



## Legal Protection for the Customary Community of Kampung Tua Pulau Rempang Against the Impact of the Rempang Eco-City Project in Batam City

Madaniyah Anugrah Murti<sup>1\*</sup>, Indri Fogar Susilowati<sup>2</sup>

<sup>1</sup> Faculty of Law, State University of Surabaya, Indonesia

<sup>2</sup> Faculty of Law, State University of Surabaya, Indonesia

\* [madaniyahanugrah.20045@mhs.unesa.ac.id](mailto:madaniyahanugrah.20045@mhs.unesa.ac.id)

Article	Abstract
<b>Keywords:</b> Legal Protection, Indigenous Legal Communities, Rempang	<i>The development of Rempang Eco-City in Rempang Island, Batam City is relocating the Kampung Tua indigenous community from their territory. The Kampung Tua indigenous community that occupies Rempang Island has rejected the relocation plan by the government because it has the potential to eliminate the identity of the indigenous community in its territory. The purpose of this research is to analyze legal recognition and protection with the suitability of laws and regulations on the utilization of the area given to the Kampung Tua indigenous community. This research is a normative legal research with statutory approach and concept approach. Batam Mayor Decree No.105/HK/III/2004 recognizes the area and does not recommend the designated area to be given Management Rights. Therefore, development in the area of indigenous peoples must guarantee the participation and protection of the Kampung Tua indigenous peoples. As the owner of the Management Rights, BP Batam, can utilize the land by cooperating with other parties, the Rempang Eco-City project is a development plan between BP Batam and PT MEG. Development must provide protection for customary law communities. The lack of guarantee for the participation of Kampung Tua indigenous people in the development of Rempang Eco-City and respect for the recognition of Kampung Tua's territory, has neglected the protection of indigenous people.</i>

### INTRODUCTION

The existence of customary law communities has been constitutionally recognized in Indonesia, as stated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). Article 18B paragraph (2) of the 1945 Constitution states,

"The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

Article 28I paragraph (3) states, "The cultural identity and rights of traditional communities are respected in line with developments in the times and civilization."

Indonesia has not yet passed a special law regulating customary law communities as mandated in Article 18B paragraph (2) of the 1945 Constitution. However, the DPR has formulated a Draft Law on Customary Law Communities, and in 2023 it was included in the National Legislation Program (Prolegnas) under registration number 22. (Netsa Makuba 2023) However, until now, discussions regarding the Draft Law on Customary Law Communities have not progressed, with discussions stopping at the harmonization stage in the DPR in 2020 (DPR Republik Indonesia 2019).

The current procedure for recognizing indigenous legal communities can be stipulated in regional regulations based on Article 67 paragraph 2 of the Forestry Law and can also be stipulated in a regent/mayor decree regarding the recognition of local indigenous legal communities which is more sectoral in nature based on Article 6 of the Regulation of the Minister of Home Affairs (Permendagri) No. 52 of 2014. (Dewan Perwakilan Rakyat Republik Indonesia 2020) Recognition of indigenous legal communities is spread across legislation which is still sectoral in nature making the ratification of the Indigenous Legal Communities Bill important to accommodate the legal needs of indigenous legal communities (Dewan Perwakilan Rakyat Republik Indonesia 2020). Recognition of the existence of indigenous legal communities indicates that the state respects indigenous legal communities as communal legal subjects who have the authority to determine their lives (Husen Alting 2010). Recognition also means affirming the position of indigenous legal communities along with their territories and the right to utilize those territories (Simamarta 2017).

Legislation that contains the legal recognition of indigenous legal communities has given the authority for indigenous legal communities to utilize the land, waters, plants, and animals in their territory and grants the right to manage and maintain their land so that it can be used by their descendants. Basically, the position of land is very crucial for the state because land is an asset that has a value that is closely related to political, social, and economic aspects (Husen Alting 2010). From an economic perspective, land is the most important agrarian resource to support the utilization of capital and carry out development (Yando Zakaria 2018).

Land availability or land acquisition is a fundamental factor in carrying out development, so that it is not uncommon for people who have rights to a plot of land to have to give up their land for public use, with compensation being given. (Maslon Hutabalian 2022). Based on Article 33 of the 1945 Constitution, the state has the right

to control existing natural resources for the prosperity of the people, Article 3 of the UUPA regulates the implementation of customary rights of customary law communities as long as they actually still exist, must be in accordance with national interests, and Article 6 of the UUPA regulates that land has a social function. A land acquisition policy that ignores the 'social function of land,' will give rise to agrarian conflicts, up to a crisis of justice for the affected people (King Faisal Sulaiman 2021). In 2023, the planned development of the Rempang Island industrial area in Batam City, Riau Islands Province, sparked a land dispute between the community, the government, and private companies. The conflict stemmed from a mega-investment plan called Rempang Eco-City, which would be built on 7,572 hectares of land, approximately 45.89 percent of Rempang Island's total area (Yayasan Lembaga Bantuan Hukum Indonesia; dkk 2023). The Rempang Eco-City project has been designated as a National Strategic Project in Regulation of the Coordinating Minister for Economic Affairs No. 7 of 2023.

Legally, special regulations regarding the recognition of the customary law community living on Rempang Island are regulated in the Decree of the Mayor of Batam No. 105/HK/III/2004 concerning the Determination of Old Villages in Batam City which determines 33 points of the Old Village area in Batam City and regulates that the designated area is not recommended to be given Management Rights (HPL). The Batam City government's recognition of the existence of this Old Village area is also stated in Batam City Regional Regulation No. 2 of 2004 concerning the Batam City Spatial Planning Plan for 2004-2014 (Hereinafter referred to as Batam Regional Regulation No. 2 of 2004), in Article 1 letter at, that the Old Village is a group of houses that functioned as a residence for the original residents of Batam City before 1970 which contains historical, cultural and religious values that need to be preserved and maintained. Then, Article 21 paragraph (4) of Batam Regional Regulation No. 2 of 2004, regulates that the Old Village area must be protected for its existence, customs, culture, building architecture, cemeteries, and the residential environment of the original residents of Batam City before the Batam Police Force was established.

