




Legal Protection for Indigenous Peoples for the Masela Block Gas Infrastructure

Adonia Ivonne Laturette*¹, Sri Ayu Junita Sainyakit²

^{1,2} Faculty of Law Pattimura University, Ambon, Indonesia.

 : laturettedony@gmail.com

Corresponding Author*

Submitted: 2023-01-29

Revised: 2023-03-06

Published: 2023-03-11



Article Info	Abstract
<p>Keywords: Customary Law; Legal Protection; Customary Land Rights.</p>	<p>Introduction: Customary law communities can own land rights, including the customary law community of Latdalam Village who have rights over land called land owned by relatives/soa whose control rights are carried out jointly.</p> <p>Purposes of the Research: This writing aims to determine the existence of the customary law community over Soa Olusi's land and the legal protection of the customary law community of Latdalam Village over Soa Olusi's land rights in the framework of the development of the Masela Block liquefied natural gas infrastructure.</p> <p>Methods of the Research: This research is a normative research that refers to the legislation and legal materials related to the substance of the research, then linked to the main problems in this research. The approach taken in this research is a statutory approach and a conceptual approach.</p> <p>Results of the Research: Based on the results of the study, the land rights of the Soa Olusi customary law community in Latdalam Village are considered to still exist and are recognized in accordance with Act number 5 year 1999 article 2. And the process of transferring land rights belonging to Soa Olusi through buying and selling has an invalid legal status / legal defect because it does not comply with applicable procedures according to applicable customary law and Indonesian law. In relation to development for the public interest, the government must provide compensation and recognition of those who have land rights, namely Soa Olusi, and if the government is wrong or wrong in providing compensation and recognition, then there is legal protection for the Soa Olusi community, namely preventive legal protection. and repressive legal protection.</p>

1. INTRODUCTION

Land has a very important meaning in human life, even land is one of the primary human needs. Land is something that becomes a place or space for all activities and human survival, meanwhile the existence of land in life has meaning and at the same time has a dual function, namely as a social asset and a capital asset. As a social asset, land is a means of binding social unity among the community for life and livelihood, while land capital is a capital factor in national development and has grown as a very important economic object.¹ Man and land are two things that cannot be separated, because human life cannot be separated from the soil. Humans also have an emotional and spiritual relationship with

¹ Jayadi Setiabudi, *Tata Cara Mengurus Tanah Rumah Serta Segala Perizinannya*, cet. 1. Yogyakarta: Buku Pintar, 2012, p. 4

the land. Land is not only seen as a commodity of mere economic value, but the relationship between land and its owner contains certain cultural, customary, economic and spiritual values.²

Based on Article 16 Act Number 5 year 1960 concerning Basic Regulations on Agrarian Principles, there are 8 rights to land, namely property rights, cultivation rights (HGU), building use rights (HGB), use rights, lease rights, rights to open land, rights to collect forest products and other rights that are not included in these rights which will be stipulated by law as well as rights of a temporary nature as stated in the article.

Based on the UUPA, the occurrence of property rights are:³ 1). According to customary law, that is, based on the recognition and ratification of former customary land; 2). Determination of rights by the Government according to the methods and conditions specified. Mechanisms for granting state land rights include transmigration land, land reform object and community arable land; 3). Legal Provisions. Acquisition of rights which, among other things, come from court decisions, auctions; 4). Legal provisions. For example, the results of ex-Western lands; 5). Enhancement of rights. It is an increase in rights from the previous Right to Build or Right to Use after undergoing a process determined by law.⁴

The existence of customary law is directly related to indigenous peoples and their culture which is based on the principle of togetherness. As a result, customary law relates to communal land which for some areas is known as ulayat rights. Observing the stipulation of customary law as the basic for the formation of national land law, on the one hand there is an acknowledgment of the existence of customary law that applies as a norm that is born and grows from society while at the same time fulfilling the development of modernization of a society. Latdalam village is a village that still preserves the traditional values of its ancestors since time immemorial. The customary system in Latdalam Village includes structural elements consisting of traditional elders, landowners, and customary law communities who are members of the soa.

