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Identification and Inventory of Customary (Ulayat) Land among the Pakpak Indigenous Community in Dairi and Pakpak Bharat Regencies

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ABSTRACT

This study examines the role and function of customary legal structures within the Pakpak Indigenous Community, with particular attention to the preservation of customary norms related to communal land rights, inheritance, marriage, and kinship systems. The research focuses on *Sulang Silima*, the highest customary legal authority among the Pakpak people, which holds jurisdiction in establishing, interpreting, and enforcing customary norms governing social and legal relations within the community. This study employs a qualitative ethnographic approach to obtain an in-depth understanding of how customary law operates as a living legal system within the Pakpak Indigenous Community. Through field observation and qualitative analysis, the research explores how the institutional structure of *Sulang Silima* regulates internal governance and decision-making processes, particularly in matters concerning customary land transactions, inheritance arrangements, and kinship obligations. The findings reveal that *Sulang Silima* functions as a central normative institution that maintains social order and safeguards the collective rights of the Pakpak Indigenous Community. In practice, a customary leader (*kepala adat*) may be appointed from the same clan to serve as an intermediary between the community and the five elements of *Sulang Silima*; however, the *kepala adat* does not possess decision-making authority within the customary legal framework and performs primarily ceremonial functions. Furthermore, customary mechanisms such as *pago-pago* and *ajeg-ajeg* play a significant role in legitimizing customary land transactions through communal deliberation and ritual validation. The study concludes that the continued existence of *Sulang Silima* demonstrates the enduring relevance of indigenous legal systems within Indonesia's pluralistic legal order. Recognition and protection of customary institutions and communal land rights are therefore essential for ensuring legal certainty, safeguarding indigenous identity, and promoting equitable and sustainable development within the national legal framework.

Keywords: Customary Law, Pakpak Indigenous Community, Sulang Silima, Communal Land, Collective Rights Protection

ABSTRAK

Penelitian ini bertujuan untuk mengkaji peran dan fungsi struktur hukum adat dalam masyarakat adat Pakpak, dengan perhatian khusus pada pelestarian norma-norma adat yang berkaitan dengan tanah ulayat, pewarisan, perkawinan, dan sistem kekerabatan. Penelitian ini berfokus pada *Sulang Silima* sebagai lembaga hukum adat tertinggi dalam masyarakat Pakpak yang memiliki kewenangan dalam menetapkan, menafsirkan, dan menegakkan norma-norma adat yang mengatur hubungan sosial dan hukum dalam komunitas. Penelitian ini menggunakan pendekatan kualitatif dengan metode etnografi untuk memperoleh



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pemahaman yang mendalam mengenai bagaimana hukum adat berfungsi sebagai *living law* dalam kehidupan masyarakat adat Pakpak. Melalui observasi lapangan dan analisis kualitatif, penelitian ini menelaah bagaimana struktur kelembagaan *Sulang Silima* mengatur tata kelola internal serta proses pengambilan keputusan, khususnya dalam hal transaksi tanah adat, pengaturan pewarisan, dan kewajiban kekerabatan. Hasil penelitian menunjukkan bahwa *Sulang Silima* berfungsi sebagai institusi normatif utama yang menjaga keteraturan sosial sekaligus melindungi hak-hak kolektif masyarakat adat Pakpak. Dalam praktiknya, seorang kepala adat dapat diangkat dari marga yang sama untuk berperan sebagai perantara antara masyarakat dengan unsur-unsur *Sulang Silima*. Namun demikian, kepala adat tidak memiliki kewenangan dalam pengambilan keputusan hukum adat dan lebih berfungsi secara seremonial. Selain itu, mekanisme adat seperti *pago-pago* dan *ajeg-ajeg* memiliki peran penting dalam memberikan legitimasi terhadap transaksi tanah adat melalui proses musyawarah dan pengesahan secara adat. Penelitian ini menyimpulkan bahwa keberadaan *Sulang Silima* menunjukkan masih kuatnya eksistensi sistem hukum adat dalam tatanan hukum pluralistik di Indonesia. Oleh karena itu, pengakuan dan perlindungan terhadap lembaga adat serta hak-hak atas tanah ulayat menjadi penting untuk menjamin kepastian hukum, menjaga identitas masyarakat adat, serta mendukung pembangunan yang berkeadilan dan berkelanjutan.

