

# ARRANGEMENTS FOR UTILIZATION OF ULAYAT LAND FOR MICRO HYDRO POWER GENERATING BUSINESS (PLTMH) IN WEST SUMATERA

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## ABSTRACT

In remote areas that cannot be reached by electricity, it is necessary to procure small-scale power plants, commonly known as Micro Hydro Power Plants (PLTMH). In the procurement process, the land is needed both for road access and for the construction of all the needs of the PLTMH. Because it is located in the territory of the customary law community, the land to be used is also still related to the land of the customary law community (Minangkabau adat). Its construction is related to several legal methods, including customary law, national land law, investment law, and law on electricity, both at the central level and regulations at the regional level.

**Keywords:** Micro Hydropower Plant, Investment, Customary Land.

## INTRODUCTION

The basis of Indonesia's national agrarian politics is contained in Article 33 paragraphs 2 and 3 of the 1945 Constitution, which reads: "Production branches which are important for the state and affect the livelihood of the people are controlled by the state. The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This statement means that the state controls the earth, water, and natural resources contained therein for the greatest prosperity of the Indonesian people because the state has the power to do so (Isnaeni and Suratman, 2018).

To realize the provisions of Article 33 paragraphs (2) and (3) of the 1945 Constitution, through a long process, finally on September 24, 1960, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) was promulgated. The ratification of this UUPA abolishes several land regulations inherited from the Dutch Colonial, including the *domain verklaring regulation* (Isnaeni and Suratman, 2018).

The state's right to control in Article 33 of the 1945 Constitution is further clarified in Article 2 paragraph (2) of the UUPA. Article 2 paragraph (2) of the UUPA stipulates that the state's right to control authorizes the state to (1) regulate and administer the allocation, use, supply, and maintenance of the earth, water, and space; (2) Determine and regulate legal relations between humans and the earth, water, and space; (3) Determine and regulate legal relations between humans and legal actions concerning the earth, water, and space.

Based on the right of control from the state, the state stipulates various types of land rights that can be owned by people either alone or together with other people and legal entities as property rights, cultivation rights (HGU), building use rights (HGB) usufructuary rights, lease rights, land clearing rights, yield rights, and rights that are not included in these rights, which are stipulated by law and temporary rights. This is stated in Article 16 of the LoGA (Sembiring, 2017).

In addition to the land rights regulated in Article 16 of the LoGA, the state also recognizes the existence of customary rights of customary law communities, which is stated in Article 3 of the LoGA, namely: the implementation of such rights of customary law communities, as long as in reality they still exist, must be in such a way that it is following the national and state interests based on national unity and may not conflict with other higher laws and regulations" and Article 5 of the LoGA stipulates: "Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in the law. This law and with other statutory regulations, everything by taking into account the elements that rely on religious law."

Elucidation of Article 3 of the UUPA states: what is meant by ulayat rights and similar rights are what in the adat library is called *beschikkingsrecht*. Based on the provisions of Article 5 of the LoGA, the applicable agrarian law is customary law with certain conditions (Santoso, 2017). However, the LoGA does not further regulate customary rights, as with land rights as regulated in

Article 16 of the LoGA. There are no definite rules on transferring customary rights, such as the arrangement of property rights, HGU, and HBG.

West Sumatra is one area that also has customary rules regarding land. Minangkabau is located in the geographical area of West Sumatra and also reaches outside the West Sumatra area, namely to the western part of the administrative geographical area of Riau province and to the western part of the Jambi administrative area (Syarifuddin, 1982). This means that the rules of Minangkabau customary law will be recognized by the state as long as these customary rules do not conflict with the land provisions stipulated by the government in various laws and regulations, ranging from the central level to regional level regulations.

Its development, especially in remote areas that do not have electricity because they are far from PLN, requires the construction of small-scale power plants called micro hydropower plants (PLTMH). The land is needed to procure micro-hydropower plants on indigenous peoples' customary lands. Even sometimes, the presence of water where the construction of this PLTMH is carried out is in a forest area.

The construction of the MHP involves several legal regulations, namely land law, customary law, forest law regulations, legal regulations regarding electricity, legal regulations regarding investment, and several other legal methods. For example, Law Number 41 of 1999 concerning Forestry, Article 1 point (6) states that customary forest is a state forest located within the territory of customary law communities. This means that the state incorporates customary forests into state forests. Meanwhile, the rules of customary law also regulate the use of customary land both by outsiders and by members of the orthodox law community itself. According to the provisions of customary law, outsiders who want to use customary land must also comply with local customary law principles, such as custom filled with lumbago. On the other hand, the construction of the PLTMH requires legal certainty, including legal certainty regarding the status of the land that will be used for the construction of the PLTMH.

