

## Adat Law in Designing of Land Law System

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### Abstract

Legal problems of land are evidence that confirm the importance and significance of soil for human life. Loss of land rights not only means less food and non-fulfillment of the minimum requirements for people who rely and depend their lives on land, but also undermine the entire order of other non-economic life are attached to the land based on the origin of cultural history ancestors living place hereditary ... Article 3 of the Law No. 5 of 1960 on the UUPA states that adat law is bound as long as it is not contrary to law or regulation or other higher national interests. Although the adat law (communal rights) does exist and still adhered by the people, there is no reason to apply, unless there is consent from the holders of power.

**Keywords:** Adat Law, Land Law System

### 1. Introduction

Indonesia is a country of diverse ethnicity, culture, and customs. All of them are shades of nation building material and nature that cannot be refuted by any means. When those diversities can be accommodated through the dealing mechanism, it will become a strengthening and also can be interpreted as the state building foundations placed upon it. In other words, it can be said that it is evidence of a success in defining and utilizing diversity as a potential strength either in form of intellectual intelligence or in form of emotional intelligence as wisdom.<sup>1</sup> This reason makes the founding father to commit establishing and developing of conception of the state that can ensure diversity.<sup>2</sup> Through the motto Unity in Diversity, a form of collective awareness of diversity is later immortalized as the nation's wealth and power.<sup>3</sup> In the context of the views of the new law with character Indonesia, then, it can be said that the ability to ensure fairness and legal certainty or the ability to provide fair protection to the existence of the Adat community and their rights is an integral part of the effort to do simultaneous changes in the nature of independence.

In the Preamble of the 1945 Constitution of the Republic of Indonesia stated, "the independence is the inalienable right of all nations, therefore all colonialism must be abolished in this world, as it is not in conformity with humanity and justice... (first paragraph), and "... to live a free national life, the people of Indonesia hereby declare their independence" (third paragraph). Basically, this formula implies that the national life that is free, fair and prosperous will manifest as a reflection of independence. All forms and manifestation of colonization, including views and thoughts and valuable legal alien character that is incompatible with humanity and justice, dominate, institutionalized and scrapping perspective and how to act to Indonesian-ness us through legal norms, can be sterilized or cleaned.

Along this purpose, the founding fathers saw the necessity to make immediate changes in the legal field, especially how to design a new agrarian legislation to resolve the issue of dualism land law.<sup>4</sup> If the demands of development through independence can be achieved, it will bring a great change in the area of justice and prosperous society. In this context, efforts to realize harmonization and synergisation to overcome limitations such differences, resulting in a unified legal system as a whole in a harmonious diversity, is a demand of meaning, as it will determine the validity and dignity of land law effectively. Therefore, according to A.Suriyaman Mustari pide, the attitude and understanding of the society to the "existence of indigenous peoples and their law are needed and has cultural and spiritual values to show the relationship between people and their lands or territories."<sup>5</sup> Indeed, the objects of elementary needs have to have a fixed physical supply and cannot be renewed as exclusive ownership.<sup>6</sup>

<sup>1</sup> Wisdom is meant as something to be learned, smartness, common sense, insight, prudence, and discrete. See Anthon F. Susanto, *Non-Systematic of Legal Science: Basic Philosophy of Development of Legal Science in Indonesia*, Genta Publishing, Yogyakarta, 2010. P. 248.

<sup>2</sup> Ulli Parulian Sihombing, *Sueing Bakor Pakem*, ed. I, ILRC, Jakarta, 2008, p.1.

<sup>3</sup> *ibid.*

<sup>4</sup> Supomo, in Subadi, *Possessing and Using Forest Area Land*, Prestasi Pustaka Publisher, Jakarta, 2010, p. 2.

<sup>5</sup> A. Suryaman Mustari Pide, *Adat Law: Past, Present, and Future*, Pelita Pustaka, Makassar, 2009 (b), p. 51.

