

Land Utilisation Conflicts between Customary Law Community and Companies: A Case Study in North Musirawas Regency of Indonesia

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Land conflicts occur as a result of permission granted by the government to companies to utilise the land that has been controlled by customary law communities/indigenous people for a long period. A company's land utilisation indigenous people to lose their land which is their source of life. There are two ways to settle this conflict, litigation and non-litigation. The Customary Law Community tends to choose the latter. Therefore, in order to prevent land conflicts, it is recommended for companies to use land through the use or leasing model.

Key words: *Land Conflicts, Customary Law Community, Utilisation Land*

Introduction

All natural resources are controlled by the state and used for the greatest prosperity of the people. In this context, the state is given the authority to make arrangements, as well as carry out the allotment, utilisation, and maintenance of natural resources to provide social welfare. However, the implementation of empirical facts in the statement "for the greatest prosperity of the people" still needs to be questioned, because in reality the community that lives around the utilisation of natural resources feels more physical and economic losses on an on-going basis.

The United Nations Human Rights (Commissioner, 2013) makes the following statement::

"Unfortunately, many indigenous people continue to face a range of human rights issues. The implementation of their rights is far from perfect. Some of the most difficult human rights challenges for indigenous people stem from pressures on their lands, territories, and resources

as a result of activities associated with the development and extraction of resources. Their culture continues to be threatened, and the protection and promotion of their rights resisted.”

The utilisation of land, territories and resources for development often creates pressure on the rights of indigenous people in controlling their land.

Government policies in the field of land are strongly influenced by multinational companies. The capitalist perspective which views land as a commodity causes it to be released from social ties which can cause damage to people's lives and in turn cause a turmoil of resistance. This condition has failed to achieve the goal of agrarian designation for the welfare of the community especially farmers, because it has implications for the degradation of the quality of the agricultural land and even horizontal and vertical land conflicts (Asmarani, Aulia, 2010).

Vertical or structural disputes exist between indigenous people who control economic resources such as forests, rivers, mining resources, pasture herds, shrubs and agricultural lands versus the Republic of Indonesia / Indonesian Government as the guarantor of the interests of companies, whereas horizontal disputes occur between indigenous people from different alliances.

The dimension of land conflict between land rights holders, the Government and entrepreneurs tends to shift as a result of the constantly changing land configuration. This causes numerous conflicts of interest to emerge with various modes and patterns so that a dispute settlement approach that can provide justice and legal certainty for the community on the one hand and entrepreneurs on the other is needed.

During 2018, the Agrarian Reform Consortium recorded at least 410 agrarian conflicts with an area of conflict reaching 807,177,613 hectares, involving 87,568 families in various provinces in Indonesia. Thus, there were at least 1,769 accumulative agrarian conflicts during the four years (2015 - 2018) of Jokowi – JK’s governance. This year, plantations regained the highest position as the contributing sector to agrarian conflicts with 144 (35%) conflicts, followed by 137 (33%) from the property sector, 53 (13%) from the agriculture sector, 29 (7%) from mining, 19 (5%) from the forestry sector, 16 (4%) from the infrastructure sector and finally 12 (3%) from the coastal/marine sector. Of the 144 agrarian conflicts that occurred in the plantation sector throughout this year, as many as 83 cases or 60% occurred in oil palm commodity plantations(Agraria, 2019).

Those disputes were carried out in various modes and even caused casualties. This also occurred in the North Musirawas Regency. The typology of land conflicts that arises is related to the government and investors against community right holders which is motivated by the local government’s tendency to align with companies in the utilisation of natural resource

potency through the policy of granting location or mining business permits. This resulted in a shift in the function of agricultural land and reduced the access of indigenous people to the land. Moreover, in practice, the acquisition of land for the benefit of investors is not based on the principle of alignment in conducting transactions but rather on land acquisition for the development of public interest (Gunanegara, 2005).

The conflicts in North Musirawas Regency occurred as land acquisition was closely related to the release of land rights required for both public and private interests, which often caused problems in the community. This results from the emergence of various conflicting interests, resulting in the low bargaining value of the community right-holder in conducting negotiations due to the dominance of local Government interventions. This paper will further discuss the following issues: 1) What is the pattern of land conflict that occurs in the North Musirawas Regency? 2) What is the form of land conflict settlement that can provide a sense of justice for disputing parties?