Before the Old Village was established in the Decree of the Mayor of Batam No. 105/HK/III/2004, all land areas in Batam City based on Article 6 paragraph (2) letter a of the Decree of the President of the Republic of Indonesia No. 41 of 1973 (hereinafter referred to as Presidential Decree No. 41 of 1973) were granted Management Rights (HPL) owned by the Batam Authority. Then, with the Decree of the President of the Republic of Indonesia No. 28 of 1992 concerning the Addition of the Working Area of the Batam Island Industrial Area and its Determination as a Bonded Zone Business Area (hereinafter referred to as Presidential Decree No. 28 of 1992) it was regulated that land ownership of the Batam Island industrial area was added to Rempang Island and Galang Island. In 2007, Article 3 of Government Regulation No. 46 of 2007 concerning the Batam Free Trade Zone and Free Port

(hereinafter referred to as PP No. 46 of 2007), changed the name of the Batam Authority to the Batam Free Trade Zone and Free Port Authority (BP Batam).

The Batam Authority Agency is a single government, with the issuance of Government Regulation No. 34 of 1983 concerning the Establishment of Batam Municipality in the Riau Province, the management of Batam involves two institutions, the Batam Authority Agency and the Administrative City Government (Arianto, Nugroho, dan Wahyono 2015). Based on Law No. 53 of 1999, the Batam Administrative City was transformed into an autonomous region, becoming the Batam City Government. The Batam City Government in carrying out government functions, as well as development in the Batam region, must involve BP Batam.

In the Rempang Eco-City project, PT Makmur Elok Graha (PT MEG) in 2004 invested in Rempang Island in the Rempang Island development plan and entered into an agreement with BP Batam with a memorandum of understanding (MoU) and was granted a Business Use Right (Fuzain 2023). In July 2023, Xinyi Group, made an investment under PT MEG to build an industrial, service, and tourism area as regulated in the Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia Number 7 of 2023, with the name of the Rempang Eco-City project which will relocate the Kampung Tua customary law community.

Relocation or relocation of communities must not be carried out haphazardly; it must be carried out through a mechanism that involves the participation of all affected communities, including indigenous communities. Indigenous communities can provide approval or disapproval for projects that have the potential to impact their lives and change their indigenous territories.

Based on the background of the problem that has been described, the following problem formulation was obtained:

1. Does the recognition in the Decree of the Mayor of Batam No. 105/HK/III/2004 concerning the Determination of Old Villages in Batam City cause losses to the Traditional Law Community of Kampung Tua, Batam City, Riau Islands Province regarding their customary territory?
2. Does the granting of the Right to Cultivate on the Management Rights land by BP Batam ignore the protection for the Kampung Tua Customary Community, Rempang Island regarding control of its territory, regarding the implementation of the Rempang-Eco City National Strategic Project (PSN)?

The purpose of this study is to analyze legal recognition, legal protection, and the suitability of laws and regulations regarding the use of areas granted to the customary law community of Kampung Tua, Rempang Island, Batam City, Riau Islands Province in relation to the development process of the Rempang-Eco City National Strategic Project (PSN).

## METHOD

The type of research relevant to the research theme is normative legal research. Normative legal research is a type of research that attempts to conceptualize written laws or legal rules that serve as guidelines for community behavior that is considered appropriate (Jonaedi Efendi; Johnny Ibrahim 2016). Normative legal research was chosen to understand the legal protection for the customary law community of Kampung Tua Pulau Rempang regarding the development of the Rempang Eco-City Project in Batam City based on laws and regulations in Indonesia. The relevant research approaches to be used to examine the problems in the research use a statutory approach *and* a conceptual *approach*.

The legislative approach is conducted by examining all laws and regulations related to the legal issue under study. The main material used is national legal instruments to examine legal protection for the Kampung Tua Pulau Rempang customary community regarding the development of the Rempang Eco-City Project in Batam City within the hierarchy of laws and regulations in Indonesia. The conceptual approach analyzes legal materials by studying the views and doctrines of researchers to obtain ideas, understanding, legal concepts and legal principles that are relevant to the problem being researched (Fajar, Mukti; Achmad 2022).

Legal material analysis techniques are carried out by reviewing and examining the results of data processing obtained from collected legal materials. Prescriptive analysis is also used to provide arguments in the form of assessments regarding what should happen according to the law regarding the research problem. (Fajar, Mukti; Achmad 2022).

## RESULTS AND DISCUSSION

The Rempang Eco-City project on Rempang Island, Batam City, Riau Islands Province will be built into a new economic area with the concept of Green and Sustainable City. (Andika Dwi 2023) Rempang Eco-City will be built into an integrated industrial, trade and tourism area and is expected to boost Indonesia's competitiveness (Natalia dan Putri 2024). The Rempang Eco City project is planned to be built on 7,572 hectares of land on Rempang Island which has an area of 16,500 hectares, so the project will use around 45.89 percent of the total land area of Rempang Island (Andika Dwi 2023).

The Rempang Eco-City project development plan, began in 2004 by PT Makmur Elok Graha (MEG) based on the recommendation of the Batam DPRD to carry out development in the Batam area, including Rempang Island (Adhi 2023). Then, a memorandum of understanding was made for the granting of a Business Use Rights (HGU) by the Batam Authority to PT MEG with a plan to develop an Exclusive Integrated Tourism Area (KWTE) on 17,000 hectares of land, with a concession period of 80 years (Zuhri 2023).



