

LEGAL PROTECTION FOR COMMUNAL LAND TO PREVENT LAND CONFLICTS IN BOTH WEST SUMATRA AND RIAU PROVINCES

Tegnan Hilaire, Universitas Andalas
Mardalena Hanifah, Universitas Andalas
Syaifullah Yophi Ardiyanto, Universitas Andalas

ABSTRACT

Land related conflicts take place everywhere in the world and West Sumatra and Riau provinces, where villagers and large-scale palm oil plantation companies have often been going at each other since mid-1998, are not exempt from this reality. These conflicts are closely related to the process of land control or land acquisition by both local governments and companies. This paper discusses the issue of legal protection for communal land (referred to as tanah ulayat hereafter) rights in both West Sumatra and Riau provinces. This is an empirical research seeking to find out to what extent laws and regulations protect traditional communities' land rights in both West Sumatra and Riau provinces. It uses case study and root cause analysis in an attempt to dissect the root-causes of long existing customary land conflicts in both West Sumatra and Riau provinces. Data were collected through in-depth interviews, surveys, laws/regulations, news papers and magazines. This study reveals that the dismissal of customary law, the inconsistency of communal land transfer process through customary law (hukum adat), the exclusion of traditional communities from land transfer negotiations, and unkept promises are, among many others, the reasons of land conflict escalation in West Sumatra and Riau provinces.

Keywords: Legal Protection, Communal Land, Land Conflicts, Customary Law, Community.

INTRODUCTION

The term “adat” law (Customary Law) was originally pioneered by the Dutch Scholar Snouck Hurgronje in 1894 who referred to it as *adatrecht* in his work *De Atjehers* (1893-1894), which, investigating the mores of the people of Aceh in Northernmost Indonesia, argues that the uncodified law of the people of Indonesia is atjehers. The term *adat* law was also referred to by Cornelis Van Vollenhoven. Adat law is essentially a set of standards of community that have been long-established in certain areas in Indonesia, a nation which consists of thousands of ethnic groups each of which has its own customs (Halim, 2007; Soerjono, 2003). The source of adat law is the unwritten rules and norms built and developed by traditional community (*masyarakat adat*). Because its rules are unwritten, adat law has the ability to evolve and adapt to the needs of its community. Law No. 23/2014 prescribes that regional governments are responsible for protecting the existence of traditional communities in the context of customary forest management through inventorying areas where customary law communities still exist by way of assessment and research, establishing certain areas as territories of customary law communities in the form of regional regulations; and urging the Minister of

Forestry to label certain types of forest as customary forest (Hilman, 2007; Law & Regulations, 2014). From what precedes, it is clear that tanah ulayat is provided for within the national law. Such recognition has also been provided by the 1960 Basic Agrarian Law (Law & Regulations, 1960). In addition to the agrarian law, there is also the Regulation No. 3/1995 of the Minister of Agrarian Affairs (Laws & Regulations, 1995; Kurnia, 2010), which recognizes and protects communal land including tanah ulayat. However, the existence of this type of land remains intangible as it is nowhere to be found on an official land registration map delineating its boundaries and recording it on the land list. This, among many other factors, has resulted in several land disputes in both provinces. This research investigates the regulations and policies on tanah ulayat in both West Sumatra and Riau provinces. Such study is important to determine whether or not there is a legal protection for tanah ulayat in these two provinces (Kurnia, 2009).

RESEARCH METHODOLOGY

This is an empirical research drawing on qualitative data aimed at finding out whether or not laws and regulations really protect traditional communities in both West Sumatra and Riau provinces. It uses case study and root cause analysis in an attempt to dissect the root-causes of long existing customary land conflicts in both West Sumatra and Riau provinces. Primary data were collected through in-depth interviews and surveys with traditional and religious leaders, companies and government officials. Secondary data, on the other hand, consist of laws/regulations, news papers and magazines. Case study is used as a reasearch strategy to investigate the issue of legal protection for tanah ulayat within its real-life context and as such, it is the ideal approach to dealing with the research question.

