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Legal - Political Analysis of Indigenous Relocation in Rempang: Between Agrarian Justice and the Shadow of Colonial Land Doctrine. (Study Of Land Tenure Conflict Between The Community And BP Batam)

Ilham Mustafa^{1*}, Suhadi², Irawaty³

¹ Master of Laws, Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia, ilhammust17@gmail.com

² Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia, suhadi@mail.unnes.ac.id

³ Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia, irawaty@mail.unnes.ac.id

*Corresponding Author: ilhammust17@gmail.com¹

Abstract: The agrarian conflict in Rempang Island emerged due to the planned relocation of the indigenous Kampung Tua Rempang community by the Batam Development Authority (BP Batam) for development of Rempang Eco City, designated as National Strategic Project (PSN). The community rejected relocation, arguing that they have inhabited the land for generations prior to the establishment of the Batam Authority, despite lacking formal land ownership certificates. This study aims to : analyze the government's legal policy regarding relocation and assess whether the Rempang case reflects the colonial-era principle of Domein Verklaring, which treats land without proof of ownership as state property. This research uses a normative juridical approach, focusing on analysis of laws and regulations such as Basic Agrarian Law (UUPA) No. 5 of 1960, Presidential Decree No. 41 of 1973, Presidential Decree No. 28 of 1992, and Government Regulation No. 18 of 2021. The findings reveal that BP Batam lacks legal standing, as Land Management Rights (HPL) certificate for Rempang has not been issued, and legal requirements such as compensation, community consultation, and relocation have not been fulfilled. This relocation practice closely resembles Domein Verklaring and represents form of modern agrarian colonialism that contradicts principles of justice in Indonesia's agrarian law.

Keyword: Forced relocation, Kampung Tua Rempang, Domein Verklaring, BP Batam, agrarian conflict.

INTRODUCTION

In recent times, public attention has focused on the agrarian conflict occurring on Rempang Island, Batam, and Galang, which are part of the Batam Authority development area. The conflict involves the residents of Kampung Tua Rempang and the Batam Business Agency (BP Batam), which plans to relocate residents for the construction of a national strategic project (PSN) called Rempang Eco City. This program is stipulated in Regulation of the Coordinating

Minister for Economic Affairs of the Republic of Indonesia Number 7 of 2023, which designates the Rempang area as one of the priority locations for national strategic investment (Kemenko Perekonomian, 2023). Indigenous communities who have lived in the area for generations reject the planned eviction of the villages, considering the land to be their ancestral heritage and part of their cultural identity. This rejection has sparked numerous demonstrations and clashes between authorities and residents, and drawn reactions from many parties, including academics, activists, and traditional leaders. Unfortunately, the government appears to be insisting on the relocation policy under the guise of long-term development and investment. This creates a dilemma between the vision of national development and the protection of indigenous peoples' rights.

The people of Kampung Tua Rempang claim to have lived and cultivated the area long before the formation of the Batam Authority through Presidential Decree Number 41 of 1973. In fact, Rempang Island was only recently designated as part of the Batam Authority's industrial development area based on Presidential Decree No. 28 of 1992 (Harsono, 1997). Therefore, their existence should be recognized as a form of socially and historically legitimate land ownership. However, because they lack official land titles, the Batam Free Trade Zone Authority (BP Batam) has declared the area under state control through the Land Management Rights (HPL) scheme. However, to date, the HPL for the Rempang area has not been officially issued by the Land Office, as stipulated in Government Regulation No. 18 of 2021. This situation creates an imbalance of power between the state and the community, where the state enforces formal legal claims without considering the historical and social legitimacy of customary ownership. This situation reflects the weak legal protection for indigenous communities in Indonesia's contemporary agrarian system.

Community resistance grew stronger when they recalled President Joko Widodo's 2019 promise to certify land long controlled by indigenous communities but lacking formal legal status. This hope led the community to believe that the state was beginning to recognize their existence and rights to the land they had cultivated for generations. However, the reality proved otherwise. When strategic national development required land, their rights were ignored and they were faced with a non-participatory relocation policy. The government promised relocation to the Dapur Tiga area of Sijantung, covering 450 hectares, with compensation in the form of a type 45 house worth Rp 120 million per unit (Kompas, 2023). Furthermore, the Batam Free Trade Zone Authority (BP Batam) also promised complete facilities such as Malay-style houses, schools, places of worship, a dock, and 24-hour electricity (CNN Indonesia, 2023). However, residents considered the compensation offered to be disproportionate to the loss of cultural identity, living space, and ancestral land. This condition shows the imposition of technocratic policies without taking into account the social and cultural aspects of society.