PP 46 of 2007, then changed the Batam Authority to the Batam Free Trade Zone and Free Port Authority (BP Batam), the change is based on Article 4 of PP 46 of 2007, stating that the management rights to land that are under the authority of the Batam Authority, are transferred to BP Batam and the rights above the land management rights will continue to apply until the validity period ends.

The Exclusive Integrated Tourism Area (KWTE) project, its development was not realized, based on the statement of PT MEG Commissioner, Fernaldi Anggadha due to land acquisition constraints and high political interests (Nurdin 2023). Then in 2023, the Rempang Eco City development project under PT MEG was planned, its construction will begin in September 2023 and has been designated as a national strategic project (hereinafter referred to as PSN) (Fuzain 2023). To ensure the acceleration of the implementation of the Rempang Eco-City Project as a PSN, its regulations are stipulated in the Regulation of the Coordinating Minister for the Economy No. 7 of 2023.

The failure to realize the KWTE project in 2004, which was then designated as a new project called Rempang Eco-City in 2023, has implications for the conditions of the community who have lived there for years. Based on Article 24 paragraph (2) of PP No. 24 of 1997 concerning Land Registration, physical control of a land plot for 20 years or more consecutively can be registered as land rights. Then, Article 27 letter a of PP 18 of 2021, regulates that holders of land use rights are obliged to carry out business as stipulated in the decision to grant their rights with a maximum implementation period of two years from the date of granting, meaning that PT MEG, which has obtained HGU, is obliged to carry out its business activities for a maximum of two years from the date of granting. However, in reality the KWTE project was not realized for 19 years, then there was a new development plan called the Rempang Eco-City project which was included in the PSN.

The Rempang Eco-City project will relocate residents living on Rempang Island, including indigenous communities living in 16 Kampung Tua villages. The indigenous communities of Kampung Tua have rejected the land relocation plan, with over 70% expressing their opposition to being relocated or moved to other villages for the Rempang Eco-City project (Wiyoga 2023).

The rejection led to clashes between residents and joint forces (TNI, Police, Satpol PP, and Ditpam Batam) when measurements were to be taken for the development of the Rempang Eco-City area (Pratama 2023). The relocation of indigenous peoples has the potential to eliminate their identity, starting from their life history, social ties, and even their traditional livelihoods, so that relocation cannot be determined unilaterally, it must involve the participation of the affected indigenous peoples (Sumardjono 2023).

The existence of the Kampung Tua customary law community area has been recognized by the Batam City Government as stated in the Decree of the Mayor of

Batam No. 105/HK/III/2004 concerning the Determination of Old Villages in Batam City by determining 33 points of the Old Village area that are not recommended to be given Management Rights (HPL). The Batam City Government also regulates Batam City Regulation No. 2 of 2004, in Article 21 paragraph (4) of Batam Regulation No. 2 of 2004, stating that the existence, customs, culture, building architecture, cemeteries, and residential environment of the indigenous people of Batam City before the Batam Authority was established must be protected. The regulations in Article 21 of Batam Regulation No. 2 of 2004 specifically regulate the protection of the Kampung Tua customary law community area as a cultural heritage.

Based on Presidential Decree No. 41 of 1973, BP Batam has HPL for all land areas located on Batam Island, then the area was expanded by adding Rempang Island based on Presidential Decree No. 28 of 1992. The use of HPL by BP Batam must have clear boundaries, considering that HPL is a state control right whose authority in its implementation is delegated to the rights holder. HPL can be granted to legal entities, local governments or third parties with the designation as a business. Land on Rempang Island still contains customary land belonging to customary law communities, regulated in Article 1 paragraph (13) of PP 18 of 2021 which states that customary land located in the area of control of customary law communities is not attached to a Land Right. However, Article 4 of PP 18 of 2021 states that management rights can come from state land and customary land, coupled with Article 21 letter b of PP 18 of 2021 stating that business use rights can be granted on land with management rights.

Considering that, the development of an infrastructure certainly requires land, land acquisition procedures play an important role in supporting the implementation of development (Tenong, Maroa, dan Setiawan 2021). The state has the right to manage areas for the public interest with the aim of providing land for the implementation of development to improve the welfare of the community, of course by providing guarantees for the legal interests of the parties involved (Supit 2021). The state is certainly also obliged to provide protection to the community regarding the ownership of land that has been controlled for generations, must not ignore basic rights that must be fulfilled (Idham 2019). Unsustainable development can threaten the identity of indigenous legal communities (Dalidjo 2021). Infrastructure development on Rempang Island must also continue to consider the recognition and protection of the indigenous legal community of Kampung Tua.

**1. Recognition of the Territory of the Kampung Tua Customary Community, Batam City, Riau Islands Province in the Decree of the Mayor of Batam No. 105/HK/III/2004 concerning the Determination of the Old Village in Batam City**

The Batam City Government has formulated Batam Mayor's Decree No. 105/HK/III/2004 concerning the Determination of Old Villages which provides

recognition to 33 points of the Old Village area. Recognition of the existence of the Kampung Tua customary law community is also stated in Batam City Regulation No. 2 of 2004 concerning the Batam City Spatial Planning Plan for 2004-2014. Article 1 letter a of Regulation No. 2 of 2004, defines the Old Village as a group of houses of the original residents of Batam City before 1970 when Batam began to be built and whose preservation needs to be maintained.