The traditional elders and landlords are customary law communities who have occupied the Latdalam Village area since the first time where the ancestors came from various regions with their clans, and occupied the southern, northern and eastern areas of Latdalam Village and already have rights. on land in the region to carry out activities and carry out life and life. These ancestors gathered and merged to form an 'eye of fire' which was used at that time as an object of light in his life as well as a marker of evidence that there were people/people associations in the area and known as the term Soa. The term Soa is known as a collection of several clans (marga) since time immemorial who live together, both in their customary system, land tenure rights belonging to relatives/soa and other things.⁵

Soa land ownership rights are carried out jointly in a soa. Where they use the land rights of each area that they occupied for the first time for the purposes of daily life so that there is no conflict over the land rights of the soa. And their habit at that time was farming activities on land that already had ownership rights per household (marga) in the soa. Even

² Wibawanti, Erna Sri dkk, *Hak atas tanah dan peralihannya*, Yogyakarta: Liberty, 2013. p. 1

³ *Ibid*, p. 27

⁴ *Ibid*, p. 27

⁵ Interview with Mr. Roy Sainyakit, *Representative of Soa Olusi in Latdalam Village*, Friday, April 2, 2021, at 18.00 WIT.

though there are land rights per house, it does not mean personal control, but collective ownership rights as a soa.

Soa's land area at that time covered the entire area of Latdalam Village, known as common land/soa land whose tenure rights were per soa from time immemorial which was divided into Soa Olusi with its common land area covering the southern part of Latdalam Village, Soa Olinger with its common land area covering the upper part of Wermatang Village, Soa Otarembun and Soa Olsuin.⁶

In Presidential Regulation Number 109 year 2020 concerning the Third Amendment to Presidential Regulation Number 3 year 2016 concerning Acceleration of Implementation of National Strategic Projects which came into effect on 20 November 2020, and one of the national strategic projects in the energy sector is the Eternal Field Development of Masela Working Area, Maluku.⁷ Based on the Governor's Decree Number 96 year 2020 concerning Determination of Land Procurement Locations for the Development of the Abadi Field Liquefied Natural Gas (LNG) Refinery on Nustual Island, Lermatang Village, Moluccas Province, land acquisition for other infrastructure development covers part of the land area of the Latdalam Village government and that area is the right of on land owned by Soa Olusi.

Based on Governor's Decree Number 96 year 2020 concerning Determination of Land Procurement Locations for the Development of the Abadi Field Liquefied Natural Gas (LNG) Refinery on Nustual Island, Lermatang Village, Moluccas Province, land acquisition for other infrastructure development covers part of the land area of the Latdalam Village government.

In relation to the land acquisition plan for the development of liquefied natural gas infrastructure, the Masela block covers the area of land that belongs to Soa Olusi, precisely in the southern part of Latdalam Village, based on the author's observations, there are problems that arise, namely land disputes, namely the expropriation of land rights belonging to Soa Olusi. Which is carried out by secretly clearing land for the purpose of selling land for the construction of liquefied natural gas infrastructure in the Masela block without Soa Olusi's knowledge.⁸

Observing the Governor's Decree above, on the basis of the usufructuary rights they have received from Soa Olusi, they arbitrarily clear land and carry out legal actions of buying and selling to other parties in the form of entrepreneurs/others with the aim of fulfilling their daily needs. . And the land being traded will be awarded for development of liquefied natural gas infrastructure in the Masela Block, which is carried out without going through a legal customary law process and does not follow the buying and selling procedures that have been regulated in positive Indonesian law. And this has happened more than once. So they feel very unappreciated and disadvantaged.

Based on the above rules, seeing that land disputes that occur will have an impact on the process of land acquisition for the public interest which is carried out by providing compensation is not feasible and fair because later the compensation process will occur to

⁶ Interview with Mr. Roy Sainyakit, *Representative of Soa Olusi in Latdalam Village*, Friday, April 2, 2021, at 19.00 WIT.

⁷ <https://kppip.go.id/berita/revisi-rencana-pengembangan-proyek-minyak-dan-gas-blok-masela-diterima-presiden/> pada Senin, 26 April 2021

⁸ Interview with Mr. Roy Sainyakit, *Representative of Soa Olusi in Latdalam Village*, Friday, Mart 25, 2021, at 09.00 WIT.

parties who do not have rights to the land, in this case the parties. who had bought land as a result of the takeover of the ownership rights to the Soa Olusi land.

The principle of recognizing and respecting customary law community units and their traditional rights has been affirmed in Article 18B paragraph 2, so the State must implement this principle in an infrastructure development plan for the Masela Block by taking legal protection efforts against indigenous peoples over land owned by Soa Olusi. Based on the above background, the formulation of the problem that will be studied in this paper are: 1. How is the existence of the customary law community on the land owned by Soa Olusi? 2. How is the legal protection for the customary law community of Latdalam Village over land owned by Soa Olusi in the context of developing liquefied natural gas infrastructure in the Masela block field?