## RESEARCH METHOD

The type of research used is normative legal research. This research is a study of regulations regarding customary land for investment in micro-hydropower plants in West Sumatra.

## RESULTS AND DISCUSSION

### Customary Land in Minangkabau Customary Law (West Sumatra)

According to the provisions of Minangkabau customary law, relinquishing inheritance is difficult and almost impossible, except in very emergencies. The teachings of Minangkabau customary law are more likely to leave the layout land uncultivated if they cannot do so, rather than the transfer of rights outside the traditional law alliance.

In its development, national development requires land, one form of utilization of customary rights of customary law communities is in the business of micro-hydropower generation. Micro-hydro, or what is meant by the micro-hydro power plant (PLTMH), is a small-scale power plant that uses hydropower as its driving force, such as irrigation channels, rivers, or natural waterfalls, by utilizing the height of the falls and the amount of water discharge. The difference between hydroelectric power plants (PLTA) and micro-hydro, especially in the amount of electricity produced by hydropower, micro-hydro produces under 200 KW (Hamdi, 2016).

West Sumatra is one area that has abundant water resources, namely 1,100 MW; West Sumatra has 4 (four) lakes and 32 large rivers. With these potential natural resources, building a micro hydropower plant (PLTMH) is possible. Micro-hydro is used for remote areas that do not have an electricity supply, so with the development of micro-hydro, equal opportunities to get development and information can be achieved more quickly (Hamdi, 2016). Based on statistical data in 2017, there are already several micro-hydropower plants in West Sumatra, as shown below.

Table.1.1

**Number of Micro Hydro/Piko Hydro Power Plants (MHP)  
West Sumatra Province in 2017**

<b>Regency/City Regency/Municipality</b>	<b>Capacity Capacity (KW)</b>	<b>Generator Generator(Unit)</b>	<b>Head of Family (KK) Electric</b>
(1)	(2)	(3)	(4)
<b>Regency/ Regency</b>			
01. Mentawai Islands	20.00	1.00	56.00
02. South Coast	557.00	23.00	2 327.00
03. solo	601.00	26.00	2 425.00
04. Sijunjung	57.00	12.00	75.00
05. Flatland	25.00	4.00	115.00

06	Padang Pariaman	67.00	5.00	459.00	
07	religion	123.00	12.00	663.00	
08	Fifty Cities	147.00	9.00	641.00	
09	partner	475.60	19.00	2 136.00	
10	South Solok	707.00	37.00	3 020.00	
11	Dharmasraya	30.00	1.00	300.00	
12	West Pasaman	274.00	14.00	1 136.00	
<b>City/ Municipality</b>					
01	field	20.00	2.00	36.00	
02	solo	-	-	-	
03	Sawahlunto	-	-	-	
04	Long Field	-	-	-	
05	Bukittinggi	-	-	-	
06	Payakumbuh	-	-	-	
07	Pariaman	-	-	-	
<b>Total/ Total</b>		2017	3 103.60	165.00	13 389.00
		2016	2 924.00	160.00	12 982.00
		2015	2 472.00	109.00	8 267.00
		2014	2 682.50	141.00	12 734.00
		2013	2 711.50	141.00	12 718.00

Source: Department of Energy and Mineral Resources of West Sumatra Province (Solok, 2022).

Several regulations have binding on land provisions, both privately owned land, and customary law community land. As previously explained, this is generally regulated in the Logga. In addition, the land of customary law communities is also regulated in Law 41 of 1999 concerning Forestry. Article 1 point (6) states that: a customary forest is a state forest located within the territory of customary law communities.

With the contents of the provisions of Article 1 point (6), this means that customary rights over forests, also known as customary forests, are part of the scope of the customary rights of an indigenous people. Then in, the Elucidation of Article 5 paragraph (1) states that state forests can be in the form of customary forests, namely state forests whose management is handed over to customary law communities (*rechtsgemeenschap*). The customary forest was previously called ulayat forest, clan forest, private forest, or other names (Sembiring).

If paying attention to the rules in the LoGA and comparing them with the rules in the Forestry Law regarding customary land, in this case, there are two different approaches in recognizing the rights of indigenous peoples to tenure rights and customary rights in Indonesia. Outside forest areas, it is regulated under the LoGA, while the recognition of the rights of indigenous peoples in forest areas is regulated by the Forestry Law (Mulyadi, 2017).

The UUPA stipulates ulayat land rights as a separate entity adjoining state lands and private lands (land attached to a land right by individuals or legal entities). In contrast, the Forestry Law, which regulates state forests, recognizes customary forests, as long as they do not conflict with the nation, still consider it a state forest. Therefore, the protection and recognition of the rights of indigenous peoples in forest areas is part of the state forest, so the recognition of customary forests is very weak and depends on the state's need for the forest area itself. Since the birth of the Forestry Law, the application of the LoGA has been limited to outside forest areas, so the LoGA does not have jurisdiction over 70% of Indonesia's territory because it is a forest area (Mulyadi, 2017).

