Legislation to Reduce Land Conflicts in Indonesian Provinces

by Mardalena Hanifah
Legislation to Reduce Land Conflicts in Indonesian Provinces

by Mardalena Hanifah, Syaifulhiah Yopphi Ardiyanto and Hilaire Tegnan

The term adat law (customary law) was coined in 1894 by the Dutch scholar, Snouck Hurgronje, who also referred to it as “adatrecht”. Cornelis van Vollenhoven also used the term. Adat law is essentially a set of long-established community standards in certain areas in Indonesia. The source of adat law is the unwritten rules and norms built and developed by its traditional community (masyarakat adat). Because its rules are unwritten, adat law has the ability to evolve and adapt to the needs of its community.

In Indonesia, Law No. 22/2014 stipulates that local governments are responsible for protecting traditional communities in the context of customary forest management using three primary mechanisms:
1. Developing an inventory of customary law communities and their lands;
2. Formally establishing "territories" of customary law communities by regulation; and
3. Urging the Minister of Forestry to label certain types of forest as customary forest.

As this clearly demonstrates, national law recognises the existence of tanah ulayat (customary lands). However, the existence of this type of land remains intangible as this designation is not included on any official land registration map delineating its boundaries, nor is it recorded in the land registry. This, among many other factors, has resulted in several land disputes in the Province of Riau.

National Land Agency Regulation No. 3/2011 on the Management, Adjustment and Handling of Land Affairs describes "land conflicts" as land disputes between individuals, groups of individuals, organisations, legal entities or institutions that are likely to have a broad socio-political impact. In the Province of Riau, there are more land dispute cases than any other category of dispute. Most of these land conflicts have ended in riots and the loss of lives and properties. For example, the case of Ampian Rotan, where the Sukai tribe land grab in the towns of Minas and Duri, was a tanah ulayat conflict case, which led to human casualties and the destruction of properties. The case and conflict arose as a result of the lack of comprehensive legislation to protect tanah ulayat. Such legislation is needed not only in the Province of Riau but in other provinces as well.

With regard to this case, Maria Soemardjono argues that the protection of tanah ulayat would be a reality only if the local government has good intentions to provide such protection to the adat community. She goes on to claim that, although the regulations of the Minister of Agrarian Affairs and the National Land Agency provide certain protection to tanah ulayat, they are not clear about which lands qualify for consideration as tanah ulayat and how its boundaries are to be determined. She observes that the conflicts in Minas and Duri could have been avoided had the adat community known the legal boundaries of their land; and calls for tanah ulayat boundary determination through a participatory process involving local communities, academics and local socio-political organisations, in misunderstanding.

Another case of such an escalation of violence occurred on 8 December 2008. It involved a clash between hundreds of Riau police officers and the local community over the concession of the Industrial Plantation Forest owned by Arara Abadi Company in the village of Suluk Bongkal, Bengkalis. The clash was triggered by a land dispute between the company and local residents. Several properties were destroyed, although no human casualties were reported. Historically, Suluk Bongkal hamlet was formally, legally mapped when the Dutch established a cooperation with the Siak kingdom in 1940. Around 1959, a cadastral map was drawn which included the Suluk Bongkal area, but did not address the community residential nature of the land. For a long time, the people of this area were able to coexist peacefully with other tribes in their hamlet. However, since the issuance of a relevant decree of the Minister of Forestry, conflicts have begun to arise which have forced some communities to move away.

Tanah ulayat and Ulayat Rights

The ulayat right is the highest right over land within adat law according to which if a land within its jurisdiction is left without clear ownership, it falls back under the authority of ulayat right until the village adat leaders decide how to allocate it. Only village adat community members have the right to use tanah ulayat. Unless they have paid some fee for specific, limited access to tanah ulayat, foreigners and non-natives are prohibited from making any claims over such land. Rights over tanah ulayat include farming/cultivation, hunting, logging, fishing and building rights. If an adat community member abandons their tanah ulayat allocation for a long period of time, the land is seized by the local adat authority, which normally places it at the disposal of the community for social and religious purposes.

