

Legal Protection of Land Ownership Rights Holders

Against Overlapping Protected Forest Areas

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ABSTRACT

This study examines the agrarian conflict in Tanea Village, South Konawe Regency, which arose due to the overlap between community-owned land that has been controlled for generations and has been certified with the determination of protected forest areas based on the Decree of the Minister of Agriculture No. 639/Kpts/Um/9/1982 concerning the Forest Use Agreement (TGHK). This determination was carried out without community participation, thus creating legal uncertainty, the threat of criminalization, and the risk of loss of livelihoods. The study used a sociolegal method with an empirical juridical approach through interviews and document studies, involving six samples from institutional elements, the community, and academics. The results of the study indicate that the factors causing the conflict include historical, institutional, technological aspects, and weak evidence of formal ownership. From the perspective of Karl Marx's conflict theory, this condition reflects the class conflict between the Tanea Village community as a proletarian class dependent on land, and the state as a representative of the bourgeois class that dominates through the forestry regime. Settlement efforts are carried out through preventive legal protection, such as regulations, One Map Policy-based mapping, and socialization, as well as repressive measures through mediation, changes to forest area boundaries, land redistribution through TORA, social forestry programs, and litigation in court.

Keywords: Agrarian Conflict, Overlapping, Legal Protection.

1. INTRODUCTION

The Indonesian nation has been blessed with abundant natural resources in the form of renewable biological resources to support human life and non-biological natural resources (Yuliana et al., 2021). Natural resources that can be utilized by humans include the earth, water, and space within which are controlled and managed by the state for the welfare and prosperity of all Indonesian people, which is in accordance with the mandate of the UUD NRI Article 33 paragraph (3). The phrase "control" in this case does not mean private ownership but means that it has the right to supervise and regulate the utilization and use of these natural resources to meet the needs and interests of society with the aim of preventing misuse, destruction and excessive use for individual or group interests (Swara & Kawiana, 2021).

State land is land that is completely under control by the state as regulated by PP No. 8 of 1953 concerning Control of State Land in Article 1. Free state land and non-free state land are two categories of state land. State land that does not have land rights is known as free state land. On the other hand, non-free state land is state land that once had rights to the land due to a legal act that made it state land. Examples are land that was released voluntarily by the owner, land whose rights



have been revoked, and land that was formerly a western right whose validity period has expired (Putra & Saleh, 2021).

In contrast, the rights regime in the UUPA focuses solely on ensuring legal certainty and defending community rights to land, including ownership rights, land use rights, building use rights, and use rights (Miptahuddin, 2024). As part of the people's welfare and national development, the UUPA is a legal document that regulates the civil rights of communities regarding land use. The UUPA regulates the civil rights of communities in the context of land use as part of national development and the people's welfare.

The overlapping of land rights held by communities, as stipulated in the UUPA, is a recurring problem and a challenge for the government to resolve. Numerous cases have seen land rights holders confronted with forest area designations by the Ministry of Forestry without proper coordination involving the rights holders (Hidayanti et al., 2021). This has resulted in agrarian conflicts, where community land rights are threatened or even deemed illegal because their land falls within newly designated forest areas. The conflict between these two regimes reflects the duality of Indonesia's agrarian legal system, which embraces two distinct principles: area-based regulation for environmental conservation and the protection of individual rights in land management and utilization. The inconsistency between the Forestry Law and the Basic Agrarian Law often creates legal uncertainty for communities and rights holders and has the potential to hinder land-based development. Both regulations share a similar hierarchy, potentially leading to conflict when their implementation overlaps.

The designation of forest areas often lacks coordination and synchronization with land maps (Hunt & Leonard, 2023). This results in certified areas being included within forest areas. This problem arises from a lack of coordination between the relevant agencies, namely the National Land Office and the Ministry of Forestry. The issuance of Ministerial Regulation No. 7 of 2021 provides a solution to various issues between the rights regime and the area regime in forestry. Article 136 states:

"Settlement of plots of land that have been controlled and utilized and/or have been given rights over them before the plot of land is designated as a Forest Area is carried out by removing the plot of land from within the State Forest Area through Changes in Forest Area Boundaries"

Then continued in Article 137, stating that:

- 1) Settlement of control over land areas that are controlled and utilized after the land area is designated as a State Forest Area is carried out through inventory and verification.