RESULTS AND DISCUSSION

Understanding of Tanah Ulayat and Ulayat Rights

Ulayat right is the highest right over land within adat law according to which if a land within its jurisdiction is left without a clear ownership, it falls back under the authority of ulayat right until the village adat leaders decide who it must be given to. Even as such, only village adat community members have the right to tanah ulayat. Unless they paid some fee, which grants them some limited access to tanah ulayat, foreigners and non-natives are prohibited from making any claims over such land (Soedharyono, 1994). Rights over tanah ulayat include farming/cultivation, hunting, logging, fishing and building rights. As argued above, if an adat community member abandons their block of tanah ulayat 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. This customary system of social control and management has been supported by Kampar Regency through the Regulation No. 12/1999 on Ulayat Land Rights (Malay Customs Authority, 2005). Article 2 paragraph 2 of this regulation says that the purpose of Ulayat Land Rights is to improve social, economic and cultural welfare of social and economic adat community members. The same regulation prescribe that the role of clan leaders, known as *ninik mamak* or *penghulu* is to oversee, manage, and preseve tanah ulayat by making provisions on its management and utilization. In reality however, the influence and the role of *ninik mamak* and *penghulu* as the guardians of adat law has significantly diminished over the last decades. This has resulted in weakening adat law and adat leaders's authority in dealing with

tanah ulayat rights and other family related issues in the province of Riau. Adat law, along with the authority of adat leaders in dealing with adat community problems including tanah ulayat, is set forth in Law No. 23/2014 on Regional Government mentioned above.

Issues faced by Tanah Ulayat

Lack of transparency in 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 ulayat owned by nagari (village) communities and certain kin groups (*kaum*). West Sumatra is faced with several conflicts related to land acquisition process which, sadly, have resulted in deadly clash between palm oil companies and the adat communities who wanted to take back their tanah ulayat either because the land was acquired not in accordance with adat law principles and procedures or both the local government and the companies did not deliver on the promises they made when making land deals with adat communities (Hilaire, 2015). When it comes to making land acquisition deals with local communities in West Sumatra, both the local government and the companies adopt similar tactics and procedures as follows: First the company or the government invites the people in charge of a designated tanah ulayat 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 (Jefri, 2017). These meetings, mostly held in the capital of each regency, district and subdistrict, and some nagari, are intended to persuade those who have authority over tanah ulayat i.e., the *ninik mamak* (clan leaders) and *penghulu* (religious leaders) to handover some blocks of land to a company (Jefri, 2017). An example of such a situation is the land deal made between leaders of Nagari Lubuk Kilangan in the town Padang and the semen company called PT. Semen Padang. Adat leaders of this village unit agreed to handover some of their tanah ulayat to the semen company. But after several years of unkept promises from the part of the company, the community took to the streets to protest against PT Semen Padang demanding the return of their land. The Nagari Lubuk Kilangan and PT. Semen land deal has caused many conflicts and continues to do so to this day (Hilaire, 2015). It is clear from what precedes that adat leaders made those decisions not during a nagari meeting and therefore they did not involve community multi-stakeholders and the kinships (*kekerabatan*). The participation of the population in general in these protests proves this. In the Nagari Kapar, West Pasaman, for example, a group called Tunas Mekar criticized adat leaders i.e., *ninik mamak*, as authoritarians because they made the decision to hand over the tanah ulayat without consulting various other parties within the nagari. In Nagari Kinali there were also protests from the non-*ninik mamak* elites over the decisions made by *ninik mamak* behind close doors during meetings with the local government and companies. The protesters questioned their honesty by demanding the nullification of their decision to handover nagari tanah ulayat to companies. This has led to several conflicts in many other nagari whereby protesters not only challenged the authority of *ninik mamak* but also urged them to give back any money they may have received from a third party including companies. This lack of transparency in leadership over the management of tanah ulayat in many nagari has resulted in conflicts between nagari members (*anak nagari*) and their *ninik mamak*. Although *ninik mamak* claim to act as the guardians of custom in West Sumatra, their role in the management of tanah ulayat remains ambiguous. On the one hand, they claim to act on the behalf of the community in negotiating land use deals with investors but on the other hand, they

act as if they were the actual owners of the land by granting land use permissions to a third party without consulting the very community they represent. Adat rights are recognized by the local government and investors on behalf of the community. However, the decision to hand over a *tanah ulayat* 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 either by the local government or the company. Should it be borrowed, the transfer certificate does not say in written how long the land use rights would be. As argued earlier, decisions on the use of tanah ulayat by companies or the government are made by *ninnik mamak* in business meetings. While the discussions over trivial matters related to tanah ulayat are conducted in open nagari meetings, real decisions affecting tanah ulayat and the community are made in private meeting behind close doors between adat leaders and business corporations.