In the Kampar Regency of Riau province, this customary system of social control and management has been supported by Article 2 paragraph 2 of Regulation No. 12/1999 on Ulayat Land Rights, which specifies that the purpose of these rights is to improve the social, economic and cultural welfare of adat community members. The same regulation states that the role of clan leaders, known as srikul manuk or penghulu, is to oversee, manage and preserve tanah ulayat by making provisions for its management and utilisation. While this
may reflect the situation in the past, present, the influence and the role of 

ninik manak and penghulu as 

the guardians of adat law have been significantly diminished. As a result, the authority of adat law (and 
adat leaders) dealing with tanah ulyayat rights and other 

family-related issues has been weakened.

Non-transparency of Tanah ulyayat 

Management in West Sumatra

In West Sumatra, the local government and palm oil plantation companies have acknowledged that the land 

used for palm oil plantation purposes is tanah ulyayat 

owned by communities of the nagari and certain other 

kin groups. Like Riau, West Sumatra is also faced with 

several conflicts related to land acquisition processes 

which, sadly, have resulted in deadly clashes between 

palm oil companies and the adat communities who 

wanted to take back their tanah ulyayat either because the 

land was not acquired in accordance with adat law 

principles and procedures or because the local 

government and the companies did not deliver on the 

promises they made when making land deals with adat 

communities.5

In making land acquisition deals with local 

communities in West Sumatra, the local governments and 

the companies adopt similar tactics and procedures. 

First, the company or the government invites the 

people in charge of a designated tanah ulyayat to a 

meeting to inform them of the plan to transform the land 

into a palm oil plantation under the control and 

supervision of a company. These meetings are typically 

held in the capital of the regency, district or subdistrict 

involved, with the goal of encouraging some nagari 

community members to persuade the ninik manak and 

penghulu in authority to hand over some tanah ulyayat 

to a company. An example of such a situation is the 

land deal between leaders of the Nagari Lubuk Kilangan 

community in the town of Padang and a cement plant 
called "PT Semen Padang". Adat leaders of this village 

unit agreed to hand over some of their tanah ulyayat land, 

but the community took to the streets after several years 
of unkept promises to demand the return of their land. 
The Nagari Lubuk Kilangan-PT Semen Padang land 
deal has caused many conflicts and continues to do so to 
this day.6 In this instance, it is clear that adat leaders did 
not make the decisions agreeing to the land deal during 
a public meeting involving community stakeholders and 
the kinships. The participation of the general population 
in these protests proves this.

In another community the Nagari Kampar, West 

Pasaman a group called Tumus Mehar criticised the ninik 

manak because they made the decision to hand over the 
tanah ulyayat without consulting various other parties 

within the community. In yet another (Nagari Kindai), 

there were also protests from the community members 

who were outside the ninik manak elite group, objecting 
to decisions made by them behind closed doors during 
meetings with the local government and companies. The 
protesters questioned the honesty of the ninik manak 
decision makers, demanding the nullification of their 
decision to handover nagari tanah ulyayat to companies.

These conflicts have been followed by conflicts in 

many other nagari communities, in which protesters not 

only challenged the authority of the ninik manak but 

also urged them to give back any money they may have 

received from companies and other third parties. In 

many nagari communities, conflicts over lack of 

transparency in the management of tanah ulyayat have 

been between nagari members and their ninik manak, 
rather than directly against the external users of the 
tanah ulyayat.

Although ninik manak claim to act as the guardians 
of customary law in West Sumatra, their role in the 

management of tanah ulyayat remains ambiguous. They 

claim to act on behalf of the community in negotiating 
land-use deals with investors, but they act as if they were 

the actual owners of the land granting land-use 

permissions to third parties without consulting the 

community they represent. Adat rights are recognised by 

the local government and investors on behalf of the 

community. However, the decision to hand over a tanah 

ulyayat is dominated by adat leaders with almost no 
involvement of nagari community and kinships.