The conflict in Rempang is not an isolated case, but rather part of an ongoing structural agrarian problem in Indonesia. Many similar cases occur when national development projects are implemented without consultation and agreement with affected local communities. The state, in this case, tends to adopt a top-down approach that focuses on achieving investment and development targets, while ignoring the dimensions of human rights and social justice. Various literature indicates that forced relocation of indigenous communities often results in social trauma, fracturing relationships between residents, and the loss of value systems that have been built over many years (Soemardjan, 2009). The government should implement development with a participatory approach and prioritize the protection of vulnerable communities, including indigenous communities. However, in the Rempang context, such an approach is absent. This indicates a structural imbalance in the implementation of development that is not yet equitable.

From a legal perspective, the Rempang conflict demonstrates a shift in the meaning of the principle of "the right to control by the state" as stipulated in Article 2 of the UUPA. This

principle essentially grants the state the authority to regulate the allocation and use of land for the benefit of the people, rather than to take over land already managed by the people without proper protection. The state's interpretation of uncertified land tends to revert to the principle of *Domein Verklaring*, namely the assumption that land without proof of ownership is considered state property (Harsono, 1997). This principle was previously enforced during the Dutch colonial period through the Agrarian Decree of 1870, which became the basis for the legal seizure of customary land. Although normatively *Domein Verklaring* Although the UUPA has been revoked, in practice, a similar approach is still used in various modern agrarian policies. This demonstrates an inconsistency between the pro-people spirit of the UUPA and contemporary agrarian policies, which often favor state and investor interests. Therefore, it is important to re-examine the government's legal policy in addressing customary land issues, including through relocation policies.

The relocation of the people of Kampung Tua Rempang raises significant questions regarding the legality, morality, and legal bias in development policies. Normatively, the state has the authority to establish strategic projects and regulate land use, but its implementation must not ignore the legal principles of social justice, respect for the rights of indigenous peoples, and the principle of deliberation. Government Regulation No. 18 of 2021 explicitly stipulates that the granting of a Land Use Right (HPL) for an area must first undergo a process of measurement, verification, and settlement of legitimate ownership and control, including through compensation mechanisms (Ministry of ATR/BPN, 2021). Without these procedures, the relocation is legally flawed and reflects an abuse of power. This is where it is crucial to understand the Rempang conflict not merely as a spatial conflict, but as a symptom of structural inequality and policies that fail to guarantee agrarian justice. The government must avoid unilateral practices that tend to use a legal-formalistic approach without considering the sociological context of the affected communities. Therefore, a progressive legal approach needs to be prioritized in resolving indigenous-based agrarian conflicts.

Conceptually, the people of Kampung Tua Rempang are characterized as a customary law community that has fulfilled the elements of collective and hereditary territorial control. According to customary law experts, such as Soerojo Wignjodipoero, customary communities are entities with their own legal system, their own wealth, and a recognized leadership system (Wignjodipoero, 1973). Although not all have formal customary leaders, their collective land ownership patterns, local beliefs, and organized social systems make them legal entities whose existence should be recognized. In this context, the eviction of the land they occupy without respecting the inherent socio-cultural system is a form of denial of the principle of recognition and protection of customary law communities. If the state persists in carrying out forced relocation without first resolving the community's communal rights, this constitutes a violation of the principle of substantive justice. Therefore, the state has a moral and legal responsibility to ensure that development does not rob the living space of communities that have long maintained harmony with their environment. Especially when the living space has become an integral part of the social and cultural identity of a society.

Based on the description above, this research is important to conduct in-depth studies of the agrarian conflict between the Kampung Tua Rempang community and the Batam Free Trade Zone Authority (BP Batam), particularly in the context of implementing a national strategic project. The author's believes it is necessary to further explore the government's legal policy in implementing the relocation and review the possibility that the relocation practices reflect the application of the principle of *Domein Verklaring* in a more modern form. Therefore, the formulation of the problem in this study is formulated in two main questions, namely: (1) How is the government's legal policy viewed from the conflict that occurred between BP Batam and the Rempang Island community? and (2) Is forced relocation by emptying Rempang Island for the construction of Eco City Rempang a reflection of the practice of *Domein Verklaring*?

METHOD

This research uses an approach method normative juridical, namely an approach that relies on the study of applicable positive legal norms and their relevance to the legal issues being studied. This approach is used to systematically examine the various laws and regulations that serve as the legal basis for the relocation of the indigenous people of Kampung Tua Rempang by the Batam Business Agency (BP Batam) in the development of Rempang Eco City. The main focus of this research is to assess the suitability between applicable agrarian legal norms, such as Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), and the practice of land clearing carried out against communities who have occupied the area for generations. This approach was chosen because the object of the study is the practice of state agrarian law in the context of national strategic development that has the potential to conflict with the rights of indigenous peoples. The research also examines the extent to which the practice of forced relocation reflects the application of the principle *Domein Verklaring* in the form of modern law. Thus, the normative legal approach in this research not only plays a role in testing the validity of the law, but also reveals inconsistencies between written law and the socio-legal reality in the field (Marzuki, 2010).