2. METHOD

The research method in this paper uses the type of normative juridical research that examines the provisions of positive law, legal principles, and legal doctrine. The type of research used is descriptive, that is, using legal concepts from the existing literature. The technique of collecting legal materials through the study of literature and analysis techniques of legal materials in this study using this type of interpretation.

3. RESULTS AND DISCUSSION

3.1 The Existence of Indigenous Peoples on Land Belonging to Soa Olusi in Latdalam Village

In Article 1 paragraph (3) of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 year 1999 concerning Guidelines for the Settlement of Problems with the Ulayat Rights of Indigenous Law Communities, it is formulated that: legal alliance because of the similarity of residence or on the basis of descent". According to Husen Alting,⁹ customary law communities or legal alliances (*adatrechtsgemeenschap*) have the following characteristics: 1). Consists of an organized collection of human beings who form a unity (unity); 2). Permanently occupying a certain area or in a unitary area; 3). Having a ruler or a unitary ruler in his community; 4). Have wealth, both tangible and intangible; 5). Have a legal entity (legal entity); and 6). Have values and religions that are believed to be true.

The concept of ulayat rights according to customary law is contained in magical communalistic-religious values which provide opportunities for individual land tenure, as well as personal rights, however, ulayat rights are not the rights of individuals. So that it can be said that ulayat rights are communalistic because they are the joint rights of members of the adat law community over the land in question. The magical-religious nature refers to the ulayat rights as shared land, which is believed to have something supernatural and is a relic of the ancestors and the ancestors of the indigenous peoples as the most important element for their livelihood and life throughout the ages, and throughout that life. take place. If viewed from the customary land law system, customary rights can have the power to apply internally and externally. Inward relates to its citizens, while outward relates to non-members of its customary law community, which are called foreigners or outsiders.

⁹ Husen Alting, *Dinamika Hukum Dalam Penegakan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah* (Masa Lalu, Kini dan Masa Mendatang), Yogyakarta: LaksBang PRESSindo, 2010, p. 49

⁹Maria. S. W. Sumardjono, *Kebijakan Pertanahan Antar Regulasi dan Implementasi*, Jakarta: Kompas, 2001, p 56

According to Boedi Harsono,¹⁰ the subject of customary rights is the customary law community inhabiting a certain area. Furthermore, the object of customary rights includes land (mainland), water, earth, plants (natural wealth) contained therein and wild animals that are free in the forest. Thus, customary rights show the legal relationship between legal communities (legal subjects) and certain lands/regions (objects of rights).¹¹

The state regulates land in the provisions of Article 33 Paragraph (3) of the Constitution of Republic of Indonesia year 1945 which gave power to the state to control land in its territorial area which is then explained as follows: "Earth, water and natural resources in it are controlled by the state and used as much as possible for the prosperity of the people". Based on the contents of Article 33 paragraph (3) explicitly explains that land ownership rights exist for all Indonesian people and the State is only given an authority to control which means only to have power over something or holding power or something while ownership belongs to all Indonesian people.

The scope of the earth according to the UUPA is the earth's surface, and the earth's body under it and under water. The surface of the earth as part of the earth is also called land. Land which is meant here does not regulate land in all its aspects, but only regulates one aspect, namely land in a juridical sense called land tenure rights. The definition of "control" can be used in a physical sense, as well as in a juridical sense. There are also private and public aspects. Mastery in a juridical sense is control based on rights, which are protected by law and generally gives the right holder the authority to physically control the land that is being judged.

In the concept of law, the relationship between people and objects is a relationship called 'Rights'. The meaning of this designation is the right of ownership of an object which is called the right of ownership of the object or what is known as the "property right". The word property itself in the legal sense emphasizes more on the right than on the object. Property rights are very basic rights and are basic rights guaranteed by the constitution. The 1945 Constitution Article 28 paragraph (4) stipulates that everyone has the right to have property rights and these rights may not be taken over arbitrarily by anyone. Meanwhile, the Basic Agrarian Law as the basic regulation of national land law stipulates that property rights to land are hereditary, strongest and fullest rights that people can have on land, keeping in mind the stipulation that all land rights have a social function.

