

Conflict Resolution of Land Disputes by Using Dayak Customary Law in Seruyan Regency, Central Kalimantan, Indonesia

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Abstract

The development of plantations are highly susceptible to conflict due to some land disputes between communities with large companies. The long conflict would greatly affect business continuity, so that the necessary conflict resolution efforts that benefit both parties. The purpose of this study was to determine the resolution of the conflict due to land disputes in the Seruyan Regency. The method used was exploratory survey of quantitative method. Based on the results of the study found that by applying local wisdom in the form of Dayak customary law, then obtained a mutually beneficial settlement for both sides conflicting and no one harmed. In terms of efficiency, that the settlement of land disputes in the customary manner has a lower settlement costs when compared with the courts of law of the State. In addition, the final result that obtained can reduce the potential for conflict due to the land dispute. Parties that win and lose in court customs, can sincerely accept the decision.

Keywords: Dayak customary law, Potential Conflict Land Dispute

1. Introduction

Social impact of oil palm plantations is the greatest impact felt by indigenous peoples and local communities. Local people who live and lived for generations and rely on forests for their daily needs as well as earning a living, according to the knowledge and traditions of the indigenous will change the pattern of livelihood when the forest conversion for oil palm plantations. In practice, activities of land conversion for oil palm plantations do not necessarily involve the actual land owner to discuss. Even local people are not given enough information about the project they land conversion into plantations either by the government or the company. The realizations of the promise of employment or economic advantage granted to local communities are often violated by the government or plantation companies. In addition, the government and investors also often violate the promise to put oil palm plantations on degraded or idle land. In fact most of the land that was targeted for plantation land is agricultural land and the land of indigenous peoples, who have customary rights and is essential for the livelihoods of local communities and their cultural identity (Wakker, 2005; UCS, 2011).

According to Sumardjono (2010) (2010) stated that the government has recognized and respect the customary rights (traditional right) which exist in every unit of indigenous peoples in all regions in Indonesia. This was stated in the 1945 Constitution which the state guarantees every unity of indigenous peoples as long as everything is in line with some of the principles of development of the Unitary State of the Republic of Indonesia (NKRI). Based on the recognition that the governments impose limits in terms of customary rights is the right to manage land use, not of ownership of land. But in practice, customary rights consist of the right of public unity for land tenure. Further Sumardjono (2010) adds that the land conversion included in indigenous communities into land for construction allows it to be carried out legally. Based on Regulation of the Minister of Agrarian / BPN No. 5, 1999 Article 4b states that land conversion owned by indigenous peoples to the government departments, individuals outside the indigenous community members, as well as business entities can be done after the land was liberated by indigenous communities in accordance with the customary law prevailing in the region. Therefore, the existence of indigenous peoples who are still alive and took place in an area is the responsibility of local governments to collect data and confirm about the existence of the indigenous peoples in consultation with several experts customary law, indigenous communities, NGOs, and government agencies that have jurisdiction on the management of natural resources.

Based on Government Regulation No. 24 of 1997 Article 1.3 explains that the ground state or land within the control of the government directly is a land that is not owned by land rights. Meanwhile, according to the Basic Agrarian Law of 1960 explains that the country also indirectly controls the lands that already have land rights. In line with the statement, Maggie (2010) stated that the case of land associated with the interests of the state and indigenous rights often occur in the context of agriculture, so that the necessary regulation is integrated.

The purpose of this study was to determine the conflict resolution due to land disputes in Seruyan Regency.

2. Material and Methods

2.1 Research Location

This research was conducted in the Seruyan Regency by taking the focus area of oil palm plantation area of nongovernmental. Location of the study sample intentionally taken out of 3 (three) districts, the District of Danau Sembuluh, District of Hanau, and the District of Seruyan Raya. The location was chosen for this sixth region there are nongovernmental oil palm plantation development and already in production. The number of farmers who operates a palm oil plantation in the third sub-district is also quite a lot. Additionally, locations were selected based on ease of access to enter the territory. Geographically, the location of research in three districts can be seen in Figure 1.

