

# ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (ADRM) IN LAND CULTIVATION PROFIT-SHARING IN KUTA, WEST JAVA

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## ABSTRACT

*Kuta, a village located in West Java, Indonesia, contributes immensely in Indonesia's economy and therefore, a legal protection is required for its local farming community and their traditional wisdoms from West Java local Parliament and Government. This study discusses land disputes and alternative dispute resolution mechanisms in land cultivation profit-sharing in Kuta, West Java and how the local government can improve the well-being of the local community by protecting their traditional knowledge as a cultural heritage. This is qualitative research using both normative and ethnography methods. The study reveals that besides national law, customary law is widely accepted as an alternative dispute resolution mechanism by the people of Kuta in dealing with land their issues. However, it does not provide a safer environment whereby their traditional knowledge is protected. The study also shows that land disputes in Kuta are the result of unkept commitments regarding land revenues sharing agreements, which are made unofficially between farmers and land owners. This does not provide a legal basis that guarantees the rights and obligations of the contracting parties. It also gives no legal certainty and protection for the parties involved in the agreement, hence the need for alternative dispute resolution mechanisms.*

**Keywords:** Alternative Dispute Resolution Mechanisms, Land Cultivation and Profit-sharing and Kuta.

## INTRODUCTION

In West Java, home to the Sudanese culture, local communities are gathered within traditional villages (Kampung Adat) governed by cultural values inherited from their ancestors. These ancestral values still apply to the social life of the people in many of these villages including Kuta in the Ciamis Regency. West Java's land natural wealth known as "*tanah priangan*", has always been a wonderful attraction for both domestic and international tourisms in West Java, as the unique cultural heritage is still well-preserved. Prior to Islam, the Sundanese people believed in local wisdom, Hinduism and Buddhism. However, in search of God, they also recourse to syncretism (Ekadjati, 2002). Kuta has its own and unique wealth, which consists of many commodities including land, a vital element in human life. There is a very close relationship between land and the community. A dispute resolution mechanism in land

procurement profit-sharing according to customary law, human beings have control over land based on religion (Boedi, 2003). In the eyes of the local community of Kuta, land is much more than a place. They believe that rocks, trees, rivers, hills, animals and forests are bestowed upon them by their ancestors who continue to live in land, water and sky. They also claim that land is filled with relations speaking language and following certain laws, both natural and customary laws, no matter whether the shape of that relation is human, rock, crow, wattle. Land is loved, needed, and cared for, and to the community, land loves and cares for her peoples in turn. In short, they consider their land to be family, culture, identity. The community's right over land is provided for in the Basic Agrarian Law No. 5/1960. This study aims at finding alternative dispute resolution mechanism for land procurement profit-sharing so as to meet community's need for social justice, improve tourism and the economy in Kuta. The results of this study are expected to contribute scholarly debate on customary law in Indonesia, and to help improve policy formulation/legislation on the protection of local wisdom protection in West Java.

### **The Existence of Local Wisdom in West Java**

Kuta is a potential for the development of tourism in West Java due to its rich culture supported by a beautiful landscape. Its existence dates as far back as the VIII Century BC.<sup>1</sup> Although most of the people of this region are Muslim, they still maintain the beliefs and practices of their ancestors such as offerings, burning incense, performing traditional ceremonies, placing bad spirits repellents by the doorway and believing in sacred forest. The inhabitants of this village firmly adhere to ancient customs handed down from generation to generation by their ancestors. This is due to a traditional concept known to the Sudanese as "*pamali*" meaning "*do not forget in behaving*". It is believed that if "*pamali*" is violated by the community, they could be hit by a disaster. This is only a rather empty threat to scare the youths so as to not break away from their long existing tradition. The fact that this part of the island of Java has been able to preserve its ancestral custom and culture has attracted many local and international tourists. The community of Kuta has a profound spiritual connection to land. Their customary law and spirituality are intertwined with the land, the people and God. The preservation of land and water is central to their culture. Land sustains and waters their lives in every aspect, spiritually, physically, socially and culturally.

