

FALLOW LAND CONFLICT SETTLEMENT IN BURU ISLAND ACCORDING TO INDONESIAN INDIGENOUS LAW

Nia Kurniati, Universitas Padjadjaran
Reginawanti Hindersah, Universitas Padjadjaran
Efa Laela Fakhriah, Universitas Padjadjaran

ABSTRACT

The land conflict occurs in Waeapo Valley in Buru District, Maluku, Indonesia due to farmlands ownership disagreement between the local community and the transmigrants from Java Island. This conflict causes horizontal conflict, leading to farmlands blockades by local community in some of the villages in Waeapo Valley of Buru District. Farming activities was ceased and the land became fallow land.

The purpose of this research find out the legal certainty of land and dispute settlement alternatives based on local wisdom and customary right (adat in Indonesian); and Indonesian law. The research method normative juridical integrated by observation-based study.

This study revealed that lands belong to indigenous communities has legal uncertainty because it is not registered on land agencies. So that fallow land conflict cannot be resolved by formal juridical process. The horizontal conflict settlement option is through a non-litigation settlement between the conflict of the communities based on mutual problem-sharing and spirit of kinship lead by elder people or public figure. The government should involve carrying out this option to support win-win solution. This study concludes that the horizontal conflict settlement options in Buru District should be based on the local wisdom which is a legal reflection of the Indonesia original law.

Keywords: Indigenous Law, Conflict Settlement, Fallow Land.

INTRODUCTION

Buru district, approximately 759,500 Ha, is one of food crop production centres in eastern part of Indonesia. A total of 33,7% Buru's Gross Regional Domestic Product in 2016 was from agricultural sector. Rice is important food crop cultivated mainly in Waeapo low land. Paddy is important food crops, their expenditure for rice was approximately 18.16%, highest compared to other food consumption. Paddy cultivation was introduced by transmigrants from Java in Waeapo low land which includes Waeapo, Waelata and Lolongguba sub-district by transmigrants from Java since late 1960. Before their arrival, the livelihood of local inhabitants was collecting forest products such as sago and coconut; shifting cultivation of grain and tubers; and fishing.

In 2015 paddy field covers an area of 6,621 Ha which contributes to 60% of rice consumption in Maluku Province. Ministry of Agriculture planned to develop new paddy field in Buru based on Presidential Directive No.54 Year of 1980 on "New Paddy Field Development" (hereinafter Presidential Directive No.54 Year of 1980); and intended to create new paddy field

up to 10,000 Ha in 2017. The Government intended to increase rice productivity up to 6 t/Ha compared with actual productivity of 4.8 t/Ha.

To overcome the new paddy field program, government bought some of the local communities land to construct the paddy field on it. Historically, that land was never cultivated for almost 40 years but the owner collect food and wood from plants naturally grown in their land. Land ownership by local communities that has lasted more than 20 years is recognized by the State and is known as "*indigenous land*" (Harsono, 2003). The indigenous land is claimed to be Ulayat Rights, but it is ambiguous since register land with Ulayat Rights to the Indonesian national land agency is impossible (Kaliraj, 2017).

The new paddy fields were distributed to local and transmigrants farmer which is in line with the Law No. 5 Year of 1960 regarding Basic Regulation on Agrarian Principles (hereinafter 'Indonesian Agrarian Act'). However the problem rise when productivity of rice harvested from local farmer's field were much lower than that of transmigrant farmer who has already the habits and skills in rice production. These gaps causes land development and dispute to its legal status and disrupt rice production in some paddy field in Buru District. Fallow land often with no recognition of customary law or actual user-right - to private individuals and companies (Soekanto, 2003).

Individual or institutions have no right to manage the fallow land; and it causes a conflict in some countries which then reduce food crops production (Soekanto, 2003; Santosa, 2014). The issue of fallow land contradict with the national policy on the food production crops estate. However, food estate developments in underdeveloped region in Indonesia triggered a social conflict between communities and the land become fallow and threaten food crop production (Santosa, 2014).

