

Juridical Study of The Establishment of Community Land as a Natural Tourist Park Seblat Jurisdiction Air Rami Mukomuko District

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ABSTRACT

Legal issues that occur in the community are related to land tenure issues. On the one hand, land rights are protected by legislation, especially customary rights and property rights. On the other hand, the designation of an area as a Nature Tourism Park must have a certain landscape uniqueness. However, empirical facts show that the designation of Dusun Pulau village community land into the Seblat TWA area is not by and does not meet the criteria for natural resources determined by law and allegedly does not pay attention to land rights owned by the community. This research examines the validity of the determination of community land into a natural tourist park, especially in the jurisdiction of Mukomuko district. The method used in this research is empirical law and supported by normative legal research with qualitative methods and utilising data collected through primary and secondary sources, literature reviews and interviews directly and via telephone. The results showed that the Seblat TWA area in the jurisdiction of Mukomuko district did not have natural uniqueness that met the criteria contained in the applicable regulations; besides that, the determination was allegedly carried out unilaterally without regard to land rights owned by the community.

Keywords: Land rights; Nature Tourism Park (TWA); Validity.

Introduction

Air Rami Sub-district is one of the areas in Mukomuko Regency, Bengkulu Province. Initially, the name of the Air Rami sub-district was South Mukomuko because it was part of North Bengkulu. Based on Law No.3 of 2003, Mukomuko was expanded from North Bengkulu. After the division, it changed to the Air Rami sub-district, which was formed based on Perda No.8 of 2005. The area is 9,920 ha, with the capital in Arga Jaya village. It is bordered to the north by Ipuh and Malin Deman sub-districts, to the south by North Bengkulu regency, to the east by Jambi province, and to the west by the Indian Ocean. Kecamatan Air Rami is a rural area consisting of 12 definitive villages. Geographically, almost all villages are located in non-coastal areas, except for Air Rami village, which borders the Indian Ocean.¹

¹ Dwi Anggi Saputra, Yenni Nuraini, and Tatty Yuniarti, "Identification of Potential Fisheries Areas in Air Rami Subdistrict, Mukomuko Regency, Bengkulu Province," *Journal of Fisheries and Marine Extension* 14, no. 1 (2020): 93-105.

In addition, the Air Rami sub-district consists of various ethnic groups, namely Pekalese, Javanese, Sundanese, Minang kabau and Batak. The religions practised by the people of the Air Rami sub-district are Islam, Catholicism, and Protestant Christianity.

Air Rami sub-district consists of 12 definitive hamlets, namely Mekar Jaya, Tirta Kencana, Talang Rio, Marga Mulya, Arga Jaya, Air Rami, Bukit Harapan, Makmur Jaya, Bukit Mulya, Dusun Pulau, Cinta Asih, and Rami Mulia. Dusun Pulau Village was established in 1960; at first, Dusun Pulau Village was named Talang Pulau Village. Over time, the people who lived and settled in the village of Talang Pulau began gardening and planting agricultural commodities such as coffee, oil palm, and other crops as a livelihood until the residents finally agreed to change the name of the village to Dusun Pulau.² In line with that, M. Joji explained that the Dusun Pulau village community had managed the land since 1965 but only followed along the Air Rami River because of limited road access.³ The existence of relics such as graves and old plants such as durian and mangosteen evidences this.

Historically, the land around the Air Rami River has been managed by the Dusun Pulau Village community as plantation land for generations since 1965. In some parts of the land, sacred places such as graves have existed since ancient times, which are evidence of history and community beliefs. The existence of these sacred graves is maintained and preserved by the construction of protective houses as a form of respect. The graves have a magical value that the community believes is a place to ask for help, ask for wishes, or seek supernatural powers. Therefore, the graves are not allowed to be traded and become the joint right of the Dusun Island Village community. However, outsiders who want to make a pilgrimage or make a request to the tomb are allowed to do so with a note that they must follow the applicable legal provisions. Until now, some Dusun island villagers still use the land as agricultural land.