### **Adat and Adat Law**

*Adat* is a term derived from Arabic language for describing a variety of local customary practices and tradition. The term refers, in a broader sense, to the customary norms, rules, interdictions, and injunctions that guide individual's conduct as a member of the community and the sanctions and forms of address by which these norms and rules are upheld (Ooi, 2004). *Adat*, as the reflection of the identity of a nation, referred to something done or spoken repeatedly, and which is considered good and accepted by the people (*muamalah*). Understanding of customary law is provided by some law scholars, including: J.H.P. Belleffroid. In his book entitled "*Inleiding tot de rechtswetenschap in Nederland*", Belleffroid argues that *Adat* Law as a regulation of life which, although not enacted by the Ruler, is respected and obeyed by the people with the conviction that these rules apply as law. (Het gewoonterecht, ook

"*gewoonte*" genoemd, omvat de rechtsregels, die hoewel niet op gezag van de staatsoverheid vastgesteld, toch door het volk worden nageleefd in de overtuiging, dat zij als recht gelden) (Soerjono, 2008). Teraar and Van Vollenhoven, on the other hand, claim that *Adat* Law is a law that is not derived from the rules made by the Dutch East Indies government or other power tools that were jointed and held by the Dutch colonial administration (Cornelis, 1981).

### **Traditional Knowledge and Intellectual Property Rights**

Traditional knowledge is one of the bases of the culture, existence and rights of the local community in Kuta. The protection of their knowledge must be based on their customary laws and practices, which raises the question as to can customary law provide intellectual property rights to traditional knowledge? There is a growing international agreement that customary law must be recognized and respected in the development of laws and policies that affect the rights of indigenous peoples over their lands, territories and to protect their rights in relation to traditional knowledge and intellectual property. Traditional knowledge is developed, maintained and used in the community, which observes its customary rules regardless of whether or not a protection scheme exists in their national legal systems (Abdul, 2004). Customary law can relate to the use of and access to natural resources, rights and obligations relating to land, inheritance and property, conduct of spiritual life, maintenance of cultural heritage and knowledge systems. However, it is important to note that the customary law of the people of Kuta does not provide for the protection of traditional knowledge as it does not have any intellectual property rights framework. This issue is left to the national law to decide.

### **Land Cultivation Profit-Sharing in West Java**

Customary law regulated the existence of agreements or a transaction, including sale and purchase, lease, mortgage, etc. of these transactions, land transaction is the most frequent in Kuta. Land transaction means the change of title of land ownership through purchase, inheritance, exchange, gift/donation, Government takeover, court order and mortgage subject to the applicable laws. Under customary agrarian law, land transaction includes land use rights, which is granted by the community members themselves through their leaders. Since the land is commonly owned in accordance with customary law, land transactions in West Java, especially in Kuta, take place under the scheme of profit-sharing or revenue agreement. This scheme is also one of the core values of Islamic Law, which refers to it as *musaqah*, a partnership between the owner of a plantation and the manager or tiller for maintenance and care with a mutual profit sharing agreement. However, Islamic law's perception of the principle of profit sharing is different from that of customary law. The legal basis of the agreement under this revenue-sharing arrangement lies in Law No. 2/1960 on Agricultural Land Profit-Sharing Agreement. The objectives of the issuance of this Law are:

1. To ensure that land deal between the landowner and the farmer is done on a fair basis.
2. An affirmation of the rights and obligations of the parties to guarantee a strong and proper legal status of the tenants in profit-sharing agreement.
3. To improve soil fertility so as to preserve and increase production.

Article 4 paragraph 1 of this law says “*that in the event of a dispute arising from the profit sharing agreement, the village head shall have the authority to reconcile conflicting parties.*” Should they fail, the matter is submitted to the head of Sub-district for settlement.

