

Transfer of Individual Rights to the Customary Rights of the Imbuti Customary Law Community in Merauke Regency

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ABSTRACT

This study aims to determine the requirements for the transfer of individual rights to customary rights of the Imbuti customary community in Merauke Regency, and to understand the process of transferring individual rights to customary rights of the Imbuti customary community in Merauke Regency.

This research was conducted in Merauke Regency, specifically in Imbuti village. Employing empirical juridical research, the data collection techniques used were field study and literature review.. The data analysis technique used was qualitative.

The results of the study indicate that the transfer of individual rights to the customary rights of the imbuti customary law community must fulfill several customary requirements, including: originating from identity/lineage in the clan, approval from the customary leader (pakas anim), implementation of customary rituals/misar, preparation of attributes in the release, symbolic speech/customary oath, calling the names of ancestors (kuunam), and animal sacrifice/pig toki, planting bamboo on land boundaries, and customary advice. The process of transferring individual rights to the customary rights of the imbuti customary law community is carried out through structured and binding stages according to custom, starting from customary deliberation by pakas anim, continued with ritual preparation by mburaro, implementation of the tiang misar ceremony, recitation of customary oath, direct designation of land boundaries by mitawal, animal sacrifice (pig toki), planting bamboo as a symbol of the transfer of rights and closing with customary advice to the recipient of the rights.

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1. INTRODUCTION

Land is a fundamental human necessity. Humans live and carry out activities on land, so they are constantly in contact with it. It can be said that almost all human activities, both directly and indirectly, require land. Land also plays a vital role in the life of the Indonesian people. This is because Indonesia is an agrarian nation, so every activity carried out by the majority of Indonesians constantly requires and involves land.

Customary land rights are the highest control rights within certain customary law communities over land that is collectively owned by its members. The concept of

customary rights is rooted in the close relationship between customary communities and the land and its surrounding environment. Land is considered an integral part of the life of indigenous communities, and its management is governed by customs that have been practiced for centuries.

G. Kertasapoetra states that customary land rights are the highest rights to land held by a legal association to ensure orderly land use/utilization. Communities have the right to control land, the implementation of which is regulated by tribal or village heads.¹ Meanwhile, Imam Sudiyat stated that customary rights are inherent rights as a unique competence within customary law communities, in the form of the authority/power to manage and regulate land and its contents, with the power to exercise power both internally and externally.²

This excludes the right to regulate and manage sources of prosperity, happiness, and well-being for the Indonesian people, as stipulated in Article 33 paragraph (3) of the 1945 Constitution, 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."³

Law Number 21 of 2001 concerning special autonomy for Papua Province, Article 43, stipulates: "which expressly recognizes the ownership rights of the community, which must be protected and respected by the region." This acknowledges and respects the collective land ownership rights of customary law communities. Customary authority or customary leaders, as customary institutions, act like small governments within their customary territories, exercising general authority. Therefore, any action on customary lands within these territories must be with the knowledge and permission of the customary leaders.⁴

Papuan customary law communities live within a territory bound by specific customs, with a strong sense of solidarity among its members. In Papuan customary law, customary rights (*hak ulayat*) are communal land ownership rights based on a clan or a combination of several clans. In communal ownership rights based on a single clan, the clan head, such as the eldest son of the clan founder, has the power to regulate land use, and this power can be passed down through generations.

In communal ownership rights based on a combination of clans, the customary leader has the power to regulate these rights, assisted by a number of people (*khoselo*). The customary territories owned by these tribal groups are vast and require several days to traverse. Often, when we traverse these areas, we encounter no settlements or even humans. However, they do recognize customary rights boundaries, such as those defined by large trees, rivers, swamps, boulders, and so on. Therefore, the notion that such areas are intended to be unclaimed is incorrect. Customary law already regulates ownership of land, forests, mountains, and everything within them throughout Papua.⁵

In general, within the Papuan customary law community, two land ownership systems are recognized: communal ownership and individual ownership. Communal ownership can be further distinguished into clan-based ownership, defined as belonging to a particular clan or clan, and clan-based ownership, defined as belonging to a village,

¹ G.Kertasapoetra, R.G.Kertasapoetra, A.Setiabudi, *Hukum Tanah, Jaminan Undang-Undang Pokok Agraria Bagi Keberhasilan Pendayagunaan Tanah*, Jakarta, PT Bina Aksara 1985, hal. 88

² Imam Sudiyat, *Hukum Adat Sketsa Azas*, Yogyakarta, Liberty, 1981, hal.1

³ Undang-Undang Dasar 1945 pasal 33 ayat 3.