<sup>6</sup> Sri Susyanti Nur, *Land Banking: An alternative Dispute Settlement of Preparing Land to Create Sustainable Development of the City*, AS Publishing, Makassar, 2010, p.5.

Similarly, objectivity and honesty of the people to admit that long before Indonesia was formed and proclaimed as one nation, the region already exist with its tribes and has well organized in their Adat law respectively.<sup>1</sup> The adat law has participated and contributed in animates nationalist struggle against colonial and strengthen the unity of the nation.<sup>2</sup> It also had arranged the whole aspects of community life for generations, including land and natural environment.

The attitudes and understanding as mentioned above is needed. It is because it will determine the level of quality of legal construction that will be built as a system of rules that support the effectiveness of the implementation of the planning and development process in order to realize justice and prosperous society. It means, in the context of the creation of the land law, logically thinking of the values of the adat law is important because philosophically, as it is said Farida Patittingi, the concept of the adat land is soulless objects that should not be separated alliance with humans.<sup>3</sup> Although they are different in form and identity, but they are a unity that interplay in the concept of cosmos, macro cosmos, and micro cosmos which understood broadly covering all elements of earth, water, air, natural resources, and human as central and spirits in the supernatural realm. As stated by Bushar Muhammad, land is a unity that there is a very close relationship that human and the land itself.<sup>4</sup> Similarly, Ter Haar said that the land is home, the land gives life and livelihood; Land where man is buried and has magical-religious relationship.<sup>5</sup>

As a fundamental element of human needs particularly the adat law community, the land has a deep meaning not only as a mere dwelling on earth and as a factor of production that can economically profitable and serves as an investment, but more than it has also various non-economic meanings/values in social, political, cultural or religious perspectives. The values are perceived as something that is mandatory for the indigenous peoples. It is because the land has relationship to their life not only, as a means of production or commodities that can be obtained, but also it is an element of cultural-spiritual nature that has profound implications for their existence. Uniqueness, a characteristic that describes the closeness life can be seen in unification of psychological-emotional between people and land/he natural environment in the area where they reside. The characteristic as mentioned is referred to people who are naturally depending on the land and the natural environment according to the principles of subsistence.

This shows that the land is not only an important and strategic asset that touches an area of interest or the country's needs for various development purposes, but simultaneously touches also an area of interest and the needs of the community, both individuals and groups in various communities, including community law customary. That is why, the implications of the relationship between humans and the land creates sensitivity, very crucial, and easy to provoke reaction and resistance of a person or group of people, when the control or rights over land is possessed by other parties, including state/government that will use the land without permission. Some ridiculous reasons sometimes are used to defend the right of land. Those reasons are sewing the mouth and even willing to die on hunger strike.

Substantially, legal problem as mentioned above is an evidence that confirms the importance and significance of the land for their lives. It is because the loss of land rights, not only means less food and non-fulfillment of the minimum requirements for those who rely and depend their lives on land, but also it create damage to the entire order of non-economic life are attached to the ground by the cultural history of the origins of the ancestors where he/she lived for generations.

Therefore, the focus of this paper will examine how the adat law can be designed in the land law system. It is because the adat law is a very broad and important study to describe how important it is and put it in the Indonesian legal system proportionally.

## 2. The Adat Law in the Design of Land Law System

Social and cultural diversity of Indonesia with all its truth claims has become a problem when it needs to be bridged by the measure of truth, the law of the country with the paradigm of positivism.<sup>6</sup> In the context of Indonesian practices, the implications of the existence of diversity or plurality as a fact will intersect between the interests of one party and other.

This intersection theoretically, according to Stratford and Gordon W. Woodman, will create 5 (five)

<sup>1</sup> Daoed Joesoef, *Cultural Crisis*, Kompas, 5 April 2013, p. 6.