### **Alternative Dispute Resolution Mechanism in West Java**

Alternative dispute resolution mechanisms are very popular in Indonesia, especially in Kuta. This is due to the fact that the communities see them as fast and easy ways to access social justice. These mechanisms of conflict resolution rest upon the concept *musyawarah mufaka*: deliberation to reach consensus in decision making and dispute resolution processes. This idea of consensus in decision making and conflict resolution is deeply rooted in the Indonesian society. For deliberations to be carried out properly, several conditions must be met, namely equality of rights and obligations and sovereignty of the individuals. Alternative dispute resolution mechanisms are regulated by Law No. 30/1999 on Arbitration and Alternative Dispute Settlement. The person of Kuta relies very much on customary law to deal with their everyday problems. Referring to customary means of conflict resolution is not just a matter of choice but also and more importantly a history and tradition to the Indonesian people, including the people of Kuta. In fact, *Adat law* was the only law in force in Indonesia long before the arrival of both Islamic and Western Law (the Dutch Law) (Warman et al., 2018). Aware of this reality, the Indonesian government took a Presidential Regulation No. 10/2006 whose article 23c says that the assessment and handling of land disputes by the National Land Agency shall be carried out through alternative dispute resolution mechanisms to allow for mediation and conciliation. This regulation shows how important alternative dispute resolution is to the government. The above mentioned Law No. 30/1999 on Arbitration and Alternative Dispute Resolution expressly provides that the use of both arbitration and dispute resolution alternatives are voluntary; therefore, the use of mediation for land disputes is also voluntary. Land dispute resolution model based on the local community's wisdom takes into consideration the following:

1. The satisfaction of the disputants (win-win solution principle) in their dispute settlement.
2. Maintain peace and harmony among the community.
3. Strengthen the tie among community members.
4. Reach consensus.

In general, the resolution of disputes related to arable land in Kuta is done through deliberation or mediation by elderly community members who are deemed knowledgeable about customary law.<sup>2</sup> The recourse the alternative dispute mechanisms in land procurement profit-sharing in Kuta is considered just and fair as it creates a situation whereby most of the needs of all the parties to a case are met. It is often referred to as a “*win-win solution*”.

## **RESULTS AND DISCUSSION**

Prior to the arrival of Islam on the island of Java, the ancestors of the people of Kuta were animists. They belief in God began to form when Hinduism and Buddhism were introduced to the island. They see God as an invisible being originating from the spirit of their ancestors, experiences, dynamics of life and creativity (Ekadjati, 2002). Although the people in Kuta claim