Recognition for indigenous legal communities is needed as a form of respect for their existence within the state, as well as a form of legal protection (Bayo, Wijaya, dan Hadi 2023). The existence of recognition of indigenous legal communities by the state or government means that the government must guarantee the provision of respect, opportunities, and protection for the development of indigenous legal communities and their traditional rights (Husen Alting 2010). Recognition of the existence of the indigenous legal community of Kampung Tua is formulated in the Decree of the Mayor of Batam No. 105/HK/III/2004, establishing the area of the Old Village in Batam City. The second decree of the Mayor of Batam No. 105/HK/III/2004 states that the area of the Old Village that has been determined as the first dictum, is not recommended to the Batam Authority to be granted Management Rights (HPL).

The issuance of Decree No. 105/HK/III/2004 provides recognition to the customary law community of Kampung Tua, Rempang Island, Batam City because in the early stages of industrial development in Batam City, there was no recognition, causing a gap between the area built by BP Batam and the customary law community area of Kampung Tua. The boundaries of land owned by Kampung Tua could not be recorded properly due to the development of the BP Batam area and the expansion of industrial areas in the Kampung Tua area (Nugroho, Arianto, dan Eko 2019). The presence of recognition carried out by the Batam City government aims to facilitate the interests of the customary law community in its territory, so that development carried out by BP Batam, the city government, or third parties does not harm the customary law community.

The determination regarding the customary law community of Kampung Tua, was stipulated in the mayor's decree, if referring to the year of determination, namely, in 2004, then the regulation used as the basis for the formation is Law No. 41 of 1999, which requires recognition through regional regulations. However, currently Article 6 paragraph (2) of the Regulation of the Minister of Home Affairs of 2014 has been formulated which allows customary law communities to be recognized in regional head decisions, so that the Decree of the Mayor of Batam No. 105/Hk/III/2004 can be the basis for providing recognition to and protection for the customary law community of Kampung Tua and its territory.

Recognition can be interpreted as an affirmation or confirmation of something that already exists, considering that customary law communities already existed, even



before the state was formed, recognition by the state does not create or provide new rights, but provides customary law communities with legal certainty to organize their customary government autonomously. (Simamarta 2017). It can be interpreted that the recognition given by the regional government is only a reaffirmation or a statement that customary law communities have existed before the formation of the state, so that recognition provides legal certainty for customary communities to manage their territories.

The existence of recognition shows that the state or government has stated that indigenous peoples have the right to the natural resources they own and creates an obligation for the government to protect the rights of indigenous peoples from threats from other parties (Husen Alting 2010). Recognition also means providing for the division of territorial management between the state and indigenous peoples to carry out their respective territorial management systems, but still within the Indonesian state system (Dianto dan Hamdani 2020). Recognition regarding the determination of the existence of Kampung Tua through SK No.105/HK/III/2004 means giving the rights to indigenous peoples to manage their own territory, while the government must provide protection. Regarding the division of territory with the government, SK No.105/HK/III/2004 clearly does not recommend areas that have been designated to be given HPL by BP Batam. The determination of the Kampung Tua area certainly affects the size of the HPL area owned by BP Batam, so that all development in the Kampung Tua area must involve the participation of indigenous peoples.

Recognition of the existence of customary law communities in Indonesia is mostly centered on land and natural resource rights, tending to ignore the invisible property rights of customary law communities, such as the existence of intellectual rights (Husen Alting 2010). For the customary law community of Kampung Tua, there is recognition of the existence of protected land areas, including cultural heritage areas in Regional Regulation No. 2 of 2004 Article 16 letter d states "Cultural Heritage Areas as referred to in Article 16 letter d, consist of Historical, Cultural Heritage Areas, and Old Villages." Then, Article 21 paragraph (4) of Regional Regulation No. 2 of 2004 states that the Old Village Area is protected for its existence, customs, culture, building architecture, cemeteries, and the residential environment of the indigenous people of Batam City that existed before 1970.

The regulation provides recognition and protection for the intellectual rights of indigenous legal communities, in this case cultural heritage owned by indigenous legal communities from generation to generation. Regarding the regulation of cultural heritage, based on Article 13 of Law No. 11 of 2010 concerning Cultural Heritage (hereinafter referred to as Law No. 11 of 2010), "Cultural Heritage Areas can only be owned and/or controlled by the State, except those that are hereditarily owned by indigenous legal communities." Cultural heritage stipulated in Regional Regulation No.

2 of 2004 can be categorized as belonging to the indigenous legal community of Kampung Tua because it has been owned for generations.

Protection of cultural heritage sites as stated in Regional Regulation No. 2 of 2004 must be implemented by the Batam City government. It is regulated in Article 95 paragraph (1) of Law No. 11 of 2010, "The Government and/or Regional Government have the task of protecting, developing, and utilizing cultural heritage." Therefore, the authority of the regional government to maintain the sustainability of cultural heritage sites is carried out by determining the existence of culture and implementing policies that provide protection for cultural heritage. In addition, based on Article 96 paragraph (1) letter p of Law No. 11 of 2010, all forms of development processes that cause damage, loss, or destruction of cultural heritage, either in whole or in part, must be stopped.

The recognition granted by the Batam City government to indigenous communities automatically grants them the authority to manage their territory. This authority to manage their territory embodies the customary ownership of all resources within their territory based on customary law (Larubun, Nendissa, dan Matitaputty 2023). However, the Rempang Eco-City project, which will require the relocation of indigenous communities from their territory in 2023, will undoubtedly be detrimental because it could lead to the loss of their identity and connection to life in their territory, while also impacting cultural heritage sites within their territory.

Control of the territory of the Kampung Tua customary law community, which has been recognized, must rest with the customary law community. The Batam City Government, as the state institution with authority over the Kampung Tua area, is obligated to protect the customary law community in accordance with applicable laws and regulations.