- 2) The settlement pattern for land areas controlled and utilized after the land area is designated as a Forest Area as referred to in paragraph (1) consists of:
 - a. Exclusion of Land Plots in Forest Areas through changes to Forest Area Boundaries;
 - b. Release through changes in the designation of forest areas and changes in forest functions; release of forest areas;
 - c. Providing access to forest management through social forestry programs; or
 - d. Use of forest areas.

Tanea Village is one of the villages in Konda District, South Konawe Regency, Southeast Sulawesi Province which is affected by overlapping land rights with protected forest areas managed by KPH Gularaya, the protected forest is claimed by the Forest Area Stabilization Center WIL. XXII (BPKH) Kendari City based on the Forest Use Agreement (TGHK) with the Decree of the Minister of Agriculture Number: 639 / Kpts / Um / 9/1982 dated September 1, 1982 has been designated a Forest Area in the Province of Southeast Sulawesi Level I Region with an area of \pm 2,909,543 (Two Million Nine Hundred Nine Thousand Five Hundred Forty Three) Hectares as a Forest Area,¹⁹ Meanwhile, the land rights owned by the Tanea Village community are based on certificates legally issued by the National Land Agency of South Konawe Regency through Land Certificates (SKT) owned by the community, from areas claimed by the Forest Area Stabilization Center WIL. XXII (BPKH) of Kendari City as protected forest areas, resulting in overlapping.

The land rights held by some residents of Tanea Village span hectares. The community has owned the land for generations, passing it down through land certificates, which were later converted into ownership certificates. The community faces legal uncertainty, as they are unable to cultivate the land themselves, which could lead to future conflict.

During the initial research conducted by the author in Tanea Village, it was found that of the many lands that experienced overlapping land ownership rights and protected forest areas, the author could only access two land ownership certificates that were legally obtained in accordance with applicable regulations, namely land ownership certificate number 01597 covering an area of 1,972 M2 (one thousand nine hundred and seventy-two square meters) which was officially issued in 2013 by the South Konawe Regency Land Office and number 1179 covering an area of 13,910 M2 (thirteen thousand nine hundred and ten square meters) which was officially issued in 2000 by the Kendari Regency Land Office. Until now, the issue of overlapping land ownership rights and protected forest areas in Tanea Village has not received a firm and complete resolution from the relevant authorities. Although the community already has a legally valid land ownership certificate obtained through land administration procedures regulated by law, the existence of forest area claims unilaterally determined by the state through the 1982 TGHK Decree still serves as a basis



for forestry institutions to limit the community's freedom of movement over their own land. The absence of an effective resolution mechanism, either through an agrarian reform approach such as TORA or inter-ministerial spatial reconciliation, reflects stagnation in inter-agency coordination and weak substantive legal protection for residents. This situation not only creates prolonged legal uncertainty, but also opens up space for horizontal conflicts and broader social conflicts, including the criminalization of farmers, evictions, and the loss of community livelihoods.

Considering the ruling of the Constitutional Court Decision Number 34/PUU-IX/2011 concerning forest control by the state, Article 4 paragraph (3) of Law No. 41 of 1999 concerning Forestry is in conflict with the 1945 Constitution of the Republic of Indonesia insofar as it is not interpreted as "Forest control by the State must still protect, respect and fulfill the rights of the community granted based on the provisions of statutory regulations, and does not conflict with national interests."²⁰ Firmly states that "the control of forests by the state must take into account the existence of customary law community rights and community land rights. Those who are granted land rights in the form of ownership rights cannot be designated as forest areas.

2. RESEARCH METHODS

The research method used is Socio-Legal Research. The approach used in this study is carried out using the juridical-sociological method, an approach that examines and analyzes legal aspects not only based on norms written in laws and regulations, but also by considering social realities that occur in the field. The research location in this case focuses on Tanea Village based on the strong relevance between legal issues in that location and the research theme. Data collection techniques are carried out through interviews, documentation, library studies through library studies including internet materials, articles and scientific journals related to this research. After all legal materials are collected, they are then analyzed using qualitative descriptive. Because the researcher investigates issues, facts, or events that arise in society and provide an overview of the current situation, the researcher is interested in the use and choice of this approach. A general and comprehensive picture of the real situation can be obtained by describing and interpreting the data collected using a process known as qualitative data analysis.