⁴ Pasal 1 ayat (2) Undang-Undang Nomor 21 tahun 2001 *Tentang Otonomi Khusus bagi Profinsi Papua* (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Indonesia Nomor 5587).

⁵ <https://papua.bpk.go.id/wp-content/uploads/2014/12/Hak-Ulayat-Papua.pdf>. Diakses tanggal 26 Mei 2025 pukul 08:30

defined as belonging to a particular tribe as the original inhabitants of the village. Individual ownership, on the other hand, is not based on individuals but on heredity. Internally, there are rules governing the division of land ownership and management rights within families (margas), and each member's share is recognized according to their clan. However, socio-religious leadership over land rests with a specific individual from the oldest lineage. Therefore, in general, there are two types of land ownership rights: community rights and individual rights.⁶

Customary land belonging to indigenous communities is regulated by their respective customary laws. Land is viewed as highly valuable and must be defended by the indigenous community. Customary land is the property of the indigenous legal community. According to customary law, land ownership by indigenous people can be achieved through clearing forests, inheriting land, receiving it as a gift, exchange, or grant, or through expiration/*verjaring*.⁷

In Merauke Regency, the Malind people are divided into seven clans: the Kaize clan, the Gebze clan, the Balagaize clan, the Mahuze clan, the Ndiken clan, the Basik-Basik clan, and the Samkakai clan. These seven clans, which hold customary land, are divided based on their respective customary territories, extending from Kondo village to the Digul River. These customary rights are distributed based on the rights assigned to each clan. After the division is made among the clans, each clan then further distributes customary rights/land to each individual within the clan.

The process of transferring customary rights to individuals in customary law communities is usually regulated by a traditional ritual called the "pillar misar." During this ritual, those acquiring land must swear an oath before the misar, and the land is handed over by the birth father/customary leader, who points to the land. All customary leaders from several tribes witness the transfer of land rights, which involves a ceremony to summon ancestors to the land while holding the pole misar. Members from several clans witness the transfer of land rights.

According to customary law, individuals or groups holding land rights can transfer their rights to their children, siblings, older siblings, or cousins. However, before distributing land rights, they hold those rights collectively within the same clan.⁸ However, research conducted in Imbuti village indicates problems in implementing the transfer of individual rights to customary land. One of the cases that arose was when a father handed over land only to his eldest son without family deliberation, without the permission of the *pakas anim*, and without performing the traditional *tiang misar* ritual and calling the names of ancestors. This action triggered conflict in the family because his two sons felt their rights were being ignored, but the process was not valid according to Malind customary law.

2. METHOD

This research is a type of empirical legal research, also known as field research, which examines applicable legal provisions and the reality of what happens in society. It relates to issues of customary rights or customary land in Merauke Regency, the Malind tribe, and is linked to existing legal regulations or norms within the indigenous community. Data were obtained through field studies, interviews, and observations.

⁶ Andreas Jefri Deda dan Suriel Samuel Mofu, *Masyarakat Hukum Adat dan Hak Ulayat di Provinsi Papua Barat Sebagai Orang Asli Papua Ditinjau Dari Sisi Adat dan Budaya; Sebuah Kajian Etnografi Kekinian*, Vol 11, Nomor 2 Jurnal Administrasi Publik, Tahun 2014.

⁷ Sudiyat,I (1981) *Hak Adat Sketsa Asas*. Liberty

⁸ Ketua Adat Masyarakat Malind Imbuti, Bapak Julius Romeo Sokay Mahuze. Minggu 23/02/2025.