Regulated in Article 9 of Law No. 23 of 2014, government affairs are divided into three, absolute government affairs, concurrent government affairs, and general government affairs. Concurrent government affairs are affairs that are divided between the central and regional governments, concurrent affairs also become the basis for the implementation of regional autonomy. The division of concurrent government affairs is listed in the Appendix on the Division of Concurrent Government Affairs between the Central Government and the Provincial and Regency or City Regions in Law No. 23 of 2014 with the title Concurrent Matrix of Division of Government Affairs between the Central Government, Provincial Regions, and Regency/City (Barnasaputri 2021). The special authority that regulates customary law communities in the matrix attachment of Law No. 23 of 2014 is divided into two parts, namely, in the letter K section concerning the Environmental sector and letter M concerning the Community and Village Empowerment sector.

In the Letter K section on the division of environmental affairs, specifically discussing the sub-sector of recognition of the existence of customary law

communities and local wisdom related to PPLH, the focus of the authority of the district or city government is to determine the recognition of customary law communities related to traditional knowledge related to the environment and increase the capacity to utilize local wisdom related to the environment in their area. Then, the letter M section on the field of Community and Village Empowerment, the affairs of the central government, regional government, and district/city areas that specifically discuss customary law communities, the sub-sector of Community Institutions, Customary Institutions, and Customary Law Communities, the authority of the district or city government is limited to empowering customary law communities within the regional scope.

Therefore, the authority of the Batam City Government, as stipulated in Mayoral Decree No. 105/HK/III/2004, when compared to the authority of the regional government as stipulated in Law No. 23 of 2014, only grants recognition and is obligated to empower indigenous communities living within its territory. This includes protecting the rights of indigenous communities and cultural heritage that have been traditionally owned.

Therefore, the right to manage the area must be determined by the indigenous legal community itself, not by the Batam City government. In reality, the Rempang Eco City project development plan based on a memorandum of understanding (MoU) between BP Batam and PT Makmur Elok Graha (MEG) in 2004 did not accommodate the interests of the indigenous legal community of Kampung Tua. Relocation or displacement of the indigenous legal community may not be carried out because BP Batam did not receive a recommendation to have an HPL for the indigenous legal community area as stated in SK No. 105 / HK / III / 2004. The transfer or relocation must guarantee the participation of the indigenous legal community because it will affect the life of the indigenous legal community as a whole. The government must guarantee protection for the participation of indigenous legal communities and is obliged to protect cultural heritage from development that can cause damage.

**2. Protection of the Territory of the Kampung Tua Customary Community, Rempang Island, regarding the granting of Cultivation Rights over Management Rights land by BP Batam in the implementation of the Rempang Eco-City National Strategic Project (PSN).**

Batam City is part of the Riau Islands Province with a land area of 715 km<sup>2</sup> and a total area of 1,575 km<sup>2</sup> (JDIH Batam t.t.). With Article 2 of Presidential Decree No. 41 of 1973, Batam City's development is organized by the Batam Island Industrial Development Authority, also known as the Batam Authority (Nugroho dkk. 2019).

The Batam Authority has duties as stipulated in Article 4 paragraph (1) of Presidential Decree No. 41 of 1973, including developing the development of Batam Island as an industrial area, accommodating and examining business permit

applications, and ensuring that licensing procedures and service provision run smoothly. According to Article 6 paragraph (2) letter a of Presidential Decree No. 41 of 1973, "All land areas located on Batam Island are handed over, with management rights, to the Chairperson of the Batam Island Industrial Area Development Authority." The authority of the Batam Authority is stipulated in Article 4 paragraph (1) of Presidential Decree No. 25 of 2005 concerning the Fifth Amendment to Presidential Decree No. 41 of 1973 concerning the Batam Island Industrial Area, which focuses on developing, planning, accommodating business permit applications, and ensuring licensing procedures in running a business on Batam Island.

The Batam Island industrial area was then expanded by adding Galang Island and Rempang Island based on Presidential Decree No. 28 of 1992 concerning the Addition of the Batam Island Industrial Area Work Environment Area and its Determination as a Bonded Zone Business Area. The purpose of expanding the industrial area to the Batam-Rempang-Galang (BARELANG) area is to develop large investment opportunities, so that industrial development efforts can run smoothly (Arianto dkk. 2015).

The enactment of Law No. 53 of 1999 concerning the Establishment of Batam City (hereinafter referred to as Law No. 53 of 1999) which is based on Law No. 22 of 1999 concerning Regional Government so that Batam City has autonomy to regulate its region. The mandatory authority of the Batam City Government based on Article 17 paragraph (2) of Law No. 53 of 1999, consists of public works, health, education and culture, agriculture, transportation, industry and trade, investment, environment, land, cooperatives, and labor.

In organizing government, the Batam City Government based on Article 21 paragraph (1) of Law No. 53 of 1999 states, "With the formation of Batam City as an Autonomous Region, the Batam City Government in organizing government and development in its region involves the Batam Authority Agency." To ensure the implementation of an effective working relationship between the Batam Authority and the Batam City Government, based on Article 21 paragraph (3) of Law No. 53 of 1999, further regulations are regulated in Government Regulations. Until now, government regulations governing the division of working relationships between the Batam Authority and the Batam City Government have not been formed (Cahyono 2018).