Conflict Pattern in the North Musirawas Regency

The concept of Land Right Tenure is regulated by the Law No. 5, 1960 of the Republic of Indonesia concerning Basic Rules for Agrarian Principles (hereinafter referred to as UUPA). Based on this law, land tenure covers the relationship between individuals, legal entities or communities as a collective with the land that is claimed, resulting in the creation of rights and responsibilities.

This form of land tenure can be temporary or continuous. In the context of land tenure, authorities benefit, enjoy, utilise and aim to survive and protect their livelihood at all cost. In the 1945 Constitution and the UUPA, the terms “control” and “to control” are used in the public aspect. Mawuntu maintains that “the tenure right of the state” is still being debated and has not had the same interpretation (Harsono, 2008). On the other hand, the community as the holder of land rights has the authority, obligation, and prohibition for the holders of land rights to do “something” on the land that is claimed. Land utilisation by the authorities as well as the community holding land rights often creates conflicts between the two parties.

According to Nader and Todd, the concept of Land Dispute Settlement is between two or more parties on an open basis. Furthermore, settlement involves three parties. Community conflicts undergo a process or stages including pre-conflict which is marked by complaints and tends to lead to confrontation, then escalate into conflict situations in the form of negative reactions and hostility, eventually escalating to the public arena (community).

Article 1 number 2 of the Regulation of the Head of the National Land Agency No. 3 of 2011 (*Perka* BPN) concerning the Management of Study and Land Cases Settlement maintains that,



“land disputes are land conflicts between individuals, legal entities, or institutions which do not have a vast socio-political impact.” Article 1 number 3 of *Perka* BPN No. 3 of 2011 states that, “Land conflicts are disputes between individuals, groups, categories, organisations, legal entities or institutions that have a tendency to or already have vast socio-political impacts.” The definition of the term land disputes can also be seen in the Regulation of the Minister of Agrarian Affairs No. 1 of 1999 concerning Procedures for Settling Land Disputes.

Based on the above definitions, both land disputes and land conflicts highlight that there are differences or disputes between two or more parties over land resources. Based on the impact dimension, the term conflict has a broader impact when compared to the term dispute. Land conflicts that have occurred and continue to occur may continue to take place if no objective solutions are found. This is an interesting topic for further discussion and resolution in the context of a future administration.

Factors causing land conflicts include incomplete regulations, incompatibility of regulations, land officials who are less responsive to needs and amount of land available, inaccurate and incomplete data, erroneous land data, limited human resources assigned to resolve land conflicts, incorrect land transactions and finally settlement from other agencies which results in the overlapping of authority (Sembiring, 2009).

Natural resource conflicts occur not only due to conflicting interests in the practice in the field but also triggered by state policies that have not seriously accommodated traditional natural resource management claims by various local communities that up to present time still inherit the tradition of hereditary land tenure, both individually and communally. This pattern of ownership is indeed not the same as formal land law standards which are based on ownership certificates, resulting in serious conflict in managing forests/land based on positive law with traditional community law. Conflicts are a result of the central government's discriminatory regulations and inappropriate treatment of locals by ignoring, eliminating and weakening the values and norms of customary law and community traditions in the area (Prasetya, 2007).

Land conflicts in Indonesia tend to last for a long period, especially those involving indigenous communities, as the litigation mechanism is always preferred to resolve land conflicts. Private and state companies prefer to use litigation mechanisms, that is to bring land conflicts to court. As a result, the courts often side with companies because they have the legal documents that prove their ownership or management rights over the land. Indigenous communities, especially farmers are at a loss because these groups only possess customary evidence such as stories or testimonies that are not acknowledged by the court. The litigation process often causes small communities to feel that they do not receive any justice. Conflict settlement should not always be measured from a normative perspective. Instead, it requires consideration and wisdom through persuasive and accommodating forms of communication (Najwan, 2009).