In Article 20 paragraph (1) of the LoGA it is stated that: "Property rights are hereditary, strongest and fullest rights that people can have on land, keeping in mind the provisions in article 6". Land has an important position for the life of customary law communities both communally and individually, customary law recognizes 2 (two) things that cause land to have a very important position in customary law caused by: 1). Because of its nature, which is the only object of wealth which, even though it undergoes certain circumstances, will still be permanent in its state and even become more profitable; 2). Due to the fact, namely the fact that the land is: a). Is the residence of the community (community); b). Providing livelihood to the community (community); c). It is a place where the deceased members of the community (community) are buried; d). It is a place to live for the danyang - danyang protector of the community (community) and the spirits of the ancestors of the community (community).

¹⁰ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agrari Isi dan Pelaksanaannya*, Jakarta: Djanbatan, 2005, p. 181

¹¹ Bushar Muhammad, *Pokok – Pokok Hukum Adat*, Jakarta: Pradnya Paramita, 1983, p. 109

Provisions regarding property rights are stated in Article 16 paragraph (1) letter a, the Basic Agrarian Law (hereinafter written UUPA). Specifically regulated in Article 20 to Article 27. According to Article 50 paragraph (1) of the LoGA, "Further provisions regarding Property Rights are regulated by law". Ownership rights to land that occur because of the provisions of the Act means the Law that stipulates the property rights. For example, land ownership rights are derived from the conversion of former customary land. In essence, customary land is land rights, but according to the national land law in force in Indonesia on September 24th, 1960, customary land can become property rights if it has been converted. Conversion is the adjustment of a land title according to the old law into a land right according to the new law. This adjustment of rights also occurs in land rights that are subject to Western law (eigendom, Erfpacht, and opstal). As for the conversion of Western rights, they can be converted into property rights, Cultivation Rights, Building Use Rights, and Use Rights based on the conversion provisions of the UUPA. The laws ordered here have not yet been enacted. Land regulated according to western civil law has several kinds of rights, including the Recht van Eigendom right; Recht van Opstal rights; Rights of Recht van Erfpacht and Land of Recht van Vruchgrebuic.¹²

Land law, in addition to land law based on western law, also applies land law rules based on customary land law. Customary land law is unwritten law and has been in effect among indigenous Indonesians before the arrival of the colonialists, while western land law developed along with the arrival of the Dutch in Indonesia and brought with it Dutch legal instruments regarding land which were originally still based on ancient Dutch law which based on unwritten customs. According to Purbacaraka and Halim, customary rights lands consist of: a). ulayat rights, namely land rights which are jointly held by all members of the customary law community; b). Ownership and usufructuary rights. Customary property rights to land are land rights held by individuals over a certain plot of land within the territory of the customary law community concerned.

Van Dijk stated that customary land rights can be divided into: 1). Right of partnership or right of mastery; 2). Partnership rights that result in exit are:¹³ a). Prohibition against outsiders to take advantage of ulayat land, except after obtaining a permit and after paying recognition money; b). Prohibition of restrictions or various binding regulations on people to obtain individual rights to agricultural land.; 3). Individual rights to customary land, consisting of: "Customary property rights (inland bezitrecht) are individual rights to land, where the person concerned has his energy and business continuously planted on the land, so that its power is becoming more evident and recognized by other members, and the power of the clan/group is dwindling, and individual power stronger".

3.2 The Existence of the Latdalam Village Indigenous Peoples on Land Owned by Soa Olusi

Latdalam village is a village that still respects and even preserves traditional values since time immemorial. According to the adat elders in Latdalam Village, that customary law has been applied by the ancestors since time immemorial. And it started when the

¹² Suhendra, *Analisa terhadap hak Keperdataan*, Jakarta: Fakultas Hukum Universitas Indonesia, 2011.p. 34

¹³ Uktolseja, Novita & Pieter Radjawane. (2019). *Tinjauan Juridis Perkembangan Tanah-Tanah Adat (Dahulu, Kini dan Akan Datang)*, Volume 25 Nomor 1, diunggah dari <https://www.google.com/url?sa=t&source=web&rct=j&url=https://media.neliti.com/media/publications/316024-tinjauan-juridis-perkembangan-tanah-tana-cc7c15fa.pdf&ved=2ahUKEwivzZSnq5fxAhUGXsSKHcPMDvQQFnoECCkQAQ&usg=AOvVaw1x7u-ho1he-dxejignA896>

ancestors occupied certain areas in Latdalam Village and were occupied by certain clans to carry on their life and livelihood.¹⁴ One of them is a place called 'Yempori' which according to the Yamdena traditional language is referred to as an old village and is usually known as 'Mata Api' which is proof that they have rights and authority over the land and territory.

