwhile, private forest is a type of forest found on land that has been legally encumbered by property rights, either by individuals or legal entities. In this case, ownership of the land on which the forest grows gives the owner the right to utilize the forest in accordance with applicable laws and regulations. There are significant differences between the UUPA and the 1967 Forestry Law regarding the recognition of customary law communities and forest management. UUPA recognizes the existence of customary law communities and customary land, but the Forestry Law does not regulate customary forests. In addition, the UUPA uses the concept of state control rights, while the Forestry Law divides forests into state forests and private forests.

The Basic Forestry Law places customary forests under the status of state forests, but this does not mean the elimination of the rights of customary law communities and their members to benefit from forests, as long as those rights are still valid in practice. Furthermore, the elucidation of Article 7 of this provision clarifies that the customary rights of indigenous peoples should not be an obstacle to government programs, and uncontrolled forest clearing by indigenous peoples is not justified.

3.8. Land Procurement for the Public Interest

Every land ownership right has a social responsibility, as stipulated in Article 6 of the UUPA. This means that land ownership or control should not be interpreted absolutely for personal interests alone, but must pay attention to the interests of the community and the surrounding environment. Furthermore, Article 18 of the UUPA provides the legal basis for the government to revoke land rights when necessary in the public interest. What is meant by public interest here includes the interests of the nation and state, as well as the common interests of the people. This shows that although land rights are guaranteed and protected in the national legal system, they are not absolute. The state still has the authority to take over land rights owned by individuals or legal entities if it is deemed necessary to support the development and welfare of the community at large. However, such revocation must be accompanied by the provision of appropriate compensation, the implementation of which is further regulated by legislation. Meanwhile, the UUPA does not explicitly explain the form or criteria of the public interest in question, nor does it detail the mechanism or standards in providing compensation.

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As an implementation of Article 18 of the UUPA, the government passed Law No. 20/1961 on the revocation of land and building rights. Furthermore, on November 17, 1973, Presidential Instruction No. 9 of 1973 was issued which ordered that the process of revocation of land and building rights must be carried out carefully, fairly, and wisely, and in accordance with applicable legal provisions.

The reference to Law No. 20/1961 in this regulation causes weaknesses, namely the absence of anticipatory legal protection for the community. In the articles and explanations of this regulation, there is no mention of access for the public to express opinions or objections in the land acquisition process [11]. Before the Reformasi, there was also no special regulation on the procurement of land derived from customary land.

Prior to the reformasi era, there were several regulations governing the acquisition of land for public use, but each regulation used different terms. The following table summarizes these regulations:

Table 1.
Land Acquisition Regulations Before the Reform.

Yes	Legal Basis	Terms used
1.	Article 18 of the UUPA	Revoked land rights
2.	Law No. 20 of 1961	Revoke the rights to the Land
3.	Presidential Instruction No. 9 of 1973	Revocation of rights to land and objects on it
4.	Government Regulation No. 39 of 1973	Revocation of rights to land and objects thereon
5.	Permendagri No. 15 of 1975	Land Liberation
6.	Presidential Decree No. 55 of 1993	Release of rights or assignment of land rights

Of the various regulations that have been in force regarding land acquisition, only Presidential Decree No. 55 of 1993 specifically mentions the replacement of eligible land parcels with customary rights. The replacement is given in the form of construction of public facilities or other forms that provide benefits to the local community.

3.9. West Sumatra Regional Regulations

Prior to the reformation era, the regulation of customary land in West Sumatra had not been specifically regulated in a comprehensive regulation. However, there are several regulations that indirectly touch on aspects of customary land management, one of which is the Decree of the Governor of West Sumatra Level I Number 189-104-1991. This decree is an implementation guideline of "Regional Regulation Number 13 of 1983 concerning Nagari as a unit of customary law society in West Sumatra Province" [12].

3.10. Regulation of Customary Land Utilization for the Development of PLTMH in West Sumatra After the Reform

After reformasi, there were several regulations in the field of national land law that began to recognize the existence of customary law communities. The following are those regulations:

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Table 2.
Legal Basis for the Recognition of Indigenous Peoples' Rights.

