

# LOCAL ADMINISTRATION OF INDIGENOUS PEOPLES IN LAND AFFAIRS AND FOOD SECURITY BY LAW NO. 18 OF 2012 ON FOOD

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## ABSTRACT

*Local wisdom of indigenous peoples Baduy in agriculture or cultivation is part of the cultural richness that is very valuable and could usefully be put-use in efforts to achieve food security for indigenous peoples at least Baduy itself. This study aims to determine the local wisdom of indigenous peoples Baduy in the management of land for food security associated with Law No. 18 of 2012 on Food, and to find evidence of customary land tenure rights of indigenous peoples Baduy, and legal proof of such rights. The method used in this research is the empirical socio-legal legal research methods. Interviews in the study conducted on indigenous Baduy village Leuwidamar Kanekes Subdistrict, Lebak, Banten Province. The results show that the local knowledge of indigenous peoples in the management of land Baduy to achieve food security in accordance with Law No. 18 of 2012 appears in the cultivation system from the stage of finding land to the management of crops. The cultivation system was able to encourage and sustain the realization of food security for indigenous peoples Baduy. Moreover, the procurement of customary land rights of indigenous peoples contained in the Baduy Lebak District Regulation No. 13 in 1990, and Lebak District Regulation No. 32 of 2001 on the Protection of Land Rights published in the Gazette Baduy community Lebak District Ordinance No. 2001 65 Series C have the force of law as certificate of customary land rights.*

**Keywords:** Local Knowledge, Indigenous Peoples, Land Rights, Food Security, Proof of Entitlement.

## INTRODUCTION

The existence of tribal communities, including Baduy tribes in Banten, Indonesia, and their local wisdom are recognized both constitutionally and juridically in the laws and regulations in Indonesia. Provisions 18B of the 1945 Constitution of the Republic of Indonesia expressly states that:

*"The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of the nation, society and principles. Unitary State of the Republic of Indonesia regulated in law".*

This is also reinforced by Article 28I paragraph (3) stating that:

*"Cultural identity and the rights of traditional communities are respected in accordance with the development of times and civilizations".*

Accordingly, the provisions of Article 1 point 1 of Law No. 6 of 2014 concerning Villages (hereinafter referred to as the Village Law), formulates that the village is a traditional village and village or called another name, hereinafter referred to as a Village, is a legal community unit that has a regional boundary that is authorized to regulate and administer government affairs, public interests locally based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Republic of Indonesia (Iskandar, 2019).

The mandate of the 1945 Constitution and the contents of the Village Law are not limited to recognition of the existence of indigenous peoples and their local wisdom (including Baduy indigenous peoples), but also encourage initiatives, movements and participation of rural communities to develop village potential and assets in order to achieve shared prosperity. Therefore, local wisdom as a reflection of the nation's cultural wealth needs to be used as an instrument in rural development and realize food security. Local wisdom is actually used as the basis for every government policy in the effort to build and prosper the village community (Lisdiyono, 2017). So, it is reasonable if local wisdom in the agricultural sector that has been carried out from generation to generation by indigenous peoples can be used to realize food security (Khomsan et al., 2009).

Here, the government needs to take seriously the existence of indigenous peoples and their local wisdom and tenure rights over communal land (Alting, 2011; Sannikov, 2017). This is important so that indigenous peoples' local wisdom can be used for the development of traditional villages and for avoiding conflict (Juwono, 2013; Mulyadi, 2019). Therefore, the central and regional governments are responsible so that the implementation of national food can be carried out in a more directed, useful and efficient manner. Thus, the implementation of its management by empowering all potential stakeholders so that there is synergy and potential to produce food management effectively and efficiently in order to be able to face the problems and challenges of the present as well as the future (Ismi, 2013; Prayoga, 2016).