Kata kunci: Hukum Adat, Masyarakat Adat Pakpak, Sulang Silima, Tanah Ulayat, Perlindungan Hak Kolektif

I. Introduction

Indonesia is constitutionally and socially characterized by legal pluralism, wherein multiple normative systems coexist within the national legal order. The Indonesian legal system formally recognizes customary law (*hukum adat*) as a living and operative source of law alongside statutory national legislation. This recognition is grounded in Article 18B(2) of the *Undang-Undang Dasar 1945* (1945 Constitution), which stipulates that “the State recognizes and respects Indigenous Peoples and their traditional rights” so long as those rights remain in existence and consistent with societal development and national principles. Such recognition underscores that customary law is more than an object of cultural heritage; it is a functional legal system actively governing social relations at the community level.

Indonesia is a nation characterized by its cultural diversity and the coexistence of customary legal systems alongside the national legal framework. Among the indigenous communities that continue to preserve their cultural and legal values is the Pakpak ethnic group, residing in the Dairi and Pakpak Bharat regencies of North Sumatra. The Pakpak indigenous community maintains a well-structured social and legal system, which plays a crucial role in preserving social order and ensuring the continuity of traditional values.

The preservation and protection of clan customs and cultural heritage within the Pakpak indigenous community extend beyond moral aspects, such as cultural norms and values, to encompass material aspects, including ancestral rights, traditional inheritance, and cultural objects owned by the clan. These elements are an integral part of the community's cultural identity and require legal protection within the framework of national law.

Within the customary legal system of the Pakpak people, *Sulang Silima* holds the highest legal authority and is responsible for making critical decisions regarding land rights, inheritance, marriage, and kinship relations. *Sulang Silima* consists of five fundamental elements of customary law that collectively possess the authority to define and shape the direction of customary legal norms. In practical application, outside of these five elements, a customary leader (*kepala adat*) is appointed from the same clan to act as an intermediary between the community and the elements of *Sulang Silima*. However, the *kepala adat* does not have the authority to make legal decisions within the customary framework and serves only in a ceremonial capacity during customary events.

The role of *Sulang Silima* in the Pakpak community underscores the continued relevance and respect for customary law as a living and vital legal system. It serves as an important safeguard for the collective rights

of indigenous communities, especially in the context of legal pluralism. Therefore, it is essential to further examine the function and legal position of customary law in the broader framework of national legal development, one that respects the autonomy of indigenous peoples and acknowledges their status as legal subjects within the constitutional and legal landscape of Indonesia.

II. Method

This study employs a qualitative ethnographic approach to examine the cultural and legal practices of the Pakpak Indigenous Community, particularly the role of *Sulang Silima* as the highest customary legal authority. Ethnography is appropriate because it seeks to understand social life within its natural setting through direct engagement and observation. Given that Pakpak customary law operates through oral tradition, kinship structures, and communal deliberation rather than codified statutes, an ethnographic method enables a contextual and culturally grounded understanding of how customary norms regulate land, inheritance, marriage, and kinship relations in practice.

As a qualitative research strategy, ethnography focuses on describing and interpreting cultural patterns, belief systems, and institutional structures from the perspective of community members themselves. This approach is particularly relevant in analyzing *Sulang Silima*, whose authority derives not from formal state recognition alone but from collective legitimacy and shared customary values. Through participant observation and in-depth interviews, the research captures the internal normative logic that sustains the customary legal order.

Furthermore, ethnographic inquiry allows for systematic analysis through stages such as field immersion, selection of key informants, domain analysis, and thematic interpretation. These procedures ensure that the study does not merely describe ceremonial practices, including the intermediary role of the *kepala adat*, but critically examines how authority, decision-making, and communal legitimacy are structured within the Pakpak customary legal system.

III. Result & Discussion

Sulang Silima constitutes the highest authority in customary law within the Pakpak Indigenous Community, serving as the determinant and decision-maker in matters related to land tenure, inheritance law, marriage law, and kinship regulations. In practice, outside of the five core elements that define *Sulang Silima*, a representative from the same clan is appointed as the customary head (*kepala adat*). The role of the customary head is strictly that of an intermediary between the community and the five elements of *Sulang Silima*. The customary head does not hold the authority to make binding decisions on matters of customary law, and his functions are primarily ceremonial, limited to traditional events. Thus, the role of *Sulang Silima* can be compared to that of *Pertaki* or *Kapping* (village head) in earlier customary governance structures.