The eyes of fire are a group/several clans who are members of one group and live in one place and use the eyes of fire as an object of light in their lives. At that time, there were several relatives/soa who occupied the area of Latdalam Village with each clan in it and their origins and zones/areas of control were as follows: Soa Olusi originally came from Yempori. And several clans who are members of this soa include: 1). Clan Sainyakit; 2). The Buarbelai clan; 3). Sasake Clan; 4). Litinyoe clan. Several clans/households who are members of Soa Olusi carry on their lives and lives and have rights and authority over land and territories with the following boundaries: a). East : with the land of Lematang Village; b). West : by Sea; c). North : with the land of Soa Olinger Otarempun communal land; d). South : by Sea; e). Soa Olinger. Soa Olinger is a soa/relative who comes from Kalkoislakar Village which is located in the northern part of Wermatang Village. And several clans who are members of this soa include: 1). Clan Batlayeri; 2). Bunbaban clan; 3). Soa otarembun.

Soa Otarembun is a soa/relative from Fanoir Village. And several clans who are members of this soa include: a). Clan Kundre; b). Sambonu clan; c). Masnifit clan; d). Clan Laiyan; g). Soa Olsuin. Soa olsuin is a soa/relative that comes from Matruti. And there is only one clan that is incorporated in soa, namely the Rahanratu clan. The four soa described above are known as 4O (4 eyes of fire/soa) and they are the ones who initiated the first Latdalam village guidance. Based on the results of the interview above, it can be seen that the origin of land and territory control is clearly visible and has been owned by SOA who have previously occupied the area. With regard to the control of land rights belonging to SOA, so far its.

One of the questions that is the object of this study is the Olusi Problem. Soa Olusi is a soa that has existed for a long time, but until now several clans in Soa Olusi have become extinct and only the Sainyakit clan remains, so the policies of the ancestors for Soa Olusi are incorporated into Soa Batulempun. The form of the existence of the customary law community on land owned by Soa Olusi is an acknowledgment made by other parties to the property rights of Soa Olusi and carried out from time to time, which can be described as follows:¹⁵ a). On March 20th, 1984, a person named Carel Hayer gave an acknowledgment of the rights to land belonging to Soa Olusi in the form of giving Sopi as a traditional tradition worth 1,000 rupiahs for the purpose of capturing marine products in the Yempori Sea petuanan; b). On May 9th, 1984, a man named Daud Refualu acknowledged the rights to land belonging to Soa Olusi in the form of a Sopi worth 2,000,00 rupiahs to release the chart on the Yempori marine petuanan to the Sainyakit clan; c). In 1989, a timber businessman named Yonga came to Latdalam village to cut some wood for his daily needs. The place he was going to was the property and territory of Soa Olusi to be precise in the Malmei area, north of Yempori Village. At that time, Yempori Village was 300m near the beach. The entrepreneur before carrying out his activities, he made an acknowledgment and

¹⁴ Jenny Kristiana Matuankotta, Eksistensi Masyarakat Hukum Adat Dalam Mempertahankan Sumber Daya Alam, *jurnal SASI* Volume Issue <https://fhukum.unpatti.ac.id/download/jurnal-paper/konstitusi/Jurnal%20Konstitusi%20Vol%20II%20No%201%20Juni%202010/Jenny%20M%20-%20EKSISTENSI%20MASYARAKAT%20HUKUM%20ADAT%20DALAM%20MEMPERTAHANKAN%20SUMBER%20DAYA%20ALAM.pdf>, Diunduh pada Selasa 15 Oktobe pada jam 08.00 WIB.