3. RESULTS AND DISCUSSION

Factors Causing Overlapping Land Ownership Rights and Protected Forest Areas in Tanea Village, South Konawe Regency

A forest area is a specific area designated by the government to be maintained as a permanent forest. This definition refers to Article 1 number 1 of the Ministerial Regulation on



Forest Area Designation and Changes in Forest Area Function, which is the *lex specialis* in forestry law. Forest areas differ from ordinary forested areas because they have legal status as part of state control. The state, based on the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, controls forest areas for the prosperity of the people, which means the state not only has administrative power, but also the responsibility to guarantee the sustainability, justice, and benefits of these areas (Tokede, 2005).

The UUPA is an authentic interpretation of the ideology of Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which states that "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." However, its implementation has given rise to several problems. One concrete form of the problem arising from the implementation of the UUPA is overlapping land rights, one of which is overlapping land rights with forest areas.

The overlapping of land rights and forest areas is inseparable from the initial implementation of the UUPA, although it uses the term "agrarian", in reality most of its substance only regulates land, around 90% of its content discusses land, while other agrarian aspects are only discussed to a limited extent. At that time, Indonesia faced urgent economic needs, so that the issuance of Law of the Republic of Indonesia Number 1 of 1967 concerning Foreign Investment. This was then followed by the emergence of various sectoral laws such as Law of the Republic of Indonesia Number 5 of 1967 concerning Basic Provisions on Forestry and Law of the Republic of Indonesia Number 11 of 1967 concerning Mining.

One of the conflicts resulting from a lack of coordination between the ATR/BPN and the Ministry of Forestry occurred in Tanea Village. Tanea Village, a village in Konda District, South Konawe Regency, Southeast Sulawesi Province, is affected by overlapping land rights with a protected forest area managed by the Gularaya Forest Management Unit (KPH Gularaya), which is claimed by the WIL Forest Area Stabilization Center. XXII (BPKH) Kendari City based on Forest Use Agreement (TGHK) with Decree of the Minister of Agriculture Number: 639/Kpts/Um/9/1982 dated September 1, 1982 has designated Forest Area in the Province of Southeast Sulawesi Province with an area of $\pm 2,909,543$ (Two Million Nine Hundred Nine Thousand Five Hundred Forty Three) Hectares as Forest Area, while the land rights owned by the Tanea Village community based on certificates legally issued by the National Land Agency of South Konawe Regency through Land Certificates (SKT) owned by the community, from the area claimed by the Forest Area Stabilization Center WIL. XXII (BPKH) Kendari City as a protected forest area resulting in overlapping.



The land rights held by some residents of Tanea Village span hectares. The community has owned the land for generations, passing it down through land certificates, which were later converted into ownership certificates. The community faces legal uncertainty, as they are unable to cultivate the land themselves, which could lead to future conflict.

The rights to land owned by the community itself have been officially regulated in the UUPA, specifically in Article 4 paragraph (1) of the UUPA which states that: "On the basis of the State's right to control as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities."

Land is granted to and owned by people with rights provided by the UUPA, for use or exploitation. The granting and ownership of land with these rights will be meaningless if its use is limited to the land as the surface of the earth only. For any purpose, it is inevitable that part of the earth's body beneath it and the water and space above it will also be required. Therefore, paragraph (2) states that land rights not only provide the authority to use a certain part of the earth's surface in question, called "land", but also the earth's body beneath it and the water and space above it.

Although it has been regulated in the UUPA, the fact was found during the research conducted by the author in Tanea Village, it was found that from the many lands that experienced overlapping between land ownership rights and protected forest areas. In this case the author took two samples of certificates that were burdened with land ownership rights that were legally obtained according to the applicable regulations, namely land ownership certificate number 01597 covering an area of 1,972 M2 (one thousand nine hundred and seventy-two square meters) which was officially issued in 2013 by the South Konawe Regency Land Office and number 1179 covering an area of 13,910 M2 (thirteen thousand nine hundred and ten square meters) which was officially issued in 2000 by the Kendari Regency Land Office in the name of the owner of the rights Helda Novrianty, SE

Based on the results of an interview with the land owner, Helda Novrianty, SE, it was obtained information "I obtained this land through credit guarantee because the debtor could not fulfill his obligations so that this land became mine in 2020, then to cultivate the land I collaborated with the developer of the land plot company PT. Granada Syariah Property to be reused, however after the project was almost finished it was at the stage of splitting the certificate from the local PPAT saying that the land had overlapped with the forestry area so that until now only about 30% of the land area that we can manage, until now there has been no further resolution even from the developer's legal team we have also communicated with the South Konawe Land Office with the result that it is difficult to resolve due to overlapping with protected forest areas.



