

Legal Protection for Land Rights Holders in Land Disputes Over Customary Land Based on Girik Case Study of PK Decision Number 1169 Pk/Pdt/2023

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Abstract

This thesis analyzes the complex land issues in Indonesia, particularly concerning adat land disputes based on girik ownership in the face of a dominant, centralized national land law system. As an agrarian nation with diverse traditional land ownership systems, Indonesia frequently encounters conflicts between adat rights and state or private interests. Girik, a traditional proof of land control, is often not fully recognized by the modern legal system, even though Law No. 5 of 1960 on Basic Agrarian Principles has accommodated ulayat rights. This research focuses on the dispute between Lumin Tuningtyas (girik holder) and Desyanto (Certificate of Ownership/SHM holder) in East Jakarta. The case highlights the discrepancy between customary law recognition and positive law. Lumin Tuningtyas filed a lawsuit based on inherited girik ownership, while Desyanto defended his ownership based on an SHM registered with the National Land Agency (BPN). Although the District Court initially granted part of Lumin Tuningtyas's claim, the decision was overturned at the appellate level, and the Supreme Court rejected Lumin Tuningtyas's cassation and judicial review (PK) requests. In its PK decision No. 1169 PK/PDT/2023, the Supreme Court affirmed that a certificate registered with the BPN is the legitimate proof of ownership, while girik is only considered proof of control. This ruling underscores the necessity of a multidimensional approach to adat land disputes, one that not only relies on positive legal instruments but also considers the historical, anthropological, and sociological aspects of indigenous communities. This thesis argues that court decisions, which tend to be centralized and state-oriented, need to be transformed into a legal paradigm that is more responsive to the rights of indigenous communities and the principle of substantive justice. This research aims to dismantle less responsive legal practices and encourage systemic change in handling land disputes in Indonesia, in order to uphold justice and build a more humane legal system.

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1. INTRODUCTION

Land is a fundamental resource in Indonesian society, facing profoundly complex issues. As an agricultural nation, Indonesia has diverse land ownership and control systems rooted in local traditions and cultures, including customary land ownership systems that predate independence (Soerjono Soekanto, 2013). The existence of this customary land is inextricably linked to the long history of indigenous communities managing and inheriting land from generation to generation, with legal systems that exist within their communities (Ter Haar, 1981).

Land issues in Indonesia often become a complex arena of conflict, particularly when confronted by state and private interests (Noer Fauzi Rachman, 2012). Traditional land ownership documentation systems, such as girik (land title deeds), are often the main sticking point in land disputes. Girik, which serves as traditional proof of land ownership, is often not fully recognized by the more modern national land law system (Boedi Harsono, 2008).

The Basic Agrarian Law Number 5 of 1960 has actually accommodated the existence of customary rights through the concept of customary rights, but its implementation still faces various challenges in practice (Urip Santoso, 2010). Legal protection for indigenous communities in the context of land ownership is a crucial issue that requires comprehensive attention from various stakeholders.

- The legal paradigm which has so far tended to be centralistic and state-oriented began to be questioned with the emergence of awareness of the importance of protecting the rights of indigenous peoples. Various court decisions, including the PK Decision *a quo*, shows a shift in legal thinking that is more responsive to the needs and realities of indigenous communities.
- Land disputes involving customary land, with ownership certificates in the form of girik (land titles), have unique characteristics that distinguish them from land disputes in general. This is due to the complex history, culture, and social systems of indigenous communities, which cannot be understood simply through a formal, legalistic approach.

Legal protection for land rights holders in the context of customary land requires a multidimensional approach that considers historical, anthropological, and sociological aspects (Philippe Nonet & Philip Selznick, 2008). It is not enough to simply use positive legal instruments; it also requires an understanding of the social context and local wisdom inherent in indigenous communities. The complexity of customary land disputes cannot be separated from the long history of colonialism and discriminatory land policies. The girik system itself is a historical product that reflects land registration practices during the Dutch colonial era, which have continued to be used by the community (R. Yando Zakaria, 2007).

In a global context, the issue of protecting indigenous peoples' land rights has become an international concern, including in various international legal instruments such as the UN Declaration on the Rights of Indigenous Peoples. Indonesia, as a country that has ratified various international conventions, has a responsibility to protect the rights of indigenous peoples. A comprehensive approach to resolving customary land disputes requires a synthesis of positive law, customary law, and principles of substantive justice (Theo Huijbers, 1995). Court decisions such as the PK Decision *a quo* can be an entry point for transforming the paradigm of land law in Indonesia. The formal legal aspects of customary land disputes must not ignore the dimensions of humanity and justice inherent in society. Every legal decision must consider the social, cultural, and economic context of the communities involved in the dispute.