In addition to the exclusion of the nagari 

community and kinships from land-use deals, there is 

also the ambiguous status of the land-transfer certificate, 
as it does not say whether the block of land being handed 

over was borrowed, rented out or purchased, and to 

whom (i.e., to the local government or the company). If 

borrowed, the transfer certificate does not specify for 

how long; if rented or purchased, it may fail to mention 

the amount of rent or purchase price. As noted, while the 
discussions over trivial matters related to tanah ulyayat 

are conducted in meetings open to the entire nagari 

community, real decisions affecting tanah ulyayat and the 

community are made behind closed doors, in private 

meetings between adat leaders and business 
corporations.

Legislatively, West Sumatra has recognised 
tanah ulyayat since 1983 with the issuance of Local Regulation 
16/2008 on the Utilization of Tanah Ulayat.

Legal Protection of Tanah ulyayat in Riau

Land-tenure policies in the province of Riau are 

very different from those in West Sumatra. Unlike West 

Sumatra, the law in Riau does not require the 

involvement of any traditional community or the 

following of any customary procedures in land 
negotiations involving tanah ulyayat. Neither the 
government nor the companies are required to go to any 

clan or traditional leaders seeking permission to use the 

land. This should not be taken to imply that anyone can 

have access to land when and how they see fit, or that 

the local communities in Riau don't care less about who 
is using their land and how they have acquired it. It 

simply means that there is no legal requirement that the 
government or company comply with customary 

formalities prior to the acquisition of land-use rights.

This is what fuels land conflicts between companies 

and local communities in the province. Not having been 

involved in the acquisition process, local communities
often find out after the fact that the government or a company has usurped its land ownership title and that it is carrying out a land grab. Meanwhile, the company considers its activities on the disputed land legitimate, because it has obtained official land-use permits and titles from the local authorities (i.e., the local land agency) as prescribed by national law. In Riau there is no evidence or tangible proof documenting any land transfer from the local population to a company, despite the fact that many companies have obtained permission to use tanah ulayat lands. This further demonstrates the frequent complete exclusion of local communities from land-transfer decision making. This entire problem can be blamed on the lack of any legal framework for properly including local communities in the land-transfer process.

**Governmental Recognition and Legal Protection of Tanah Ulayat**

In both West Sumatra and Riau provinces, there is government recognition of the local communities’ rights to land and forests. Unlike West Sumatra, the Riau provincial government has not adopted any legislation or official instrument that clearly recognises tanah ulayat, apart from a general recognition of its existence by local officials, which provides neither rights nor major roles to traditional community leaders. Dissatisfied with this condition, local communities in Riau are calling on the provincial government to enact regulations recognising and regulating tanah ulayat.

Of the regencies in the province of Riau, only the Kampar regency government recognises the existence of tanah ulayat within its administrative territory, which, as noted above, issued a district regulation on tanah ulayat rights in mid-July 1999. This law specifically declares tanah ulayat as the common property of indigenous communities, which have owned this type of land for many centuries, handing it down from generation to generation. Although this local regulation recognises tanah ulayat as the property of the local community, it also states that tanah ulayat may be used for the benefit of third parties. The regulation states that decisions should be made through deliberations not only among the adat leaders, but also the kinship members and other local community members, and that the agreement must be made before the competent authorities.

To avoid further casualties, loss of property, pollution and environmental degradation as the result of communal land grabs by government and corporations, there is a crucial need throughout Riau province and elsewhere to provide a legal protection for tanah ulayat by enacting laws and regulations that would take into consideration the following ideas:

1. Converting adat and ulayat rights into a recognised form of private rights;
2. Strengthening the role of government as supervisor, to ensure that every actor in any land transaction involving tanah ulayat abides by the rules;
3. Redefining the concept of nationalism;
4. Providing a clear and accurate mapping of tanah ulayat and its use, to better enable comprehensive and transparent management; and
5. Involving local communities in tanah ulayat transfers by making them public so that everyone can have a say in the process.