In essence, the settlement of each land conflict is adjusted according to the style and characteristics of the conflict itself. The Indonesian original cultural view that promotes peace, harmony, mutual co-operation, help and tolerance, is a fundamental concept in dealing with conflicts. Settlements do not go straight to court (litigation) but usually addressed through out of court negotiations.

In the Land Conflict Pattern in the North Musirawas Regency, the State in the context of Article 33 paragraph (3) of the 1945 Constitution is the highest form of people's power that has an obligation and responsibility to improve people's welfare over agrarian resources under their tenure. In terms of the use of instruments on the rights to control the state, the government can determine the legal relationship between individuals / legal entities and land, as well as supervise the legal actions carried out by an individuals / legal entity with the land that is claimed after mapping the land's allotment and utilisation. However, economic liberalisation, especially during the New Order era has resulted in changes in land functions. Land function as a mechanism of capital accumulation results in the marginalisation of the rights of agricultural landowners. This has led to both structural and horizontal land conflicts (Najwan, 2009).

Land conflicts that are structural in nature consist of agrarian conflicts caused by a policy or decision made by public officials, both central and regional, which results in victimisation and a wide range of impact including the social, economic, cultural and political dimensions (Agraria, 2019). According to Neneng Widya Amellia, et. al., vertical conflict involves the community with the government (Neneng Widya Amelliaa, Arry Bainusb, Wawan Budi Darmawanc, 2020), whereas Mukmin Zakie maintains that horizontal conflict exists between one community and another, as well as a in the form of conflict between the community and investors (Zakie, 2017). Horizontal conflict takes place internally for indigenous people. This type of conflict is strongly influenced by the state's legal system that marginalises customary law and its authority in resolving customary land conflicts. This situation is most felt through the revocation of the traditional court as an official institution for resolving customary conflicts by the state through the Judicial Power Act (Firmansyah, 2018).

Land conflicts that occur between large capital owners and the government with the holders of land rights are influenced by various issues ranging from access to the land to appreciation of land value in the form of compensation. According to the Indonesian Farmers' Union, conflicts confronting the farmers' community with security forces, the government and companies continued to occur throughout 2011. These conflicts resulted in as many as 35 farmers becoming criminalised victims, 273,888 displaced from their land and 18 dying while trying to fight for their land. The same pattern of land conflicts occurred in the North Musirawas Regency. The study results show that the land conflicts involving the community with companies and/or regional government were both structural and horizontal. North Musirawas

Regency has mining potency and encounters conflicts over land acquisition, as well as the unresolved rights of the indigenous people.

Structural land conflict patterns occur in almost all mining areas with various degrees of escalation and dynamics. The conflict between PT Lonsum and the people of Karangdapo Village in North Musirawas is related to the customary land rights of the Kubu tribe in the Working Contract area. The concession of PT. Lonsum was awarded through a working contract which was signed by the Government of Indonesia on 19 February, 1999 (Kompasiana, n.d.)

Form of Land Conflict Settlement in North Musirawas

Conflict settlement can be achieved through conflict management, which is required to develop a mechanism of conflict management to prevent conflicts from developing into violence which is socially, economically and ecologically destructive, and turn it into constructive and co-operative social relations. Based on the identification of relations between participants and the roots causing the conflict, several approaches can be formulated to manage the conflict. Conflicts arise in 3 (three) conditions/forms, including 1) latent conflict that is covert so that it needs to be brought to the surface so that it can be settled effectively; 2) open conflict which is rooted and very real so that it requires various actions to overcome the root causes and their various effects; 3) conflicts on the surface that have the characteristic of shallow roots/causes and emerge only due to misunderstanding about the subject which can be resolved by improving communication (Dato, 2014).