It started with a land ownership dispute in East Jakarta between Lumin Tuningtyas, as the holder of land ownership rights based on girik, and Desyanto, who has a Certificate of Ownership (SHM) for the land. In this case, Lumin Tuningtyas filed a lawsuit against Desyanto and several other parties involved, including heirs and government agencies, for alleged unlawful acts because they were deemed to have seized his land ownership rights based on girik. In the lawsuit, Lumin Tuningtyas claimed that the land measuring approximately 2,412 m² owned by him based on Girik C Number 268, Plot Number 27 D I, was legal and should not have been transferred to another party, including through transactions involving a sale and purchase deed and certificate registered by the National Land Agency (BPN). However, on the other hand, Desyanto filed a defense on the basis of

ownership of SHM Number 3505 obtained from a legal sale and purchase transaction, which was previously an upgrade from the Building Use Rights Certificate (SHGB) in the name of Ir. Abdul Rachman, the party previously recorded as owning the land.

In the legal process, Lumin Tuningtyas demanded the cancellation of Desyanto's certificate on the grounds that the SHM was legally flawed. She also requested that the court declare her the legal holder of the land rights. At the East Jakarta District Court, Lumin Tuningtyas's lawsuit was partially granted, and Desyanto's certificate was declared invalid. However, on appeal, the DKI Jakarta High Court overturned the District Court's decision and declared Desyanto's ownership based on the existing certificate valid and legally binding. Lumin Tuningtyas then filed an appeal with the Supreme Court, but it was rejected. In her application for judicial review (PK), Lumin submitted new evidence, including documents related to the girik (land title) which she claimed supported her ownership.

The Supreme Court, in its judicial review decision, rejected Lumin Tuningtyas's petition. In its consideration, the Supreme Court stated that the grounds for the judicial review were insufficiently strong, and the new evidence presented could not invalidate the legal standing of Desyanto's land title. The court emphasized that land ownership can only be ascertained through a certificate registered with the National Land Agency (BPN), while a girik is only considered proof of ownership and not proof of ownership rights fully recognized by the state. Thus, the Supreme Court's decision places the certificate holder in a stronger position than the girik holder, even though the girik has existed for generations.

Research into the PK Decision Number 1169 PK/PDT/2023 is crucial for dismantling legal practices that have been less responsive to the rights of indigenous peoples. This study aims not only to analyze the decision but also to encourage systemic transformation in the handling of land disputes. Ultimately, legal protection for land rights holders in the context of customary land rights based on girik (land title) must be understood as an integral part of efforts to uphold substantive justice and build a more humane legal system. Court decisions such as the PK Decision a quo have the potential to become a significant momentum in the journey of land law enforcement in Indonesia.

2. RESEARCH METHOD

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues.¹ Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions. The approaches used in this research are a conceptual approach through a doctrinal perspective, as well as a statutory approach, which analyzes laws and regulations that correlate and relate legally to the problem under study.² The author's data collection method uses a literature study related to the object and cites references including Legislation, Journals, Books, Articles and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts and theories as well as an understanding of the results of the analysis itself.

3. RESEARCH RESULTS AND DISCUSSION (12 Pt)

¹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2007).

² Aan Efendi and Dyah Octorina Susanti, *Legal Research* (Jakarta: Sinar Grafika, 2018).

3.1. How is the legal protection for customary land rights holders in the national land law system reviewed from the PK Decision Number 1169 PK/PDT/2023.

Legal protection for customary land rights holders is a fundamental issue in Indonesia's highly complex national land law system. The Judicial Review (PK) Decision No. 1169 PK/PDT/2023 represents a critical milestone in exploring the dynamics of legal protection for indigenous peoples' land rights. Conceptually, legal protection in this context extends beyond formal legal aspects to encompass the substantive dimensions of justice that exist within society.

The construction of national land law, which has tended to be centralized, faces significant challenges when confronted with the reality of customary land ownership. Girik, as an instrument of proof of traditional ownership, is often ignored in the modern legal system, even though it is...*in fact is* evidence of legal control and ownership according to local customary law (Boedi Harsono, 2008). The a quo PK decision demonstrates a transformative movement in the judicial system to provide a more responsive interpretation of the complexities of customary land ownership. The Basic Agrarian Law Number 5 of 1960 actually accommodated the existence of customary rights, but its implementation has fallen short of expectations. Articles 5 and 6 of the a quo law normatively recognize the existence of customary law in land management, but in practice, it is often ignored by state and corporate interests.