Land Issues in Riau Province

The National Land Agency Regulation No. 3/2011 on the Management, Assessment and Handling of Land Affairs says that land conflicts are land disputes between individuals, groups of individuals, organizations, legal entities or institutions that have a tendency or have broad socio-political impact (Laws & Regulations, 2011). In fact land disputes cases ranks first compared to other cases in the Province of Riau. Most of these land conflicts ended in riots and loss of lives and properties, such as the case of Ampaian Rotan, the Sakai tribe land grab in the towns of Minas and Duri. This tanah ulayat conflict case, which led to human casualty and the destruction of properties was the result of the lack of comprehensive legislations that provide real protection to tanah ulayat not only in the Province of Riau but other provinces as well. Maria Soemardjono argues that the protection of tanah ulayat would be a reality only if the local government has good intention to provide such protection to adat community. Maria goes on to claim that although the regulations of the Minister of Agrarian Affairs and the National Land Agency mentioned above provide certain protection to tanah ulayat, they do not provide for what qualifies as a tanah ulayat and what its boundaries are (Maria, 1999; Kurnia, 2009). The conflicts in these two towns could have been avoided had adat community known the legal boundaries of their land, Maria observes. Maria added that tanah ulayat boundary determination should be done in a participatory manner by involving local communities, academics, and local socio-political organizations to minimize misunderstandings. Another case of such an escalation of violence is the December 8, 2008 clash between hundreds of Riau Police personnel and the local community over the concession of 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 the local resident. No casualty was reported except for the destruction of several properties. Historically, Suluk Bongkal hamlet belongs to Besluit, which was mapped when the Dutch established a cooperation with the Siak kingdom in 1940. Around 1959, a cadastral map was drawn which included Suluk Bongkal area. For a long time, this map had allowed the people of this area to coexist peacefully. However, since the issuance of the Decree of the Minister of Forestry, conflicts have begun to rise which forced some hamlet communities to move away.

Legal Protection of Tanah Ulayat in the Province of Riau

Land tenure policies in the province of Riau are very different from those in West Sumatra. Unlike West Sumatra, land deal negotiations in Riau does not require any real customary procedures, in other words, no traditional community or procedure is involved in the process. This means that the government or the companies do not necessarily have to go to any clan leaders to obtain land use permission. By no means this implies that anyone can have access to land when and how they see fit or that the local communities in Riau care less about who is using their land and how he/she have acquired to it. It simply means that no customary formality needs to be meet prior to the acquisition of land used rights. This is what fuels land conflicts between companies and local communities in the province. In fact, since they are not involved in land acquisition process, local communities often find 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 legitimate its activities on the disputed land as it obtained official land use permits/tiltes from the local authorities, i.e., the local land agency, as proscribes by the national law. It is very rare in Riau to find tangible proof of land transfer from the local population to a company. In fact, no such evidence has even existed in the history of this province. The exclusion of the local communities in many cases from land transfer to companies or the government can be seen from the lack of written proof of transfer contracts between local communities, the government and the companies. This is due to a lack of legal framework which provides for real inclusion of the communities in land transfer process in the province of Riau, as the case of West Sumatra.

Government's Recognition and Legal Protection of Tanah Ulayat

In both West Sumatera and Riau provinces, there is a government recognition of the local communities' rights to land and forests (Elviriyadi, 2007). In West Sumatra, the recognition has been established since 1983 with the issuance of Local Regulation No. 13/1983, Local Regulation No. 9/2000 (later repealed by Local Regulation No. 7/2007 and Local Regulation No. 16/2008 on the Utilization of Tanah Ulayat; Laws & Regulations, 1983). But unlike West Sumatera, there are no clear legislations or official recognition of tanah ulayat by the provincial government in the province of Riau. Only certain recognition of the existence of tanah ulayat, which provides neither rights nor major roles to traditional community leaders, can be found from the part of local officials. Unsatisfied with this condition, local communities in Riau are calling on the provincial government to enact regulations recognizing and regulating tanah ulayat. Of nearly all the regencies in the province of Riau, only the Kampar regency government recognizes the existence of tanah ulayat within its administrative territory. In fact, in mid-July 1999, Kampar regency government issued district regulation on Tanah Ulayat Rights (Regulation, 1999). According to this law, tanah ulayat is a common property of indigenous communities (Budi, 2004). They have owned this type of land for many centuries as it is handed down from generation to generation. Although this local regulation recognizes tanah ulayat as the property of the local community, it prescribes that tanah ulayat may be used for the benefit of third parties. The regulation also says that decision-making should be through deliberation not only among the adat leaders, but also the members of kinship and other local community members, and that the agreement must be made before the competent authorities. To avoid further casualties, loss of properties, pollution and environmental degradation as the result of