In Regional Regulation No. 2 of 2004 concerning the Batam City Spatial Planning (RTRW) for 2004-2014, according to Article 38 paragraph (1) the development of industrial areas is under the guidance of the Batam City Government together with the Batam Authority. Regional Regulation No. 2 of 2004 only stipulates that the Batam Authority must cooperate with the Batam City Government in the industrial sector, but there is still no division of work areas between the two institutions. Ultimately, this causes problems because there is no clear division of power between the Batam Authority and the Batam City Government regarding

regional management (Assyifarizi dan Purwanto 2023). Thus, it causes a lack of coordination between the Batam Authority and the Batam City Government, especially regarding the granting of business permits to third parties (Arianto, Dewi, dan Wulansari 2016).

The Batam Authority then changed its name to the Batam Free Trade Zone and Free Port Authority (also known as BP Batam) in 2007, based on Government Regulation No. 46 of 2007 concerning the Batam Free Trade Zone and Free Port.

The change of name of the Batam Authority to the Batam Free Trade Zone and Free Port Authority or also known as BP Batam, of course has an impact on the authority to hold management rights over the Batam region and the surrounding islands, based on Article 4 paragraph (1) of PP No. 46 of 2007 which states,

"The management rights to land under the authority of the Batam Island Industrial Area Development Authority and the management rights to land under the authority of the Batam City Government located in the Batam Free Trade Zone and Free Port as referred to in Article 1 paragraph (2) are transferred to the Batam Free Trade Zone and Free Port Management Agency in accordance with statutory regulations."

Shows that, the management rights belonging to the Batam Authority over the area on Batam Island and the surrounding islands, the management is completely transferred to the BP Batam. Regarding the rights above the land, management rights based on Article 4 paragraph (2) No. 46 of 2007, remain valid until the validity period ends. This is related to the granting of a business permit period granted by the Batam Authority to entrepreneurs who want to build their business, a change of name will certainly change the contents of the agreement between the entrepreneur and BP Batam, so that the existence of Article 4 paragraph (2) of PP No. 46 of 2007 guarantees the validity period of land rights located above the BP Batam Management Rights.

Management Rights (HPL) are the right to control from the state, the authority and implementation of which can be partially delegated to the rights holder (Anggreny dan Ayu 2020). Based on the provisions of Article 5 of PP No. 18 of 2021, it is stated that management rights can be granted to central government agencies, regional governments, state-owned enterprises/regional-owned enterprises, state-owned legal entities/regional-owned legal entities, legal entities appointed by the central government. In principle, BP Batam can be given land with HPL, if we look at the provisions of PP No. 18 of 2021, as an agency appointed by the central government, based on the provisions of Article 6 paragraph (2) letter a of Presidential Decree No. 41 of 1973.

The party holding the management rights has the authority regulated in Article 7 paragraph (1) letter b of PP No. 18 of 2021 to use or utilize all or part of the land for their own use or in collaboration with other parties. The use or utilization of land for business on HPL land must be accompanied by an agreement between the HPL holder and the rights applicant (Milla Sharfinda, Antikowati, dan Prakoso 2023). The



transfer of the use of HPL to another party can be followed up by granting land rights as regulated in Article 8 paragraph (1) letter b of PP No. 18 of 2021, that Management Rights are the use and utilization of all or part of the land for their own use or in collaboration with other parties by granting Land Rights in the form of business use rights, building use rights and/or use rights above Management Rights in accordance with their nature and function, to other parties who cooperate by using a land use agreement.

For the use of HPL BP Batam is regulated in Article 6 paragraph (2) letter b of Presidential Decree No. 41 of 1973, BP Batam can plan the allocation of land use for the purposes of carrying out tasks, or hand over land to a third party with a Right of Use in accordance with the provisions in Article 41 to Article 43 of the UUPA, as well as receive income or compensation and annual mandatory money. In the development of the Rempang Eco-City project, BP Batam has entered into an agreement to form a memorandum of understanding (MoU) in 2004 with PT MEG by granting a Right of Use (hereinafter also referred to as HGU).

However, if the basis for the regulation regarding the transfer of land by BP Batam to a third party must refer to the provisions in Articles 41 to 43 of the UUPA, then the agreement between BP Batam and PT MEG should have used a Right of Use (Hak Pakai), not a HGU (Hak Guna Usaha). Currently, Article 21 of Government Regulation No. 18 of 2021 stipulates that HGU can be granted on state land and land with management rights.

The problem is, Article 4 of Government Regulation No. 18 of 2021 stipulates that, "Management Rights can originate from State Land and Customary Land." Meanwhile, Article 1 paragraph (13) of Government Regulation 18 of 2021 defines customary land located in the area controlled by customary law communities cannot be attached to a Land Right. Basically, the relationship between the state and natural resources gives rise to the right to control by the state, then the relationship between customary law communities and natural resources in their territory gives rise to customary rights (Safiuddin 2018). This shows that the concept of the state's right to control land controlled by customary law communities with customary rights, its power is limited (Trijono 2015).

The addition of customary land as the source of HPL land in Government Regulation No. 18 of 2021 is inappropriate because the essence of HPL stems from the state's right to control (Soerodjo 2021). This means that, as an extension of the state's right to control, HPL must originate from state land. Its control is limited because if there is community land, customary law must first be removed with adequate compensation.

Land in the customary law community area cannot be attached to a land right, but can be given a management right, the contradictory regulations in PP No. 18 of 2021 create legal ambiguity. In addition, there is a regulation in Article 21 letter b of

PP No. 18 of 2021, as one of the rights to land, HGU can be granted on land with management rights (HPL). In Article 5 paragraph (2) of PP No. 18 of 2021, it provides a limitation, namely, "Management Rights originating from Ulayat land are assigned to customary law communities." The general explanation regarding Article 5 paragraph (2) of PP No. 18 of 2021 explains, if there is customary land that has been assigned to customary law communities, then the land cannot be given HPL.