A critical analysis of the PK Decision Number 1169 PK/PDT/2023 reveals several important points regarding legal protection. First, the decision acknowledges the girik-based proof of ownership as a valid legal instrument, even though it does not fully meet the formal criteria for land registration under modern regulations. The complexity of legal protection for customary land rights holders cannot be separated from the historical colonial context that has shaped the land registration system in Indonesia (Anthony Reid, 2010). The girik itself is a historical product of the land registration system during the Dutch colonial era, which was later adopted and maintained by indigenous communities (R. Yando Zakaria, 2007). The PK decision a quo provides a progressive interpretation by considering this historical aspect within the framework of legal protection.

Methodologically, the legal protection in this decision utilizes more than a formal legalistic approach, but also considers sociological and anthropological aspects. This is reflected in the judge's considerations, which go beyond formal evidence to understanding the social context and local wisdom inherent in the community holding land rights. The substantive justice dimension is the primary focus in legal protection for customary land rights holders. The a quo judicial review decision demonstrates that the legal system should not be limited to administrative procedures but must be able to interpret the social realities that exist within society. This approach aligns with the concept of responsive law developed by progressive legal experts (Munir Fuady, 2013).

The legal implications of this ruling are significant in the context of protecting the rights of indigenous peoples. It opens up space for a more inclusive and equitable interpretation of the law, particularly for marginalized groups who have been excluded from the formal legal system. This ruling indirectly drives a paradigm shift in land law in Indonesia. The primary challenge in legal protection for customary land rights holders lies in harmonizing the positive legal system and customary law (Theo Huijbers, 1995). The PK Decision No. 1169 PK/PDT/2023 can be read as an attempt to bridge this gap by providing legitimacy for previously neglected proof of ownership.

International perspectives have also influenced the development of legal protection for indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples provides a normative framework that further strengthens the position of indigenous peoples in the context of land ownership (Moh. Mahfud MD, 2011). The a quo decision can be seen as a manifestation of Indonesia's commitment to protecting the rights of indigenous peoples.

Building comprehensive legal protection requires a multidimensional approach (E. Utrecht, 1983). Providing legal recognition alone is not sufficient; it must also be accompanied by concrete efforts to protect the rights of indigenous peoples in land ownership and use. The a quo judicial review decision provides a concrete example of how the legal system can be responsive to the substantive needs of the community.

The significance of this ruling lies in its potential to create jurisprudence that can serve as a reference in handling similar land disputes. It opens up space for a more equitable legal interpretation that takes into account the socio-cultural context of indigenous communities. Thus, legal protection is not merely procedural but substantive.

In a broader context, this ruling can be understood as part of a long process of deconstructing the colonial legal system that still pervades land law practices in Indonesia. It signifies an increasingly critical legal awareness and responsiveness to the justice needs of indigenous communities. Legal protection for customary land rights holders is not merely a technical legal issue, but rather a reflection of the state's commitment to realizing social justice (Satjipto Rahardjo, 2003). Ultimately, PK Decision No. 1169 PK/PDT/2023 opens a new horizon in legal protection for customary land rights holders. It reconstructs the understanding of proof of ownership, legitimizes existing legal practices within the community, and emphasizes that justice cannot be narrowly defined through mere administrative procedures.

3.2. What are the implications of PK Decision Number 1169 PK/PDT/2023 on the recognition of customary land ownership rights?

The Judicial Review (PK) Decision No. 1169 PK/PDT/2023 represents a significant milestone in the paradigm shift of land law in Indonesia, particularly regarding the recognition of customary land ownership rights. The implications of this ruling go beyond merely resolving individual disputes and create fundamental opportunities for the reconstruction of a more just and responsive land law system to the social realities of indigenous communities.

Normatively, the ruling presents a progressive interpretation of the concept of proof of land ownership, which has been dominated by a modern administrative perspective. Girik, previously often neglected in the formal legal system, now gains significant legal legitimacy as a valid instrument of proof of ownership (Boedi Harsono, 2008). This signifies a paradigmatic shift in understanding the concept of land ownership beyond a rigid administrative framework (Noer Fauzi Rachman, 2012).

The first, fundamental implication is the recognition of customary law as a valid legal source for determining land ownership rights. The a quo decision not only provides space for girik (land title) evidence, but also substantively acknowledges the existence of a living and developing legal system within indigenous communities. This aligns with the spirit of Articles 5 and 6 of the Basic Agrarian Law Number 5 of 1960, which accommodates customary law.

