FAIR MEDIATION AS AN ALTERNATIVE FOR SETTLEMENT OF CUSTOMARY LAND DISPUTES FOR OIL PALM PLANTATION BUSINESSES IN WEST PASAMAN

Nur Asmah, Sekolah Tinggi Ilmu Hukum Lubuk Sikaping Indonesia
Yaswirman, Faculty of Law, Andalas University, Padang, Indonesia
Kurnia Warman, Faculty of Law, Andalas University, Padang, Indonesia
Mardenis, Faculty of Law, Andalas University, Padang, Indonesia

ABSTRACT

The existence of the oil palm plantation company PT. Anam Koto in West Pasaman, has had both positive and negative impacts on both the social and economic aspects of the Nagari Aia Gadang community. The involvement of plantation companies in the economic field is able to dominate the economic movement of the community which continues to grow and develop. But on the other hand, it creates social influences, one of which is in the form of prolonged conflicts between Indigenous Peoples and Plantation Companies. Problems arise when: First, the Plantation Company does not fulfill the agreement in the form of handing over plasma to the Indigenous Peoples in accordance with the initial agreement. Second, inequality in dispute resolution. Third: not achieving justice either in the laws and regulations, or in the process of resolving disputes between Indigenous Peoples and plantation investors. This study uses empirical juridical research methods, analytical descriptive. Using primary data derived from informants, and obtained directly from the source, either through interviews, observations, or reports from unofficial documents which are then processed. Secondary data derived from legal materials. The results showed that: The conflict between the Indigenous Peoples of Nagari Aia Gadang Pasaman Barat and PT. Anam Koto is lame in resolving the dispute. Lame in the sense that the rights of indigenous peoples contained in customary law are not involved in dispute resolution, besides that the Regional Government as a facilitator of the transfer of customary land rights into HGU controlled by PT. Anam Koto seemed to let go. In addition, justice has not been achieved both in the laws and regulations and in the dispute resolution process in disputes between Indigenous Peoples and Oil Palm Plantation Investors. The author assumes that actually the regulations relating to HGU and plantations in Indonesia have run away from the concept of justice. The author recommends that the Central Government make a special law on non-litigation settlement of customary land disputes, in the form of mediation facilitated by the Regional Government and the Dispute Resolution Team, involving the Customary Institutions as a form of balancing the interests between the Indigenous Law Community and the Investors.

Keywords: Mediation, Dispute Resolution, Communal Land, Oil Palm Plantation.

INTRODUCTION

Article 4 Paragraph (1) of the Basic Agrarian Law (UUPA) describes land rights granted to the community, both individually and collectively based on the right to control the state. The

land rights as referred to in Article 4 above are determined in Article 16 Paragraph (1) which stipulates as follows: 1) Property rights; 2) Cultivation rights; 3) Right of use-building; 4) Right to use; 4) Lease rights; 5) Right to clear land; 6) The right to collect forest products; and, 7) Other rights that are not included in the rights mentioned above which will be stipulated by law as well as temporary rights as mentioned in Article 53. An interesting thing about the land rights is the issue of in usufructuary rights. This right to cultivate is regulated in Presidential Decree No. 23/1980 on Land Utilization. Right to Cultivate and Right to Build for Joint Ventures in the Framework of Investment, were later replaced by Government Regulation No. 40 of 1996 concerning Right to Cultivate, Right to Build and Right to Use Land.

Cultivation rights in Indonesia are usually used for plantations, both in the form of local investment and foreign investment. The need for plantation companies for land is facilitated by the state, including by granting location permits (Cahyaningrum, 2012). Nearly 500 thousand hectares or about 12.5 percent of the area of West Sumatra is controlled by a number of concession business permits such as Industrial Plantation Forests (HTI), Forest Concession Rights (HPH), plantations and mining. These are spread over several regencies/cities such as West Pasaman Regency, South Solok Regency, Sijunjung Regency, Dharmasraya Regency and Pesisir Selatan Regency (Dingin, 2016). The existence of a development policy that is implemented requires a lot of land. The implications of this policy cause various conflicts, both vertical and horizontal. Vertical in nature, such as conflicts between indigenous peoples and the government and the private sector (investors). On the other hand, the horizontal nature occurs between members of the customary law community itself (Mirwati, 2002). The current laws and regulations seem to position the land rights of indigenous peoples (hak ulayat) in a discriminatory manner. The government seems to be a super power institution that is given too much legitimacy and authority so that the rights of indigenous peoples (hak ulayat) can be marginalized or protected (Mirwati, 2002).