In the context of land, conflict is a problem with broad social and political dimensions, involving the interests of many parties, while disputes are generally limited to issues between individuals without significant socio-political overtones. A case is a conflict or dispute that has been brought to the courts, whether the District Court, the High Court, or the State Administrative Court. Land disputes and conflicts usually arise from differences in perception, opinion, interests, or values between two or more parties regarding land status, control, ownership, or the validity of a decree concerning a particular land. These differences can persist for a long time, causing harm to one of the parties, and ultimately becoming a public issue.

Based on several recent land conflicts, it appears that the common causes of land conflicts can be grouped into legal factors, including: overlapping regulations, inadequate regulations, overlapping judicial processes, and convoluted resolution and bureaucracy. Meanwhile, non-legal factors include: overlapping land uses, high land economic value, increased public awareness, fixed land, and increasing population, and poverty. Therefore, the emergence of land conflicts can be grouped into two factors: legal and non-legal factors.

The case of overlapping land ownership rights within the protected forest area in Tanea Village falls under the typology of overlapping land control and ownership, specifically within the forestry conflict category. Based on the National Land Agency (BPN/ATR) classification, this typology represents a form of land dispute arising from differing interests and perceptions regarding the legal status and control of land. This conflict is complex because it involves aspects of forestry, agrarian, and spatial planning law, and has broad social and political impacts.

To date, the overlapping issue of land ownership rights and protected forest areas in Tanea Village has not received a firm and comprehensive resolution from the relevant authorities. Although the community already possesses legally valid land ownership certificates obtained through land administration procedures regulated by law, the existence of forest area claims unilaterally determined by the state through the 1982 TGHK Decree continues to serve as a basis for forestry institutions to restrict the community's freedom of movement over their own land. The absence of an effective resolution mechanism, whether through agrarian reform approaches such as TORA or inter-ministerial spatial planning reconciliation, reflects stagnation in inter-agency coordination and weak substantive legal protection for residents. This situation not only creates prolonged legal uncertainty but also opens the door to horizontal conflict and broader social conflict, including the criminalization of farmers, evictions, and the loss of community livelihoods.

1. Analysis of the Structure of Agrarian Conflict in Tanea Village from the Perspective of Karl Marx's Conflict Theory



Marx divided society into two main classes: the bourgeoisie, which owns the means of production, and the proletariat, which owns only labor. In this context, the conflict between these classes is a fundamental and unavoidable conflict of interests. The bourgeoisie seeks to maintain its power and economic advantage, while the proletariat fights for recognition of its rights and well-being. This conflict arises not only within the context of industrial relations but also extends to various aspects of social life, including control over land and natural resources. Land, as one of the most vital natural resources, often becomes an arena for struggles for power and control, reflecting broader social injustice. Conflicts over land demonstrate how unequal socioeconomic structures reinforce the dominance of certain groups while oppressing others.

In the context of agrarian conflicts occurring in Indonesia, particularly in cases of overlapping community land rights and protected forest areas, as occurred in Tanea Village, South Konawe Regency, Marx's conflict theory provides a highly relevant and applicable analytical framework. Local communities, who have owned, utilized, and managed the land for generations, are suddenly confronted with the state's claim to designate the land as part of a protected forest area. This designation is made through administrative legal instruments, such as decrees designating forest areas or designations based on agreed-upon Forest Use Plans (TGHK), without participatory community involvement and without a process of verifying pre-existing land ownership.

Analysis of the Role of the State and Law as Tools of Domination Marx views the state and law not as neutral entities, but rather as instruments for the ruling class to maintain its dominance. In the context of overlapping rights, the establishment of protected forest areas by the state is often carried out through regulations that can de facto legitimize the expropriation of the rights of ordinary people. The workings of this theory help analyze the causes of overlapping rights by highlighting how legal instruments are used to claim land and marginalize community rights (Joireman, 2011). This is very much in line with Marx's view that law can be a tool of oppression. This theory is used to explore why two interests collide (the state vs. society), and why positive legal solutions alone may not be enough without changing the power structure. Other approaches may not critically highlight how the legal structure itself can reinforce existing inequalities.

Conflicts between land rights holders and forestry authorities, who designate protected forest areas, are not a new phenomenon in the context of natural resource management in Indonesia. One such conflict is evident in Tanea Village, South Konawe Regency, where several plots of land with community land titles are instead claimed by the forestry agency as



part of a protected forest area. This overlap not only impacts legal certainty for rights holders but also creates tension between communities and the government and complicates spatial governance processes at the regional level.