In 2018 there are 8,124 Ha of paddy fields in Buru District, and only 5,500 Ha are cultivated, around 600 Ha was fallow not only is caused by damaged irrigation network and change to plantation crops, but also by horizontal land conflict between local and transmigrant farmers (personal communication). This situation is very contrary to the socio-economic function of the land. Land is the source of life, symbol of identity and human dignity (Sumardjono, 2008). The relationship between human and land is very prominent (Notonagoro, 1984; Soetiknjo, 1994).

Fallow land is contradictory to the principles of "*land rights social function*" and "*farmland for farmers*" (Harsono, 2003) and should be cultivated for rice or other food crops. Land conflicts which induce social conflict between communities should be resolved by involving communities themselves and government. The purpose of this qualitative research is to find out the legal certainty of land and dispute settlement alternatives based on local wisdom and customary right (adat in Indonesian); and Indonesian law.

METHODOLOGY

The research was carried out in September 2017. The study location was in Waeapo low land in Buru District, Maluku Province. The low lands consists of three sub-district namely Waeapo, Waelata, and Lolongguba. This study uses juridical normative method which is a study conducted using secondary data in the form of legal norms in relation with agrarian law and dispute settlement in land dispute. These data will then supported by field research to obtain primary data from respondents in regard with fallow land cases in Buru. The data will be analysed using juridical qualitative method which is analysing primary and secondary data described in the form of elucidation using legal interpretation.

LITERATURE REVIEW

Indigenous Land, Indigenous Law and Indigenous Law Community

Indigenous Land is lands that have not been registered to the Land Office (Harsono, 2003). The term “*indigenous Law*” is interpreted as “*unwritten natural law that is based on the culture and the perspective of life of the Indonesian people, providing guidelines for most of the majority of the Indonesian people, in their daily life in the relationship between one and another, whether in cities or in villages*” (Muhammad, 1994). Usually, indigenous land is inhabited by indigenous community which possess cultural similarity and a rule of order (Koesnoe, 2002).

Indigenous law communities in Indonesia is based on “*ancestral relationship*” (genealogy) and on “*its regional environment*” or territorial (Koesnoe, 2002). According to Surojo (Wignjodipuro, 1980), “*indigenous law community in Buru is a singular territorial indigenous law community since they developed the territory as a place of residence, only by one part of the group and there is no other group that reside within that area. The residential area of the family is located in the territory of the kampong (village) that is headed by a kepala kampong (village chief)*” (Koesnoe, 2002). The relationship between indigenous law community and the land where they settled is tight, spiritual and religious object because land is the source of wealth, life, and memory (Wignjodipuro, 1980).

This man-land relationship give the right to indigenous law community to possess, cultivate the land, and collect plant product land as well as to hunt the animals based on indigenous law community known as Ulayat Rights (Communal Rights) according to (Wignjodipuro, 1980). Ulayat Rights can grant to local individual people so that they have right to develop the land and continuously cultivate it (Wignjodipuro, 1980). Transmigrants or communities are allowed to live on Ulayat land with certain requirements; but if they do not develop the land properly then they lose the rights over land (Wignjodipuro, 1980).

Ulayat Rights in Buru District is known as “*Nuru*” (personal communication); these local rights have “*inward*” and “*outward*” enforceability. “*Inward*” enforceability means that members of the indigenous law community can gather everything that is above the land along with the plants and the wildlife that live on top of it (Wignjodipuro, 1980). “*Outward*” enforceability means that people not belong to indigenous law community not allowed to cultivate the indigenous community-owned land, except by permission from indigenous law community and with certain “*compensation*” fee (Wignjodipuro, 1980).

The development of land with indigenous land rights in Buru for the new paddy field program is based on Presidential Directive number 54 Year 1980 concerning transfer of land right from indigenous people that accompanied with of compensation fees without social-economic assessment. That new paddy field officially could be cultivated by indigenous as well as transmigrants.