Talking about agrarian conflicts, the Consortium for Agrarian Reform (KPA) noted that there were at least 1,769 agrarian conflicts, the agrarian conflicts that occurred covered an area of 807,177.6 hectares (ha) and involved 87,568 families. The highest position of agrarian conflicts was contributed by development in the plantation sector with 144 cases or 35%. As many as 60% or 83 cases of conflict in the plantation sector occurred in oil palm plantations This position was followed by conflicts in the property sector as many as 137 cases or 33%, agriculture 53 cases or 13%, mining 29 cases or 7%. Then, forestry 19 cases or 5%, infrastructure development 16 cases or 4%, and coastal/marine 12 cases or 3%. Agrarian conflicts are most widely spread in the province of Riau, which is as many as 42 cases. The main factor that causes most agrarian conflicts to occur in Riau is the rise of oil palm plantations and industrial forest plantation companies (HTI). Riau's position was followed by East Java with 35 cases, South Sumatra with 28 cases, West Java with 28 cases, Lampung with 26 cases, North Sumatra with 23 cases, Banten with 22 cases, Aceh with 21 cases, Central Kalimantan with 17 cases, and DKI Jakarta with 17 cases. There are 444 villages and 200 cities affected by agrarian conflicts. Conflicts in the plantation sector have increased four times compared to the area in other sectors. The total area of agrarian conflicts in this sector reaches 591,640.32 ha. The extent of the conflict was followed by the forestry sector reaching 65,669.52 ha, coastal 54,052 ha, mining 49,692 ha, property 13,004,763 ha, and infrastructure 4,859 ha.

West Sumatra tries to anticipate the occurrence of this agrarian conflict, especially plantation conflicts involving customary lands by issuing several regulations at the Regional Regulation level, including in 2008 the Provincial Regulation No. As a follow-up to the

Provincial Regulation Number 6 of 2008 in 2012, the Governor of West Sumatra Regulation (Pergub) Number 21 of 2012 was ratified on Guidelines and Procedures for the Utilization of Communal Land for Investment. From the very beginning, the purpose of the issuance of the Regional Regulations and Governor Regulations above was to serve as a reference in investment, so as to create legal certainty in the use of customary land by investors in West Sumatra. In the consideration section of the Gubernatorial Regulation No. 21 of 2012 it is stated that the purpose of establishing the Governor's Regulation is in the context of regulating the use of ulayat land for the greatest benefit of the people's prosperity. For this reason, investment activities are needed, which are currently specifically regulated in Law Number 25 of 2007 concerning Investment and stated in Article 3 paragraphs (1) and 4, Regional Regulation Number 6 of 2008 that the main target of utilizing communal land is to improve welfare and prosperity. indigenous peoples or take advantage of the land including natural resources for their survival and livelihood. Especially in the regulation of agrarian resources in the form of communal land and assets in West Sumatra.

If understood, the above provisions basically recognize the existence of indigenous peoples who have the right to control their ulayat rights. However, in reality indigenous peoples as weak people are often marginalized. Until now, the ulayat land dispute between the customary law community and the Plantation Company has not been resolved, which must be resolved. One of them is the status of customary land which has become HGU, according to the laws and regulations it has become the status of state land after the HGU period expires. The plantation company extended the HGU without the knowledge of the indigenous peoples. This is one of the current problems in West Sumatra, especially in West Pasaman Regency.