Since 2014, the community agricultural land has been designated as part of the Seblat Natural Tourism Park area partially and without apparent socialisation, even though most of the community's land already has legal proof of ownership in the form of certificates/land certificate (SKT) issued by National Land Agency (BPN) between 1998-2004 (regardless of the procedure for determining certificates and SKT in the Elephant Training Center in Special Production Forest area (PLG HPKH area), which is not discussed extensively in this research). The establishment of Natural Tourist Park (TWA) Seblat began

² Jhoni, "Interview on the History of Dusun Pulau Village," 2024.

³ M Joji, "Interview on Land Management by Dusun Pulau Village Community," 2024.

in 1974 as a production forest with a particular function for PLG managed by the forest concession rights (HPT) holder PT MJRT (Maju Jaya Raya Timber) with a decree of the Minister of Forestry No. 422/kpts/Um/8/1974, then in 1995 HPKh PLG Seblat was designated through Sk No.658/kpts-II/1995, temporary boundaries designation and definitive boundaries were carried out in 1995/1996. In 2011, through the minister of Forestry Decree No. 643 / Menhut- II / 2011 HPKh-PLG Seblat and HPT lebong Kandis changed its function to as a conservation area with the function of a Nature Tourism Park, 2012 the Seblat TWA was re-designated through Sk. No.784 / Menhut-II / 2012, and was officially designated as a Nature Tourism Park area in 2014 with Minister of Forestry Decree No. 389 / Menhut- VII / KUH / 2014.⁴

The establishment of community agricultural land into a Nature Tourism Park impacts the welfare of the Dusun Pulau village community. Most Dusun Pulau villagers who work as farmers lost their livelihoods due to the establishment of the natural tourism park. In addition, when the land function changed from a plantation area to an elephant training centre, there was a conflict between residents and the provincial BKSDA. Around 2000, the first eviction was carried out by the forest police on the grounds of land conversion into an elephant training centre area. In 2002, the community returned to work on the land to plant oil palms, rubber, and jengkol, driven by limited livelihoods and belief in ownership rights managed for generations. After the first eviction, the Dusun Pulau community experienced another eviction in 2004. This time, forest rangers used elephant herds from Seblat Nature Park to damage the villagers' plantations, forcing them to leave their fields and return to the village. After returning to the village, most people who lost their farms turned to labour at PT Alno Agro Utama. However, some villagers still chose to stay and cultivate the land secretly. In 2024, residents who were still working on the land were arrested and prosecuted.⁵ Based on the description above, problems arise related to the existence of the Seblat Nature Tourism Park, so it is necessary to conduct research on the legality of the community and the Ministry of Environment and Forestry regarding land tenure. Based on this background, this paper aims to analyze the legal protection of the land rights of the island hamlet community as a Natural Tourism Park Area and analyze whether establishing the Seblat natural tourist park area in Air Rami District is by applicable legal provisions.

⁴ BKSDA Bengkulu, "Profile of TWA Seblat Area," *BKSDA Bengkulu*, last modified 2024, accessed September 7, 2024, <https://bksdabengkulu.ksdae.menlhk.go.id/profil/kawasan/6>.

⁵ Khairul Dharmawi, "Interview on the Process of Land Conversion by BKSDA," 2024.

Methods

This research was conducted in the Air Rami Sub-district, Mukomuko Regency. The research was conducted from June to September 2024. This type of legal research uses empirical legal research methods supported by normative legal research. The data sources used are primary and secondary data. Data collection methods are carried out through interviews and documentation studies. The data obtained for this research is collected, systematised and analysed qualitatively by understanding and systematically reviewing existing data to obtain an overview of the problem or situation under study. The method used is a forensic empirical/sociological approach. In addition, the method of thinking used to analyse the data is inductive thinking.