communal land grabs by government and corporations, there is a crucial need 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 private rights.
2. Strengthening the Role of Government as Supervisor to allow every actor to abide by the rules.
3. Redefining the concept of Nationalism.
4. Providing a clear and accurate mapping of tanah ulayat use and cover so as to allow a comprehensive and transparent management.
5. Involving of local communities in tanah ulayat transfer negotiations 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 fail to enact strong and effective regulations to truly protect traditional communities and their land: tanah ulayat. This has resulted in many conflicts between villagers and various large-scale palm oil plantation companies since mid 1998 in both provinces. These conflicts are closely related to land grab by either companies or local governments. The reasons why these land grabs have led to several conflicts are pretty identical in both provinces: the dismissal of customary law and the exclusion of traditional communities from land transfer negotiations, local government/companies failure to deliver on the promises made to the communities. However, the difference between West Sumatra and Riau is that in the former, the government recognizes that adat community are the sole guardians and proprietors of adat rights, including tanah ulayat while in the later, no such recognition is granted by the local government. As a consequence, In West Sumatra, tensions have arisen between local communities and not only the companies but also their own traditional leaders, i.e., the *ninik mamak* as they feel betrayed by them in dealing with land issues. While in Riau, the local communities were angry not at their traditional leaders, as they play no significant roles in land acquisition process, but at both their local government and the companies exploiting their land. This is due in part to the absence of guidance on the mechanism of land rights acquisition in accordance with customary law and state law. This is also due to the lack of adat law guidelines that can be used by both governments and companies.

REFERENCES

- Budi, R. (2004). *Indigenous forest settings In Indonesia*. Bogor: Lembaga Pengkajian Hukum dan Lingkungan.
- Elviridi, (2007). *A book of forests for the bald country sucks the wisdom of the elders*. Kampar, Pekanbaru: Suska Press.
- Halim, R. (2007). *Customary law in question and answer*. Jakarta: PT Ghalia Indonesia.
- Hilaire, T. (2015). Legal pluralism and land administration in West Sumatra: the implementation of the regulations of both local and nagari governments on communal land tenure. *The Journal of Legal Pluralism and Unofficial Law*, 47(2), 312-323.
- Hilman H. (2007). *Principal: The principal legal sense customary in Salindeho*. Masalah Tanah dalam Pembangunan, Jakarta: Sinar Grafika.
- Jefri. (2017). *Interview on Padang 18 Fevrier*.
- Kurnia, W. (2009). Diversity in the unity of law: Model of interaction between customary law and state law in agrarian law (Study in SumBar). *Media Law Journal*, 16(1), 56-74.
- Kurnia, W. (2009). Position of customary law in the reality of the development of Indonesian agrarian law. *Constitutional Journal*, 6(4), 62-82.

- Kurnia, W. (2010). *Agrarian law in compound society*. Jakarta: Huma KITLV.
- Laws & Regulations (2014). *Law No. 23 on regional governments*.
- Laws & Regulations. (1960). *Basic agrarian law*.
- Laws & Regulations. (1983). *Local regulation no. 13/1983, local regulation no.9/2000 (later repealed by local regulation no. 7/2007 and local regulation no. 16/2008 on the utilization of tanah ulayat*.
- Laws & Regulations. (1995). *Regulation of the minister of agrarian affairs No. 3/1995*.
- Laws & Regulations. (2011). *National land agency regulation No. 3/2011 on the management, assessment and handling of land affairs*.
- Malay Customs Authority (2005). *Ulayat land and the existence of indigenous peoples*. LPNU Press.
- Maria, S.W.S. (1999). *Recognition of the existence of customary forests in the framework of agrarian Reform*. Lokakarya Keberadaan Hutan Adat, Gedung Manggala Wanabhakti, Jakarta.
- Regulation (1999). *Kampar regency through the regulation no 12 on ulayat land rights*.
- Soedharyono, S. (1994). *Status of rights and land acquisition*. Jakarta: Sinar Grafika.
- Soerjono, S. (2003). *Customary law Indonesia*. Jakarta: PT. Raja Grafindo Persada.