The context of this paper is the Baduy indigenous people and the local wisdom of their agricultural fields, including the status of their customary rights. This local wisdom of Baduy indigenous people in agriculture can be used as an instrument and strategy in realizing indigenous people's food security. This is in line with the spirit of Law No. 18 of 2012 concerning Food that encourages the use of local resources, institutions and culture in realizing food availability and security. Realizing sovereignty, independence and food security are fundamental things that are very meaningful and beneficial to support the implementation of policies related to food management in Indonesia. In this context, this paper aims to examine more deeply the local wisdom of Baduy customary law communities in relation to food security, along with the consideration of land management to realize food security according to Law No. 18 of 2012 concerning Food.

### **National Law and Customary Rights to Self-Manage Food Security**

Human relations and groups with each other require rules or a set of rules as a guide to behavior. What is truly fundamental must be in law in any society; primitive or civilized is the legitimate use of physical coercion by a body that is socially authorized. The customary right is a land right from legal alliances only in Indonesia, which cannot be released forever and has a religious basis (religion). Thus, customary rights can be formulated as a religious communalistic concept. What are meant by communalistic are the joint rights of members of the customary law

alliance called customary rights (Sunaryo & Joshi, 2003). Magical religious nature is customary land which is a common property or shared property which is believed to be a gift of occult power or ancestral heritage to a group of indigenous people who carry out life. Customary rights have the power that applies in and out. Into dealing with its citizens, while the force that applies to the outside in relation to non-members of the customary law community, called foreigners or outsiders.

Boedi Harsono (1999) argued that customary rights are a series of authority and obligations of a customary law community related to land, including the area's environment. Urip Santoso (2005) stated that customary rights are a series of authority and obligations of a customary law community, which relate to land, located in the area of his territory. In Indonesia, the existence of customary rights is normatively recognized and protected by law (Sitorus & Sierrad, 2006). According to Law No. 5 of 1960 concerning Basic Agrarian Regulations (hereinafter abbreviated as BAL), the national agrarian law is based on customary law (Sihombing, 2019). Regarding this matter, Boedi Harsono (1999) stated that national land law is based on customary law and that national land law is customary law indicating a functional relationship between customary law and national land law. Customary law according to the real meaning, namely the original law of the indigenous people, which is a law that lives in an unwritten form and contains original national elements, namely the nature of society and kinship which is based on balance and is covered by religious conditions. Thus, national land law has the same philosophy/conception as customary law, which is religious-communalistic, which is in line with the original views of the Indonesian people in viewing the relationship between human beings and the community who always prioritize the interests of society. In customary law there is a principle "*in individual rights is always attached to the rights of the people*" this is a manifestation of the nature of the Indonesian people.

The existence of Baduy indigenous people makes they are entitled to customary rights. Based on the provisions of Article 3 of the BAL, the existence of customary land is legally bound to the existence or absence of indigenous peoples. Legal status of customary rights is also important in providing legal certainty and certainty of rights for indigenous peoples. In relation to this, Article 1 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for the Settlement of the Customary Rights Issue of the Legal Community also mentions that Customary Land is a parcel of land on which there are customary rights of a particular customary law community. Whereas, customary law communities are a group of people who are bound by the customary law as citizens together with a legal alliance because of the similarity of their place of residence or on the basis of inheritance.

Conceptually, the granting of customary rights to the Baduy indigenous people is in line with the principle of justice of John Rawls (2006), namely the same principle of freedom. The freedom referred to by Rawls (2006) is political freedom (the right to vote and be elected to a public office) along with freedom of speech and association; freedom of belief and freedom of thought; one's freedom along with the freedom to retain property rights (personal); and freedom from arbitrary arrest as defined by the concept of rule of law. So according to this principle, justice demands that all people be recognized, valued and guaranteed their rights to freedom equally (Keraf, 2000).