The type of data used in this study is legal data, which are classified into three types: primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations that serve as the main legal basis, including: the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Agrarian Principles (UUPA), Presidential Decree Number 41 of 1973 concerning the Batam Authority, Presidential Decree Number 28 of 1992 concerning the Expansion of the Batam Authority Business Area, Regulation of the Minister of Agrarian Affairs Number 9-VIII of 1993, and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Secondary legal materials consist of agrarian law books, scientific journals, opinion articles, previous research results, and the opinions of legal experts who discuss the relationship between the state, law, and indigenous communities. Tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and other supplementary documents that help understand the legal concepts used. The technique for collecting legal materials is carried out through library research, by searching legal documents, academic publications, laws and regulations, as well as the official websites of related institutions such as the JDIH of the Ministry of ATR/BPN, the Coordinating Ministry for Economic Affairs, and national journal repositories (SINTA, Garuda Ristek-BRIN). The analysis techniques used are qualitative normative analysis, namely interpreting the contents of legal norms and examining their relationship to land tenure practices and the relocation of indigenous communities. In addition, it is also used conceptual approach for analyzing the principles of social justice, protection of constitutional rights, and the principles of agrarian law as a basis for assessing state legal practices in the context of the Rempang conflict.

RESULTS AND DISCUSSION

History Of Batam Business Authority

The Batam Island Industrial Area Development Authority is the forerunner of the Batam Business Agency (BP Batam). The legal basis for the establishment of the Batam Island Industrial Area Development Authority is based on Presidential Decree Number 41 of 1973, which states that the Batam Island Industrial Area Development Authority is the authority responsible for the development and growth of the Batam Island Industrial Area and has the following duties:

- a. Develop and control the development of Batam Island as an industrial area;
- b. Develop and control transshipment activities on Batam Island;

- c. Planning infrastructure needs and managing infrastructure installations and other facilities;
- d. Receive and examine business permit applications submitted by entrepreneurs and submit them to the relevant agencies;
- e. Ensure that the licensing procedures and provision of services required for establishing and running a business on Batam Island can run smoothly and orderly, everything to be able to increase the interest of entrepreneurs in investing their capital on Batam Island.

The Batam Island Industrial Area Development Authority was established based on Presidential Decree No. 41 of 1973. This decree authorized the Batam Authority to develop and control the development of Batam Island as a national strategic industrial area. The decree stipulated that the Batam Authority had management rights (HPL) over all land areas on Batam Island. This gave the land in Batam its status as state land managed by the Authority, rather than the property of individual citizens. This broad authority was granted to encourage investment through the centralized provision of land for businesses. The Authority was also responsible for business licensing, infrastructure development, and industrial zone control. The Batam Authority's role at that time was fully directed at establishing Batam as a new center of economic growth that supported national development (Republic of Indonesia, 1973).

In line with the growing need for industrial land and the expansion of development areas, the government then issued Presidential Decree No. 28 of 1992. This decree expanded the scope of the Batam Authority's territory to include Rempang Island, Galang Island, and the surrounding small islands. However, this expansion did not automatically grant the Batam Authority HPL over the new areas. The articles of the Presidential Decree emphasized that land management and administration in the expanded area must be subject to further regulations by the Head of the National Land Agency (BPN). This means that claims for management rights must go through appropriate administrative and legal procedures, including: measurement and issuance of HPL certificates by the National Land Agency (BPN). This provision serves as an important basis for ensuring that the land status in Rempang and Galang is not immediately under the full control of the Batam Authority since the Presidential Decree was enacted (Republic of Indonesia, 1992).

As a follow-up to Presidential Decree 28/1992, the Minister of Agrarian Affairs issued Ministerial Regulation Number 9-VIII of 1993. This regulation provided a legal framework for granting HPL to the Batam Authority for land in Rempang and Galang, but with strict conditions. This regulation stipulates that HPL can only be granted if the land in question is free from community ownership or control. In practice, this means that if there are still buildings, crops, or residential areas on land to be granted HPL, the government, through the Authority, is obliged to first provide compensation and provide new residential locations. This is also emphasized in Ministerial Decree Number 77 of 1974, which is a derivative of Presidential Decree 41 of 1973. This regulation aims to protect community rights to land that they actually controlled before the expansion of the authority's territory (Ministry of Agrarian Affairs, 1993).

In 2007, the government again undertook institutional transformation through Government Regulation No. 46 of 2007. This regulation designated Batam and several surrounding islands, including Rempang and Galang, as a Free Trade Zone and Free Port. This designation was made to strengthen Batam's competitiveness in attracting foreign and domestic investment by providing legal certainty and fiscal incentives. The regulation stipulated that the zone's status would be valid for 70 years, providing a substantial timeframe for investors. The primary objective was to establish Batam as an economic hub that synergizes with neighboring countries such as Singapore and Malaysia. This transformation also brought about changes in the area's management structure, including the establishment of the Batam Business Agency (BP Batam), which took over the functions of the former Batam Authority (Republic of Indonesia, 2007).