Various problems arise as a result of the extension of this HGU, one of which is a conflict that leads to an agrarian dispute. There are several factors that cause disputes between Indigenous Law Communities and Investments, namely: First: Problems arise when the Plantation Company does not fulfill the agreement in the form of surrendering plasma to the customary law community in accordance with the initial agreement, during the handover of customary land. As is the case with the dispute between the Nagari Aia Gadang Indigenous Law Community and PT. Anam Koto. In this dispute PT. Anam Koto defaulted on the initial agreement with the community in which PT. Anam Koto promised to give indigenous peoples the right to manage Plasma plantations with the area specified in the agreement, but in fact for 22 (twenty two) years managing oil palm plantations that stood on land with HGU status which was formerly customary community land, PT . Anam Koto never kept that promise. The settlement of this dispute has gone through several efforts from non-litigation and litigation processes, but still does not get the results according to the demands of the Indigenous Law Community. Second: Another problem The customary law community considers that the land of the former HGU is still their ulayat land, after the HGU period expires the land returns to their ulayat land, the community considers that the siliah jariah given by the plantation company to them does not mean they sell the ulayat land to the plantation company, such as a proverb in Minangkabau custom states that "kabau pai kubangan tingga, sado that is tabao luluak nan lakek in the body" (meaning that after the HGU period is over, the company leaves the land back into customary land of the indigenous people, what is brought is only the produce, the land remains). Meanwhile, plantation companies and UUPA mean otherwise. Siliah Jariah according to Minangkabau customary law is a substitute for the efforts of the holders of customary land management rights. Siliah Jariah does not change the status of customary land ownership rights. Siliah Jariah and plasma plantations that are managed in a partnership between the community

and the Plantation Company according to the community are a form of compensation obtained (dingin, 2016). Again, the issue of this conflict is always won by the plantation company.

The author argues that the problem that causes indigenous peoples to always be in a disadvantaged position in court decisions in land disputes is the issue of the judge's lack of understanding with customary law. For this reason, according to the author, it is necessary to have a balanced position between the customary rights regulated in customary law and the rights of the Company. The author admits that customary law cannot be recognized as law in Indonesia, which adheres to the notion of civil law and relies on positive law. However, the rights of indigenous peoples over their ulayat lands as stipulated in customary law need to be taken into consideration to minimize conflict. For this reason, the opportunity to minimize these conflicts can be done at the mediation level. For this reason, this article will provide a model for resolving customary land disputes for plantations with fair mediation. Justice here means involving customary law in the mediation settlement process. The theory used in measuring justice in this case is Gustav Radbruch's version of justice theory.

Communal Land Dispute of Aia Gadang Pasaman Barat community with PT. Anam Koto

PT. Anam Koto entered West Pasaman (formerly Pasaman Regency) on November 19, 1990. The process of transferring customary rights to HGU was facilitated by the Regional Government of Pasaman Regency which was then followed up with a Letter of Agreement between Niniak Mamak and PT. Anam Koto. The agreement basically states that Ninik Mamak is willing to hand over the land to be used by PT. Anam Koto for oil palm plantations. Ninik Mamak's willingness to hand over the land was none other than because of the lure given by the Regional Government as the facilitator, namely speculation that with the existence of PT. Anam Koto can improve the welfare of the living standards of their children, nephews and grandchildren. Then the indigenous peoples were also promised plasma plantations that could be cultivated by the indigenous peoples covering an area of 10% of the total 4,740 ha of land handed over to the company.

In fact, 22 years since the agreement was made, PT. Anam Koto never kept his achievements against the agreement, and it sparked social conflicts to land disputes. Moving on from this, the author concludes that there is an imbalance in the process of resolving plantation land disputes with the Indigenous Peoples. Not only inequality in solving cases, the author claims that this inequality has existed since the beginning of the emergence of oil palm plantations in Pasaman Regency, for that the author will describe these inequalities as follows:

First, the local government's alignment with investors. In the case of a dispute between the Aia Gadang community and PT. Anam Koto. In this case, there was an attempt by the Regional Government of Pasaman Regency at that time to persuade the community to surrender their ulayat land with the lure of welfare if the land was turned into oil palm plantations. Oil palm plantations are indeed considered as one of the magnets to attract investors to invest in the hope that the local community will help their economy.

Talking about the business potential and investment of plantations, indeed (Nomlene, 2015) plantations have an important and strategic role in national development, especially in increasing the prosperity and welfare of the people, receiving foreign exchange, providing employment, obtaining added value and competitiveness, meeting the needs of the people. Domestic consumption, domestic industrial raw materials as well as optimizing the management of natural resources in a sustainable manner. This is what is used as a tool to influence the

community to hand over their ulayat land to the Regional Government to be cultivated into oil palm plantations and pawned to investors.