2. Analysis of the Causing Factors of Overlapping Land Ownership Rights and Protected Forest Areas in Tanea Village, South Konawe Regency

The One Map Policy (OMP) is a government policy aimed at realizing good forest and land governance as a means to prevent land tenure conflicts in Indonesia. OMP was necessary when the administration of President Susilo Bambang Yudhoyono requested land area data regarding the Vegetation Map, which was then sought by the Presidential Working Unit for Development Supervision and Control (UKP-PPP or UKP4) through the Ministry of Forestry and Environment. However, after combining the data from UKP4 with data from the Ministry of Forestry and the Ministry of Environment, it turned out that they were not the same (Tomboelu, 2020). The President at that time (in 2010) mandated the Geospatial Information Agency (BIG) to create an OMP to integrate all map information produced from various sectors into one map in an integrative manner, so that there would be no differences or overlapping formations in the maps determined by BIG. In this case, the BIG Map is used as a standard reference.

Another benefit of the OMP is that every level of government, with the one-map policy, will use the same base map. Because the same map is used, land that has already been issued a management permit cannot be issued for the same plot of land. This means that overlapping permit issuances for land management can be avoided. For example, a mining permit may have been issued but a plantation permit was also issued (overlapping permits). It is hoped that the OMP will prevent this from happening again.

In the case of Tanea Village, land certificates, particularly those issued in the year before the OMP was implemented, were also a contributing factor to the conflict. OMP must be the primary tool in ending the dualism of spatial information between the Ministry of Environment and Forestry (KLHK) and the National Land Agency (BPN). Therefore, policy prescriptions include: Establishing an integrated, cross-agency spatial data center managed by BIG and required to serve as the sole reference in the land permit and certificate issuance process. Obligation for spatial data updates by the BPKH and ATR/BPN to be synchronous and periodic, with supervision from independent institutions if necessary, to ensure data transparency and accuracy.

3. Technological Developments in the Land and Forestry Sector

The land conflict in Tanea Village is not solely caused by an imbalance of power or unilateral regulations, but is also influenced by past technological limitations, both in the land and forestry sectors. Before digitalization, land administration processes were still conventional.

Past technological limitations were one of the causes of overlapping land ownership conflicts in Tanea Village. The lack of accuracy and transparency in the land and forestry systems, both from the Land Office, which relied solely on announcements for publication, and from the BPKH, which still used manual methods to determine forest area coordinates, led to weak data validation and increased potential disputes between community land rights and state-designated forest areas.

Past technological limitations have contributed to inaccurate boundary data. Therefore, modernization of land and forestry work systems based on digital geospatial data is needed, integrating geographic information systems (GIS) and land information systems (LIS). This requires increasing the capacity of technical human resources through integrated inter-agency training. This will ensure uniform and reliable data measurement, registration, and validation across Indonesia, including remote villages like Tanea.

4. There is no strong evidence of Community Ownership

Based on information from sources at the land office, South Konawe Regency, land title certificates cannot be issued if there is an overlap with forest areas, unless the applicant can show proof of legal ownership such as a deed of sale, gift, inheritance, auction results, or court decision as the legal basis for control of the land.

The absence of valid proof of ownership, such as a land title certificate recognized by the relevant authorities, results in community claims to land being legally ineligible. This poses a serious problem in resolving overlapping forest areas, particularly if the land rights were not recorded or issued prior to the designation of the forest area as stipulated in Government Regulation Number 43 of 2021 concerning the Settlement of Discordances in Spatial Planning, Forest Areas, Permits, and/or Land Rights (PP 43/2021), specifically as stipulated in Chapter IV concerning the Settlement of Discordances in the RTRWP, RTRWK, Forest Areas, Permits, Concessions, Land Rights, and/or Management Rights.

Although legally, community claims of land ownership that are not supported by certificates or other formal evidence cannot be recognized, the reality on the ground shows that land ownership by the Tanea Village community has been passed down through generations and is proven by the payment of Land and Building Tax (PBB). Proof of PBB payment has been considered sufficient by the community as a basis for submitting a



certificate application to the National Land Agency (BPN), even though it does not meet the formal legal requirements for ownership. This reflects a gap between national legal regulations and customary or traditional land ownership practices at the local level.