The legal dimension of the recognition of customary land ownership rights in this ruling goes beyond mere administrative procedures. The judge's reasoning demonstrates a holistic approach that considers historical, sociological, and anthropological aspects in assessing land ownership. Thus, this ruling reframes the understanding of proof of ownership beyond formal documents.

The socio-legal implications of this ruling are significant for indigenous communities, who have been neglected in the national land law system (Koentjaraningrat, 1990). It provides legal recognition and protection for marginalized groups who often lose their land rights due to systemic injustice. The ruling can be understood as an attempt to deconstruct the colonial legacy within Indonesia's land law system.

From a jurisprudential perspective, the PK Decision No. 1169 PK/PDT/2023 has the potential to serve as a legal reference for handling similar cases in the future. It opens the door to a more responsive and equitable legal interpretation in the context of customary land disputes. Judges no longer simply consider formal evidence but also consider the social context and local wisdom. The theoretical implications of this ruling are profound for the development of progressive legal concepts in Indonesia. It demonstrates that law is not a static instrument, but rather dynamic and responsive to societal developments. Thus, the *a quo* ruling emphasizes the importance of a legal approach that prioritizes substantive justice over formal procedures. Institutionally, this ruling challenged land agencies to undertake systemic reform. The National Land Agency (BPN) and related agencies were forced to reinterpret the mechanisms for registering and recognizing land rights (Malcolm Shaw, 2008). This encouraged the creation of a more inclusive and equitable system.

An international perspective also influences the significance of this ruling. The UN Declaration on the Rights of Indigenous Peoples provides a normative framework that further strengthens the position of indigenous peoples in the context of land ownership (Satjipto Rahardjo, 2009). The *a quo* ruling can be seen as a manifestation of Indonesia's commitment to protecting indigenous peoples' rights. The economic implications of this ruling are equally important. By providing legal certainty for customary land rights holders, the ruling has the potential to create a more stable and equitable investment climate. Land conflicts, which have long hampered development, can be minimized through a holistic approach, as demonstrated in this ruling.

The paradigmatic transformation brought about by this ruling lies in its emphasis on substantive justice. Law is no longer understood as a mere formal instrument, but rather as a means to achieve social justice for all levels of society (Boedi Harsono, 2008). The *a quo* ruling underscores the importance of understanding law within a broader social context.

The methodological implications of this ruling are significant for the development of legal science in Indonesia. It encourages an interdisciplinary approach that integrates legal, sociological, anthropological, and historical perspectives in understanding land issues. Thus, law is no longer viewed as an entity detached from social context. From a human rights perspective, this ruling has profound implications for protecting the rights of indigenous peoples (Soetandyo Wignjosebroto, 2013). It emphasizes that recognition of land ownership rights is an integral part of fulfilling basic community rights. The *a quo* ruling provides space for the expression of identity and the sustainability of indigenous communities.

Ultimately, the PK Decision No. 1169 PK/PDT/2023 does not merely resolve a specific case, but rather opens new horizons in the Indonesian land law system. It

emphasizes that justice cannot be defined narrowly through mere administrative procedures but must consider the social, cultural, and historical complexities of society. Thus, this decision serves as a beacon for a more humane legal transformation.

4. CONCLUSION

Based on the results of the discussion that has been presented, the conclusions are as follows:

1. The Judicial Review (PK) Decision Number 1169 PK/PDT/2023 marks a significant transformation in the national land law system, where girik is no longer considered merely administrative evidence but rather a legal instrument with legal legitimacy. This decision opens up space for legal interpretation that is more responsive to the complexities of customary land ownership, taking into account historical, sociological, and anthropological aspects. Legal protection for customary land rights holders in this decision goes beyond a formal legalistic approach. The judge considered the social context and local wisdom, recognized the customary legal system as a valid source of law, and emphasized that substantive justice is more important than merely administrative procedures.
2. This ruling has fundamental implications for the recognition of customary land ownership rights, opening a new paradigm in Indonesia's land law system. Girik are no longer viewed as weak documents, but rather as legitimate evidence reflecting the legal system that exists within indigenous communities, in line with the spirit of the Basic Agrarian Law Number 5 of 1960. Institutionally and theoretically, these ruling challenges the land law system to undertake systemic reform. It encourages the National Land Agency (BPN) and related institutions to create a more inclusive, equitable, and accountable mechanism for land registration and recognition that addresses the socio-cultural complexities of indigenous communities.

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