Following the issuance of Government Regulation 46/2007, assets and authority were transferred from the Batam Authority to the Batam Free Trade Zone Authority (BP Batam). All land rights and authority, including the Land Use Permit (HPL), previously controlled by the Batam Authority, were administratively transferred to BP Batam. BP Batam then continued to manage land in the Batam region and claimed that the Rempang and Galang areas were also included within its HPL scope. This control was based on the interpretation that Presidential Decree 41/1973 and Presidential Decree 28/1992 still served as valid legal bases. However, there is no official document stating that the HPL for Rempang and Galang had been issued by the National Land Agency (BPN). BP Batam has also not provided proof of legal standing in the form of an HPL certificate for the area, which would serve as the legal basis for legal land management (Tempo.co, 2023).

This situation then became the starting point of the agrarian conflict between the Batam Free Trade Zone Authority (BP Batam) and the indigenous community of Kampung Tua Rempang. The community, which has inhabited and managed the Rempang area for generations, rejected the forced relocation plan because their rights had not been resolved as stipulated in agrarian regulations. BP Batam continued to implement the Rempang Eco City development plan as part of the National Strategic Project (PSN) without waiting for the resolution of the HPL status. However, Agrarian Ministerial Regulation 9-VIII/1993 explicitly states that the granting of HPL cannot be carried out if there is still community ownership or control without first providing compensation and deliberation. This rejection demonstrates gaps in the government's implementation of the law and the weak protection of indigenous peoples in national development (Ministry of ATR/BPN, 1993).

Additional complexity arises because, to date, the Minister of Agrarian Affairs/Head of the National Land Agency (BPN), Hadi Tjahjanto, has stated that the Land Use Right (HPL) granted to the Batam Free Trade Zone Authority (BP Batam) in the Rempang area is still under measurement. This means there is no formal legal basis in the form of a certificate that BP Batam can use as a valid basis for carrying out forced relocation of the community. This statement indicates that BP Batam's actions in claiming the Rempang land and clearing the area lack a strong legal basis. Legally, without an HPL certificate, BP Batam's land management in Rempang is considered invalid. This further strengthens the position of the Kampung Tua Rempang community, which maintains its customary rights to the land they have long occupied (Tempo.co, 2023).

From a legal and political perspective, the government's approach to the development of the Rempang area reflects the exercise of state power in the name of development. Unfortunately, this approach ignores the formal legal procedures that should be followed to respect residents' rights. Forced relocations without HPL certificates and without compensation demonstrate that justice in agrarian law has not been a priority. The government should not only prioritize national strategic projects but also ensure the fulfillment of community rights through participatory dialogue. The emphasis on investment and development should not sacrifice residents' constitutional rights to the land they have historically controlled. In this context, the conflict in Rempang reflects the failure of a fair and participatory land management system within the context of national development (Rahardjo, 2006).

Thus, the history of the Batam Authority and its transfer of authority to the Batam Free Trade Zone Authority (BP Batam) created a legal framework that remains incompletely implemented. Although regulations ranging from the 1973 Presidential Decree to the 2007 Government Regulation legitimize the management of industrial areas, the implementation of land rights, particularly in expansion areas such as Rempang and Galang, requires a fair administrative and social process. The discrepancy between state claims and the social reality on the ground highlights the importance of reviewing the mechanisms for recognizing land rights. BP Batam should prioritize deliberation and settlement of compensation before

undertaking relocation. In a legal system that upholds social justice, indigenous communities should not be marginalized by large-scale projects that disregard their fundamental rights.

Management Rights

In Law 5 of 1960 concerning Basic Agrarian Regulations (UUPA), the term Management Rights is not recognized. Looking at the provisions of Article 16 of the UUPA, Management Rights are not Land Rights as referred to in the UUPA and if they are intended as new land rights according to the provisions of the article, they must be determined by Law.

The UUPA does not explicitly explain Management Rights, but we can assume that Management Rights are the state's right to control as Article 2 paragraphs (1) and (2) state that: "(1) On the basis of the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, earth, water and space, including the natural resources contained therein, are controlled at the highest level by the state, as the organization of power of all the people."

"(2) The right of control from the state referred to in paragraph (1) of this article provides authority for :

- a. Regulate and organize the allocation, use, supply and maintenance of the earth, water and space.
- b. Determine and regulate legal relations between people and the earth, water and space.
- c. Determine and regulate legal relationships between people and legal actions concerning earth, water and space."

The term "Management Rights" first appeared in the Minister of Agrarian Affairs Regulation Number 9 of 1965 concerning the Implementation of Conversion of Control over State Land and Provisions on Policy. Management Rights are a conversion of Control Rights over State Land. In other words, Management Rights are a bundle or part of the State's Control Rights, where the authority to manage them is granted to authorized agencies or those appointed under statutory regulations.

In the latest regulation, namely in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration, the definition of Management Rights is the right to control from the state, the implementation authority of which is partly delegated to the holder of Management Rights.

The Government Regulation explains that land management rights can originate from both state and customary land. Management rights over state land are granted as long as their primary duties and functions are directly related to land management, while management rights originating from customary land are assigned to customary law communities.