Considering this factor, it is necessary to recognize and validate long-standing ownership by the community through a land ownership legalization scheme based on real ownership (field facts), such as recognition of proof of PBB payment as supporting administrative evidence and a field verification mechanism by an integrated team (KLHK, ATR/BPN, Pemda, community representatives) before determining claims as forest areas or state land.

Another factor exacerbating the situation is technological limitations and weaknesses in the past land administration system, which resulted in inaccurate and difficult-to-verify ownership data. Communities who have paid Land and Building Tax (PBB) and have held land for generations remain legally unrecognized due to the lack of formal documentation. In this case, the law acts as a tool of social exclusion, ignoring sociological realities in favor of legalistic interests.

Thus, the overlapping land disputes in Tanea Village reflect a disconnect between the national legal system and the social realities of local communities. This requires a resolution approach that is not solely based on positive law but also considers historical, social, and agrarian justice aspects. Resolving the overlapping land disputes in Tanea Village cannot be achieved solely through a legal-formal approach. A resolution mechanism based on agrarian justice, community participation, and recognition of real and historical land ownership is required. The state must redefine agrarian law, not only based on legal certainty but also prioritizing the principles of social justice, sustainability, and recognition of local community rights.

Legal Protection Efforts Against Overlapping Land Ownership Rights and Protected Forest Areas in Tanea Village, South Konawe Regency

Legal protection provides protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law. Legal protection is an effort to protect a person's interests and aims to provide protection to the community, so that the community can enjoy the rights granted by law. Legal protection in this case can be divided into two forms of legal protection, namely, preventive and repressive. Preventive legal protection prevents overlapping land between protected forest areas and land title certificates (Ukkas et al., 2025).

This aligns with Philipus M. Hadjon's view, explaining that legal protection for citizens in the Indonesian legal system can be classified into two forms: preventive legal protection and repressive legal protection. Preventive legal protection provides the public with the opportunity to

voice objections, input, or opinions (inspraak) before a government action or decision is finalized. The primary objective of this type of protection is to prevent conflict or legal disputes through active citizen participation in the decision-making process. This makes government actions more transparent, accountable, and democratic. Meanwhile, repressive legal protection is provided once a dispute has already occurred, with the aim of resolving the conflict through available legal mechanisms, such as filing a lawsuit in court or filing an objection through administrative channels. This protection serves as a form of control over government actions to ensure they do not deviate from legal provisions, while simultaneously providing justice to citizens whose rights have been violated. Both forms of protection are essential pillars of a state based on the rule of law, ensuring that power is exercised responsibly and respecting the human rights of every citizen.

Preventive efforts to protect forest areas legally demonstrate the government's commitment to systematically and legally managing and protecting forests. These measures include the creation of regulations governing forest protection and community rights, and the establishment of technical institutions such as the Forest Area Stabilization Center (BPKH), which has the crucial task of mapping, confirming, and managing forestry data. In areas such as Tanea Village, this task is carried out by the BPKH Region XXII Kendari, as mandated by the Minister of Environment and Forestry Decree. Furthermore, efforts are being made to strengthen inter-agency coordination, particularly with the National Land Agency (BPN), to support the OMP policy and ensure there is no overlapping land ownership. Public awareness campaigns are also being conducted to raise legal awareness and the importance of protecting forest areas, while clarifying legal sanctions for violations. Overall, this strategy aims to create legal certainty, prevent land conflicts, and maintain the sustainability of forest ecological functions.

According to Herman Soesangobeng, land ownership can be understood in two dimensions: *de jure* and *de facto*. *De jure* land ownership is ownership officially recognized by state law and evidenced by legal documents such as ownership certificates or decrees from authorized officials. This form of ownership is formal, administrative, and relies on the land registration system stipulated in the 1960 UUPA and its implementing regulations. Conversely, *de facto* land ownership refers to actual control over a plot of land acquired through physical, social, and historical processes, even though it has not or is not recognized by positive law. Examples can be found in indigenous communities who have controlled customary land for generations or farmers who cultivate land based on oral agreements. Soesangobeng criticized the *de jure* system for tending to ignore the social legitimacy of *de facto* ownership, often leading to overlapping ownership claims (Marx & Engels, 2023). In his view, the resolution of agrarian disputes should



ideally consider the validity of both forms of ownership equally, as ignoring one or the other has the potential to create injustice and trigger prolonged conflict.