Land conflicts that occur in the North Musirawas Regency are open conflicts that need to be settled with appropriate conflict management. Land conflicts have various characteristics, due to the diversity of interests by parties. Therefore, the settlement of conflicts that occur refers to 2 (two) settlement mechanisms, litigation and non-litigation. The settlement of conflict has to consider the rights of indigenous people mentioned in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Customary Law Community rights are those which are related to land, territories and natural resources that include legal recognition, protection and adjudication, dispossession, removal, and relocation, compensation, restitution and redress, environment, and military activities (IWGIA), 2015). However, these rights are often unfulfilled because indigenous people do not have evidence of land tenure rights so that they do not receive legal recognition or compensation. Nur Putri Hidayah et. al. maintain:

“From the 2,302 entities of indigenous people in Indonesia, only 11 are recognised by local regulation, and only 1 is processed to obtain its determination from the National Land Agency (*Badan Pertanahan Nasional*) by only 1 communal right. This shows low recognition of the

state to indigenous people. Without local regulations, it is impossible to act for and on behalf of themselves and manage their customary rights (Hidayah, Nur Putri, 2018).

Low recognition of indigenous people also results in conflict settlement that does not provide fair legal protection for them.

Fergus MacKay and Alancay Morales Garro state: “Many states also continue to apply a presumption against the existence of indigenous people’s rights to own their traditional territories and resources and often with the support of domestic courts have rejected indigenous land and resource rights by applying, inter alia, rigid evidentiary requirements”(MacKay, 2014). Likewise, settlement of land conflicts in North Musirawas Regency using the litigation mechanism tends to base the verdict on rigid evidence in the form of legal documents on land tenure. This is one of the limitations of conflict settlement, which is procedural and based on formal law so that it does not accommodate public interest (Alfitri, et. al. 2017).

The latent agrarian conflict can explode at any time. The conflict settlement approach used by Indonesia is legalistic, while there are many regulations, laws, regulations and decisions of public officials which are not fair to people’s rights. As a result, conflicting farmers are labelled as ‘illegal citizens,’ ‘illegal encroachers’ and ‘state land thieves’ because they are deemed to have no legal proof. In this legalistic agrarian political system, we often see a large number of concession permits issued to village lands, dwellings, farmland and people's living source (Agraria, 2019).

Jawahir Thontowi (Thontowi, 2013) maintains that although changes in political and legal policies towards the development of indigenous people have taken place, up to now indigenous people have not yet experienced significant changes.

- a. Recognition and respect for indigenous people as regulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia cannot yet be implemented. Therefore, the Customary Law Community has not yet received tangible benefits. The Customary Law Community’s lack of legal standing does not only result in not having the authority to control any property rights, but the inability to file a case in the court. Law No. 24 of 2003 provides opportunities for the Customary Law Community to be able to file a case in the Constitutional Court of the Republic of Indonesia.
- b. Unclear legal status of the Customary Law Community results in legal uncertainty and the inability to obtain legal justice. The constitutional rights of the Customary Law Community should be used by community members. In reality, their educational, cultural, health and socio-economic condition are generally underdeveloped. The Customary Law Community struggles for constitutional rights due to unfair national economic policies such as control of their customary lands by domestic and foreign capital owners which cannot be

prevented. National development policies carried out in various regions, whether they due to mining of mineral gas, oil, and coal or overlapping arrangements between customary lands and forestry parties place the Customary Law Community at a loss.

A decision has been made by the Constitutional Court which provides strengthening of customary land including Constitutional Court Decision No. 35 / PUU-X / 2012. The decision of the Constitutional Court states that customary forests are no longer state forests. However, customary forest status needs to be supplemented by regional regulations, as well as stipulation from the regent, mayor and even central government. If stipulation is through regional or regent/mayor regulations, or there is no stipulation by central government, the settlement of customary land conflicts will not provide fair legal protection for the Customary Law Community. Once the decision of the Constitutional Court has been made, a stipulation has been made regarding customary forests to dozens of communities by the Ministry of Environment and Forestry, but only to a small extent (Mongabay, 2019).

The land conflict settlement mechanisms, including litigation and non-litigation have been selected by disputing parties. In general, litigation is usually selected by companies in settling conflicts related to compensation and customary rights as well as other issues that arise as a result of land owned by the company (Prasetya, 2007). Conflicts between indigenous people and companies are resolved through litigation to the level of appeal in the Supreme Court. The choice of settlement is based on the consideration that the Kubu Tribe which claims to have customary land over the mining business area in their village does not have a strong legal base. Conflicts will continue in each generation, thus hamper the company's production. Litigation conflicts emphasise a win-lose solution, in which conflicts end with the certainty of who wins and loses.