¹⁵ Boedi Harsono, *Ibid* p. 174

appreciation to Soa Olusi who owns the property rights to the area. And the forms of recognition and awards are in the form of; d). Gave traditional drink called 'sopi' for 25,000,00 rupiahs which has been a uniting tool for customary law communities from a long time ago and is usually used in traditional events (marriages, problem solving processes, recognition to landlords, etc.) in Latdalam Village; e). Gave the complete house tower before the wood is produced to Soa Olusi; f). On 18th June 1995, the Latdalam Village Government recognized the rights to land belonging to Soa Olusi in the form of a traditional prayer bottle stopper/prayer in connection with the search for the bodies of drowned people in Petuanan Laut Yempori amounting to 5,000,00 rupiahs to the Sanyakit clan; f). On September 8th, 1999, the Village Government represented by the Village Government Kaur recognized the rights to land belonging to Soa Olusi in the form of a traditional prayer bottle stopper at the Yempori village communal land for the vandirin of Latdalam village in the amount of 6,000,00 rupiahs plus a bottle of traditional drink; h). On October 9th, 2007, a person named Aris Buton confessed to Soa Olusi in the form of a payment of 500,000,00 rupiahs for the payment of traditional drink for his interest in petuanan Laut Yempori; ¹⁶ i). On July 17th, 2008, a businessman named Agustinus Thiodorus acknowledged the land rights belonging to Soa Olusi in the form of a payment of 10,000,000,00 rupiahs for the purpose of the construction of a street project for the Lermatang Village road to Latdalam Village for the Sainyakit clan; j). In 2009, the Village Censorship Operator latdalam gave recognition to the land rights belonging to Soa Olusi in the form of a cash payment of 1,000,000,00 rupiahs for payment of traditional drink for timber management on Yempori's communal land; k). In 2013, a person named Frans J. Labunga gave an acknowledgment to the land rights belonging to Soa Olusi in the form of a payment of 500,000,00 rupiahs for the payment of Yempori communal; l). On November 28th, 2016, a person named Ake Alaskan gave an acknowledgment of the rights to land owned by Soa Olusi in the form of a payment of 100,000,00 rupiahs for the payment of traditional ceremony in Yempori land; m). On December 25th, 2016, a person named Alex Luturmas gave an acknowledgment of land rights belonging to Soa Olusi in the form of giving a bottle of traditional drink and a stopper of 25,000,00 rupiahs for traditional prayers to sick people in Soa Olusi's Yempori communal land; n). On May 11th, 2017, a person named Seblon Halirmuri gave recognition to the rights to land owned by Soa Olusi in the form of giving money of 25,000 rupiahs and a bottle of traditional drink in the context of traditional prayer for the sick in Yempori village belonging to Soa Olusi; o). On May 14th 2017, a person named Obet Miru gave recognition to the rights to land owned by Soa Olusi in the form of giving money of 20,000,00 rupiahs and a bottle of traditional drink in the context of traditional prayer for people who were involved in an accident at Soa Olusi's Yempori communal land; p). On February 8th 2018, Latdalam Village BPD acknowledged the rights to land owned by Soa Olusi in the form of giving traditional drink and bottle stoppers in the form of cash money to Sanyakit clan. The above directly reflects that until now, the existence of customary law communities to land rights belonging to Soa Olusi is still being carried out.

3.3 Legal Protection for the Indigenous Law Community of Latdalam Village on Soa Olusi Land Ownership Rights

In relation to law enforcement on land acquisition for the public interest as the author examines in this paper, legal protection is all efforts to fulfill rights and provide assistance

¹⁶ Results of an interview with Mr. Roy Sainyakit, *Representative of Soa Olusi in Latdalam Village*, Friday, April 2, 2021 at 17.00 WIT

to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, This can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.¹⁷ Legal protection is given to legal subjects in the form of tools, both preventive and repressive, both verbal and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that the law provides justice, order, certainty, benefit and peace.

The principle of legal protection against government actions and stems from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at limiting and laying down the obligations of the community and the government.⁶ The dominant aspect in the western concept of human rights is the existence of rights and freedoms inherent in human nature and its status as individuals, these rights are above the state and above all political organizations and are absolute and cannot be contested. Because of this concept, criticism is often made that the Western concept of human rights is an individualistic concept. Then with the inclusion of social rights and economic rights as well as cultural rights, there is a tendency to begin to fade away the individualistic nature of the Western concept.¹⁸

In formulating the principles of legal protection in Indonesia, the foundation is Pancasila as the ideology and philosophy of the state. The conception of legal protection for the people in the West is based on the concepts of *Rechtstaat* and "Rule of The Law". By using the Western conception as a framework of thinking based on Pancasila, the principle of legal protection in Indonesia is the principle of recognition and protection of human dignity and respect related to law enforcement on land acquisition for the public interest as the author examines in this writing, rooted in Pancasila. The principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights because historically in the West, the concept of the birth of the recognition and protection of human rights is directed at limiting and laying down the obligations of society and the government. In the life of a country before carrying out legal activities in the community, so that it can run smoothly and effectively. The government must ensure the law is on the track and must be pay their attention to various factors that exist in society. Because in law, the state of society and the problems of society are known by the Government, if the Government wants to ensure the law.