3. RESULTS AND DISCUSSION

In Indonesian and Dutch literature, the word "Malind" is an interpretation of the word used in psychoanalytic research (observing the movements of interviewees) for the actual name of the Malind tribe. This tribe resides on the southern coast of Papua. "Malind" is derived from the word "malind," the main group living in Merauke Regency.⁹ "Malind" is combined with "anim," meaning "Malind people" or "Malind people." After undergoing a change in intonation to "Malind anim," it is now distinguished as the Malind tribe.

Based on previous anthropological research, the Malind Imbiti community depends on the natural environment for its livelihood, obtaining food from it. The Malind Imbiti's staple foods are sago, taro, and kumbili.¹⁰ They believe in "DEMA," or a combination of thoughts. Dema is a combination of thoughts embodied in several totems within the community.¹¹ During the initiation process, the community maintains a harmonious relationship with nature, and if their beliefs are out of balance, they perform traditional ceremonies/rituals to restore the continuity of their lives by making "misar poles."¹² The Malind Imbuti community also believes that dema represents greatness passed down through their ancestors through clans. This is evident in the settlement patterns present in Merauke Regency today.

The Malind Imbiti indigenous people live in groups and have their own unique sacred symbols or totems. Within these groups, some clans have totems, such as the Gebze clan. They believe that this sacred symbolism is passed down through generations, and that humans have become their totems. Therefore, they do not easily destroy this sacred symbolism.¹³

After contact with the outside world, the Malind Imbiti indigenous people's way of life has been greatly influenced by the outside world. However, those who still inhabit the villages still adhere to their customs and are not easily influenced. The Malind initially welcomed outsiders, highly respecting and appreciating differences in perspectives on the sacredness of their ancestors within the clan. The Malind people are highly influenced by this influence, and they adapt to outsiders.

The Malind Imbiti are not easily receptive to external influences; they maintain their culture and natural heritage to this day. In general, the houses of the coastal Malind tribe are constructed in the form of long houses with only one door and no windows. The rooms are spacious on the east side, with an east-west pattern. The roof is made of woven sago leaves, resembling an inverted Y. The top is called "cikal bakal."

The pillars of the houses are made of wood called "named" (wood), such as ironwood, red bus, and so on. The reason for making houses with "named" wood is because, according to their custom, if they build a house with wood that is not named, they will fall ill and feel unsafe. Meanwhile, the walls are made of sago palm fronds of the nimbang tree and gaba-gaba (soybean).

⁹ Freerk Christiaans Kamma, *Ethnology of the Malind-Anim*, (The Hague: Martinus Nijhoff, 1972), hal.15

¹⁰ Gerrit J. Held, *The Papuas of South-East New Guinea: The Malind-Anim*, (The Hague: Martinus Nijhoff, 1957), hlm. 48–49.

¹¹ Opcit hal. 105

¹² C. van Baal, *The Malind Anim: Religion and Society in the South New Guinea*, (The Hague: Martinus Nijhoff, 1966), hal. 212

¹³ Ayub Pidy *Kumpulan Cerita Rakyat Daerah Malind*. Merauke. Dinas Kebudayaan dan Pariwisata Kabupaten Merauke.

The size of the Malind Imbiti houses within each community corresponds to the position of the house for men. The house for men is larger than that for women, and the men's dormitory is long and spacious, with no rooms (gotanq). The houses are arranged in rows from east to west. The women's house is at the back, while the men's dormitory and men's dormitory are at the front.¹⁴

After the 1920s, the Dutch government eradicated their traditional way of life through Catholic missions. At that time, the inner family emerged within the Malind Imbiti community as a key player in their livelihoods. The climate varies significantly between the dry and rainy seasons. This area has a tropical climate influenced by the Australian climate. The dry season runs from May to November and the rainy season from December to April. During these seasons, rivers, swamps, and wells dry up. Rainfall is significantly lower than in other regions of Papua Province.¹⁵