In connection with this communal right in the explanation of Article 3 of the BAL it is stated that: "*What is meant by customary rights and similar rights is what is in the traditional library called *beschikkingsrecht**". Furthermore, in the General Explanation II number 3 is as

follows: *“In relation to the relationship between the nation and the earth and the water and the power of the State as referred to in Article 1 and 2, in Article 3 there are provisions concerning customary rights of legal community units, what is intended will occupy that right in the proper place in the state of nature today”.*

The customary rights are rights to land owned jointly by indigenous peoples, and are a “gift” from an occult power, not seen as something that is obtained by chance or because of the strength of the indigenous peoples' efforts. Therefore, customary rights that become the life-giving environment for indigenous peoples can be viewed as joint-land, so all individual rights are sourced from the common land (Keraf, 2002). Each member of the indigenous community has the right to control and use part of the land together to meet the personal and family needs. According to Harsono (1999), the control and use of the land can be done individually or together with other groups of citizens. There is no obligation to master and use it collectively.

From the interview with Jaro Dainah, Kanekes Village Chief, it was known that the Baduy community had a structure of customary law structures that were submissive and obedient to the three societal body as a unit (*trias politica*), as the highest leader of the customary government residing in Cikeusik Village, Cibeo Village and Kampung Cikartawana. The customary legal structure system in the Baduy community plays an important role in protecting all layers of its citizens both in the social field and in managing its natural environment.

In connection with the protection of customary rights, in fact in Indonesia there is also a legal regulation as stipulated in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency number 5 of 1999 concerning Guidelines for the Settlement of Customary Rights in Customary Law Communities. In these regulations what is meant by:

1. The rights to customary and the like from the Customary Law Community (hereinafter referred to as customary rights), are the authority which according to customary law belongs to certain customary law communities over certain areas which constitute the living environment of its citizens to benefit from natural resources; including land in the region, for the survival of life and life, arising from an outward and inward relationship between the indigenous and tribal peoples and the region concerned.
2. Customary land is a land area on which there are customary land rights from a particular customary law community.
3. Customary law community is a group of people who are bound by the customary law as citizens together with a legal alliance because of the similarity of their place of residence or on the basis of inheritance.
4. Region is an autonomous region authorized to carry out land affairs as referred to in Act Number 22 of 1999 concerning Regional Government (now amended by Law Number 32 of 2004 concerning Regional Government).

Along with the era of regional autonomy, based on Presidential Decree No. 34 of 2003, affairs in the land sector are one of the fields whose implementation authority is delegated by the central government to the Regional Government. Therefore, the local government has the authority and responsibility in the administration of land, including land affairs for indigenous peoples in their territories. And, as the implementation of the regulation, the Lebak Regency Government of Banten Province has also given customary rights to the Baduy indigenous people to manage their land and environment as contained in the Lebak Regency Regional Regulation No. 13 of 1990, and the District Regulation of Lebak No. 32 of 2001 concerning Protection of Customary Rights of Baduy Communities.

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In the development of customary or customary land, it is increasingly being pushed back by formal legislation, which results in the urgency of the interests of the village community due to the lack of written grip. In Article 4 of the Basic Agrarian Law, the right to control is in the State, so that the position of customary land must be submitted to the State. With the issuance of Law Number 22 of 1999 which has been amended by Law Number 32 of 2004 concerning Regional Government and linked to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999, therefore regulating the land and customary rights is in the District/City Government. Without evidence of the existence of customary law communities, the land is land controlled by the state. It is the country that has the authority to determine the existence of land and customary rights.

From the description it is clear that the existence of customary rights is very dependent on the existence of indigenous peoples. If the existence of indigenous peoples is not recognized, then the community land rights-was not given photo communal land specifically regulates the result will be the emergence of a variety of land-related issues. In the position of customary land that is within the scope of state land, it could be for reasons for national and development interests or other reasons, at any time the customary land can be revoked. This condition can certainly lead to legal uncertainty for indigenous peoples.