Non-litigation dispute resolution involves resolving disputes through negotiation (deliberation), mediation, arbitration, and conciliation. Through litigation or state judicial institutions, disputes are heard by a court judge in a series of trials. The administration of justice is carried out by a Supreme Court and its subordinate judicial bodies, including the General Courts, Religious Courts, Military Courts, State Administrative Courts, and the Constitutional Court.

Article 11 of Government Regulation No. 43 of 2021 regulates the resolution mechanism for discrepancies in permits, concessions, and land ownership within forest areas that occurred before the area was officially designated as a forest area. This can be done through changes to the designation, function, or use of the forest area, while still respecting the valid permit or concession until its expiration in accordance with the regulations. Furthermore, for land ownership by the community (such as settlements, social facilities, community gardens, or customary forests) that has been physically and continuously for at least 20 years in good faith and without dispute, the resolution is carried out by the Minister of Forestry in accordance with legal provisions. If after the change in forest status, the land is not utilized for at least 2 years, it can be designated as abandoned land by the Minister of Agrarian Affairs. Resolution of all forms of discrepancies must be completed no later than 3 years from the date this government regulation comes into effect (Anugrah et al., n.d.).

Furthermore, BPKH Region XXII Kendari City through Zainul Ashar, SP., MPWK Member of the Land Control Settlement Section in Forest Areas (PPTKH) explained that land that already has a certificate of rights on it can be complained to by the Community to BPKH Region XXII Kendari City where changes to the Forest Area can be made provided that the certificate already exists before the area is designated as a Forest Area. The complaint will be followed up in accordance with Permen LHK 7/2021 Where changes to the designation of forest areas and changes to the function of forest areas for provincial areas are carried out based on proposals from the Governor to the Minister.

Article 139 of Ministerial Regulation 7/2021 provides a prescriptive framework for resolving land ownership within forest areas by individuals and social/religious organizations. This provision reinforces the state's commitment to restructuring the status of long-standing land ownership in forest areas, without neglecting conservation and ecological sustainability. The article classifies settlement patterns based on the type of forest area: conservation, protected, or production, and considers the length of tenure and land use, such as settlements, public facilities, or cultivated land. For example, for land ownership located in production forest areas that has been



occupied for more than 20 (twenty) years, the solution offered is through a mechanism to change forest area boundaries. Meanwhile, if land ownership has been held for less than twenty years, the approach is through a social forestry scheme. This approach is a compromise because it allows for the legalization of community land ownership while maintaining the function of the forest area (Akman, 2021).

In the context of agrarian conflicts such as those in Tanea Village, this article serves as a normative basis that allows communities to obtain legal certainty, as long as land ownership can be verified and meets administrative and technical criteria. Therefore, the implementation of this provision must be supported by synergy between institutions such as the Ministry of Environment and Forestry, the ATR/BPN, and local governments, as well as through accelerated land ownership verification and updating of indicative maps for land ownership settlement within forest areas (PPTKH). With consistent application of Article 139, agrarian conflicts resulting from overlapping community rights and state claims to forest areas can be resolved legally, fairly, and oriented towards socio-environmental sustainability.

Land dispute resolution through litigation in Indonesia essentially provides stronger legal certainty because the decision is final and binding (*inkracht van gewijsde*). However, the litigation procedures regulated in the HIR, RBg, and sectoral provisions such as Law Number 48 of 2009 concerning Judicial Power for resolving land issues through general court institutions are also not directly proportional to the hopes and inspiration of the community, especially the less fortunate, because of the length of the judicial process, the need for large costs for litigation, the assumption that court decisions are considered to favor the economically strong party, especially the community's difficulty in finding supporting data in formal evidence and the inability or ignorance of procedural law in court, this has not fulfilled the community's sense of justice in obtaining land rights. The above is complicated by the overlapping regulations regarding land that are sectoral in nature, for example regulations regarding land are faced with regulations regarding mining, plantations, the environment and local government, the court in this case has difficulty handling problems where regulations between agencies conflict. Besides that, the judge's knowledge of land issues is also a problem in itself.

Legal protection efforts for the community, particularly the Tanea Village community, in dealing with overlapping land ownership issues with forest areas, are reflected through preventive and repressive approaches as previously explained. These efforts include formal legal confirmation of forest area boundaries, legal counseling to the community regarding the status and function of forest areas, strengthening inter-agency coordination such as between the BPKH and the BPN in order to synchronize data, and resolving disputes through non-litigation mechanisms, such as



mediation facilitated by the Ministry of ATR/BPN. All of these steps aim to achieve legal certainty, avoid social conflict, and guarantee the proportional protection of community rights.