The handover of the customary holdings of the Indigenous Peoples is made in the form of a written agreement between Ninik Mamak and the Investor which is facilitated by the Regional Government. This land acquisition is certainly not without profit, the compensation for the land is called siliah jariah. The transition process is assisted by the Regional Government through a Committee consisting of the Land, Plantation, Forestry and Governance Agency. In addition to the above, there are other requirements, namely plasma plantations. The current legal basis for plasma is Minister of Agriculture Regulation No. 26 of 2007 on Guidelines for Plantation Business Licensing. The important point of the Ministry of Agriculture is the obligation for Large Private Plantations (PBS) and State Large Plantations (PBN) to develop plasma plantations of about 20 percent of the total concessions they have. Indeed, the handover of the customary land of the Nagari Indigenous Peoples occurred before the Minister of Agriculture No. 26 of 2007 was born, in fact the issue of giving plasma promised by investors is not clear, and the agreement tends to benefit investors.

In this case, the author assumes that the Regional Government sided with investors, because the Regional Government at that time was a facilitator. This means that the Regional Government as a representative of the State at that time denied what was stated in the Preamble to the 1945 Constitution, which reads: "...to form an Indonesian state government that protects the entire Indonesian nation and the entire homeland of Indonesia, and to promote public welfare and educate the nation's life". There is a phrase "promoting public welfare" at the opening of the 1945 Constitution, meaning that the welfare of the community is the responsibility of the State.

Second, inequality in dispute resolution, dispute resolution between Indigenous Peoples and investors in palm oil plantations. What I mean by lame here is that the local government as a facilitator seems to be getting out of hand. To the author's knowledge, there are several forms of dispute resolution that the author quotes from Rahmadi (2001), among them; the first is the adjudicative process. Courts and arbitration are included in both adjudicative dispute resolution processes because in both processes there are neutral third parties, namely judges and arbitrators who have the authority to decide on the basis of various facts and arguments put forward by the disputing parties. The final result of litigation and arbitration is a decision. There are options in this adjudicative process, namely court and out of court. The local government should first facilitate the disputing parties to carry out mediation. Mediation is needed to listen to the arguments, facts and evidence presented by both parties to reduce the conflict so that it does not surface as a dispute. But in fact the local government failed to do this. For this reason, the author tries to offer a model in the implementation of dispute resolution between indigenous peoples and plantation investors which will be discussed below.

The second category of dispute resolution is investigative, namely fact finding. In fact-finding, a neutral third party which usually consists of an odd number of people is appointed by the disputing parties to collect and clarify facts surrounding the issue that can be used to resolve the dispute. The end result of a fact-finding team is a recommendation which can be binding or non-binding depending on the agreement between the parties. The author underlines the phrase "a neutral third party". The Regional Government and other apparatuses such as the National Land Agency and other Ministries can be those parties, and it would be better if the Customary Institutions were involved in these parties. at least the customary institutions, ninik mamak, are involved in the fact-finding and deliberation process.

The third category of dispute resolution is based on a collaborative approach and consensus or consensus of the parties. This third typology can be divided into two forms, namely negotiation and mediation. Negotiation is a form of dispute resolution through a negotiation process between the parties without the assistance of other parties. Apart from being a form of dispute resolution, negotiation also functions as a mechanism for making agreements in the field of civil law and agreements in international law. Mediation is a form of dispute resolution through negotiations with the help of a neutral third party called a mediator. The essence of negotiation and mediation is negotiation to reach a consensus or consensus that meets the interests of the parties.

The fourth category is a combination of the two existing forms. In foreign literature this combined form is called “hybrid process”. For example, the combination of mediation and arbitration is called medarb. Fact finding can also be combined with mediation.

Third, the lack of justice in terms of laws and regulations, dispute resolution processes, and disputes between indigenous peoples and investors in oil palm plantations in West Pasaman. The author assumes that in fact the regulations relating to HGU and plantations in Indonesia have run away from the concept of justice. The concept of justice that the author means in this case can be seen from several theories of justice. If the author analyzes using the theory of justice according to Aristotle, which in his main view states justice as a granting of equal rights but not equality.