Article 33 of the 1945 Constitution places the state's role in a very strategic position to structure the economy and control important production branches and guarantee natural resources to be used for the greatest prosperity of the people based on economic democracy (Ramlan, 2021).

In West Sumatra, the definition of customary forest is different from the customary forest. Kurnia Warman said that according to Minangkabau customary law, the definition of customary forest is broader than customary forest. Ulayat forest is only one of the various types of customary forest according to ownership and control (Sembiring).

The reform era gave the broadest possible autonomy to the regions. The decentralization policy set by the government through Law Number 22 of 1999 concerning Regional Government was followed up by the Regional Government of West Sumatra Province by issuing the Regional Regulation of the Province of West Sumatra Number 9 of 2000 concerning the Basic Provisions

of Nagari Government (ZEFRIZAL, 2017). The state's acknowledgment of the existence of customary lands of customary law communities is also contained in Article 2 paragraph (9) of Law Number 32 of 2004 concerning Regional Government which states: "The state recognizes and respects customary law community units and their traditional rights as long as they are alive and well. Following the development of society and the principles of the unitary state of the Republic of Indonesia."

After enacting Law No. 32 of 2004, the Regional Government of West Sumatra Province replaced Regional Regulation No. 9 of 2000 with West Sumatra Provincial Regulation No. 2 of 2007 concerning the Principles of Nagari Governance. Then on September 30, 2014, Law Number 32 of 2014 concerning Regional Government was passed, which expressly revoked Law Number 32 of 2004 concerning Regional Government. There are no more rules regarding state recognition of customary law communities in this new law.

Furthermore, the Regional Government of West Sumatra Province stipulates the Regional Regulation of the Province of West Sumatra Number 6 of 2008 concerning Ulayat Land and its Utilization. The process of forming Regional Regulation Number 6 of 2008 has been discussed since 2000, because in the Regional Regulation of West Sumatra Province Number 9 of 2000 concerning Basic Provisions for Nagari Government, Article 10 states: guidelines for the management and utilization of ulayat Nagari as stated in Article 7 letter d, separately regulated by provincial regulations. Article 7 letter d states that one of the assets of the Nagari is; land, forest, water bodies, thickets, lakes, and seas that are customary for the Nagari.

The statement in Article 10 of Regional Regulation No. 9 of 2000 shows that there is an acknowledgment that land, forest, water bodies, thickets, lakes, and seas are ulayat Nagari which must receive special attention and therefore need to be regulated in the form of provincial regulations (Nurlinda, 2009).

The West Sumatra Regional Regulation Number 6 of 2008 was issued based on the consideration that Law No. 32 of 2004 concerning Regional Government states that the regions have the authority to regulate and manage the interests of the local community according to their own initiatives based on the aspirations of the people within the Unitary State of the Republic of Indonesia. Therefore, based on the consideration of the context above, it is necessary to establish guidelines that can be used as a guide in the regulation and utilization of customary land with a regional regulation of West Sumatra Province (Mulyadi, 2017).

However, if you read further the provisions of Article 14 paragraph (1) letter (k) of Law Number 32 of 2004 concerning Regional Government stipulates that land affairs are the affairs of district/city regional governments. This is reinforced by the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Settlement of Indigenous Land Problems for Indigenous Peoples of course, this is contrary to the provisions of Article 10 of Regional Regulation No. 9 of 2000 (Nurlinda, 2009).

As a legal basis for regions to make regulations at the regional level related to land use is Article 2 paragraph (4) of the BAL which states that the right to control from the state for its implementation can be delegated to autonomous regions and customary law communities, only as necessary and does not conflict with national interests, according to the provisions of government regulations.

### **Arrangements for Development of Micro-Hydro Power Plants in West Sumatra**

Micro-hydro is a term consisting of micro, which means small, and hydro, which means water. Micro-hydro, also known as micro-hydro power plant (PLTMH), is a small-scale power plant with a capacity limit of 5 kW-1 MW per unit (Nugroho and Sallata, 2015) that uses hydropower as its driving force, such as irrigation canals, rivers, or natural waterfalls. By utilizing the height of the plunge (*head*) and the amount of water discharge. Technically, micro-hydro has three main components: water (as an energy source), turbine, and generator. Water that flows with a specific capacity to the turbine house installation house. In the house (*powerhouse*), the water installation will hit the turbine; the turbine will receive Energy directly from the water and convert it into mechanical energy, which causes the turbine shaft to rotate. The turbine shaft is then transmitted to the generator using a coupling. Then from the generator, electrical energy will be generated entered into the electric current control system before being distributed to people's homes (Nugroho and Sallata, 2015).