The Imbiti people live in areas such as Sengosal Beach and permanent alluvial mudflats influenced by freshwater. During the dry season, the land cracks because the sun rises first. The Malind settlement pattern is spread across three zones: the coast, the river basin, and the swamps.¹⁶

3.1. Conditions for the Transfer of Individual Rights to the Customary Rights of the Malind Imbuti Customary Law Community

The conditions for the transfer of individual rights to customary rights of the Imbuti customary law community are:¹⁷

a. Clan Identity

Land rights must be granted to members of the clan with customary rights, particularly male descendants in the direct line. In the Malind Imbuti tribe, land is not owned individually but communally by the clan. However, individuals can acquire rights to a portion of customary land if they are part of that clan.

b. Approval of Pakas Anim (Clan Leader)

The transfer of land rights must be approved in a customary meeting by the clan leaders, known as pakas anim. Pakas anim are the highest customary authorities in each clan. The decision to grant rights to individuals must be made through a deliberation forum and decided collectively by the customary leaders. Without this approval, the transfer is not legally valid and is potentially subject to future disputes.

c. Implementation of Customary Rituals

The transfer of customary rights to individual rights is carried out through a customary ceremony involving the recitation of a customary oath before the customary leader and witnesses from the clan. Sacred ceremonies such as "kondo milaf wi bioskosmis samb anim gawir anim sendani anim Sosok mayo" are recited by the recipient of the land as a form of loyalty and recognition of the ancestors, God, and the four cardinal directions. This demonstrates acceptance of customary and spiritual responsibilities for the land.

Customary rituals for the transfer of land rights are part of a cultural legitimacy mechanism that strengthens social decisions spiritually and symbolically. In Papuan indigenous communities, rituals such as misar are not only religious but also represent a form of social contract between humans, ancestors, and nature.

¹⁴ Ketua Adat Masyarakat malind Imbuti, bapak Yulius Romeo Sokay Mahuze selasa 06/05/2025 waktu 10:30 WIT.

¹⁵ Dinas Lingkungan Hidup Kabupaten Merauke, *Profil Iklim dan Lingkungan Hidup Kabupaten Merauke Tahun 2020*, (Merauke: DLH, 2020), hal. 18

¹⁶ Badan Perencanaan Pembangunan Daerah (Bappeda) Kabupaten Merauke, *Pola Permukiman dan Tata Guna Lahan Masyarakat Adat di Wilayah Selatan Papua*, (Merauke: Bappeda, 2019), hal. 27

¹⁷ Ketua Adat Masyarakat Malind Imbuti, Bapak Julius Romeo Sokay Mahuze. Minggu 23/02/2025

d. Preparation of Attributes in the Release by (Mburaro)

A woman designated by custom prepares customary symbols (bananas, coconuts, sugar cane) and calls out the names of the dema and arameb during the land handover ceremony. The mburaro plays a crucial role in bridging the spiritual elements by calling out the names of ancestral shrines and supernatural powers believed in by the community. Her role is to serve as a customary witness in the transfer of land rights.

e. Symbolic Speech and Direct Pointing

The elders (mitawal) directly bow to the boundaries of the land being transferred with customary speech. Speeches such as "mata neso" are used by elders (usually the father or traditional leader) to physically indicate the boundaries of the land. This pointing signifies the transfer of rights and forms the basis of the clan's collective knowledge of the location and size of the land being transferred.

f. Invocation of Ancestors' Names (Kuunum)

The names of ancestors who hold land rights must be mentioned in the land transfer ritual. Invoking the names of ancestors in traditional ceremonies is a form of respect and spirituality for land rights. This demonstrates that the transferred rights are legitimate and originate from a recognized lineage according to custom.

g. Animal Sacrifice (Toki Babi)

An animal (usually a pig) is sacrificed as part of the transfer of land rights. The act of toki babi is an offering to the ancestors and a symbol of customary validation. The child must slaughter a pig at the land transfer site. The pork is then distributed to the clan that transferred the land rights, as a form of respect for the ancestors and as a symbol of the recipient's legal acceptance. Killing the pig serves as a customary seal that the land has been released and cannot be contested by other descendants, as it has gone through a traditional ceremony and received a sacrifice from the ancestors.