In this life, land has a close relationship with humans. Everyone need land. Land can not only be used to fulfill the needs of life, even after passing away humans need land. The amount of land that can be controlled by humans is very limited, while the number of people who want land is getting more and more. The unbalanced condition between the supply of land and the need for land causes various problems and cases of disputes that require a good and correct settlement and provide protection and legal certainty as well as justice for citizens who actually have rights to the land. regulates it in the Basic Agrarian Law in article 26 paragraph (1) which stated that: buying and selling, exchanging, giving, giving according to and other actions intended for supervision are regulated by government regulations. customary law, is defined as: the authority which according to customary law is owned by certain customary law communities over certain areas which constitute a severe

¹⁷ Interview with Mr. Roy Sainyakit, Representative of Soa Olusi in Latdalam Village, Friday, April 2, 2021 at 20.00 WIT.

¹⁸ Interview with Mr. Roy Sainyakit, Representative of Soa Olusi in Latdalam Village, Friday, April 25A, 2021 at 20.00 WIT.

environment for its citizens to take advantage of natural resources, including land within the area, for their survival and livelihood, arising from relationships¹⁹ outwardly and inwardly, hereditary and unbroken from the customary law community and the territory concerned. Legal protection is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be provided by law enforcement officials to provide legal protection. a sense of security, both physically and mentally from disturbances and threats from any party.

The Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia year 1945 as the foundation of the state constitution. The state upholds human rights and guarantees equal rights and positions in law and government and is entitled to legal protection. The statement about the existence of guarantees regarding the right to legal protection for every citizen at the same time as his position in law and the government and the obligation to uphold the law and government is without exception, and Article 28 d paragraph (1), "Everyone has the right to recognition of guarantees, protection and fair legal certainty and equal treatment before the law". The customary law communities in Moluccas and their rights to their customary lands were formed by a long historical process, until now they still exist and are maintained. They are also generally very respectful and aware that a piece of land that has been cultivated since their ancestors is the customary land on which they live and is subject to binding customary rules. Customary lands known as communal lands are essentially a concept of joint ownership of the local customary law community.

The existence of ulayat/communal rights as well as their management rights in various regions in Moluccas often face or clash with development policies, especially development for the (public interest) which eventually causes conflicts between indigenous peoples and local governments. For this reason, customary land has its own legal force which has been regulated in the order of the customary law alliance by customary officials in its arrangement. The perspective of customary land is regulated within the scope of customary law whose arrangements are recognized by the state based on law, therefore customary land cannot be taken carelessly, as stated in the Constitution of the Republic of Indonesia year 1945 Article 18 B affirms that: "The state recognizes and respects the unity of - customary law community units 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.

Responding to this matter by taking into account the Law on land acquisition for the public interest. There are several points, namely the definition of agency, the notion of public interest, the suitability of land acquisition with the regional spatial plan, public consultation, appraisal agencies, forms of compensation. as follows: 1). The principle of land for public use must be available. Development for the public interest of course requires land. Land law does not apply absolutely to the community. Because if the government requires it, then with its authority it will be able to carry out the release or revocation of rights to the land. Therefore, there needs to be a balance between private, private and public/public

¹⁹ Jenny Kristiana Matuankotta, Eric Stenly Holle, State Recognition and Respect for the Rights of Customary Law Communities in the Maluku Islands Region in the Exploitation of Forest Resources, Volume 28 Issue 1 Tahun 2022. <https://fhukum.unpatti.ac.id/jurnal/sasi/issue/view/52>, Diunduh pada Selasa 15 Oktobe pada jam 08.00 WIB.

rights, which is a must through a process that is fair, open and involves the community; 2). The principle of ensuring community rights, based on the 1945 Constitution article 28 H paragraph (4) securing restrictions and/or expropriation of land through correct procedures, accompanied by fair compensation. For parties whose land is subject to land acquisition, they must have the opportunity to file objections to the construction site and compensation, both in value and in the form of compensation; 3). The principle of land speculation is reduced. In the procurement of land for the public interest intended for the public interest should be done openly. This is to reduce speculative practices that will harm the property rights of the people whose land is being developed for the public interest.

Some simple principles in the implementation of land acquisition for the public interest are intended to provide protection for community members whose land is affected by the development, namely as follows: "Preventive legal protection related to public consultations and objections regarding the planned construction site begins at the time of consultation for a maximum period of 60 working days. Meanwhile, the maximum time for objections is 30 working days. If the recommendations in the re-public consultation still have objections, the agency requiring the land will report the objection to the governor of Moluccas Province. In Moluccas province, a solution will be found regarding the rights of the people of Saumlaki City whose land is subject to public development".