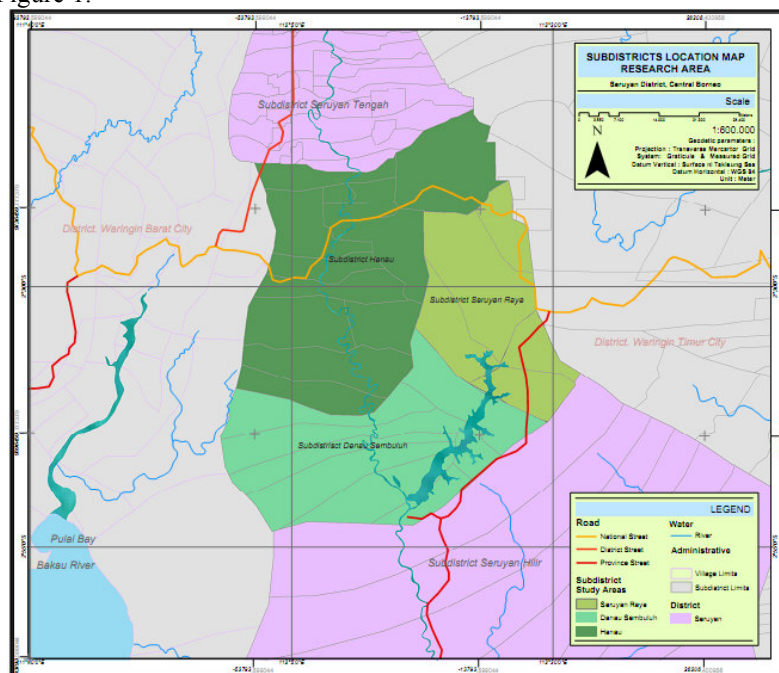


Figure 1. Location of Research

2.2 Data Collection Methods

The research approach used in this research is the analysis of exploratory survey (exploratory research). According to Nazir (2005), explains that the exploratory survey methods commonly used to reveal the facts and identify the problem and get a justification for ongoing implementation. The sample analysis of the potential for social conflict set respondents as many as 13 people. It refers to research conducted by (Bourgeois and Jesus, 2004), which states that the minimum number of respondents deemed capable of representing if there are 13 experts. These experts include 4 government officials, three community leaders, three academics, two businessmen and one person NGO (Non-Governmental Organization) of Green Borneo.

2.3 Data Analysis

To analyze the potential social conflicts related to land tenure by the public there will be a qualitative deductive. All materials and the law relating to this study described constructed to answer the problem. Additionally, in this study also using (statute approach) and examine all laws and regulations that connected with legal issues which is being handled, and how it is applied in the field.

3. Results and Discussion

Based on the results of the study revealed that the conflicts are common in Seruyan Regency is conflict between communities and oil palm plantation company. The conflict occurs because the company took over the lands of indigenous peoples in the name of a clearing permit from the government. They believed that the land is state-owned, while the public acknowledges that the land belongs to the indigenous peoples who have managed hereditary. There are some conflicts that have occurred in this area. The first case was reported in 1996 to 2003 between PT. Agro Indomas (AI) with the villagers of Danau Sembuluh. In the early stages of development of oil palm plantations, the company does not engage in dialogue with the local community for land clearing activities. Even the company conducts land clearing activities indiscriminate and resulted in the destruction of sacred grave

and the eviction of villagers from Terawan, Bangkal and Lanpasa. In addition, people felt aggrieved because the company took over the gardens and fields without their knowledge and without compensation. One factor that triggers some cases occurring is the community itself, especially farmers who do not understand the importance of certainty about the status of property right.

Based on Table 1, property right status can be divided into five groups. Group of the status of property right is do not have a Certificate of Land, Certificate of Customary lands (SKTA), sale / purchase commitment agreement, Certificate of Land Ownership (SKT), and a certificate from the National Land Agency (BPN). The Property right statuses of the largest oil palm are certificate of customary land (SKTA) as much as 41.7%. Property right is very dominant status because most farmers own the land to the next. A total of 2.5% of respondent's farmers have the right to land ownership form Certificate from the National Land Agency (BPN). While as many as 37.5% ownership was only strengthened by Certificate of Land Ownership (SKT) signed by the head of the village and sub-district head.

Table 1. The Number and Percentage of Respondents According to property right status

No	Property right status	Number (person)	Percentage (%)
1.	Do not have a Certificate of Land	21	17,5
2.	Certificate of Customary lands (SKTA)	50	41,7
3.	Sale / purchase commitment agreement	1	0,8
4.	Certificate of Land Ownership (SKT)	45	37,5
5.	Certificate from the National Land Agency (BPN)	3	2,5
Total		120	100

Source: Primary Data Analysis, 2016.

Based on data from the table above, it can be seen that people are already trying to demonstrate proof of ownership of the land which they have authority. They urged by a condition and under heavy pressure from the oil palm plantation of large scale company which any time can seize the land they have long occupied. This was revealed during an interview with one of the farmers. The farmers' statement is quoted as follows:

"Honestly we do not understand how important Certificate of Land Ownership, such as SKT. This is because we have been occupying the land here is hereditary, ranging from our ancestors. We occupy the ground more than a dozen years ago, and making it what it is today. This is proof that these lands belong to us. The trees are planted it is our proof. However Certificate of Land Ownership recognized and the sweat of our hard work in cultivating land not recognized at all".