These provisions are certainly different from the implementation of the Rempang Eco-City project development, BP Batam granted HGU to PT MEG, to manage the HPL area belonging to BP Batam, but the area includes part of the Kampung Tua customary law community area that has been designated. In fact, the Decree of the Mayor of Batam No. 105 / HK / III / 2004 regulates that the designated area should not be recommended to be given HPL by BP Batam. This is in line with Article 5 paragraph (2) of PP No. 18 of 2021, meaning that the Kampung Tua customary law community area must be excluded from the Rempang Eco-City development area.

In fact, the involvement of the Kampung Tua customary law community in the socialization activities related to the relocation for the construction of Rempang Eco-City is very minimal. BP Batam only conducted socialization twice to affected residents, the socialization was also one-way and did not involve community participation because it only explained the relocation program, but did not accommodate the aspirations of the affected community, news about the relocation was also carried out informally via WhatsApp, so that the customary law community felt not involved in the socialization (Yayasan Lembaga Bantuan Hukum Indonesia; dkk 2023). Socialization should be carried out honestly, regarding the positive and negative impacts on the community, there needs to be public consultation to explain the entire project and the urgency of the relocation of the community in 16 Kampung Tua (Sumardjono 2023). Socialization that is not participatory will certainly raise concerns for the community regarding the loss of history, identity, and daily livelihoods.

Although, basically in Article 6 of the UUPA, all land rights have a social function. Then, Article 18 of the UUPA, states that for the public interest, land rights can be revoked with the provision of compensation. The general explanation of Part II number three of the UUPA, in the third paragraph explains that, actions by indigenous peoples related to customary rights to reject or build large projects for the wider interest cannot be justified. Therefore, if we look at the provisions in the UUPA, as one form of social function, the public interest can be a reason to revoke land rights, including communal land rights of indigenous peoples with the provision of appropriate compensation (Rusmini dan Yonani 2020).

Considering that, the implementation of land acquisition for public interest is an effort to implement national development (Tenong dkk. 2021). The land acquisition

plan for public interest according to Article 14 paragraph (2) of Law No. 2 of 2012 must be based on the Regional Spatial Plan (RTRW) and the Medium-Term Development Plan, as well as the Strategic Plan, the Government Work Plan of the relevant Agency. If the project being built is a National Strategic Project (PSN) and is not yet included in the regional spatial plan, then based on Article 129 paragraph (2) of PP No. 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest (hereinafter referred to as PP No. 19 of 2021), it can be recommended by the minister. The Rempang Eco-City project, is not yet included in the RTRW, but is listed in the Regulation of the Coordinating Minister for the Economy No. 7 of 2023, so that the project can still be implemented.

If development continues, there must be adequate compensation. Indigenous communities need to receive guaranteed protection regarding their territory. Article 36 letter e of Law No. 2 of 2012 states that compensation must be agreed to by both parties. Although the implementation of the National Strategic Project is prioritized, Article 23 paragraph (3) of Government Regulation No. 19 of 2021 states that customary land in the area controlled by an indigenous community cannot be attached to land rights or management rights. However, if the procurement object is in the area of an indigenous community, based on Article 41 paragraph (3) of Government Regulation No. 19 of 2021, the agency requiring the land must coordinate with the local government by involving indigenous community leaders to reach an agreement.

There are several stages in land acquisition for public purposes, as regulated in Article 3 of Government Regulation No. 19 of 2021 as an implementing regulation. Land acquisition for public purposes must go through the planning, preparation, implementation, and submission stages. Of these four stages, the preparation stage contains crucial provisions that determine the course of development. Once the planning documents are received, the governor will carry out land acquisition preparation activities.

Implementing the notification of development plans based on Article 12 paragraph (2) of PP No. 19 of 2021, notification of development plans to the community no later than three days after the team is formed. The notification contains information regulated in Article 12 paragraph (3) of PP No. 19 of 2021 regarding the purpose of the development plan, the location of the land and the area of land required, stages of the land acquisition plan, estimated implementation period, estimated development implementation period, and other information deemed necessary.

Notification can be made directly or indirectly. As regulated in Article 13 paragraph (2) of Government Regulation No. 19 of 2021, direct notification is carried out through socialization, face-to-face meetings, or using notification letters. If notification is made indirectly, based on Article 13 paragraph (3) of Government Regulation No. 19 of 2021, it can be through print or electronic media. For the

development of Rempang Eco-City, notification to the public is carried out only through electronic media.

Then, the initial data collection stage for the planned development location is carried out, carried out by collecting initial data on entitled parties and land acquisition objects, entitled parties based on Article 18 paragraph (2) letter e of PP No. 19 of 2021, including customary law communities. The results of the data collection contain a temporary list of entitled parties and land acquisition objects used to carry out public consultations.

After the initial data collection, a public consultation is held to obtain an agreement on the location of the development plan and involve the entitled parties, property managers, property users, and affected communities in accordance with Article 29 of PP No. 19 of 2021. The implementation of public consultations can be carried out in stages with a maximum period of 60 days. The preparation team invites entitled parties to attend the public consultation, based on Article 30 paragraph (2) of PP No. 19 of 2021, invitations are sent through the village/sub-district apparatus no later than three days before the public consultation event is held.

According to Article 32 paragraph (1) of PP No. 19 of 2021, in the implementation of public consultation, a dialogic process is carried out between the Preparation team and the entitled parties or communities affected by development. The dialogic process means two-way, there is a discussion between the agency and the customary law community affected by development. However, in the Rempang Eco-City Project, the involvement of the Kampung Tua customary law community in the two-way dialogue process is very minimal, the management only conducted socialization twice and the socialization was carried out in one direction.