h. Bamboo Planting at Land Boundaries

Bamboo is planted at the boundaries of the transferred land. Planting bamboo serves as a concrete symbol that the land has been demarcated and transferred to an individual. Bamboo serves as a visual marker that is easily recognized by indigenous communities and serves as physical evidence of customary ownership boundaries.

i. Customary Advice

As part of the land transfer process, the recipient is required to receive customary advice from clan leaders or traditional figures. This advice has moral and spiritual values that bind the management of the land received. One of the traditional sayings often uttered is "wi bioskosmis samb," which literally means "land is entrusted by God through the ancestors."

3.2. The Process of Transferring Individual Rights to the Customary Rights of the Malind Imbuti Customary Law Community

The process of transferring individual rights to customary rights within the Imbuti customary law community, the Malind tribe in Merauke Regency, is a customary mechanism passed down through generations. This process is carried out based on a customary leadership structure collectively recognized by the local community.

In this study, the author examines a problem in an Imbuti family. A head of the family, with three sons, unilaterally transferred a plot of land to the eldest son without the knowledge of the other two sons, and without any family deliberation, customary approval, or even a misar ceremony. As a result, the other two sons felt their rights were being violated, leading to internal conflict within the family. However, this land transfer did not comply with Malind Imbuti customary law procedures; therefore, the land transfer began at the initial stage, which involved customary deliberation.

The Malind customary deliberation was led by clan leaders known as pakas anim. This deliberation is held in the Malind traditional house and attended by Malind traditional leaders from the relevant clans. During this deliberation, the Pakas Anim (traditional leaders) discuss and decide whether the transfer of land rights can be carried out according to prevailing Malind customs. In the past, traditional leaders would send traditional ropes as representatives to the deliberation if they were unable to attend. In traditional deliberations, or meetings, the traditional leaders would sit on the ground, covered with mats, discussing the land. This would continue for days until all parties agreed. If the deliberation reaches an agreement on the transfer of land rights, the process continues with a traditional Malind ceremony called the "Pilla Misar" (Tian Misar). The "Pilla Misar" (Tian Misar) is a sacred pole for the Malind imbuti customary law community, and for several tribes in Merauke Regency. During this ceremony, the son who receives the land will stick a hardwood pole, such as buswood or ironwood, into the plot of land to be transferred. After the wood is planted, a woman prepares the traditional attributes, including a spear, bow, machete, coconut, banana, sugar cane, and bamboo. The spear, bow, or machete will be used to kill the pig, while the coconut, banana, sugar cane, and bamboo will be planted around the misar. The woman who prepares the attributes and appears at the traditional table to witness the transition is also the one who pronounces the names of the dema and aremb. "Dema" means a creature from ancient times, which, along with other creatures, formed this world.

Next, a traditional oath is recited. Then, the traditional leaders of several tribes call upon their ancestors (kuunum). The traditional leader calls upon the names of the ancestors who first cleared, controlled, or inherited the land. This summons these ancestors, in accordance with Malind customary law, so that they can participate in handing over the land rights. Because the boy is of the Kaize clan, they invoke their ancestors by dancing, imitating the cassowary's totem/dema: the dancer walks with stiff steps, head bowed, like a cassowary, accompanied by traditional cries and cries as a form of spiritual calling. Afterward, the boy recites a traditional oath before the traditional leaders and witnesses from various clans. This oath represents a commitment to safeguard the land he has received and to refrain from misusing it carelessly.