A. The elements of Sulung Silima:

Sulang Silima constitutes a foundational normative structure within the Pakpak customary legal system. Rather than functioning merely as a cultural classification of family members, it represents an indigenous socio-legal framework that regulates authority, responsibility, kinship obligations, and internal governance within the familial unit. In this regard, *Sulang Silima* reflects what legal pluralism scholars would describe as a “living law”, a normative order that operates organically within the community and possesses binding force independent of formal state codification.

The fivefold structure of *Sulang Silima* establishes a hierarchical yet complementary arrangement of roles within the family. Each classification carries distinct normative implications that affect decision-making authority, succession, social responsibility, and relational ethics. This structure ensures that customary governance is not concentrated in a single individual but distributed across a system of relational roles grounded in genealogy and birth order.

1. Perisang-isang (Elders)

Perisang-isang refers to the eldest child or the senior-most position within the sibling hierarchy. In the customary legal context, this position embodies normative authority and symbolic guardianship

over familial continuity. The elder is entrusted with preserving adat values, maintaining internal order, and representing the family in deliberative processes.

From a legal anthropological perspective, the authority of *Perisang-isang* may be conceptualized as a form of customary trusteeship. Although not codified in statutory law, this authority carries social legitimacy and binding force within the community. The elder's role often extends to dispute mediation, inheritance deliberation, and ritual coordination, thereby positioning the elder as a stabilizing force in the internal governance structure.

2. Pertelung Tengah (Middle Child)

The *Pertelung Tengah* occupies a structurally mediating position within the familial hierarchy. Unlike the eldest, whose authority is normative and representative, the middle child functions as an intermediary balancing competing interests within the family structure.

In socio-legal terms, this role reflects the principle of equilibrium embedded in customary governance. The presence of *Pertelung Tengah* prevents concentration of authority and fosters internal consultation. This mediating function is particularly relevant in contexts of inheritance distribution, familial disputes, and collective decision-making. The existence of such a role illustrates that *Sulang Silima* is not a rigid hierarchy but a dynamic relational system grounded in consensus-building.

3. Perekur-ekur (Youngest Child)

The *Perekur-ekur*, or youngest child, holds a distinctive normative position that is often associated with residual obligations toward parents and the ancestral household. In many customary practices, the youngest child assumes responsibility for caring for aging parents and maintaining the continuity of the original family dwelling.

This role may be interpreted as a customary mechanism of social security embedded within kinship law. Rather than delegating elder care to external institutions, the customary structure integrates filial responsibility into its normative framework. Consequently, rights within the family structure are balanced by corresponding obligations, reinforcing the communitarian character of Pakpak indigenous law.

4. Perpunya Ndiadep (Daughters)

Perpunya Ndiadep refers to daughters within the familial structure. Although patrilineal principles often shape clan identity, daughters occupy a strategically significant socio-legal position, particularly in the context of marital alliances and inter-clan relations.

Their role extends beyond domestic identity; daughters function as relational bridges between kinship groups. In customary marriage arrangements, they embody both continuity and expansion of social networks. The normative recognition of *Perpunya Ndiadep* demonstrates that women's roles within the system, while structured by adat, remain integral to the maintenance of social cohesion and reciprocal obligations between clans.

From a contemporary human rights perspective, scholarly examination of this classification requires careful analysis to ensure compatibility with principles of equality and non-discrimination, particularly within the broader framework of Indonesia's constitutional order.

5. Perbetekken (Members of the Same Clan)

Perbetekken represents individuals belonging to the same clan lineage. This classification reinforces genealogical solidarity and regulates prohibitions, particularly in relation to marriage. The recognition of shared clan identity functions as a normative boundary that prevents endogamous unions and preserves lineage integrity.

Legally speaking, this demonstrates how *Sulang Silima* operates not merely as a domestic ordering principle but also as a regulatory mechanism governing social reproduction and alliance formation. Clan identity under *Perbetekken* reflects collective rights and collective responsibilities, reinforcing the communitarian ethos of customary law.