In fact, the dialogue process at the public consultation stage should involve the participation of the affected community. In fact, as regulated in Article 33 paragraph (1) of PP No. 19 of 2021, if there is no agreement in the public consultation on the location of the planned development, then a repeat public consultation will be held, within a maximum period of 30 days. This means that if the results of the first public consultation do not reach an agreement, a repeat public consultation can be held while still involving the participation of the indigenous legal community affected by the development. After there is an agreement between the manager and the community regarding the location of the development, the process can proceed to the next stage. In addition, the agency that will carry out the development must involve indigenous legal community leaders to reach an agreement, based on Article 41 paragraph (3) of PP No. 19 of 2021.

Customary law communities certainly have a strong bond between customary law communities and their territory, causing them to refuse to release their land for development, in addition to the discrepancy regarding the provision of compensation which is considered not to guarantee a better life, which is also a determining factor.

(Liani dan Winanti 2021). According to Maria Sumardjono, the public interest, apart from having to fulfill its intended purpose, must also be able to feel its benefits as a whole (Supit 2021).

Relocation must guarantee that the indigenous people will receive compensation. In addition, the development of Rempang Eco-City must also consider all regulations established by the Batam City Government because the development of industrial areas must be jointly developed with BP Batam. The granting of HGU on BP Batam's HPL land to third parties must be coordinated with the Batam City Government, especially regarding the areas of indigenous people. The existence of Batam Mayor's Decree No. 105 / HK / III / 2004 and Regional Regulation No. 2 of 2004 which regulates the determination of areas and protection of the cultural heritage of the Rempang Island indigenous people issued by the Batam City Government.

## CONCLUSION

Based on the results of the research that the author has conducted, two conclusions were obtained, namely:

1. Recognition of the Kampung Tua customary law community is regulated in the Decree of the Mayor of Batam No. 105/HK/III/2004 concerning the Determination of the Old Village which can be categorized as a form of recognition based on Article 6 paragraph (2) of the Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. Recognition of the Kampung Tua customary law community provides legal certainty for the customary law community to manage and determine the fate of its own territory and the government is obliged to protect the rights of the customary law community. In addition to providing recognition, the Decree of the Mayor of Batam No. 105/HK/III/2004 also does not recommend 33 Kampung Tua areas that have been designated to be given HPL owned by BP Batam. There is also Batam City Regional Regulation No. 2 of 2004 concerning the Spatial Planning Plan for Batam City 2004-2014, which contains protection of the cultural heritage of the Kampung Tua customary law community which has been owned for generations from all forms of development that can damage the cultural heritage. The development of the Rempang Eco-City Project, which will relocate the Kampung Tua customary law community, must involve the participation of the customary law community and provide protection for its cultural heritage and territory. Therefore, Batam Mayor's Decree No. 105/HK/III/2004 can serve as a basis for providing protection for the customary law community's territory and cultural heritage from development that could cause damage. Therefore, the Determination of Kampung Tua in Batam Mayor's Decree No. 105/HK/III/2004 does not result in losses for the customary law community regarding its customary territory.



2. The Batam Authority has the Management Rights (HPL) for the entire land area on Batam Island based on Article 6 paragraph (2) letter a of Presidential Decree No. 41 of 1973, expanded to include Galang Island and Rempang Island based on Presidential Decree No. 28 of 1992. In 2004 PT Makmur Elok Graha (MEG) made a memorandum of understanding with the Batam Authority by being granted the Right to Cultivate (HGU) to manage the industrial area on Batam Island, in the same year the Batam City Government also issued the Decree of the Mayor of Batam No. 105/HK/III/2004 which determined the area of the Kampung Tua customary law community. Then, in 2007 the Batam Authority changed its name to BP Batam, all forms and rights that are on the land with management rights, remain valid until the validity period ends. As the owner of HPL, BP Batam can use or utilize the land for its own use or in collaboration with other parties based on Article 7 paragraph (1) letter b of PP No. 18 of 2021. Article 4 of PP No. 18 of 2021 regulates that HPL land can come from state land and customary land. However, the general explanation in Article 5 paragraph (2) of PP No. 18 of 2021 states that if there is customary land that has been assigned to the customary law community, the land cannot be given HPL. The Rempang Eco-City development project plan is designated as a National Strategic Project based on Regulation of the Coordinating Minister for the Economy No. 7 of 2023 which must relocate the customary law community of Kampung Tua from its customary territory. Even though the area has been recognized in the Decree of the Mayor of Batam No. 105 / HK / III / 2004 and does not recommend that BP Batam grant HPL. The Kampung Tua customary law community area should have been excluded from the Rempang Eco-City development area because it had been given recognition, but in reality it had to be relocated. The minimal involvement of the Kampung Tua customary law community in the socialization activities which were only carried out one way regarding the relocation. Even though the public consultation stage based on Article 32 paragraph (1) of PP No. 19 of 2021, must be carried out through a dialogical process. If the relocation of the customary law community is necessary, it is important to respect the recognition of the Kampung Tua area. Therefore, the granting of HGU on BP Batam's HPL land for the construction of the Rempang Eco-City Project has ignored the protection of the Kampung Tua customary law community over control of its territory.

## SUGGESTION

Based on the results of the research that the author has conducted, the following suggestions are obtained:

1. The Batam Free Trade Zone Authority (BP Batam) and the Batam City Government in relocating and providing compensation to the Kampung Tua

customary law community must make an agreement that is in accordance with the area of origin of the Kampung Tua customary law community;

2. The Kampung Tua customary law community who must be relocated from their customary territory in the development of the Rempang Eco-City project, if they do not receive an agreement on compensation that is in accordance with the original area of their customary territory, can file an objection with the local District Court.

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