Aristotle distinguishes equal rights according to proportional rights. Equal rights are seen by humans as a unit or the same container. This is what can be understood that all people or every citizen before the law is equal. Proportional equality gives each person what he is entitled to according to his abilities and achievements. Furthermore, according to Aristotle’s view, justice is divided into two types of justice, namely distributive and commutative justice. Distributive justice is justice that gives everyone a share according to their achievements. Commutative justice is justice that gives the same amount to everyone without discriminating against their achievements. From this kind of distribution of justice, Aristotle gets a lot of controversy and debate.

However, this version of Aristotle’s theory of justice cannot be used as a knife for analyzing the injustices contained in legal norms as the author described earlier. However, this theory can provide an illustration that distributive justice should be justice given to each person according to their achievements, if we relate it to the case of the Indigenous Peoples dispute with PT. Anam Koto in terms of plasma development for the community. In the letter of agreement dated November 19, 1990, there is a clause in Article 1 paragraph (1.2) which states “Land as referred to in the area of plasma plantations outside the land as nucleus plantations of the First Party is an area of 10% (ten percent) of 4,740 Ha (four thousand seven hundred four twenty hectares)” while Article 2 paragraph (2.2) strip (-) 1 states “The Second Party (customary community) is entitled to a plasma plantation of 10% (ten percent) of 4,740 Ha (four thousand seven hundred and forty hectares)”. In this case it is clear that PT. Anam Koto has defaulted, which is not exactly what was promised. In addition to the legal facts, PT. Anam Koto clearly did not comply with Article 22 of Law Number 18 of 2004 concerning Plantations and Article 1 paragraph (16), Article 11 paragraph (1), paragraph (2), as well as paragraph (3), Article 24 paragraph (1), and Article 34 letter g of the Ministry of Agriculture Number: 26/Permentan/ OT.140/2/2007 concerning Guidelines for Plantation Business Licensing which expressly states that “Plantation business partnerships are carried out between companies and planters, employees and/or communities around the plantations in the form of a working relationship that

is mutually beneficial. Mutual benefit, respect, responsibility, strengthening and interdependence in order to grow and empower local communities/cooperatives".

In addition, referring to Article 58 Paragraph (1) of Law No. 39 of 2014 Plantation Law concerning Plantation Business Partnerships, it is explained that plantation companies that have plantation business permits are required to facilitate the development of community plantations of at least 20% of the total plantation area. Cultivated by plantation companies, besides the regulations that were born before Law No. 39 of 2014 also say so. It means PT. Anam Koto clearly violated this provision.

Next, John Rawls's version of justice theory, which is in the "liberal-egalitarian of social justice" view, argues that justice is the main virtue of the presence of social institutions. However, virtue for the whole community cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak community seeking justice (Faiz, 2009). Specifically, John Rawls developed the idea of the principles of justice by fully using the concepts of his creation known as the "original position" and "veil of ignorance" (Faiz, 2009). Rawls's view positions the existence of an equal and equal situation between each individual in society. There is no distinction of status, position or having a higher position between one another, so that one party with another can make a balanced agreement that is Rawls's view as an "original position" which rests on the notion of reflective equilibrium based on the characteristics of rationality, freedom, and equality to regulate the basic structure of society.

In John Rawls's view of the concept of "original position" there are the main principles of justice, including the principle of equality, namely that everyone is equal to freedom that is universal, essential and compatible and the inequality of social and economic needs in each individual. The first principle is stated as the equal liberty principle, such as freedom of religion, political liberty, freedom of opinion and expression, while the second principle is stated as the difference principle, which hypothesizes on the equal opportunity principle (Rawls, 2006). John Rawls emphasized his view on justice that the program of justice enforcement with a populist dimension must pay attention to two principles of justice, namely, first, to provide equal rights and opportunities for the broadest basic freedom as broad as equal freedom for everyone. Second, being able to reorganize the socio-economic gaps that occur so that they can provide reciprocal benefits.