Referring to the provisions of the Basic Agrarian Law, Regulation of the Minister of Agrarian Affairs/Head of Land Affairs Agency No. 5 of 1999, and the Lebak Regional Regulation No. 32 of 2001 on the Protection of Land Rights Baduy community, indicating that the actual legal position of indigenous Baduy customary land they occupy is strong enough, although on the customary rights that no certification. The area of customary land rights of the Baduy community is set forth in a map of the basic land registration by including an appropriate cartographic sign (map making). Thus, it is clear that the proof of the customary rights of land rights by the Baduy indigenous people is the Lebak Regional Regulation No. 32 of 2001 concerning Protection of the Customary Rights of the Baduy Community, which was published in the Regional Sheet of Lebak Regency in 2001 No. 65 Series C.

The Regional Regulation can function as a land rights certificate for the Baduy indigenous people. This means, Lebak Regional Regulation No. 32 of 2001 concerning Protection of Customary Rights of the Baduy community provides legal certainty and certainty of customary rights to the Baduy indigenous people. The existence of legal protection for customary land tenure rights is very important for the Baduy indigenous people in managing their customary land for cultivation purposes (*ngahuma*) and so on. Moreover, the existence of legal certainty and certainty of these rights can support efforts to realize food security for the Baduy indigenous people. The proof of tenure rights over customary land for Baduy indigenous peoples is the Lebak Regional Regulation No. 32 of 2001 concerning Protection of Customary Rights of Baduy Communities as contained in the Lebak Regency Regional Gazette in 2001 No. 65 Series C. Proof of rights in the form of this Regional Regulation can function and have legal force as a certificate on land. Existence of Lebak Regional Regulation No. 32 of 2001 concerning Protection of Customary Rights also provides legal certainty and certainty of

customary rights to the Baduy indigenous people. The existence of legal protection for customary land tenure rights is very important for Baduy indigenous peoples to be free in managing their customary lands for cultivation (*ngahuma*) and so on towards the prosperous Baduy indigenous people and able to realize their food security (Sukandar & Mudjajanto, 2009).

### **Local Wisdom on Indigenous Peoples in Land Management and Food Security**

Indigenous peoples have local wisdom in managing their communal land. Local wisdom is noble values that are adhered to and apply in a certain community and there are historical works or human actions, which are still inherited by the local community. This wise behavior is usually actions, habits or traditions, and the ways of the local community that lead to peace, peace and prosperity. Local wisdom is local knowledge that has thus been integrated with the system of beliefs, norms and culture and expressed in the traditions and myths that have been adhered to for a long time (Sunaryo & Joshi, 2003). This includes all forms of belief, understanding or insight as well as customs or ethics that guide human behavior in life within the ecological community. From a structural perspective, local wisdom can be understood from the uniqueness of social structures that develop in the community, which can explain social institutions or organizations as well as existing social groups. In a cultural perspective, local wisdom is a variety of values that are created, developed, and maintained by the people who become their life guidelines, including mechanisms and ways to behave, behave and act as outlined in a social order. From a functional perspective, local wisdom can be understood from how the community performs its functions, namely the function of adaptation, integration, achievement of goals and maintenance of patterns.

One of the efforts that can be done in realizing food security for the community or indigenous people is by empowering local wisdom in the field of agriculture which has taken root in the community. The same is true of the local wisdom of the Baduy indigenous people in the management of communal land. According to Iskandar (1992), the Baduy farming system is still traditional. Farming is usually done by moving or often referred to as shifting swidden, slash and burn, or shifting cultivation. This cultivation activity is known almost in various parts of the world, especially those with tropical climates. Furthermore, Iskandar stated that cultivation in various regions of the world has undergone many changes. This is due to rapid population growth, the development of increasingly advanced science and technology, and rapid economic growth. The change in the farming system does not automatically apply in Indonesia. The Baduy community groups, for example, still adhere to customs and cultivation traditions that have been carried out for generations. In other words, the cultivation system in the indigenous Baduy community is still in accordance with hereditary traditions. This tradition of cultivation is strongly held by the Baduy based on the great-grandfather, which is not allowed to change the structure of the land. The field farming system has a special character, which is to cultivate agricultural land on a shift in forest land. The cultivators cut down the forest for planting rice plants and other crops for a short period of 1-2 years, and then the land was rested for quite a long time, starting from three years to decades. When the land is laid down, a natural succession process takes place towards the formation of secondary forests. The secondary forest can be reopened as a field, and thus the land use cycle for agriculture is restarted.