4. CONCLUSION

The agrarian conflict in Tanea Village arose from overlapping claims between community-owned land and protected forest areas, rooted in historical, legal, institutional, and technological factors. Since the forest area was designated through the 1982 TGHK Decree, without clear administrative boundaries and community participation, data asymmetry and weak formal ownership evidence have emerged. From the perspective of Karl Marx's conflict theory, this case reflects the structural inequality between the community, as those dependent on the land, and the state, as the holder of authority. The state's unilateral policies have created legal uncertainty, the threat of criminalization, and the risk of loss of livelihoods, which contradict the principles of the constitution and the Basic Agrarian Law, which guarantee land rights for the people's welfare.

The government has attempted to resolve overlapping land disputes in Tanea Village through preventive and repressive legal protection measures, including regulations, forest area designation, agency coordination, and land redistribution through TORA and social forestry. However, their effectiveness remains limited due to weak coordination, lack of community participation, and slow verification of land ownership. This situation highlights the challenges in realizing agrarian justice as mandated by the UUPA and Article 33 of the 1945 Constitution. Therefore, a social justice-based approach and recognition of indigenous/hereditary rights are needed to prevent the conflict from escalating.

REFERENCES

- Akman, P. (2021). *Regulating competition in digital platform markets: a critical assessment of the framework and approach of the EU Digital Markets Act*.
- Anugrah, M. B., Pattitingi, F., & Nur, S. S. (n.d.). Implications of the Establishment of the Laposo Niniconang Watangsoppeng Forest for the Protection of People's Rights to Land. *Pleno Jure*, 10(2), 98–114.
- Hidayanti, S., Koswara, I., & Gunawan, Y. (2021). The land legal system in Indonesia and land rights according to the basic agrarian law (UUPA). *Legal Brief*, 11(1), 366–378.
- Hunt, G., & Leonard, S. N. (2023). The struggle for forest tenure in Myanmar: voices from the 2019 forest rules consultation. *Journal of Land Use Science*, 18(1), 296–314.
- Joireman, S. F. (2011). *Where there is no government: Enforcing property rights in common law Africa*. Oxford University Press.



- Marx, K., & Engels, F. (2023). Manifesto of the communist party. In *Social Theory Re-Wired* (pp. 128–135). Routledge.
- Miptahuddin, C. (2024). The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations. *Advances In Social Humanities Research*, 2(5), 784–803.
- Putra, A. P., & Saleh, M. (2021). Due To The Law On The Purchase of Land Rights That Have Not Been Certified If Bound By The Government Ah City of Surabaya (Case Study Number: 678 K/PID. SUS/2019 Jo 87/Pid. Sus/TPK/2018/PN. Sby. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 17(2), 149–162.
- Swara, N., & Kawiana, I. G. P. (2021). Harmonization Of Sustainable Development With Marine Conservation Rituals: The Development of Nyepi Segara As A Community Capital Ni Nyoman Adityarini Abiyoga Vena Swara¹, I Gede Putu Kawiana², Ni Luh Adisti Abiyoga Wulandari³. *PROCEEDING BOOK OF 7th ICIIS Virtual International Conference of Interreligious and Intercultural Studies Living the New Normal: Achieving Resilience & Ensuring Sustainable Future*, 619.
- Tokede, M. J. (2005). *The Impact of Special Autonomy on Papua's Forestry Sector: Empowering Customary Communities (Masyarakat Adat) in Decentralized Forestry Development in Manokwari District* (Vol. 13). CIFOR.
- Tomboelu, V. E. (2020). Regional Government Supervision of Mineral and Coal Mining Businesses Based on Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Atma Jaya University Yogyakarta.
- Ukkas, J., Fatimah, A. A. N., Anshary, M. R., & Kaimuddin, M. S. P. (2025). Analysis of Dispute Resolution towards Overlapping Ownership of Land Rights in South Konawe District. *Journal of Law, Social Science and Management*, 2(1), 130–136.
- Yuliana, E., Yusuf, M., Nirmalasary, T. N., Amri, N. H., Erlyn, P., Hariani, P. L., & Hidayat, B. A. (2021). Natural resources and environment Management for the development of local wisdom. *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 4(4), 8248–8254.