John Rawls's version of Justice Theory, if it is related to the issues being discussed, it can be concluded that in terms of upholding justice with a populist dimension, two principles of justice are taken into account, namely, first, giving equal rights and opportunities to the broadest basic freedoms as broad as equal freedoms. For everyone, indeed in the settlement of disputes between Indigenous Peoples and Oil Palm Plantation Investors, each party is given the same portion, it's just that in the position before the dispute over the position of the community, it is more disadvantaged, this happens because of the inequality of agreements facilitated by the Regional Government between the community owners. land with investors, as in the case of the Community dispute with PT. Anam Koto which has been discussed in the previous paragraphs. So that justice is not able to break the gap, causing various kinds of conflicts and leading to legal disputes.

The next theory of justice is Gustav Radbruch's version. In realizing the legal objectives, Gustav Radbruch stated that it is necessary to use the priority principle of the three basic values which are the objectives of the law. This is because in reality, legal justice often clashes with the benefits and legal certainty and vice versa. Among the three basic values of the purpose of the

law, in the event of a conflict, someone must be sacrificed. For this reason, the principle of priority used by Gustav Radbruch must be implemented in the following order:

1. Legal Justice;
2. Legal Benefits;
3. Legal Certainty (Erwin, 2012).

With the order of priority as stated above, the legal system can avoid internal conflicts. Historically, according to Gustav Radbruch, the goal of certainty was at the top of the list among other goals. However, Radbruch changed it after looking at the facts of the Nazi war, and placed the goal of justice above other legal goals (Fanani, 2011).

Legal Justice as the first order if represented is in the form of Law. Then, if it is related to the issues discussed in this article, whether the laws and regulations governing plantation issues in Indonesia have fulfilled the sense of justice. In order to answer this question, it is necessary to study the whole of the legislation, some of the laws have been discussed by the author in this article. From the discussion of several laws governing plantations and their implementation, the author can conclude that, at this level, legal justice has not been achieved, meaning that in these regulations there are still unequal positions and tend to harm Indigenous Peoples or even harm the state.

One example, Article 28 paragraph (1) jo. Article 29 paragraph (1) of the UUPA explains that the Right to Cultivate ("HGU") is one of the rights to land, namely the right to cultivate land that is directly controlled by the state, according to a maximum period of 25 years, for agricultural, fishery or farm. Then Article 8 paragraph (1) of PP Number 40 of 1996 and Article 3 paragraph (1) explains that for a period of time, the HGU is granted a maximum of 35 years and can be extended for a maximum period of 25 years. The right holder can then be granted a HGU renewal. This means that the land will be controlled and exploited by investors for 60 years, after which time the land will become state land.

Most of the land that becomes HGU is ulayat land belonging to indigenous peoples which through the agreement is given to investors to be worked on as plantation land with certain conditions. If after the HGU period expires, what about the status of the former HGU plantation land? Can the HGU land be returned to customary land, or can the indigenous people be evicted and the land controlled by the state. In this case, society will benefit, of course the answer is no. Even the agreement to release ulayat land into HGU also tends to harm indigenous peoples.

Then after the emergence of the Investment Law Number 25 of 2007, the Cultivation Right has a period of 95 years in Article 22 which reads "The Cultivation Right can be granted for a total of 95 (ninety five) years by way of being granted and extended upfront at once for as long as 60 (sixty) years and can be renewed for 35 (thirty five) years.

When compared with the provisions of erfpacht rights during the colonial period which had a term of 75 years, of course we think that the Investment Law Number 25 of 2007 actually worsened the situation and the provisions regarding HGU were worse than in the colonial era. It should be noted that the erfpacht right which is valid for 75 years has been canceled by the Constitutional Court, because it is contrary to the principle of state control over land. Surprisingly, even though the term of land rights is almost three generations, the provisions regarding the obligation to actively develop plantations by companies and the prohibition of abandoning land as regulated in Article 16 of the Plantation Law Number 39 of 2014 with threats to be taken over by the state are in line with Law Number 11 Article 180 of 2020 concerning Job Creation states that if rights, permits, or concessions on land or areas that are intentionally not

cultivated or abandoned by the owner within a period of two years from being granted will be returned to the state.

