

## Legislation to Reduce Land Conflicts in Indonesian Provinces

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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.<sup>1</sup> 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. 23/2014 stipulates that regional 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).<sup>2</sup> 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, Assessment 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 Ampaian Rotan, addressing the Sakai 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.<sup>3</sup> 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.<sup>4</sup> 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 *ninik mamak* 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, at present, the influence and the role of *ninik mamak* 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 ulayat* rights and other family-related issues has been weakened.

### **Non-transparency of Tanah ulayat 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 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 ulayat* 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.<sup>5</sup>

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 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. 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 mamak* and *penghulu* in authority to hand over some *tanah ulayat* land 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 ulayat* 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." 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 *Tunas Mekar* criticised the *ninik mamak* because they made the decision to hand over the *tanah ulayat* without consulting various other parties within the community. In yet another (*Nagari Kinali*), there were also protests from the community members who were outside the *ninik mamak* 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 mamak* decision makers, demanding the nullification of their decision to handover *nagari tanah ulayat* 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 mamak* 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 ulayat* have been between *nagari* members and their *ninik mamak*, rather than directly against the external users of the *tanah ulayat*.

Although *ninik mamak* claim to act as the guardians of customary law in West Sumatra, their role in the management of *tanah ulayat* 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 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, 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 ulayat* are conducted in meetings open to the entire *nagari* community, real decisions affecting *tanah ulayat* and the community are made behind closed doors, in private meetings between *adat* leaders and business corporations.

Legislatively, West Sumatra has recognised *tanah ulayat* since 1983 with the issuance of Local Regulation No. 13/1983 and Local Regulations No. 7/2007 and No. 16/2008 on the Utilization of *Tanah Ulayat*.

### **Legal Protection of Tanah ulayat 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 ulayat*. 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 (ie., the local land agency) as proscribed 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.<sup>7</sup> 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* 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 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.

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## Notes

- 1 See Ridwan 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 Soedharyono Soimin, at 51-52.
- 5 See Tegnan.
- 6 *ibid.*
- 7 See Kampar Regency Regulation No. 12/1999 on *Tanah ulayat*