Results and Analysis

A. Legal Protection of Community Land Rights with Designation as a Nature Tourism Park Area

Indonesia is one of the most agricultural countries in the world, where land is one of the determining indicators for the survival of the people. This is explicitly regulated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "The earth, water, and airspace as well as the natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people". Regarding land utilised for the greatest prosperity of the people, it is a "*condition sine qua non*". To achieve this goal, the role of the government is required as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely, "the land shall be controlled by the state and utilised to the greatest extent for the prosperity of the people fairly and equitably".⁶ On the other hand, Indonesia is also a country that recognises the existence of customary rules. Recognition and respect for Indigenous peoples have been expressly regulated in Article 18 B paragraph (2) of the 1945 Constitution, which reads, "the state recognises and respects customary law communities and their traditional rights as long as in reality they still exist, by the development of society and the principles of the Unitary State of the Republic of Indonesia and are regulated by law."⁷ This is the basis for recognising customary rights enshrined in Law No.5 of 1960 on Basic Agrarian Regulations, known as the Basic Agrarian Law (UUPA). This recognition is

⁶ Ahyar Ahyar, "Legal Protection of Customary Land Rights (Case Study in Aceh Province, Especially Bener Meriah District)," *De Jure Journal of Legal Research* 18, no. 3 (2018): 289.

⁷ Rizki Yudha Bramantyo, Gentur Cahyo Setiono, and Fitri Windradi, "Implementation of the 1945 Constitution Article 18b Paragraph 2 on State Recognition of Customary Norms in the Religious and Ritualist Perspective of the Temboro Hamlet Community, Wates District, Kediri Regency" (2022).

affirmed in Article 3 of the UUPA, namely: "Keeping in mind the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as according to reality they still exist, must be in such a way that it is by national and state interests, which are based on national unity, and must not conflict with laws and other higher regulations". However, in practice, agrarian conflicts accompanied by land rights violations often occur in Indonesia, one of which occurs in Dusun Pulau Village.

The agrarian conflict in Dusun Pulau Village stems from the designation of community land as the Seblat Nature Tourism Park and overlapping ownership claims between the indigenous community and BKSDA Bengkulu. The Indigenous people of Dusun Pulau Village have managed the land for generations; this is reinforced by the ownership of land ownership certificates and land certificates (SKT) over part of the entire Indigenous community and area. On the other hand, the land is designated as part of the Seblat Nature Tourism Park based on Minister of Forestry Decree No. 389/Menhut-VII/KUH/2014. In this designation, community land conversion was carried out by force without regard to land ownership rights and compensation for losses. From a legal perspective, the agrarian conflict in Dusun Pulau Village is a violation of Indigenous people's land rights and property rights over land. Based on Article 18 of Law No.5 of 1960 concerning the Basic Regulation of Agrarian Principles, it confirms that "For the public interest, including the interests of the nation and the State and the common interests of the people, land rights can be revoked, by providing adequate compensation and in a manner regulated by law". Based on Article 18 of the UUPA, it can be concluded that the revocation of land rights can be carried out as long as the land is used for the public interest; this is by the provisions of Article 16 of the UUPA that land has a social function.⁸ However, in the case of revocation of property rights and customary rights of the Dusun Island community for the sake of public interest, it is not accompanied by adequate compensation, causing material losses to the community. As stated by Bambang Irawan, the takeover of community land was carried out by force and without compensation.⁹

The need for development is enormous, while the available land is very limited and directly under the control of the government because the existing land is almost entirely

⁸ Nurmasita Sahibu et al., "Revocation and Acquisition of Land Rights: Procedures and Implications," *Yustisiabel Journal* 7, no. 2 (2023): 284.

⁹ Bambang Irawan, "Interview on whether there is compensation to the community for the establishment of the Seblat TWA," 2024.

private. Increased development activities require more and more land, which can lead to problems in the land sector in the future. As land prices continue to rise, land no longer has social value for the owner but has economic value. Therefore, those who hold land rights significantly influence the implementation of development.

Thus, the government needs to take the role of making policies regarding land acquisition for development. These problems can be solved by creating land acquisition institutions regulated in laws and regulations such as Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest amended by Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest. The existence of regulations regarding land acquisition as a guideline for the authorities in the plan to acquire land to carry out development in the public interest and ensure certainty for the community as holders of land ownership rights to receive adequate compensation. This can achieve the state's goal of ensuring better survival at the socio-economic level of government policies regarding land acquisition.