The development of micro-hydropower plants is for the public interest, where land acquisition activities by the government for the public interest are also subject to specific rules. The government may only carry out land procurement for public interest in principle. State-Owned Enterprises or Private-Owned Enterprises can only carry out land acquisition for the public interest if they receive an assignment from the government (Gunanegara, 2018). Because the lands in Indonesia are generally already owned, or at least some are occupied. Consequently, if development activities require land, the land must be obtained by expropriation/acquisition/land acquisition (Sitorus and Limbong, 2004).

Regulations regarding investment activities in Indonesia are regulated in Law no. 25 of 2007 concerning investment. In Article 3 paragraph (1) letter a, it is stated that investment activities are carried out based on the principle of legal certainty. Meanwhile, what is meant by the "principle of legal certainty" is the principle in a state of law that lays down the law and provisions of laws and regulations as the basis for every policy and action in the investment sector. In this context, what is meant by legal certainty is the consistency of regulations and law enforcement in Indonesia. The consistency of regulations is indicated by the existence of regulations that do not conflict with each other and can be used as guidelines for a sufficient period so that it does not seem that every change of office is always followed by a change of regulations that can conflict with each other.

To implement investment activities in West Sumatra, on July 1, 2008, the government of West Sumatra promulgated the Regional Regulation of the Province of West Sumatra Number 6 of 2008 concerning ulayat land and its utilization. Article 1 paragraph (7)

states that ulayat land is a parcel of heirloom land along with the natural resources that exist above and in which it is obtained from generation to generation is the right of the customary law community in the Province of West Sumatra.

Article 9 paragraph (5) of Regional Regulation No. 6 of 2008 stipulates that the provisions and procedures for the use of customary land for the public interest or the benefit of legal entities will be further regulated by a Governor Regulation. To carry out the mandate of Regional Regulation No. 6 of 2008, the Governor of West Sumatra, on March 12, 2012, issued the Governor of West Sumatra Regulation No. 21 of 2012 concerning Guidelines and Procedures for Utilizing Customary Land for Investment.

On June 6, 2014, the Regional Government of West Sumatra Province promulgated Regional Regulation Number 2 of 2014 concerning Investment. Article 1 number (13) states that the definition of investment is almost the same as the understanding in the 2007 Investment Law; the difference is the area in West Sumatra.

Investments in developing micro-hydropower plants in West Sumatra are not only subject to the Investment Law the Regulation of the Governor of West Sumatra, and they are also subject to electricity regulations. Both at the central and regional levels. In addition, the construction must go through a licensing process following the rules for the construction of PLTMH.

The policies used as the basis for developing micro-hydro are 1). Law Number 30 of 2007 concerning Energy, 2) Law Number 30 of 2009 concerning Electricity, 3) Minister of Energy and Mineral Resources Regulation (Permen) Number 31 of 2009 concerning the Purchase Price of Electricity by PT PLN (Persero) from Generators Electric Power Using Small and Medium-Scale Renewable Energy or Excess Electricity, is revoked by the ratification of the Minister of Energy and Mineral Resources No. 4 of 2012 concerning the Purchase Price of Electricity by PT PLN (Persero) from Power Plants Using Small and Medium-Scale Renewable Energy or Excess Electricity. Then the Minister of Energy and Mineral Resources Regulation Number 4 of 2012 was revoked by the Minister of Energy and Mineral Resources Regulation Number 7 of 2018 concerning the Revocation of the Regulation of the Minister of Energy and Mineral Resources and the Regulation of the Minister of Mining and Energy-Related to Electricity Business Activities.

Prior to the enactment of the Minister of Energy and Mineral Resources No. 12 of 2014 concerning the Purchase of Electricity from PLTA by PLN, the general stages of PLTMH development were as follows: 1). Determination of location and initial permit, 2). Feasibility study, 3). Submission of PLTMH development proposals, 4). Completion of permit management. Permits that must be obtained include the Electricity Supply Business Permit (IUPTL), location permits, forest area borrowing permits (if passing through the forest), and Building Construction Permits (IMB). 5). Earnings PPA. *The Purchasing Power Agreement (PPA)* is an essential document because it involves the primary source of income from developing the MHP project.

## CONCLUSION

West Sumatra's micro-hydropower plant development activities are located in remote areas, which are customary rights areas for indigenous peoples. To build a power plant in a location, legal certainty is needed through the formation of laws and regulations made by the central and regional governments. This legal certainty is needed both for investors and customary law communities whose land is used to construct micro-hydropower plants.

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