Experts suggest the need to establish a special court for land conflict cases in the scope of a general court. The special court is an institution that specialises in handling conflicts arising from the implementation of a massive land-related program. It is an effective step in the process of resolving land conflicts which reflect justice and legal certainty. However, it requires careful in-depth consideration in preparing institutions, resources and procedures.

On the other hand, non-litigation is primarily chosen by community members. The settlement of land conflicts through non-litigation is based on the support of the village and regional governments as well as limited knowledge and capital of the community.

Land conflict settlement in North Musirawa is dominated by non-litigation / ADR settlement. This can be seen from the stages of settlement that are carried out by disputing parties including mediation and negotiation, which is based on the view that conflicts do not only involve companies and/or governments but also other members of the community who are still related.

Therefore, the settlement aims to restore the regularity of social relations and balance in society with a more beneficial solution for each party (Lubis, 2012).

The concept of a solution that benefits each party includes a win-win solution paradigm by prioritising communication between the disputing parties, negotiating to reach an agreement so that each party feels that their wishes are respected without causing hostility. In reality, the settlement process outside court does not solve the problem completely. This can be seen from the settlement of land conflict related to compensation for land acquisition in 3 (three) regions of Karangdapo and Setia Marga village, which is still taking place until the present time. Despite apparent mass mobilisation in each conflict, open access to the implementation of negotiations, including negotiations and mediation will be fairly effective (Wignjodipoero, 1999).

Land conflicts rooted in lack of respect for the customary rights of indigenous peoples, the settlement mechanism has to be completed more comprehensively. In addition to conflict settlement, Conflict Resolution must also be conducted by formulating strategies to deal with the causes of conflict through reconciliation of relations between the state, private sector/companies and indigenous people. Recognition of the rights of indigenous people must be constitutionally respected. There are still restrictions in the UUPA regarding the recognition of the legal rights of indigenous people through requirements and policies in each local government agency which are not yet synergistic. This creates sectorisation and lack of clarity regarding the most competent institutions dealing with the rights of indigenous people, as well as the creation of a comprehensive regulatory model for legal recognition of the existence of indigenous people, both in substance and the implementation framework.

The policy of granting control to private parties/companies to utilise the land with use/leasing rights that are preceded by an agreement with the landowner for a certain period of time will create authority and obligations specified in the agreement with the owner. This, will create a better relationship compared to releasing the land to become the state's property so that indigenous people lose the land that becomes their source of livelihood. Granting of the right to use or lease the land to companies is not accompanied by the process of handing over land rights. Thus, there is no compensation in the process. Instead, the compensation model of giving an amount of money to holders of rights over land, buildings, plants, and or other objects related to the land is used without releasing or handing over land rights (Utomo, 2012).

The form and amount of compensation are negotiated by holders of land rights. To further strengthen implementation of the agreement, civil society can be involved as a controller or companion for community empowerment. A compromised approach is a strategic choice to produce justice or peace. In the agreement, the government and civil society are involved to effectively participate in the democratic process, help as a force of control, have effective dialogue with the government, and propose alternatives in land tenure. The application of the



model with the use/lease rights between company and landowners will create a harmonious relationship as the company places owners as part of the company in the implementation of the investment. The relationship between land and owners does not end as long as stipulated in the agreement. Respect for community land ownership in an investment process will give pride to the community. The company will be more morally responsible in optimising the utilisation of the land and the right-holding community can regain control of the land when the utilisation period ends. This can be an alternative arrangement regarding the ways to obtain land for the company's benefit.

Conclusion

Land conflicts in North Musirawas are caused by lack of respect for land values that are realised through compensation and the rights of indigenous people in the form of structural or horizontal conflicts. Land conflict settlements in North Musirawas are undertaken through both litigation and non-litigation. The selection of settlement mechanism by the community/company regarding conflicts is based on consideration of the availability of evidence of ownership, capital and Government support. The government/companies generally choose the litigation mechanism to settle conflict, whereas the community prefers the non-litigious path because land tenure is carried out through generations and is proven by customary rather than formal law.

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