Fair compensation to landowners aims to respect the rights of landowners to be willing to surrender their land rights to the government. There have been many changes to the laws and regulations related to land acquisition, which are intended to respect and guarantee the rights of landowners. In order to guarantee the rights of landowners, the transfer of land ownership rights must be carried out by legal norms through buying and selling or other efforts. However, in some cases, land acquisition practices still ignore the rights of landowners, especially for small and marginalised communities such as those in Dusun Pulau village, by granting or handing over ownership rights to the land that is transferred to the party who wants the land, in this case, the government. This violates the principles of the human rights principle contained in the 1945 Constitution regarding the concept of a decent life.

Based on the explanation and analysis above, the author concludes that expropriating community land in the Air Rami sub-district to be used as a TWA does not fulfil the principles of justice and compliance with the law. The expropriation was carried out without regard to community rights, without an adequate consultation and participation process, and without adequate compensation. Therefore, it is evident that this action contradicts the provisions in Indonesian law, especially the UUPA and Law No.5 of 1990 concerning the Conservation of Natural Resources and Ecosystems. Thus, the designation

of the land as a TWA is not legally valid and needs to be reviewed. It has violated the rights of the people who have managed the land for a long time and for generations.

B. The validity of the establishment of the Seblat Nature Tourism Park Area in the Jurisdiction of Air Rami District

TWA Seblat in Bengkulu Province is a nature reserve with high biodiversity and exceptional aesthetic value. The designation of TWA Seblat as a protected area aims to protect the habitat of flora and fauna and their ecosystems, as well as the cultural values and local wisdom they contain. In reality, however, there are conflicts between conservation interests and the rights of communities who have traditionally lived and utilised the land. One of the disputes that arose was related to the determination of agricultural land that had been passed down from generation to generation, some of which already had land rights in the form of certificates and ownership evidenced by Certificate and SKT and had been transferred to TWA Seblat. Related to whether to remember that land rights are human rights protected by law, this finding raises questions about its validity.

Laws on land rights and nature reserve management are contained in Law No.5 of 1990 on the Conservation of Living Natural Resources and Their Ecosystems, Law No.5 of 1960 on Agrarian Principles, and Government Regulation No.24 of 1997 on Land Registration. In practice, however, applying these regulations often leads to confusion and overlap, creating loopholes for conserving conservation areas that could harm community rights. Based on Law No. 5 of 1990, TWA is a legally protected nature reserve. Article 1 Point 14 of this law strictly prohibits the implementation of activities that can result in changes to the Nature Conservation Area, including land use activities for agriculture.

The mechanism for determining an area to become a nature tourism park is regulated through several statutory provisions. Article 29 Paragraph (2) of Law No. 5 of 1990 explains, "Further provisions regarding the determination of an area as a nature conservation area and the determination of the area adjacent to it as a buffer zone are regulated by Government Regulation." It was further regulated through PP No. 68 of 1998 and PP No. 28 of 2011 concerning managing nature reserves and conservation areas. As explained above, the establishment of the Seblat Nature Park occurred in 1974 as a production forest with the function of PLG until the designation of the area in 2011 and 2012, as well as the designation as a TWA in 2014, for this reason, the procedure for determining TWA should refer to the provisions contained in PP No.68 of 1998 concerning Nature Reserve Areas and Nature Conservation Areas.