But basically whether the laws discussed above have been fair. At the ideal level, in fact all the laws and regulations governing plantations and all their details are fair and should be able to provide legal certainty and legal benefits. This is due to the fact that the legislators have made every effort to include as much justice as possible into the law, so that the laws issued by the legislators should have contained justice. But in fact, this law can create a legal paradox and trigger injustice, legal uncertainty and make the law useless. This is in accordance with what has been explained by John Rawls, that the three legal priorities mentioned above are difficult to implement simultaneously otherwise.

Model for Settlement of Disputes on the Utilization of Customary Land for Plantation Investments in West Pasaman through Fair Mediation

In the following, to provide answers, the authors develop a flow model scheme for the settlement of customary lands between indigenous peoples and plantation investors through mediation. Basically this model is almost the same as other models of dispute resolution through mediation, only the difference lies in the involvement of customary institutions as a form of balancing interests between the Indigenous Peoples and investors in West Pasaman, but this model can only be used in customary land disputes of indigenous peoples. with investors in which indigenous peoples are the plaintiffs/reporters as follows:

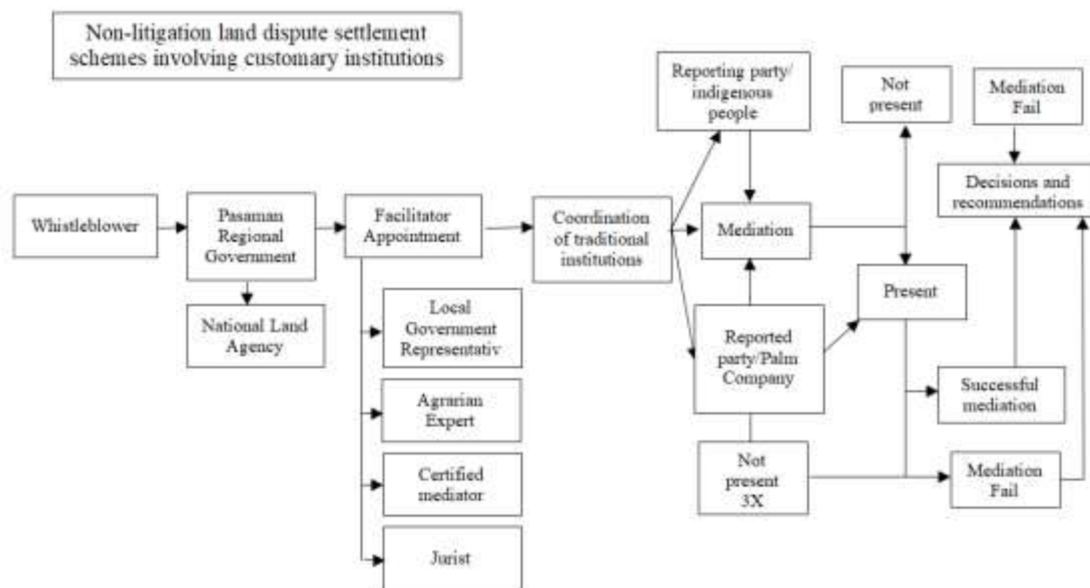

FIGURE 1
ALTERNATIVE DISPUTE RESOLUTION FAST FLOW MODEL

The following explains the flow of this model:

1. The settlement process begins with a report from one of the parties to the West Pasaman Regional Government

2. Then the West Pasama Regional Government will confirm together with the National Land Agency (BPN/ATR) and collect documents related to the complainant and the reported/plaintiff and the defendant.
   The involvement of BPN/ATR in this matter is in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases ("Permen ATR/Head of BPN 21/2020"). In the event of a land case, the parties (in this model the complaint/reporting is carried out by indigenous peoples who are facilitated and accompanied by the West Pasaman Regional Government) can make complaints through the complaint letter reception counter, direct complaint reception counter, and through online media organized by the ministry, regional office, land office. Complaints submitted must meet the following requirements:
   a. Identity of individual complainant, including photocopy of proof of identity or power of attorney and photocopy of identity of the giver and recipient of the power of attorney if authorized;
   b. Photocopy of supporting data or proof of land tenure/ownership of the complainant;
   c. Photocopy of other supporting data on the object of dispute or conflict; and
   d. Brief description of the case chronology.