to have embraced Islam, they still maintain the practices of their ancestors, such as offerings, burning incense, conducting traditional ceremonies, placing objects at their doorways and preserving sacred forest. They even believe that the land is the place where the protector dwells. Hence the need to maintain a very close relationship with land. This relationship has allowed the community to have the rights control and exploit land. These rights include farming, building and hunting. However, despite its crucial role not only in land administration through the nation, but also in the shaping of the Indonesian legal system, customary has always been regarded as a law of little value.<sup>3</sup> Its detractors accuse it of being irrelevant for failing or being unable to address not only technological and global issues but also domestic issues such as providing copyrights to traditional knowledge. These land issues are mostly caused by the lack of legal protection to the farming community, as shall be discussed later on. The research indicates that the indigenous peoples of Kuta have their own traditional knowledge and creativity that have been handed down from generation to generation. Traditional knowledge consists of traditional medicine deriving from herbs typical of the local area such as leaves *antan* *beureum* and *babadotan* leaf. In addition to traditional knowledge of medicine, the community of Kuta have also a unique and exquisite traditional handicraft consisting. Some of them are sold as a souvenir and some of them are sold as export commodities. These handicrafts are in the form of ornaments or decoration, but some are also part of housing furniture, for example wooden-crafted chair, table, or wardrobe. Traditional handicraft in Kuta also includes “*jaipongan*” dance, “*degung*” (*gamelan*), “*rampak drum*”, “*sisingaan*”, “*renggong horse*”, “*bajidoran*”, “*cianjuran*”, “*kacapi flute*”, “*reog*”, etc. However, it is important to note that customary law as well as the social and cultural values of the local community do not recognize individual ownership of a work in the field of science, literature and art. In addition to sustaining their lives with the selling of their handicraft work, as the majority of the people of Kuta also live off land. For this community, land is the main source of income, owning land means having a respectable social status. As argued earlier, the law of land provides a full land utilisation right to the local people of Kuta, these rights include land exploitation and transaction rights to improve the economic wellbeing of the local people. To some degree, such rights are also granted to outsiders provided there is consent from the local community. However, the implementation and management of these land exploitation rights is done under a profit-sharing agreement scheme for the common good, as both Islamic law and customary law prohibit private exploitation of land. Profit-sharing agreement in Kuta, is an oral agreement between the landlord/owner and the cultivator. It is a rather formal deal between the two parties for profit sharing after the cultivator has complete their work and the product has been sold. Generally, the parties agree to each other’s rights and obligations. The objects of land transaction profit-sharing agreement include anything on the surface of the land. The revenue of the exploitation of the land is shared on an equal basis, meaning that half of the dividend goes to the cultivator/tenant while the other goes to the landlord/owner. This revenue sharing scheme is known to the Sundanese people as *maro* or *nengah*. The time limit for the profit-sharing agreement is based on mutual agreement between the landowner or the land and the cultivator. Generally, it starts at planting season and ends in harvest season. As the deal itself is not written or documented in any forms, good faith and absolute trust are important factors in making the agreement. The candidate cultivator or tenant must show that he/she is trustworthy before the landlord/owner can allow them to

exploit/cultivate the land. Both Islamic law and customary law, in Indonesia, stipulate that the rules of land revenue sharing are determined by the agreement of both parties, i.e., the landowner and the tenant on a mutual benefit principle. Such agreement lacking clear terms and conditions, does not and cannot constitute a legal basis, and as such, it does not have any legal binding whatsoever. This can lead to unclear rights and obligations between landowners and land tenants, which, in turn, can lead to land disputes between landlord/owner and the cultivator/tenant. When such conflicts erupt, traditional leaders become key mediation elements to help restore justice and peace within the community. The approach used by these traditionally knowledgeable leaders is reaching consensus through deliberation (*musyawarah mufaqah*), an idea deeply rooted in the Indonesian society.

### CONCLUSION

The results of this study show that customary law is based on living and growing values within the community of a region, and largely unwritten, yet it has a strong binding force in society. Customary sanctions are not oriented toward punishment, but toward the achievement of peace through negotiation, mediation, conciliation and arbitration. Although the people of Kuta follow the Islamic faith, they still conserve the tradition, believes, wisdom, teaching and values of their ancestors. Consequently, it is the preservation of these ancestral practices, believes and teaching that has made West Java, especially Kuta, a major tourist attraction. In order to boost this sector, there should be legislation providing certain intellectual property rights over the traditional knowledge of the local community, not only in Kuta, but also every community throughout Indonesia. Customary law, as the guardian of this knowledge, has not been able to provide such protection so far. The growth of the economy in this region is not only due to its rich cultural heritage, but also to its land transaction profit-sharing scheme based on both Islamic and customary laws. However, the fact that the agreement is made not in written leads sometimes to land related conflicts within the region, as it does not provide a legal basis guaranteeing the rights and obligations of the contracting parties and as such, it gives no legal certainty and legal protection for the parties involved in the agreement. The lack of documentation, as well many other problems discussed, can largely be compensated for by establishment and the promotion of alternative dispute resolution mechanisms.

### ENDNOTE

1. ALG Team, Interview, 15 Jun 2017.
2. Wasyim, Interview, 15 Jun 2017.
3. Satu Dekade Legislasi MAsyarakat adat: Trend Legislasi Nasional tentang Keberadaan dan Hak-Hak Masyarakat Adat atas Sumber Daya Alam di Indonesia. Kertas Kerja Epistema No. 07/2010.

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