<sup>2</sup> Koesnoe, in A. Suriyaman Mustari Pide, *Dilemma of Collective Rights: its Existence and Reality Post UUPA*, Pelita Pustaka, Makassar, 2007, p. 22.

<sup>3</sup> Farida Patittingi, *the Dimension of Law of Small Islands in Indonesia*, Rangkang Education, Yogyakarta, 2012, p.100.

<sup>4</sup> Bushar Muhammad, *the Basic of Adat Law*, Pradya Paramita, Jakarta, 2000, p. 103.

<sup>5</sup> Ten Haar in Sri Susyanti Nur, op.cit, p. 1.

<sup>6</sup> See Bernard L. Tanya, *Law in Social Space*, Genta Publishing, Yogyakarta, 2011, p.6.

possibilities:<sup>1</sup> first, integration. It is meant as unification of state law, local laws and other laws; second, incorporation, which is adapted partly state law into local law or otherwise; Third, conflict, which is state law and local law referred to have conflict amongst them; Fourth, the competition, which is state law, local laws and other law run itself in the access to natural resources; finally, avoidance, which is one of the laws that exist to avoid another legal enforceability.

At these dimensions<sup>2</sup>, permanent difficulties in the context of Indonesia are facing various claims about the truth. That is why, in fact there is no one absolute truth as the standard, but there are truths. It is very slight possibility to decide which is the most "correct", "good" and "right" for all. Moreover, in many ways according to Bernard L. Tanya, a reality never offers a choice of "black" or "white", but it is rather thrusts of different colors that blend.<sup>3</sup> Therefore, the choice of truly representative of "good" and "right" in terms of applicable rules becomes very difficult.

Referring to such a complicated situation as explained above, the truths that people have in the context the adat law community, no matter how simple is too naive to be denied granted by state law with the truth that is singular and absolute. If it takes place, it will create a clash. However, the tendency to maintain the character that is both logical categories and universal-rational with the totality of coercion, shackle, and lock hearing, sight and feeling has never subsided.<sup>4</sup> The tendency continues to syntheses actual truth into artificial reality, although it never succeeds.<sup>5</sup> Sometimes it less recognized, if not all of the elements can be combined or integrated with it. Similarly, the elements in chemistry, not all of them can be combined to form a new substance. If it is forced, the explosion could happen.

Therefore, reading technique of the unification of the legal system is a way to accommodate the values of living law in the adat law community. Even, in some case, access to justice of heterogeneous people is totally unrealistic.<sup>6</sup> Georges Gurvitch<sup>7</sup> said that if a lawyer does not ignore the living and the applicable law, which relates to social reality that is really used in an environment (milieu) a particular social, it is likely he/she will make a legal construction that there is no completely relationship or bearing on the law can really be applicable. It will only be a replica of law that looks good.

What Georges Gurvitch described above, when juxtaposed with the state authorities to make law, it often happens. Ironically, construction of law as stated above, we hope that the law will be effective. In other words, it can be said that an expectation that is not much different from a fantasy. Benjamin Cardoso said that "the task of the law is a dynamic and creative; to reconcile what is irreconcilable; and to synthesis the things that are the opposite".<sup>8</sup>

Correspondingly, Max Radin<sup>9</sup> asserts that the law is a technique for driving an intricate social mechanism. The law is a witness of our moral life that has connection to humanity. It also acknowledges that there is a relationship between law and justice, or at least with humanity and clemency as a technique. However, in some cases, the law itself precisely defines a relationship that is not always appropriate between logical formal and sociology.<sup>10</sup> In terms of it, action to investigate the patterns and symbols of law is actually the meanings of applicable law itself as a group of specialized experience nature within a certain period and work to establish a uniform system of symbols. It is needed to recapture what they reveal and feel in order to open what they hide.<sup>11</sup> Therefore, by not doing unification, it recognizes implicitly the existence of the adat law as living law. It can be said also that it is a relatively prudent action.