The attitude of other farmers almost has the same views as land ownership. The farmers' statement is quoted as follows:

"To be honest we did not consider to Certificate of Land Ownership. Because among us are bound by an agreement to respect the land and property of others in our group. We always try to keep each other each other's right. We are not going to work the land that has been opened by someone else. However, in case of conflict the land boundary, it will be resolved by custom and uphold the attitude of tolerance and mutual respect to the results of the decision".

In interviews with the respondents also found the fact that the number of farmers who do not make the certificate to BPN due to several reasons (Table 2). The problem that most complaints by farmers is costly problem for making the certificate. Land with an area of about 2 hectares can only be given a certificate at a cost of about 1 million rupiah each certificating. Another problem facing farmers is unknowing ordinances and complexity of procedures to obtain land certificates from the National Land Agency.

Table 2. Problems in Getting the Land Certificate

No	Problems in Getting the Land Certificate	Total (person)	Percentage (%)
1.	No problem	24	20
2.	Costly	42	35
3.	Unknowing ordinances	36	30
4.	The complexity of procedures	18	15
Total		120	100

Source: Primary Data Analysis, 2016.

Rights to land by a group of customary law has a name that varies between regions and also by expert's customary law. Talib (1985) summarized from several sources such as Vollenhoven named Beschikkingsrechi meaning as *Hak Ulayat*. Djodjodigeono and Sudiyat mention *Hak Purba*. Supomo mention the *Hak Pertuanan*. While the Basic Agrarian Law call *Hak Ulayat*. In line with the statement, Saragih (2002) adds that there are six (6) characteristics of *Hak Ulayat* (customary rights), as follows:

- a. The group and its members have the right to obtain land, taking produce from everything that is in and growing on communal land.
- b. The right of individuals not stands alone but is accompanied by rights groups. The relationship between

- group rights and individual rights are feed - back, so if the stronger the individual's right to a piece of land, it will cause the weaker group rights over the land, and vice versa.
- c. The leader of a group can determine the use of certain parcels of land in the public interest, and the ground is not permitted for individual rights.
 - d. Individuals who want to take the result of the communal lands should ask permission first to the head of the group, and must pay admission, and must pay rent after harvest.
 - e. The group is responsible for all that happens on the communal land.
 - f. The group and its members are not allowed to take decisions unanimously on a plot of communal land until the group did not have jurisdiction over the land.

The interesting thing is based on the results, the fact that in Seruyan Regency almost all of the characteristics of the nature of customary rights in the region. Based above characteristics in fact not be a barrier for businesses who want to develop plantations in the neighborhood area customary law in Seruyan Regency. Investors can invest in indigenous territories as long as able to follow the traditional rules that apply in this area. For investors who want to benefit of customary land must first request permission to society and must pay admission. So that everyone although not the indigenous people of that region can utilize and take advantage of the presence of such land with grounded openness to the public.

Based on the survey results revealed the existence of other forms of compensation granted due to the shift of the right of people to the companies on this land. Restitution in the form community involvement in plantation activities known as the plasma system where people have the right to harvest the profits each time the oil palm plantations in accordance with the provisions which have been agreed. In addition, activity compensation may be their development the means of worship, health care, tuition assistance such as scholarships to students from primary school to college, help the village activities and engaging the community where land is turning into plantations to be employees of the plantation companies.

Compensation or indemnity provided by the company oil palm plantations in the Seruyan Regency to the community as a result of the shift land ownership from the public to the company should pay more attention to people's lives that can improve the standard of sustainable living. It refers to the consideration that the land has been set into plantations are public places hereditary their livelihood from the land. So any form of compensation from the switchover should be able to provide other benefits that can make people live independently.

The existence of customary law have implicit role in the regulation of the land and has no legal status is the highest in the customary law communities. This law also regulates the rights of the community and has been maintained for generations. The existence of this law on land ownership needs to be maintained as long as does not become an obstacle to national development. So that what is feared that the customs and customary law hamper the implementation of the Basic Agrarian Law does not happen. The problem of customary law and indigenous communities has been widely mentioned in the Basic Agrarian Law (Saragih, 2002; Soetrisno, 2004; Soimin, 2004; Wahid, 2004).

4. Conclusion

Based on the research above, it can be concluded that by applying local wisdom in the form of Dayak customary law, then obtained settlement for mutual benefits of both conflicting sides or none were harmed. In terms of efficiency, that the settlement of land disputes in a manner customary to have lower completion costs when compared to a court of law of the State. In addition, the final results obtained by customary law can reduce the potential for conflict as a result of the land dispute. Parties that win and lose in court customs, may willingly accept the decision.

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