After the Reform			
Yes	**Legal Basis**	**Validity Period**	**Information**
1	Permen's Ministerial Decree/Head of BPN Number 5 of 1999 concerning the Settlement of Customary Rights of Indigenous Peoples	24-06-1999 s/d 25-05-2015	For customary law communities that meet the requirements, their customary rights will be recognized. Regulating the use of customary land by third parties by way of relinquishment of rights
2	Regulation of the Minister of ATR/Head of BPN Number 9 of 2015 Concerning Procedures for the Determination of Communal Rights to Customary Law Communities and Communities in Certain Areas	25-05-2015 s/d 14-04-2016	Regulates in general the procedure for land recognition of customary law communities. (Registration of Customary Land)
3	Regulation of the Minister of ATR/Head of BPN Number 10 of 2016 Concerning Procedures for the Determination of Communal Rights to Land Rights of Customary Law Communities and Communities in Certain Areas	14-04-2016 s/d 2-10-2019	Regulate in detail the procedure for determining communal rights (registration of customary land).
4	Permen of ATR/Head of BPN Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Communities Units of Customary Law	2-10-2019 s/d 29/2-2024	Arrange more details about the registration of customary land. Customary land The customary community is recorded in the land register, so there is legal certainty.

From the analysis of post-reform regulations related to customary land of indigenous peoples, it can be seen that the direction of regulation is increasingly inclined towards the registration of customary land to ensure legal certainty and protection of the existence of customary land of indigenous peoples.

Meanwhile, Law No. 25/2007 on Investment became the basis for investment regulation after the reformation. This law does not explicitly regulate investment in customary land. However, Article 21 provides easy licensing for investment companies to obtain land rights without regard to the direct involvement of customary law communities. This means that customary land can be taken for investment purposes if the process is in accordance with Law No. 2/2012 on Land Acquisition for Public Interest.

After the reformation, the electricity sector, including MHPs, was regulated by Law No. 30/2009 on Electricity. One of the important aspects regulated in this law is about land use for electricity infrastructure development. Article 30 of the Law on Electricity expressly stipulates that the use of land for the provision of electricity can only be carried out after the provision of compensation or reasonable compensation to the party who has the right to the land. This compensation also includes buildings and plants located on the land used. In the case of customary land, the settlement must be in accordance with land regulations and consider local customary law.

In accordance with "Government Regulation No. 14/2012", owners of land rights who surrender ownership of land along with buildings, plants, or other objects on it are entitled to compensation. Meanwhile, compensation is given to voters who have rights to land, buildings, or plants on it because the land is used indirectly for electricity development, and there is no release or surrender of land rights. In Indonesian forestry law, there is recognition of the existence of customary law communities living alongside forest areas. This is reflected in Law No. 41/1999 on Forestry, which provides space for customary law communities to be involved in forest management through the concept of customary forests. In the provisions of the law, customary forests are initially still categorized as part of state forests, but their management can be handed over to customary law communities whose existence has been recognized by the government (rechtsgemeenschap).

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On the other hand, after the reformation, the mechanism of land acquisition for public interest is regulated in Presidential Regulation No. 36/2005. Article 2 of this regulation emphasizes that the government has two options in acquiring land needed for infrastructure development or projects that are considered important for the community at large. First, land acquisition can be done through the mechanism of releasing or surrendering land rights voluntarily by the owner. In this case, the landowner gives consent to release his/her rights to the state or the project implementer by receiving adequate compensation. Second, if the process of voluntary relinquishment of rights cannot be achieved, then the government can take the path of revocation of land rights. This mechanism is an administrative action taken based on applicable legal provisions, where land rights are revoked for the public interest while still providing compensation to those who lose their rights.

The mechanism for revoking land rights was previously regulated in Law No. 20/1961. In this regulation, the state is authorized to revoke a person's land rights in the public interest. However, this mechanism is often criticized because it is considered contrary to the principle of the rule of law that upholds the constitution and human rights. As a form of correction to this condition, on January 14, 2012, the government promulgated "Law No. 2/2012 on Land Acquisition for Development in the Public Interest".

Specifically in West Sumatra, after the reformation, the regulation of customary land is regulated in the "Regional Regulation of West Sumatra Province Number 6 of 2008 concerning Customary Land and its Utilization". This regulation states that customary land can be used for the public interest if it has been handed over by the ruler and customary owner based on an agreement of members of the indigenous community, in accordance with applicable regulations. This use is only allowed if there is an activity location permit.

Then, there is a regulation of the Governor of West Sumatra No. 21/2012 which is a derivative of the previous regulation that provides technical guidelines related to how the procedure for utilizing customary land for investment. The West Sumatra Provincial Government also promulgated Local Regulation No. 2/2014 on Investment, which strengthens the local government's commitment to community involvement in the investment process. Article 27 of the regulation specifically regulates community participation, which includes the right to obtain information, provide input, and oversee the course of investment in the region. This reflects the participatory spirit in investment management so as not to harm the community, especially indigenous communities whose land is the object of investment. The participation of the community is: providing suggestions, opinions, proposals, objections, complaints, rejections about investment plans, and or conveying information about regional potential. If there is a dispute between the investor and the community at the location of the investment place or between the investor and the local government, the dispute resolution is carried out by deliberation and consensus. If it is unsuccessful, the dispute is resolved through negotiation, mediation, and arbitration. If it is not successful, the last step is to resolve the dispute through the court.