Due to reformulate reality or get around in ways to negate the sociological facts as material reality, it basically will create distortion or contradiction. In some cases, it will even lead a conflict. According to Astrid R. Susanto, the interaction between the state and society do not need or do not necessarily have to be in uniformity of opinion.<sup>12</sup> The most important among the disagreements of opinion is still a balance. Some experts stipulate that the effectiveness of the law is determined by the realistic nature. The realistic of law can simply be referred

<sup>1</sup> Stratford W. Mores and Gordon R. Woodman, quoted by Ade Saptomo, *Understanding Law: from Construction to Implementation*, RajaGrafindo Persada, Jakarta, 2011, p. 45.

<sup>2</sup> Bernard L. Tanya, *Supra Note 12*, p. 12.

<sup>3</sup> *Ibid.*

<sup>4</sup> Ali Harb, in Anton F. Susanto, *op.cit.* p. 273.

<sup>5</sup> Artificial reality is words stated by Anthon F. Susanto. See anthon F. Susanto, *Supra Note 1*, p. 157.

<sup>6</sup> Bernard L. Tanya, *Supra Note 12*, p.7.

<sup>7</sup> Georges Gurvitch, *Sociology of Law*, translated by Sumantri Mertodipuro, *Sociology of Law*, Bharatara, Jakarta, 1963, p. 25.

<sup>8</sup> See Benjamin Cardoso, pp.25-26.

<sup>9</sup> See Max Radin, p. 27

<sup>10</sup> Georges Gurvitch, *Supra Note 19*, p. 26.

<sup>11</sup> *Ibid.*

<sup>12</sup> Astrid S. Susanto, *an Introduction of Sociology and Social Change*, Binacipta, Jakarta, 1985, p.38.

to Brian Z. Tamanaha point of views. He said that the law was seen as an instrument of particular social interest.<sup>1</sup> On his other views,<sup>2</sup> he said that the law includes the legal rules, legal institutions, and legal processes that consciously seen as a tool or means to achieve the goal. The purpose of which is attached to it for the purpose of maximizing social welfare or to find a balance of competing interests, which recognized by the realists. According to them, the usefulness of the rule of law will increase, when their applications are more of justice.<sup>3</sup>

It means that since the beginning of the process, a rule should have started with the steps and correct facts. It must also pay attention to the factors of causation or the concept of sowing-reaping. In the context of Indonesian law, there is a tendency to adjust legal redundant with the dynamics and demands of modernization,<sup>4</sup> which is taken through the transplanted of foreign values, regardless of the value of culture as a natural fact. It will create therefore resistance or disharmony due to non-compliance with legal values culture. Consequently, rule of law of one state (formalistic-rational) in some cases then cannot acceptable.

It should be recognized that the entity or legal unification is conditioned by the state that has not been completed because the disparity in society that reflect the diversity on the one hand is still very strong. While on the other hand, the state is still too loyal to retain the pattern that has been standardized and as if it is not budge to change the orientation of thinking. Therefore. It can be said that there is a conflict to depict a portrait of different laws to the needs. In term of it, there is a gap between national law and the adat law.<sup>5</sup> Thus, the claims of unity to a nation as offered or desired by the state is not always a real and urgent need for societies that are tightly bound to the culture and traditions.

The conflict of interest as mentioned above should be a lesson for how to determine the expectations of society. So, the process of modernization is not to be held total change in society, but actually must be mentally prepared. One step that could accelerate politically is to establish a sense of nationalism. With the development of nationalism, it will terminate and break the barrier elements of modernization in the tradition.<sup>6</sup> It has been very clear that after a physical struggle against the colonial finishes; the next desire is to build the spirit and character of the nation. In this connection, in a position where our choices is whether we prefer to dig up and collect the values of civility in our customs and culture or we choose to bury it deep or fight it as our enemy. The option is what will determine our direction and purpose in the sense of law making. Are the remains believed that to be one of the developed countries and modern among other modern countries, the principle of uniformity meaningful legal unification is the only best way that must be adhered to?