The authority of the Management Rights (HPL) holder as regulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration is:

- a. prepare plans for the allocation, use and utilization of land in accordance with spatial planning;
- b. use and utilize all or part of the Land Management Rights for personal use or in collaboration with other parties; and determine the rates and/or annual mandatory fees from other parties in accordance with the agreement.

In terms of its nature, Management Rights have the following characteristics: they cannot be used as collateral for debt by being burdened with mortgage rights, cannot be transferred or assigned to another party, and even if they can be released, they can be released in the event of being granted ownership rights, released for the public interest, or other provisions regulated in statutory regulations.

Management Rights originating from State Land must be registered with the land office and in Government Regulation number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration it is explained that management rights occur from the time they are registered by the Land Office with the issuance of a certificate as proof of ownership of Management Rights.

Furthermore, in the context of implementation in the field, Management Rights often serve as the legal basis for government institutions to control land on a large scale, even though this often leads to conflict with indigenous or local communities who have previously controlled the land for generations. This raises serious questions about the alignment of agrarian law with social justice. As occurred on Rempang Island, the Batam Free Trade Zone Authority (BP Batam)'s claim to Management Rights did not meet the administrative and substantive requirements stipulated in Government Regulation No. 18 of 2021. Land Use Permit (HPL) certificates have not been issued, and the community has not received adequate compensation for the land, buildings, or crops they have managed. Yet, one of the requirements for granting HPL for state land is the prior resolution of the people's rights therein through compensation and relocation (Republic of Indonesia, 2021). This procedural inconsistency indicates that the implementation of HPL is often used unilaterally by the state without considering the principles of deliberation and justice. This practice can violate the constitutional rights of citizens, particularly indigenous communities.

The process of granting HPL to customary or communal land should take into account the existence of customary law communities as regulated in Article 18B paragraph (2) of the 1945 Constitution. In the context of Rempang, the Kampung Tua community has strong historical, social, and cultural ties to the land they occupy, so they should be recognized as owners of customary rights. When customary land is claimed as state land and immediately transferred to HPL without a customary identification and verification process, the state has actually ignored the principles of agrarian legal pluralism. According to Harsono (2003), recognition of customary land is not only a matter of administrative legality, but is a form of respect for the original rights and existence of customary law communities. Therefore, the granting of HPL on customary land must be accompanied by a consultation mechanism, formal recognition, and agreement-based compensation. Without this, the implementation of HPL runs a high risk of perpetuating structural injustice in land ownership.

Another problem that arises in the practice of Management Rights is the lack of an effective oversight mechanism for the use of HPL land by rights holders. In many cases, HPL land, which should be managed for the public interest, is instead handed over to third parties or private investors without transparency and accountability. This has the potential to eliminate the social function of land as stipulated in Article 6 of the UUPA. In fact, every granting of land rights, including HPL, must still consider the principles of justice, utility, and environmental sustainability. The lack of community involvement in planning and decision-making regarding the use of HPL land contributes to increasing agrarian inequality. According to Lucas and Warren (2013), top-down approaches to land management tend to fail because they ignore the local context and social dynamics of the community. Therefore, HPL implementation should be directed at strengthening community participation and protecting vulnerable groups.

The legality of the HPL implementation is also a major concern, as without a valid certificate, claims of land ownership are legally flawed. In the Rempang case, the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency stated that the HPL certificate for BP Batam was still in the process of being measured and had not yet been issued (Tempo, 2023). This situation makes relocation a difficult decision is legally invalid because there is no strong legal basis for BP Batam's control of the land. In practice, this violates the principle of legality and ignores the principle of due process, a key pillar of the national legal system.

Execution without a valid certificate also opens the door to lawsuits from affected residents who have lost their rights to their homes. Therefore, before eviction and relocation can take place, HPL holders must complete all legal procedures. Without this, the state can be considered to have unilaterally seized their rights.

It is crucial to review the legal framework for Land Use Permits (HPL) within the context of sustainable development and respect for human rights. Current development concepts must prioritize ecological justice and social inclusion, not simply economic growth. Granting HPL to authoritative bodies such as the Batam Free Trade Zone Authority (BP Batam) should be accompanied by a periodic evaluation mechanism and public oversight. This ensures that land ownership is not only formally legal but also morally and socially legitimate. An inclusive land management model can be a solution to reduce agrarian conflict and create a just and sustainable legal order. As Satria (2020) argues, agrarian reform should be interpreted as a renewal of land ownership structures that favors the people, not as a tool to legalize state domination. Therefore, future HPL regulations must position the people as the primary subject, not merely the object of development.