The establishment of a nature tourism park begins with the determination of regional criteria. Article 33 of PP No.68 of 1998 explains several criteria for an area to be decided as a TWA area, namely having natural attractions in the form of plants and animals or having unique landscapes and geological formation characteristics, then having sufficient area to protect the preservation of natural attractions and potentials that can function for tourism and natural recreation, and having the support of the surrounding community regarding the development of natural tourism. After an area fulfils these criteria, the establishment of a Nature Tourism Park continues through three (3) stages, namely determining the area and its functions, determining the area's boundaries, and determining the area. The designation of an area as a Wildlife Reserve Area or Nature Reserve Area concerning the criteria in Article 8-9, including having a diversity of flora and fauna and ecosystem types; representing certain eobiont formations and their constituent units; having landscapes, both eobiont and physical, which are still beautiful and original and have not been disturbed by humans; have sufficient area and unique shape in order to support efficient management to maintain the continuity of ecological processes naturally; have potential characteristics, so that they can become examples of ecosystems whose existence requires conservation efforts, and have flora and fauna communities and ecosystems that are rare or whose existence is threatened with extinction. The criteria for areas designated as wildlife sanctuaries are part of the place of life and breeding of animal species that must be conserved; has high animal diversity and population; is one of the habitats of rare animal species that are feared to be extinct; is a place of life for certain types of migratory animals, or has an adequate area as a habitat for the animal concerned and hears the consideration of the Governor of the Head of the Region concerned. After that, boundary demarcation is carried out by a Boundary Demarcation Committee whose membership and working procedures are determined by the Minister, and finally, the determination by the Minister based on the Minutes of the Boundary Demarcation recommended by the Boundary Demarcation Committee.

Based on the flow of determining the TWA area, Seblat Tourism Park is by the procedure, and most of its area fulfils the criteria set by the legislation. TWA Seblat has a natural landscape rich flora and fauna by the criteria determined,¹⁰ Besides that, research conducted by Gunggung Senoaji et al. found that based on the approach of Analysis of

¹⁰ BKSDA Bengkulu, "Profile of TWA Seblat Area," *BKSDA Bengkulu*, last modified 2024, accessed September 7, 2024, <https://bksdabengkulu.ksdae.menlhk.go.id/profil/kawasan/6>.

Operational Areas of Natural Tourism Objects and Attractions (ADO-ODTWA), ecologically, TWA Seblat is feasible to be developed as a natural tourist attraction and recreation area.¹¹ However, not all areas of the Seblat Natural Tourism Park area have the unique landscape and richness of flora and fauna required by law; covering an area of 1.412 ha of the Seblat TWA area in the Mukomuko district jurisdiction does not have a wealth of flora and fauna that is qualified and unique landscapes, the Seblat TWA area in this border area mostly only consists of shrubs in the form of weeds and former plantations.¹² So, regarding the size of the Seblat TWA area, it is necessary to reassess the suitability of land conditions with the criteria of the law, and empirical facts show that the land is customary land and agricultural land for residents, especially the people of Air Rami sub-district who are in the jurisdiction of Mukomuko district.

In addition, as stated above, the Seblat Natural Tourism Park area in the Air Rami sub-district consists of forest areas and community plantations. Most of the community plantations that the BKSDA unilaterally determined have legal proof of ownership in the form of certificates and SKT, as stated by residents that most of the land that is now part of the Seblat TWA was once community agricultural land, which has become the livelihood of the residents of the island hamlet, even approximately 200 ha of which have certificates SKT.¹³ This is reinforced by the opinions of several other residents, such as Bambang Irawan, who argued that long before the establishment of the Seblat TWA, the lands along the Air Rami River had been managed by the community for generations.¹⁴ Similarly, Saparudin (another villager) also argued the same thing that the community plantations that are now part of the natural tourism park were once legally owned community plantations.¹⁵ So, it is not appropriate for land that already has legal ownership rights to be designated as a natural park area unilaterally without transferring rights; the determination of land into a natural tourism park area will automatically disturb the property rights to the land. The UUPA outlines that land registration ends with the provision of a letter as evidence, which applies as solid evidence, then strengthened by the

¹¹ Gunggung Senoaji et al., "Ecological Feasibility of Developing Seblat Nature Park as a Tourist Attraction in Bengkulu Province Indonesia," *Journal of Environmental Science* 22, no. 2 (2024): 289-295.

¹² Z Abidin, "Interview on the Condition of the Seblat Landscape in the Air Rami District," 2024.

¹³ M. Azhar, "Interview Related to Land Status Before Becoming a TWA with the Village Community of Dusun Pulau," 2024.