As a final customary sign of confirmation, an animal sacrifice is performed, namely a boar given by the boy. This process, called the pig-killing ritual (*toki babi*), is performed by the boy himself as a sign of gratitude for the gift of land. The pig-killing ritual uses a spear, machete, or bow to stab the boar until it dies. The boar's blood is poured onto a *misar* and onto the land to be given. The pig's meat is then distributed to the witnesses present. After the pig *toki* stage is completed, the next step is to designate the land boundaries according to the custom, the transfer of land rights is carried out by a father or traditional leader to the son, he hands over the transferred land by showing the transferred land, the transfer process is carried out from the ancestors or ancestors of the biological father to the next generation by means of the *nasiat-nasiat* carried out by the traditional leader, he said or his *nasiat* is by saying the words in the Malind language, namely "done nok en" this statement in the Malind tradition actually means a statement from a father or traditional leader of the land that is given from generation to generation.

After completing the boundary designation by the traditional leader/clan leader, the boy took the bamboo that had been planted around the crossbar and planted it on each boundary of the land handed over. The boundaries of land areas are also marked by sub-river rivers where there are several branches where land rights are regulated by the biological father or the local traditional leader, for example: a father has two sons and owns two plots of land and the plot of land is transferred to two people, the rights are given from the mouth of the river on the right to the head of the river for the first son and the second son is given the rights to the sub-district on the left from the estuary to the head of the river, the winding river is the ownership right to someone's land that is handed over by the father the territorial boundaries are also marked by the offspring.

After the entire series of traditional processions is completed, the final stage is giving traditional advice to the boy by the traditional leaders. This advice usually takes the form of a phrase like "*wi bioskosmis samb*," which means "this land is not entirely yours, but belongs to the *dema*, the spirits of our ancestors, you are only entrusted to guard it." This advice carries the meaning of a moral responsibility to protect, respect, and not sell the land. This is intended to ensure that the son maintains the land under the control of the descendant line. By completing all these stages, the son is considered legally legitimate under customary law because he has completed the stages based on the Malind Imbuti customary procedure. Therefore, the land cannot be disputed by members of the clan or other individuals.

Research conducted in the Imbuti village revealed problems with the unilateral transfer of customary land rights by a father to his eldest son. The transfer of rights was carried out without family consultation, permission from the *Pakas Anim* (leader of the tribe), and traditional rituals such as the ceremonial setting of a pillar, the invocation of ancestors, and customary advice, as is customary in the Malind Imbuti customary law community.

According to the authors, this research demonstrates that this transfer process is invalid under customary law because it ignores established customary procedures and structures. In Malind Imbuti customary law, the process of transferring land rights is not

merely a physical handover but also encompasses spiritual, cultural, and social aspects that must be respected and implemented collectively by all clan members.

Furthermore, this act reflects a disregard for the religious and philosophical values inherent in customary rights. For the Malind people, land is not merely an economic object, but also a symbol of the "wadikas makan," or mother who gives life. Therefore, the transfer must be carried out with full respect through traditional ceremonies. These ceremonies aim to invoke the blessings of the ancestors, maintain the balance between nature and society, and strengthen the social legitimacy of the recipients of the rights.

4. CONCLUSION

The process of transferring individual rights to customary rights of the Imbuti customary law community is carried out through structured and binding stages according to custom, beginning with a declaration of intent from the customary leader to hand over part of the customary land to a family member, namely a son. Next, a customary deliberation is held, led by the clan leader (pakas anim) to discuss the transfer of land rights. If approved, the Misar ceremony continues, where a sacred pole is planted on the land to be handed over. Then a woman (mburaro) prepares the attributes of release, such as coconuts, bananas, sugar cane, and bamboo or reeds, and plants them around the Misar pole. Next, customary leaders from several clans or tribes summon the ancestors who first opened and controlled the land. The party receiving the land rights will then take an oath before the customary leaders and witnesses as a form of commitment to protect the land and not misuse it. As a final validation, an animal or pig is sacrificed in front of the Misar pole as a customary seal, signifying that the land rights have been fully transferred. The handover of land was carried out verbally by the traditional leader, accompanied by advice and the words "done nok en". The boundaries of the land area are marked with bamboo or reeds, so the right to the land cannot be contested by the descendants because at the time of handover they had already sworn an oath in front of the ancestor or ancestors..

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