The form of legal protection, namely the community can file a lawsuit to the State Administrative Court against the location of the development determination. If the residents of the City of Saumlaki whose land is affected by the development have not accepted the PTUN's decision, then they can apply to the Supreme Court and later there will be a decision that becomes legal certainty for the disputed land. This is if done by the City Government based on positive law in achieving legal certainty that develops in customary law communities or local wisdom to answer the existing legal rigidity so that harmonious relations between the government and the people can be realized based on the principle of harmony, as well as a balance between rights and obligations in the settlement. The customary law community of Latdalam Village, especially Soa Olusi and their rights to their customary lands were formed by a long historical process, until now they still exist and are maintained. They are also generally very respectful and aware that a piece of land that has been cultivated since their ancestors is the customary land on which they live and is subject to binding customary rules. Customary lands known as *petuanan* lands are essentially a concept of joint ownership of the local customary law community. Based on the above rules, the Soa Olusi indigenous people must receive legal protection related to Soa Olusi land rights in the context of developing liquefied natural gas infrastructure in the Masela block through a land acquisition process carried out through compensation to Soa Olusi in a deliberation where as a meeting point the wishes of the land owners (Soa Olusi) with parties who are government agencies that require land, to further obtain an agreement on the form and amount of compensation whose compensation procedures for land acquisition in the public interest are clearly regulated in the Government Regulation Number 19 year 2021 concerning Land Management for Development in the Public Interest which is a derivative regulation of the Job Creation Law Number 11 year 2020.

4. CONCLUSION

From the study above, the conclusions that can be drawn are the existence of the Soa Olusi customary law community is still maintained and carried out from time immemorial until now. Land rights belonging to Soa Olusi are still considered to exist and exist, because there are still people in Latdalam Village who are still subject to and bound by their

customary law order, their customary land becomes the environment and a place to take their daily needs, and there is a legal order customary law regarding the management, control and use of Soa Olusi's land rights that apply and are adhered to by the customary law community of Latdalam Village such as the customary law order regarding land tenure rights owned by Soa Olusi and as a form of acknowledgment and protection of their rights marked by the price of 'Sopi' and 'Sirih Pinang' as traditional objects that are usually used in traditional ceremonies in Latdalam Village.

REFERENCES

Journal Article

Uktolseja, Novita & Pieter Radjawane. (2019). Tinjauan Juridis Perkembangan Tanah-Tanah Adat (Dahulu, Kini dan Akan Datang), *SASI*, Volume 25 Nomor 1.

Jenny Kristiana Matuankotta, Eric Stenly Holle, State Recognition and Respect for the Rights of Customary Law Communities in the Maluku Islands Region in the Exploitation of Forest Resources, *Jurnal SASI* Volume 28 Issue 1 Tahun 2022.

Jenny Kristiana Matuankotta, Eksistensi Masyarakat Hukum Adat Dalam Mempertahankan Sumber Daya Alam, *Jurnal SASI* Volume Issue

Book

Bushar Muhammad, *Pokok-Pokok Hukum Adat*, Jakarta: Pradnya Paramita, 1983.

Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya*, Jakarta: Djanbatan, 2005.

Husen Alting, *Dinamika Hukum Dalam Penegakan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*, Yogyakarta: LaksBang PRESSindo, 2010.

Jayadi Setiabudi, *Tata Cara Mengurus Tanah Rumah Serta Segala Perizinannya*, cet. 1. Yogyakarta: Buku Pintar, 2012.

Maria. S. W. Sumardjono, *Kebijakan Pertanahan Antar Regulasi dan Implementasi*, Jakarta: Kompas, 2001

Wibawanti, Erna Sri dkk, *Hak atas tanah dan peralihannya*, Yogyakarta: Liberty, 2013.

Satjipto Rahardjo, *Permasalahan Hukum Di Indonesia*, Bandung: Alumni, 1983.

Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: Ui Press, 1984.

Thesis, Web Page, and Others

<https://kppip.go.id/berita/revisi-rencana-pengembangan-proyek-minyak-dan-gas-blok-masela-diterima-presiden/>

Suhendra, *Analisa terhadap hak Keperdataan*, Jakarta: Fakultas Hukum Universitas Indonesia, 2011.

<http://raypratama.blogspot.co.id//teori-perlindungan-hukum.html>