The Baduy indigenous people argue that the farming system they carry out is in accordance with their beliefs and outlook on life, namely not to make massive changes to nature, because it will thus cause natural imbalances in the context of micro and macro cosmos. They do

not use technical irrigation, and only use rainwater. Because, there is a ban on the use of river water and other sources of water to irrigate fields. They believe that if we divert the direction of the river and the spring for agriculture, it will change the shape of nature and can cause natural imbalances so that there will be damage to nature. In the context of continuing the tradition of farming, every child in the Baduy is always invited to the fields and introduced to how to cultivate from an early age. The Baduy also have a habit, every child who has married and formed a new family must work on their own fields. Before marriage, prospective son-in-law must help female families in the fields. The goal is for the female family to assess the extent to which the prospective husband chosen for their daughter is able to support her new family later from farming. According to customary provisions, rice produced by Baduy residents may not be traded, either inside or outside the Baduy. Rice can only be given free. If there are people who fail to harvest or lack rice, other residents help meet the rice needs of those affected by the disaster. Rice barns are a symbol of food security for the Baduy people (Korina & Habiyaemye, 2017). Food security for Baduy tribe is very important because relations with the outside world are very limited. Rice in the barn is a food reserve until the next harvest. Associated with Article 1 point 17 of the Food Law, the yield of fields in the form of rice in Baduy communities is local food, in the sense that food consumed by the local community is in accordance with the potential and local wisdom.

This shows that the farming system for the Baduy indigenous people reflects an organized process of activity. The adherence of the Baduy indigenous people to the farming system has perpetuated and preserved a system of cultivation as part of their local wisdom. In other words, the words of the members of the Baduy community in implementing the cultivation system are a prerequisite for the functioning of the production source, namely fields. The results of field production are a prerequisite for the functioning of culture, namely traditional ceremonies. Therefore, conformity becomes the primary principle related to the functioning of culture. This is in accordance with the opinion of Keraf (2002), that the conformity of adherents of culture becomes a necessity for the functioning of the local cultural ecological system. In an effort to maintain the sustainability of the farming system, the Baduy indigenous people carry out an adaptation strategy, such as maintaining a balance of the population with the presence of residents who are expelled from the Baduy Dalam to Baduy Luar, especially for Baduy Dalam residents who violate customary norms. Then, the Baduy Luar adaptation strategy by farming outside the Kanekes village area introducing albasia wood, developing palm sugar industry, and being involved in the trading of a variety of non-rice products on a small scale.

Related to green revolution, the concept and implementation of the green revolution has received a lot of attention in relation to increasing agricultural productivity through the adoption of technology, which in turn, is considered able to improve the welfare of farmers (Evenson & Gollin, 2003; Glaeser, 2010). However, this concept has received a lot of criticism, due to the view that improving welfare is not enough just by the application of technology to increase agricultural productivity. In addition, concerns about the ecological impact and environmental sustainability arise with regard to excessive use of pesticides. In rural communities, the green revolution has changed the socio-cultural landscape from agrarian to market-centered agribusiness. In indigenous peoples, the green revolution is considered dangerous due to their subsistence farming behavior, and is not at all to meet market needs. Their association with the environment and nature preservation is a priority in the adat system. Here, including the Baduy, who reject modern technology and agriculture, because they are considered to deprive their social and cultural foothold from nature. In this context, the Baduy community rejected the green