The answer is not necessarily so. Sample of Japan as a country is the best example to show that Japan can retain its Japanese culture through Japanese twist in the onslaught of modern law. Japan is able to become a superpower to emulate America. Its stubbornness in maintaining the traditions and values of all Japanese should serve as an example how a nation with a different state of mind must run a legal system based on the nature of mind is different.<sup>7</sup>

It has been proved by the Japan government that when it tampers and tries to replace the law by taking from the West, it causes a rift between the new law and the Japanese life. Over the years practiced, the Japanese people do not boast of their new law and still live based on the Japanese tradition.<sup>8</sup> Similarly, the United Kingdom practices, it still maintains a Common Law System and its characteristic to the pattern of law making through its Judge Made Law. It can be a modern state and its laws can be juxtaposed with the modern law.

The situation as mentioned above, it seems a contradiction in Indonesian attitude, which is precisely with various strategies to carry out attacks against its own adat law. Even, it tends to eliminate and more powerful than ever committed by colonial as occupiers in the past. It can be seen, for example, to Article 3 of Law No. 5 of 1960 on the UUPA, which only allow the entry into force of the adat law is not contrary to law or regulation or other higher national interests. Although the adat law does exist and still adhered by the people, there is no reason to apply unless there is consent from the holders of power.

The phrase "not contrary to the law or regulation or other higher national regulation" as put in the article 3 of the UUPA, furthermore, becomes a big question to be answer. What does it mean? To answer it properly, the Law No. 10 of 2004 that was later replaced by the Law 12 of 2011 on the Establishment of legislation will show the hierarchy of the Indonesian regulation. The hierarchy is: a). The Constitution of the Republic of Indonesia 1945 (UUD 1945); b). People's Consultative Assembly Decree; c). The Law/regulation; d). The

<sup>1</sup> Brian Z. Tamanaha, *a General Jurisprudence of law and Society*, Oxford University Press, Oxford, 2001, p.44.

<sup>2</sup> Brian Z. Tamanaha, *Law as a means to an End*, Cambridge University Press, Cambridge, 2006, p. 6.

<sup>3</sup> Ibid. p. 71.

<sup>4</sup> Hari Purwadi, *Understanding Law: from Construction to Implementation*, edited by Satya Arinanto and Ninuk Triyanti, RajaGrafindo Persada, Jakarta, ed. 2. 2011, p. 64.

<sup>5</sup> Ahmad Sodiki, *Politic of the Agrarian Law*, Konstitusi Press (KonPress), Jakarta, 2013, pp.96-97.

<sup>6</sup> Astrid S. Susanto, *Supra Note 24*, p. 181.

<sup>7</sup> Satjipto Rahardjo, *Other side of Law in Indonesia*, Kompas Book Publishing, Jakarta, 2003, p. 113.

<sup>8</sup> Satjipto Rahardjo, *State Law to Create People Happiness*, ed. 2, Genta Publishing, Yogyakarta, 2009, p. 36.

Government Regulations; e). The Presidential Decree; f). The Regional (Local) Regulation (called Perda in level provincial and district/city). The adat law itself is not part of the hierarchical legislation.

The idea of hierarchical legislation as mentioned in the Law No. 12 of 2011 is understood in the context of a binary opposition or top-down relationship that formally granted the meaning of the higher legislation to guide the lower regulation. As a result of it, the higher legislation logically will perform against lower hegemony, even lead to negation. If so, what about the fate of the adat law that is not part of the legislation?. The adat law tends to be erased even though the indigenous people exist before the formation of the state. This of course becomes a problem at the level of affirmation of difference (disparity) with the reality of the condition of the Indonesian nation. Significant differences to negate I am against the other.<sup>1</sup> At this level, it can be seen what he/she wanted to be kept and what was to be removed for the purpose of subduing and master it. Therefore, it is not suitable if the adat law should have been applied the principle of hierarchy. How could the adat law will adjust to the formal laws whereas the adat law has existed longtime before the state and formal law is formed. This is indeed a difficult condition. Lon Fuller then asserts that in making the rules, the law should not have ordered something that is not possible.<sup>2</sup>