The Existence Of The Old Rempang Village

The existence of Kampung Tua on Rempang Island has a long history that demonstrates the Malay community's attachment to the area long before Indonesia's independence. Although academic references regarding the history of Kampung Tua Rempang are still limited, historical researcher from the National Research and Innovation Agency (BRIN), Dedi Arman, revealed that Malays had settled on Rempang and Galang Islands even before 1834, which has long been considered the beginning of their settlement (Arman, 2023). This statement refutes the official narrative that often states that settlement in Rempang only occurred after the area was included in the industrial development area. This historical evidence strengthens the local community's claim to the land they have occupied for generations. This fact provides a strong basis that the Kampung Tua community is not a newcomer, but rather an integral part of the historical landscape of Rempang Island. Thus, claims to land rights by local communities cannot be ignored. This is in line with the principle of recognizing the rights of customary law communities in Article 18B paragraph (2) of the 1945 Constitution.

The Kampung Tua Rempang community can be categorized as a customary law community if we refer to the indicators of the existence of a customary law community as explained in customary law literature. According to Thontowi (2008), customary law communities are characterized by shared ancestry (genealogical), a permanent residence (geographical), and a shared system of values and norms that are passed down through generations. Furthermore, the existence of a customary leadership structure, an internal dispute resolution system, and a form of administrative recognition are also important elements in the formation of a customary law community. In this context, the Kampung Tua Rempang community demonstrates a strong attachment to the land, cultural values, and sustainable living practices. They have occupied and they have managed their territories for generations, although they are not yet fully organized into formal customary structures. However, this existence should be sufficient to gain recognition as owners of customary or communal rights to the land they occupy. This right aligns with the recognition of customary rights under national agrarian law.

Wignjodipuro (1973) added that customary law communities are social entities with a regular and enduring way of life and shared wealth, both material and immaterial. This definition is relevant to the social structure of the Kampung Tua Rempang community, which, although not formally recognized by the state, maintains cultural and social continuity. Oral traditions, agricultural practices, and spiritual ties to the land strengthen their position as part of the customary community. The existence of belief systems and the practice of mutual

cooperation are markers of the social order that persists within the community. Therefore, it is important for the state to look beyond the formal form of customary organization to also consider the cultural substance of the community concerned. Ignoring this can lead to erroneous decision-making, particularly in agrarian conflicts such as those in Rempang. Therefore, a more contextual and empathetic approach is needed in land policy. Although the term "customary rights" is more popular among legal experts, this concept does not always align with the terminology used by indigenous communities themselves. Rato (2016) states that outside of regions such as Minangkabau, the term customary rights is actually unfamiliar to indigenous communities locally, including in Kalimantan and the Malay region. However, in the context of national law, customary rights have been accepted as a positive legal norm in Indonesia's agrarian system. This means that, despite the different terms, the substance of land control and management by local communities remains recognized and protected by law. In the case of Rempang, the Kampung Tua community has demonstrated a pattern of relationship with land identical to customary rights. This is reflected in collective management, customary land distribution, and respect for sacred sites such as ancestral cemeteries. Therefore, legal recognition of their rights should not be based solely on formal terms, but on social and historical realities.

Rempang and Galang Islands are demographically inhabited by two main communities: the Sea Malay (Orang Laut) who live on the coast, and the Land Malay (Orang Darat) who reside inland. These two groups have distinct traditions and lifestyles, but both demonstrate historical continuity in territorial control (Eka Sahputra, 2023). For example, the Sea Orang depend on the sea for their livelihood and settle in coastal villages, while the Land Orang develop agriculture and settlements in the island's interior. This diversity reflects the complex social dynamics of Rempang Island, enriching local cultural identity. Unfortunately, in the discourse on the development of Rempang Eco City, this social complexity is often simplified. The government tends to view the land as vacant or state land without considering the socio-cultural history of its inhabitants. However, ignoring the local social context will trigger conflict and structural injustice.

Local testimony also strengthens the historical evidence regarding the existence of Kampung Tua Rempang before Indonesian independence. Naharudin, a village elder from Tanjung Banun, stated that his village existed before the Japanese occupation in 1942 (Eka Sahputra, 2023). This information was obtained from stories passed down through generations conveyed by their parents. This confirms that the local community's land claims are not a new fabrication, but rather a continuation of a long history that should be recognized by the state. In the context of land rights, historical origins are crucial in proving the legitimacy of land ownership. Furthermore, the cultural and spiritual values inherent in the land are also an integral part of the community's identity.

Therefore, land claims in Rempang should be viewed as part of historical rights, not merely administrative claims. Another testimony came from Syamsurizal Bujur, a resident of Sembulang Village, who presented the graves of their ancestors as evidence of the community's existence decades ago. These graves, including one inscribed with the date 1958, provide physical evidence that the government cannot ignore (Eka Sahputra, 2023). More interestingly, the graves' orientation, which does not face the Qibla, indicates that the Islamic religious system was not yet fully established in the community at that time, indicating its older age than most modern communities. This evidence demonstrates that the Rempang community has a deep and enduring connection to the land they inhabit. This connection is not only economic, but also spiritual and cultural. Under agrarian law, this should be a crucial consideration before the state takes over land rights. Unfortunately, the development approach used remains top-down and ignores the historical rights of local communities.