B. Customary Property in the Land Transaction Process of the Clan

a. Pago-Pago

Pago-Pago constitutes a customary offering or compensatory payment made to the traditional authorities within the *Sulang Silima* structure during significant customary ceremonies and, more particularly, in the context of intra-clan land transfers. Within the Pakpak indigenous normative framework, *Pago-Pago* is not merely symbolic; it operates as a juridical instrument of validation in customary transactions.

In the transfer of clan land, *Pago-Pago* functions as a material manifestation of consent and acknowledgment by customary authorities and community witnesses. The offering may take various forms, including livestock (such as cattle or buffalo), cash, traditional cloth (*ulos*), food items, or other valuables deemed culturally appropriate. The diversity of objects reflects the socio-economic context of the parties involved and the value attributed to the land in question.

From a legal anthropological standpoint, *Pago-Pago* embodies what may be characterized as customary evidentiary proof. The act of delivering the offering in the presence of recognized elders and witnesses establishes communal recognition of the transaction. In customary land law scholarship, similar practices are often described as mechanisms for restoring social equilibrium and legitimizing property transfers within indigenous communities. Customary payments serve not only as economic compensation but as instruments of social integration and collective ratification.

In practical terms, *Pago-Pago* also operates as a safeguard against future disputes. Because the offering is publicly acknowledged and witnessed, it becomes part of the community's collective memory and oral record. In societies where written documentation may be secondary to oral validation, such practices function as customary authentication mechanisms, reinforcing transactional certainty through communal endorsement rather than bureaucratic registration.

Normatively, the requirement of *Pago-Pago* reflects the communitarian nature of indigenous land tenure. Land is not viewed solely as an individual commodity but as a relational asset embedded within clan identity and ancestral continuity. Consequently, its transfer necessitates ritualized acknowledgment to ensure that the transaction does not disrupt social harmony or ancestral legitimacy. Thus, *Pago-Pago* must be understood as a hybrid institution: at once ritual, compensation, and customary legal validation. It bridges economic exchange and socio-legal recognition within the indigenous governance framework.

b. Ajeg-Ajeg

While *Pago-Pago* represents the tangible offering in customary transactions, *Ajeg-Ajeg* refers to the deliberative process through which the value and form of the *Pago-Pago* are determined. It is fundamentally a customary consultative mechanism grounded in collective decision-making.

The *Ajeg-Ajeg* process involves elders, clan representatives, and relevant kin who gather to discuss and determine the appropriate amount or type of offering to be provided. This deliberation is not arbitrary but guided by customary norms, proportionality, socio-economic capacity of the parties, and the nature of the land or ceremony involved. Through consensus-building, the community ensures that the determined offering reflects fairness and cultural legitimacy.

From a socio-legal perspective, *Ajeg-Ajeg* exemplifies indigenous deliberative justice. It institutionalizes dialogue and negotiation within the customary system, thereby preventing unilateral determinations. The process reinforces the legitimacy of the eventual transaction because the amount of *Pago-Pago* emerges from communal agreement rather than private bargaining alone.

In broader legal theory, such deliberative practices resonate with principles of restorative and communitarian justice. Rather than emphasizing strict contractual autonomy, *Ajeg-Ajeg* situates economic transactions within a matrix of social responsibility and relational accountability. It ensures that land transfers are not purely commodified acts but socially embedded decisions.

Moreover, *Ajeg-Ajeg* reflects an internal balancing mechanism within the *Sulang Silima* structure. By involving multiple voices in determining the offering, the process mitigates potential power imbalances and reinforces social cohesion. It thereby operates as a procedural safeguard within the customary legal order.

In essence, if *Pago-Pago* is the substantive element of customary validation, *Ajeg-Ajeg* constitutes its procedural foundation. Together, they demonstrate that indigenous land transactions are governed not merely by material exchange but by structured deliberation and communal legitimacy.