3.11. Regulation of the Utilization of Customary Land for the Development of PLTMH in West Sumatra After the Enactment of Law Number 11 of 2020 Concerning the Job Creation Law

In 2020, the Job Creation Law came into existence and amended several laws and regulations, including regarding the utilization of customary land for investment in the MHP sector. Some of the laws amended by the Job Creation Law include "Law No. 25 of 2007 on Investment", "Law No. 30 of 2009 on Electricity", "Law No. 41 of 1999 on Forestry", "Law No. 17 of 2019 on Water Resources", and "Law No. 2 of 2012 on Land Acquisition for Development for Public Interest".

With the enactment of the Job Creation Law, the government not only encourages the investment climate through simplifying regulations and accelerating licensing, but also issues various derivative regulations that aim to regulate its technical implementation. One of them is Government Regulation No. 18/2021 on Management Rights, Property Rights, Building Rights, Flat Units, and Land Registration. PP No. 18 of 2021 is an important instrument in regulating land governance after Job Creation, including the recognition and protection of customary land owned by indigenous peoples. In

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this regulation, customary land is explicitly recognized as part of the national land system, and its existence can be registered if it meets certain requirements. This PP opens up space for customary law communities to manage their customary land more formally through the mechanism of land recognition and registration. The management of customary land is carried out based on the customary rights attached to the customary law community concerned, and the state recognizes the existence of these rights as long as they are still factually recognized and in accordance with the customary law that applies in the area.

The existence of management rights on customary land allows customary law communities to give permission to investors without having to give up customary land to state land. The Job Creation Law simplifies the business license process, so this makes it easier for investors to get access to customary land, but sometimes it does not provide opportunities for the community to actively participate in making decisions in investment activities on customary land. Customary lands managed by investors can be registered/certified, which sometimes triggers conflicts.

4. Conclusion

The use of customary land for the construction of MHPs in West Sumatra has experienced regulatory developments that can be divided into three periods, namely before the reformation, after the reformation, and after the enactment of the Job Creation Law. Before the reformation, there was no specific regulation that directly regulates the use of customary land, although the UUPA has provided recognition of the existence of customary land through Articles 3 and 5. After the reformation, policies began to emerge that more explicitly recognized the customary land of indigenous peoples and provided legal mechanisms such as customary land registration and regulation of investment on such land in West Sumatra. When the Job Creation Law came into effect, the licensing process for customary land use became more open to the private sector, including in the development of renewable energy technologies such as MHP. While this ease supports accelerated development, there are consequences for the existence of customary land, where more and more customary land is losing its status as collective property of the Minangkabau indigenous community because it has been converted or owned through other legal mechanisms.

Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

References

[1] Supriadi, *Agrarian law*. Jakarta: Sinar Grafika, 2010.
[2] A. Syarifuddin, *The implementation of islamic heritage law in the Minangkabau customary environment. Gunung Agung*. Jakarta: Gunung Agung Publisher, 1984.
[3] T. Sjarifoedin and A. Amir, *Minangkabau from the Iskandar Zulkarnain Dynasty to Tuanku Imam Bonjol*. Jakarta: Gria Media Prima, 2011.
[4] Y. Mirwati, *Conflict of customary land*. Padang: Andalas University Press, 2015.
[5] D. M. A. M. Batuah and B. D. H. Tanameh, *Customary law and minangkabau customs, three regions, two barrels*. Jakarta: N.V. Poesaka Aseli, 1960.
[6] S. Soekanto, *Reviewing Indonesian customary law: An introduction to the study of customary law*, 3rd ed. Jakarta: Rajawali Press, 1981.
[7] E. Piliang and N. D. M. Sungut, *Tambo minangkabau, culture and customary law in Minangkabau*. Bukittinggi: Kristal Multimedia, 2010.
[8] M. Zainuddin, *Minangkabau miscellaneous*. Yogyakarta: Waves, 2016.

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[9] H. Y. S. H. Nugroho and M. K. Sallata, *PLTMH (Micro Hydro Power Plant), A complete guide to making renewable energy sources independently*. Yogyakarta: Andi, 2015.
[10] Hamdi, *Renewable energy*. Jakarta: Kencana, 2016.
[11] W. Utami and Sarjita, *Land cultivation in indonesia, and several countries from time to time*. Yogyakarta: STPN Press, 2021.
[12] Z. Nurdin, "Regulation of the utilization of customary land for investment as Nagari empowerment in West Sumatra," Dissertation, Universitas Andalas (Unand), Padang, Indonesia, 2017.

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