From the various accounts above, from both historical researchers and local residents, it can be concluded that Kampung Tua Rempang existed long before the advent of state regional development policies, including the establishment of the Batam Island Industrial Area Development Authority. The community's hereditary existence demonstrates their historical and social claims to the land. Although they may not be formally organized as customary law communities as understood in legal literature, the substance of their control over the land still qualifies them for recognition as customary rights holders. In other words, the state should recognize their existence and not solely base claims to land on administrative ownership. When the state ignores these historical and social realities, agrarian conflicts like the one in Rempang are inevitable. Therefore, land policies must be aligned with the principles of social justice and respect for the rights of local communities. Only then can development proceed sustainably and peacefully.

Principle Of Domein Verklaring

The implementation of colonial agrarian policies in the Dutch East Indies was marked by the enactment of the Agrarisch Wet (AW) of 1870, which reinforced the colonial state's view as the absolute owner of all land within its colonies. The colonial state had the right to revoke individual ownership of land, even if such ownership had been legally recognized. This approach was based on the view that land for which the people could not formally prove ownership belonged to the state (Harsono, 1997). Thus, the colonial state positioned itself not merely as the ruler but also as the civil owner of the land. This policy became the basis for the legitimacy of unilateral land acquisitions for government or private interests. This naturally gave rise to unequal access to agrarian resources between the people and the colonial government. Colonial agrarian policy became a tool for exploiting the land and the colonized people.

To facilitate access to land acquisition for private investment purposes, the colonial government then formulated a policy which was outlined in the Agrarisch Besluit (Agraria Besluit/AB) as an implementation of AW 1870. This regulation contained a legal principle known as domein verklaring, a principle stating that land that cannot be proven to belong to an individual belongs to the state (Harsono, 1997). This principle was widely applied, especially in Java and Madura, and was later extended to other regions outside of these two islands. The application of this principle strengthened the colonial state's dominance in controlling land on a massive scale, including land that had been traditionally occupied by indigenous peoples. The principle of domein verklaring also allowed for the lease of these lands to foreign plantation companies. As a result, millions of hectares of land were taken over without recognition of the rights of local communities. This constituted a form of legal colonization of land.

In practice, the domain verklaring makes the state act as the civil owner of land, not merely the administrative authority. The state can transfer eigendom (ownership) rights to third parties based on the principle that land belongs to the state unless someone can prove otherwise. This concept is closely linked to Western law, which requires formal proof of land ownership (Boedi Harsono, 1997). When someone applies for land rights, the state does not grant new rights, but transfers state rights to the applicant. In other words, eigendom rights originate from the state, not from the community's actual control over the land. This demonstrates that the colonial state systematically ignored the existence of customary law systems and customary rights. The process of formalizing land ownership became a weapon for the state to eliminate local community claims.

The concept of domein verklaring (land ownership) was used as a tool of state power to maintain and regulate control over existing land. The state was given the authority to revoke, transfer, or lease land without considering the existence of indigenous communities. With this principle, the state could retain thousands of hectares of plantation land while ignoring the

rights of the rural communities living on that land (Soemardjan, 2001). The colonial state treated land as a commodity that could be transferred to foreign investors. This resulted in widening inequality in land ownership and the marginalization of indigenous communities. People who had traditionally lived and managed the land were categorized as tenants or illegal occupants. The principle of *domein verklaring* became a tool for legalizing agrarian colonialism.

Following Indonesia's independence and the enactment of the Basic Agrarian Law (UUPA) No. 5 of 1960, the principle of *domein verklaring* was officially abolished. The UUPA shifted the paradigm of land ownership from state domination to a state-controlled right approach, which implied the protection and welfare of the people. However, in its implementation, the interpretation of the state's right to control was often distorted, repositioning the state as the absolute landowner (Sirait, 2009). As a result, land policies that should have favored the people instead repeated colonial practices that marginalized community rights. This phenomenon demonstrates the continuity between old colonialism and new forms of colonialism through agrarian policies. In practice,

The state uses the pretext of development to take over people's land, even though the UUPA explicitly states that land is to be used for the greatest possible prosperity of the people. A clear example of the misinterpretation of the state's right to control is evident in the agrarian conflict on Rempang Island. The government, through the Batam Free Trade Zone Authority (BP Batam), declared the Rempang area part of a National Strategic Project (PSN) for the development of the Rempang Eco City area. Instead of improving the people's welfare, the project has become a tool to displace the people of Kampung Tua Rempang from the land they have occupied for generations. The pretext of investment and national interests is used as a justification to ignore the people's land rights. Ironically, development that is said to be for the people's prosperity is being carried out in a manner that is detrimental to the people themselves. This project demonstrates that the development approach in Indonesia still positions land solely as an economic object. Without deliberation and respect for the people's historical rights, agrarian conflicts will continue to recur.