C. Protection and Recognition of the Indigenous Community and Customary Land/Ulayat of the Pakpak Tribe

Recognition of the existence of Indigenous Peoples' Communities (MHA) in Indonesia has a strong legal foundation following the amendment of Article 18B, Paragraph 2, of the 1945 Constitution, which was ratified in August 2000. The Constitution states that, "The state recognizes and respects the unity of Indigenous Peoples' Communities along with their traditional rights as long as they remain alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

1. Regional Regulation of Pakpak Bharat Regency Number 9 of 2016 concerning the Regional Spatial Plan of Pakpak Bharat Regency for the Period 2016–2036

This Regional Regulation (Peraturan Daerah) establishes the official spatial planning framework governing land use, zoning, development priorities, environmental protection, and territorial management within Pakpak Bharat Regency for a twenty-year period (2016–2036). In the context of indigenous law, this regulation is significant because spatial planning directly affects the recognition and management of customary (ulayat) land within the regency. The regulation provides the structural basis for integrating indigenous territorial claims into formal regional development planning. Consequently, it serves as a bridge between state-administered land governance and customary land tenure systems practiced by the Pakpak indigenous community.

2. Regional Regulation of Pakpak Bharat Regency Number 4 of 2017 concerning the Customary Institution of Sulang Silima of the Pakpak Suak Simsim Clans

This Regional Regulation formally recognizes and regulates the institutional structure known as the *Sulang Silima* within the Pakpak Suak Simsim community. It provides a legal framework for the existence, authority, organizational structure, and functions of the customary institution representing the Pakpak clans. Substantively, this regulation affirms *Sulang Silima* as a legitimate customary body responsible for preserving traditional values, resolving intra-community disputes, safeguarding customary land, and maintaining cultural continuity. By codifying the existence of the *Sulang Silima* institution at the regional level, the regulation strengthens the constitutional mandate under Article 18B(2) of the 1945 Constitution regarding the recognition of Indigenous Peoples and their traditional rights. Importantly, this regulation demonstrates how indigenous governance structures may be incorporated into the formal legal system without eliminating their normative autonomy.

3. Letter of the Regent of Dairi Number 590/6087 concerning the Existence of Customary (Ulayat) Land dated 31 October 2012 in conjunction with Letter of the Regent of Dairi Number 590/8859 concerning the Existence of Customary/Clan Land dated 18 October 2001

These official letters issued by the Regent of Dairi address the legal acknowledgment of the existence of *tanah ulayat* (customary communal land) and *tanah marga* (clan land) within the administrative territory of Dairi Regency. Although not legislative instruments, these administrative correspondences carry important evidentiary and policy significance. They reflect the local government's formal acknowledgment of the continued existence of customary land tenure systems within Pakpak communities. Such acknowledgment is particularly relevant in matters involving land disputes, spatial planning integration, and land registration processes. The reference to both letters (indicated by *jo.* or *juncto*) demonstrates continuity in administrative recognition of indigenous land rights over time, reinforcing the legal standing of clan-based land ownership within the broader framework of Indonesian agrarian governance.

IV. Conclusion

The Sulang Silima institution stands as the paramount authority in the Pakpak Indigenous Community, playing a critical role in regulating key aspects of customary law, including land tenure, inheritance, marriage, and kinship. Despite the pivotal role it holds, the head of the customary law system, the kepala adat, acts merely as an intermediary, facilitating the interaction between the community and the five elements that define Sulang Silima. This highlights the traditional and ceremonial nature of the kepala adat's role, underscoring the central authority of Sulang Silima in decision-making matters.

The customary processes, such as *pago-pago*—the offerings made during traditional ceremonies and land transactions serve as important tools for reinforcing the validity and authenticity of these customs. Likewise, the *ajeg-ajeg* process provides a deliberative framework for determining the appropriate value of such offerings. These practices are crucial in maintaining the integrity of customary land transactions and the broader social structure.

Furthermore, the legal recognition and protection of the Pakpak Indigenous Community, as well as their customary land rights, are firmly grounded in the 1945 Indonesian Constitution, particularly following the amendment of Article 18B, Paragraph 2, in 2000. This constitutional recognition strengthens the position of MHA (Masyarakat Hukum Adat) in the legal system, ensuring the continuity of their traditions within the framework of national development. The local regulations in Pakpak Bharat Regency further institutionalize the role of Sulang Silima, providing a legal basis for the recognition and preservation of customary laws and practices.

In sum, Sulang Silima's traditional governance system is effectively embedded within both customary and legal frameworks, ensuring the protection and continuity of the Pakpak people's cultural heritage and land rights. The intertwining of customary practices and legal recognition highlights the importance of maintaining a balance between traditional customs and modern legal principles.

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