¹⁴ Bambang Irawan, "Interview Related to Land Status Before Becoming TWA with Dusun Pulau Village Community," 2024.

¹⁵ Saparuddin, "Interview Related to Land Status Before Becoming a TWA with the Village Community of Dusun Pulau," 2024.

provisions of Article 32 Paragraph (1) PP No.24 of 1997 concerning Land Registration, which explains that a certificate is a proof of rights as a robust evidentiary tool about physical data and juridical data in it. The ownership of the Dusun Pulau village community over the land that is used as a natural tourism park is legal according to the laws and regulations with a certificate as solid evidence so that the designation of the land as a TWA area must go through the process of transferring rights so as not to seize community property rights illegally. However, based on the field findings, the Dusun Pulau community claimed that the designation was carried out unilaterally and without a clear process of transferring rights, either through buying and selling or compensation.

In addition to not being carried out with the process of transferring property rights, the determination of residents' land into a TWA area also does not pay attention to the customs and customary rights of the Dusun Pulau community. As stated earlier, apart from being agricultural land, several places have been "sacred" by the people of Dusun Pulau village and the surrounding community, which have become the common property of the Dusun Pulau village community, preserved from generation to generation until now, so that the places that are sacred by the community qualify as customary land recognised by the 1945 Constitution and UUPA 1960. Thus, the designation of the community's customary land into the Seblat TWA area should still pay attention to the customary rights of the local community, with the designation of the land into a TWA automatically disturbing the freedom of the Dusun Pulau village community to perform and preserve various mystical rituals in their sacred places.

Based on the analysis above, it can be concluded that the acquisition of community land rights in the jurisdiction of Mukomuko district to be used as Seblat TWA does not meet the criteria according to the provisions of the law and is contrary to other rights protected by applicable regulations. The acquisition was carried out without regard to the area's suitability with the criteria of natural resources that should be fulfilled and the community rights attached to it. This is not by the provisions stipulated in Government Regulation No. 68 of 1998 concerning Nature Reserve Areas and Nature Conservation Areas and is contrary to the UUPA. Therefore, the designation of the land as TWA Seblat, especially in the jurisdiction of Mukomuko district, is not by the procedures specified by law, so it can be cancelled according to the law and violates community rights to land that has been managed for generations by the community and violates property rights to land.

Conclusion

The research shows that land conversion into a TWA must go through several stages, including socialisation and transferring rights if the area previously had rights over it. However, the results of the research show that the process of designating the land of the villagers of Dusun Pulau as a TWA did not go through adequate socialisation; this was also exacerbated by the fact that some of the land that is now part of the Seblat TWA already had rights on it and ironically the process of land conversion was carried out by force and violated pre-existing rights without compensation so that the community still wholly owns the rights to the land that is currently part of the TWA. The community of Dusun Pulau village can file a lawsuit to the State Administrative Court over the designation of Seblat Tourism Park, especially the jurisdiction of Mukomuko Regency, because it is procedurally flawed. In addition, an area, in order to be designated as a Nature Tourism Park, must fulfil the criteria of natural resource wealth stipulated in the provisions of the law and pay attention to the rights attached to it, such as customary rights and property rights that are protected by applicable legal regulations.

However, the results of the search found that the Seblat TWA area in the jurisdiction of Mukomuko district does not have qualified natural resources. This is also exacerbated by allegations that the land conversion process into a Nature Tourism Park area does not pay attention to customary and community property rights that have existed for generations. This shows that the procedure for determining the Seblat TWA area was not carried out carefully and in detail, so it did not consider the existence of land rights and the environment's carrying capacity as a Nature Tourism Park, especially in the Mukomuko district jurisdiction. Therefore, it is necessary to conduct a review by the relevant parties to determine the condition of the TWA area in the field so as not to harm the local community. The community can submit a review to the relevant agencies to review the existence of the Seblat TWA in the jurisdiction of Mukomuko district, considering that the environment's carrying capacity does not support it as a natural tourist park area.

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