The Rempang community should be actively involved in decision-making regarding the management of the land they occupy. However, the reality on the ground shows that the community is only given two choices: move or be evicted. The government has failed to provide a transparent and fair compensation process, nor has it involved participatory deliberation. Yet, the Basic Agrarian Law mandates that the resolution of agrarian conflicts must uphold the principles of social justice and recognize the rights of indigenous communities. When the government imposes its will without dialogue, it demonstrates a tendency toward authoritarianism in land governance. This situation also demonstrates how development is often used as a tool of repression against local communities. If left unchecked, this practice will erode the legitimacy of state law in the eyes of the people.

A statement by Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), Hadi Tjahjanto, during a working meeting with the Indonesian House of Representatives (DPR RI) on September 11, 2023, indicated a return to the logic of *domein verklaring*. He stated that the residents of Kampung Tua Rempang lacked land ownership certificates, thus placing the land under the authority of the Batam Free Trade Zone Authority (BP Batam) (Antara, 2023). This statement ignores the fact that the community has occupied and managed the land for generations. Certificates are not the sole proof of ownership, especially in the context of indigenous communities whose management systems are not based on certification. By basing claims on the absence of certificates, the state is re-reproducing colonial perspectives in land policy. This clearly contradicts the spirit of the Basic Agrarian Law and the principles of agrarian justice. The state should protect, not threaten, the rights of vulnerable communities.

The reasoning used by the government in the Rempang case reflects a modern version of the practice of *domein verklaring*. When communities cannot produce certificates for the land they occupy, the land is automatically deemed state property. This perspective clearly denies the long history of land ownership by indigenous communities. In the context of Indonesian agrarian law, this is unacceptable, as the paradigm has shifted from state ownership to state control limited by the principle of people's prosperity.

Therefore, resolving agrarian conflicts cannot be done with a unilateral approach relying solely on formal legality. A socio-historical approach that takes into account the real existence of communities is necessary. Otherwise, agrarian inequality will widen. The covert application of the *domein verklaring* principle through development projects such as the one in Rempang must be stopped. The state needs to return to the spirit of the Basic Agrarian Law, which places the people as the primary subject in land ownership and utilization. The principles of social justice, recognition of customary rights, and deliberation must guide the formulation and implementation of agrarian policies. The government must also evaluate its top-down approach to development to make it more participatory and equitable. Without this, strategic national projects will only reinforce inequality and exacerbate social conflict. In the long term, development that is not rights-based will actually undermine the state's legitimacy. Therefore, siding with the people must be a priority in land policies.

CONCLUSION

Based on the description of the discussion regarding the forced relocation of the Old Rempang Villages in the context of investment in the implementation of the National Strategic Project (PSN) for development of Rempang by the investor PT Makmur Elok Graha (MEG), we can conclude that the implementation of forced relocation by BP Batam is legally unjustifiable. Legal Politics The forced relocation of the Old Villages of Rempang is an effort by the Government to support the investment climate. Legal politics is also defined as legal policy or official lines (policies) regarding laws that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the state (Mahfud, 2011). However, the Government, in this case BP Batam, should not yet have full legal standing regarding land ownership on Rempang Island. As stipulated in Presidential Decree 28 of 1992, Rempang and Galang Islands are new industrial development areas, while previously only the Batam Island area was the object of the authority to manage areas and land for Industrial Area Development by the Batam Authority. This can be seen from the implementing regulations that require the Batam Authority in the case of granting Management Rights by the Land Office if there are still land, buildings and plants belonging to the community on the land area to be granted Management Rights, it must be resolved first by paying compensation and relocating to new settlements based on deliberation.

On the other hand, Management Rights originating from State Land must be registered with the Land Office and Management Rights only occur if they have been registered by the Land Office with the issuance of a certificate as proof of ownership of Management Rights as regulated in PP 18 of 2021. It is clear here that BP Batam does not yet have authority over land on Rempang Island because the authority of Management Rights granted by the state has not yet occurred because currently BP Batam does not have a certificate as proof of ownership of Management Rights on Rempang Island, this is also in line with the statement from the Minister of ATR/BPN which stated that HPL BP Batam is still in process. Actions to carry out evictions or forced relocation of residents of Kampung Tua Rempang in the context of the construction of the Rempang Eco City PSN are also a reflection of the *Domein Verklaring* practices carried out by the current Government in terms of obtaining land from the community for the benefit of investors in the context of investment. These actions can be categorized as *Domein Verklaring* because there are forced relocation efforts for the Community in order to obtain

land for the benefit of investors by the Government. In addition, the State's right to control is used as the basis for recognizing land ownership on the Rempang and Galang islands by the Government, but without respecting the rights of local communities who have lived on the land for generations because the community cannot provide proof of ownership of the land they live on, so the land is considered under State Control. This is confirmed by the statement of the Minister of ATR/BPN who stated that the community does not have a certificate for the land. Practices like this are very closely related to policies that occurred during the colonial era with the legal basis of Domein Verklaring.

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