revolution program because it was designed homogeneously, centralized and ignored the diversity of the ecological, social and cultural systems of the local community. The green revolution program aimed at planting superior rice varieties, intensifying the use of synthetic chemical fertilizers, intensifying the use of pesticides, improving the procedures for cultivating rice, and improving the construction of new irrigation, of course contrary to the principles and beliefs of the Baduy indigenous people. The Baduy indigenous people view their area as sacred, prohibited land, which must always be maintained, in accordance with traditional guidelines inherited from their ancestors from generation to generation, namely, prohibited from using chemical fertilizers, pesticides, and poisoning wildlife and fish.

The principles and philosophy of life of the Baduy indigenous people are the main instruments for environmental management. The advice as well as the mandate of his ancestors, which is considered as part of the element of trust, implies that they are the people who are chosen as guardians of nature, advice and mandate which is so strongly internalized in the hearts and minds of all Baduy who have a positive influence on all actions. They believe that if the center of nature is damaged, it will cause natural disasters in other places. To avoid damage or natural disasters in other places, the Baduy community, especially their leaders, must be much disciplined in protecting the environment. The rules for avoiding changes to natural forms in all aspects of life are a form of preserving nature between generations. Government and custom structures are combined to maintain the existence of customary law and remain part of the external environment. The economic principle applied is also the key to the continuation of the Baduy community, that all activities are aimed at fulfilling daily needs which are primary needs such as clothing, food, and shelter. Needs outside the primary are considered as fulfilling lust or desire which will trigger exploitation of natural resources and social inequality. The potential and local wisdom of the Baduy indigenous people in the field of agriculture is certainly an opportunity to encourage food availability and food security at least to meet their own needs. Therefore, the existence and participation of the Baduy indigenous people and their local wisdom may not be ignored. Their local wisdom has been built for hundreds of years and inherited from generation to generation. Thus, the objectives to be achieved by the Village Law for the welfare of the community, including indigenous peoples, and the objectives of the Food Law which encourage the active role of the community in realizing food security can be realized.

## CONCLUSIONS

The agricultural arrangements and farming systems carried out by the Baduy in West Java have received wide attention in terms of their ability to meet the population's food needs and preservation of nature. The interest of local communities to prioritize the protection of nature needs serious attention from policy makers, both national and local. As an indigenous community, like other indigenous peoples, the Baduy will maintain their socio-cultural roots and tend to reject the concepts and applications of modern agriculture that are felt to be market-centered, and less environmentally friendly. In the long run, the implementation of modern agriculture in indigenous peoples can uproot their cultural roots from the natural surroundings, from agrarian to market-based agribusiness.

This agricultural system, as a local policy, besides relating to culture, will also be closely linked to the regulatory and legal aspects. Makers need to ensure that adat systems that are able to maintain a sustainable environment are protected by regulations. Local wisdom of Baduy indigenous people in land management can be used as instruments to realize their food security

as expected by Law No. 18 of 2012 concerning Food. The local wisdom is in the form of a farming system (*ngahuma*) from the stage of searching for land (*narawas*) to the management of the harvest. Therefore, this farming system must be used and maintained by all Baduy indigenous peoples for the realization of food security and the welfare of its people. Baduy indigenous people are given the freedom and protection by the state in managing their customary lands. Evidence of the ownership of customary land rights for Baduy indigenous peoples is the Lebak Regional Regulation No. 32 of 2001 concerning Protection of the Customary Rights of the Baduy Community, which was published in the Regional Regulation of Lebak Regency in 2001 No. 65 Series C. This regional regulation functions to have the legal power as a certificate of land.

Although contemporary Indonesia's land laws have not specifically addressed customary rights in relation to ownership and use of land, future regulations must pay more attention to local policies by providing legal guarantees and protection of indigenous peoples, primarily by providing guarantees for customary land ownership and use by indigenous peoples, and support custom-based agricultural and food security systems.

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