   If the requirements for the complaint are declared complete, then it is stated in the complaint resume, then reviewed by the officer to determine whether it is a case or not. If it is a land case, it will be entered in the case handling information system.
   Stages of handling by BPN/ATR:
   The handling of land disputes and conflicts is carried out sequentially through the stages of case assessment, which is carried out to facilitate cases being handled and set forth in the form of a staff review that includes:
   a. Title;
   b. The subject matter (the subject of the dispute, the objection or claim of the complainant, the location, extent and status of the object of the case);
   c. Case history;
   d. Available data or documents;
   e. Case classification; and
   f. Other things that are considered important.
3. After verifying the data and seeing the potential for conflicts and disputes, the Government will form a committee and facilitator for the implementation of Mediation. The committee and facilitators consist of a) Representatives from the Pasaman Regional Government; b) Agararia Expert; c) Certified mediator (neutral third party); d) Legal experts.
4. The next step is the Regional Government together with the Committee to coordinate with the Customary Institutions.
5. Initial title, led by the Director, Head of Division V or Head of Section V, Representatives from the Pasaman Regional Government, Committees and Facilitators and Representatives of local Traditional Institutions aimed at:
   a. Formulate a treatment plan;
   b. Determine applicable laws and regulations;
   c. Determine juridical data, physical data, field data, and required materials;
   d. Preparing research work plans; and
   e. Set targets and completion times.
6. The results of the initial degree are made in a summary note and used as a basis for preparing responses or answers to the complainant; or prepare research working papers as a basis for conducting research.
7. Research, namely the process of seeking, exploring, developing, finding, and testing the data and/or information needed to make a case clear.
8. The results of the research are stated in the form of a research report, which outlines the typology of the problem, the root of the problem, the main problem, case history, description of field conditions, the position or legal status of each party from the study of law/statutory regulations and obstacles and suggestions. follow-up settlement.
9. Exposure of research results, to convey data/informational materials that explain the legal status of legal products and the legal position of each party. If the exposure of the research results concludes that data, information and/or coordination meetings with relevant agencies or institutions are still needed to make decisions or mediation steps are needed to resolve cases, then the following can be done:
   a. Review;

   b. Re-examination with the development of research plans and objectives;
   c. Testing/research/examination by the examination team to obtain recommendations for case resolution;
   d. Preparation of the mediation stage with the parties
10. Coordination meetings, namely meetings held by the Ministry of ATR/BPN, Regional Offices of BPN, land offices in accordance with their respective authorities with related agencies consisting of a) Representatives from the Pasaman Regional Government; b) Agararia Expert; c) Certified mediator (neutral third party); d) Legal experts; e) representatives of customary institutions in the context of integration, synchronization of handling and/or resolution of cases. The coordination meeting resulted in a conclusion in the form of a case settlement or recommendations/instructions that required additional data or information to arrive at the conclusion of a case settlement.
11. Summons of the Parties for the implementation of mediation
12. If the parties are not present for the three summonses, the mediation is considered failed, the Committee and the Facilitator issue recommendations for further settlement to litigation.
13. The mediation process gives birth to follow-ups in the form of:
   a. Peace; or
   b. The rejection letter cannot be granted.
   c. Instructions for settlement of cases or letters of determination of the rightful party but the decision on the settlement has not been followed up because there are conditions that must be fulfilled which are the authority of other agencies;
   d. Case resolution recommendation letter
   e. Criterion three (K3), in the form of a notification letter is not the authority of the Ministry.
14. A letter of recommendation for case settlement is submitted by the Committee and the Facilitator to both parties.
15. Mediation is complete.

CONCLUSION

The conflict between the people of Aia Gadang Pasaman Barat and PT. Anam Koto is lame in resolving the dispute. Lame in the sense that the rights of indigenous peoples contained in customary law are not involved in dispute resolution, besides that the Regional Government as a facilitator of the transfer of customary land rights into HGU controlled by PT. Anam Koto seemed to let go. In addition, justice has not been achieved both in the laws and regulations and in the dispute resolution process in disputes between indigenous peoples and oil palm plantation investors in West Pasaman. The author assumes that in fact the rules relating to HGU and plantations in Indonesia have run away from the concept of justice.

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