Ironically, if the adat law or the rights of indigenous people on land become part of the regulatory contents, its existence become very vulnerable to not be considered valid and no. It is just because the regulations have a problematic hierarchy. In this condition, it is understood if it is said that there is no benefit to put the adat law and the rights of indigenous people into a law or regulation formally. At this point, it is also a question to the phrase of the agrarian law that applies to the earth, water, space and natural resources as the adat law? Such contradictions clearly show the attempt to eliminate the adat law or the rights of indigenous people on the ground. According to Satjipto Rahardjo,<sup>3</sup> when the adat law is confronted with the national law, it will be exhausted and powerless.

He states, furthermore, this is taking place as a result of the actions of the legal experts who formulate the various laws and regulations that are too normative, without anthropological and sociological awareness. This phenomenon reminds to the events of the life chain in biological science that shows how they apply the law of the jungle and behaviors that are owned by the predatory animals. Is this the formal legal nature of the state of Indonesian law?

Achmad Sodiki also stipulates a question to show the reaction of the state to the adat law community.<sup>4</sup> He questions, is there unity of society's soul (volksgeist) in respect of public awareness in a pluralistic perspective of Indonesian society? This is very important to be questioned because it is always used as jargon equation and become obligatory to be done equally for the whole of society. He answers the question by making statement that "it is a real uniformity denial of pluralism" in unity.<sup>5</sup> In the area of local government, there is also a similar condition although the region is granted autonomy. This is because the local autonomy is not necessarily the area to marginalize hierarchical legislation paradigm as a foundation that must be followed in order to manufacture the rules to be applied to the area concerned.

Related to this hierarchical, it should not be understood as a static system but it is a dynamic system. The problem of this hierarchical idea is that it will cause harm to the Constitution, especially if the substance (contents) of the legislation has undergone refraction or contain political will of the pragmatic ruler.<sup>6</sup> Of course, it will have an impact on the local legal community that is very diverse. In terms of a hierarchical structure, it is structurally no difficult to fulfill but the problem will be very different and very dangerous, especially in terms of substance that should be regulated, if it is related to land. Therefore, the local government will find difficult to fulfill it, particular the local government that has the characteristics of values of the adat law.

Supposedly, how to arbitrate as mentioned by Satjipto Rahardjo in Indonesia as a pluralistic country is to facilitate the growing development of the living law in society and synergizes with national interests through legal harmonization in the sense of the substance, not as hierarchical structure. However, the fact is controversial. Even though the adat law is stated as the main source of the formation of a national land laws, it increasingly unclear position and function. This shows that the increasingly apparent attempt to negate the existence of the adat law.

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<sup>1</sup> Anthon F. Susanto, op.cit, p. 298.

<sup>2</sup> See Lon Fuller in A.A.G. Peters and Koesriani SiswoSoebroto, *Law and Social Development: Text Book of Sociology of Law*, 1990.

<sup>3</sup> Satjipto Rahardjo, *Adat Law*, Paper Presentation in Symposium Conducted by the Constitutional Court, 4-6 June 2005, p. 5.

<sup>4</sup> Achmad Sodiki, op.cit. p. 108.

<sup>5</sup> Ibid.

<sup>6</sup> Ade Saptomo, *Understanding Law: from Construction to Implementation*, edited by Satya Arinanto and Ninuk Triyanti, RajaGrafindo Persada, Jakarta, ed. 2. 2011, p. 49.