**Conclusion**

In both West Sumatra and Riau provinces, the government has failed to enact strong and effective regulations to truly protect traditional communities and their tanah ulayat land. Since mid-1998, this has resulted in many conflicts between villagers and various large-scale palm oil plantation companies in both provinces. These conflicts often appear to be virtual “land grabs”, either by the companies or by local governments. In both provinces, the dismissal of customary law and the exclusion of traditional communities from land-transfer negotiations is one of the primary reasons that these transactions have led to conflict. This is exacerbated by the failure of the local governments and companies involved to deliver on their promises. The main difference between West Sumatra and Riau is that the West Sumatran government has formally adopted legislation recognizing that each adat community is the sole guardian and proprietor of its own adat rights, including tanah ulayat; while the provincial government of Riau has adopted no such legal recognition. In West Sumatra, the tensions that have arisen are directed not only against the companies that have obtained and abused land-use rights but also against their own traditional leaders who are thought to have betrayed the communities they represent. By contrast in Riau, the local communities were angry not at their traditional leaders, who have not had any significant role in the land acquisition process, but at local government and companies exploiting tanah ulayat land. In both situations, the problems could be addressed if there was clear and fully implemented guidance on how to acquire land rights in accordance with customary law and state law. Such guidance should be coupled with adat law guidelines that could be used by both governments and companies.

**References**

1. Analyses

0378-777X/18/27.50 © 2018 IOS Press
ENVIRONMENTAL POLICY AND LAW, 48/6 (2018)


Laws and Regulations
Law of the Republic of Indonesia No. 23/2014 on Local Government
Regulation of the Minister of Agrarian Affairs No. 3/1995
Basic Agrarian Law 1960
National Land Agency Regulation No. 3/2011 on the Management, Assessment and Handling of Land Rights
Kampar Regency Regulation No. 12/1999 on Ulayat Land Rights
West Sumatra Local Regulation No13/1983
West Sumatra, Local Regulations No. 7/2007 and No. 16/2008 (repealing Local Regulation No. 9/2000) on the Utilization of Tanah ukupat

Notes
1 See Rihan Halim. The Indonesian nation consists of thousands of ethnic groups, each of which has its own customs.
2 See also the 1960 Basic Agrarian Law and Minister of Agrarian Affairs Regulation No. 3/1995
3 See Soemardjono, at 2.
4 See Soedjaryono Somin, at 51-52.
5 See Tegna.
6 Ibid.
7 See Kampar Regency Regulation No. 12/1999 on Tanah ukupat

0378-777X/18/$27.50 © 2018 IOS Press
<table>
<thead>
<tr>
<th>#</th>
<th>Source</th>
<th>Type</th>
<th>Similarity Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Submitted to Curtin International College</td>
<td>Student Paper</td>
<td>2%</td>
</tr>
<tr>
<td>2</td>
<td>Submitted to Leiden University</td>
<td>Student Paper</td>
<td>2%</td>
</tr>
<tr>
<td>3</td>
<td><a href="http://www.scribd.com">www.scribd.com</a></td>
<td>Internet Source</td>
<td>1%</td>
</tr>
<tr>
<td>4</td>
<td>e-journal.unair.ac.id</td>
<td>Internet Source</td>
<td>1%</td>
</tr>
<tr>
<td>5</td>
<td>research.unived.ac.id</td>
<td>Internet Source</td>
<td>1%</td>
</tr>
<tr>
<td>6</td>
<td>Tommy Hermawan. &quot;Legal Certainty To Double Land Statement Letter (Skl) Holders In Land Boarders (Study Case In Teteilanan Village, South Barito Regency, Center Kalimantan)&quot;; Pancasila and Law Review, 2021</td>
<td>Publication</td>
<td>1%</td>
</tr>
<tr>
<td>7</td>
<td>ejournal2.undip.ac.id</td>
<td>Internet Source</td>
<td>1%</td>
</tr>
<tr>
<td>8</td>
<td>fhuk.unand.ac.id</td>
<td>Internet Source</td>
<td>1%</td>
</tr>
</tbody>
</table>


Zefrizal Nurdin. "Legal protection of customary rights under legal pluralism and its impact on the minangkabau society: An empirical study in the district of Lima Puluh Kota, West Sumatra", Cogent Social Sciences, 2022