Along with that, Esin Orucu<sup>1</sup> said that harmonization amongst laws must not always be the method of eliminating diversity. Therefore, the unification of the law is not an appropriate answer in the context of the land law. The tendency to eliminate diversity of the adat law by forming the rule of law is something that must happen. It does not even bother anymore consequences that continue to emerge. The reason is often put forward because of relying on the views of Roscoe Pound that law as an instrument of social change. One concept that departs from the attitude overrides moral values and social norms.<sup>2</sup>

Therefore, the resistance of the adat law community towards formal law cannot be regarded as a proclamation to the non-compliance. In some cases, the resistance would limit the effectiveness of the law.<sup>3</sup> Moreover, the resistance as explained above shows a mismatch with the conditions associated with the matters of society formation process, which reflect top-down model. The model actually confirms that this is not the model of the responsibility of the state as a good facilitator and regulator. If the potential of local people (indigenous laws) are not accommodated properly, it will continue to cause problems when the law is applied. In the context of the Indonesian Constitution, a hierarchy of legislation plays an important role to guide the lowest legislation shall in line with the higher regulation. An example of it is the article 3 of the UUPA.

Related to it, Suteki asserts that the law is *a kind of death event* when the rule of law is no longer shows a sense of justice and conscience.<sup>4</sup> Domination of positivistic ideology with the characteristics of codification and unification of law in Indonesia in various fields in fact has presented a controversial reality with the objective conditions of the country as a pluralistic nation. The adat law is stated as the main source in the formation of a national land laws. However, in turn, it becomes meaningless with the position and function. The fundamental question to be asked is to become a modern and developed country, should the adat law be eliminated from the Indonesian land law system?

According to Brian Z. Tamanaha,<sup>5</sup> formal legal mechanisms always breathe a desire to become a tool for action ruler. In other words, the law is intended only as a means of legitimacy justification for every action and behavior of government when acting. The law is only intended to regulate society, while not the case for the authorities as the holders of power. The law is only as a means to provide legitimacy for the authorities to act including crushing of human rights of its citizens. Indonesia itself as part of the modern state is currently also faced with similar problems. Law and society is the two separated exclusive poles, not closer together.

The condition is contrary with the philosophical basis of the law itself, where the law is born not merely to make the social order, but more than that, how the law is born to provide a sense of justice for the people. Legal justice for the community especially for indigenous people in this country is expensive and only for the goods owned or enjoyed by those who have power, political and economic access. Not surprisingly, to be successful in law, as though someone must have power and access the if he is not a person who is an expert in mastering the rule of law.

As a common knowledge, the Law No. 5 of 1960 on UUPA is not the only regulation that governs the existence of indigenous communities. There is another regulation that governs it. However, it seems that the issue of land between indigenous people and the state (government) has not been completed.

### 3. Conclusion

Design the adat law in legal system on land is still debatable. Even though the government recognizes the existence of the adat law community and its rights, in some case it tends to ignore it. The article 3 of the Law No. 5 of 1960 on UUPA and other relevant regulation have stated clearly the position the adat law in Indonesian Legal System but some views try to put the adat law in the area of hierarchical legislation as governed in the Law No.12 of 2011.

Basically, in the Preamble of the 1945 Constitution of the Republic of Indonesia has already stated "the independence is the inalienable right of all nations, therefore all colonialism must be abolished in this world, as it is not in conformity with humanity and justice... (first paragraph), and "... .to live a free national life, the people of Indonesia hereby declare their independence" (third paragraph). This statement shall be meant the obligation to protect the Indonesian citizen interests including the adat law community. Indonesia can be existed as a modern state due to of the existence of the adat law community.

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<sup>2</sup> Achmad Sodiki, op.cit, p. 235.

<sup>3</sup> Steven vago, *Law and Society*, Prentice Hall, New Jersey, 1997, p. 294.

<sup>4</sup> Suteki, *Legal Design in Social Spatial*, Thafa Media, Semarang, 2013, p.ix.

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