The existence of Ulayat Rights is strictly acknowledged by Indonesian Agrarian Act in Article 3 and Article 5. Base on that regulation, Ulayat Rights of the indigenous law community is acknowledged as long as it still exists in reality on not contradictory with national and State interest (Hartono, 1978; Sudiyat, 1981). For example, allowing the government to perform transmigration settlement or food estate by clearing the forest with ulayat rights in order (Szczepanski, 2002). This tight man-land relationship generates a legal connection that gives the people, a right to develop the land for the benefits of people (Hutagalung, 2005). The closeness of the bond between land and people generates original and primary rights within the indigenous law community (Poesoko, 2014).

Fallow Land in the Perspective of Indonesian Agrarian Law

Legal provisions that was written in Regulation of Head of National Land Agency No.3 Year of 1998 about securing national food reserve, specified, that “*there exist an obligation for every holder of land rights or party that gain ownership over land to develop a bare land by planting it with food crops*”. The term bare land is similar to fallow land in agriculture; a piece of land normally used for plant production farming but then is left over with no crops on it (Setyawan, 2015). The term Fallow Land can only be applied towards Land that contains rights as designated in Article 20 of Indonesian Agrarian Act among which is Ownership Right. These rights can also be applied to land that have been owned physically but have not yet received its land rights status.

The obligation to develop Fallow Land reflects the social function of land explained by Basic regulations on Indonesian Agrarian Act. The essence of Article 6 of those Regulations emphasizes that every individual, legal entities or institutions have a legal relationship with the land and they obligate to develop their land for their welfare and well-being of people. If the land-rights holder could not develop the land properly or the land become fallow then the government has a right to reorder and change land development based on Government Regulation No. 11 Year of 2010 concerning Order and Utilization of Abandoned Land (hereinafter ‘GR 11/2010’).

The implementation of that regulation can only be applied to those with rights of land status, while for Indigenous land those rules cannot be applied. As results, GR 11/2010 cannot be implemented in fallow land case in Buru since Ulayat right is impossible to be registered in National Land Agency. Land ownership claimed by Buru local residents is based on indigenous law community. However, these claims are proven to be unsubstantiated since the government has buy their indigenous land and local communities has received compensation fee for new paddy filed development. However, nowadays, some new paddy filed has still no legal ownership but has been cultivated by supposed non-local communities.

In this particular dispute, local residents claimed that their “*productive*” land turned into fallow land. The existence of fallow land cannot be separated from Article 2(2) of Indonesian Agrarian Act which stated that land has a social function. However, government has the authority to declare fallow land as state land. State Land is land that is directly controlled by the State, not endowments land, not land with management rights, not land with customary rights, not land with Ulayat Rights, and not land in forest area (Harsono, 2003).

The existence of these fallow lands is contradictory with the principle of “*Social function of Land Right that the social function continues to be an important tool for enhancing popular welfare.*” (Ondetti, 2016). In the implementation of this social function principle, everybody that has a legal relationship with land must develop their land in an active manner (Ankersen & Ruppert, 2006). Fallow land is often regarded as a problem of food security in rural area (Guzrizal, 2013; Shrestha and Pokhrel, 2016). However, fallow land may indeed be viewed as valuable landscape that provides benefits for community and as important ecosystem services that support well-being of local people (Burkholder, 2012).

Moreover abandonment of farmlands that is not cultivated and developed by its owner, not only will it affects the welfare of its owner but also the welfare of the public, because farmers are food providers for the community in general and the life of farmers depends on their access towards land as their main source of livelihood (Llanto & Ballesteros, 2003). The term “*vacant land*” frequently carries a negative connotation abandoned, empty, and dangerous and thus symbolizing disinvestment, blight, and decay (Jakle & Wilson, 2013).

RESULT AND DISCUSSION

Conflict Settlement for Buru Island

Conflict is a social phenomenon that closely related to social interaction between community members to compete toward status, power, or scarce resources (Moore, 1996). According to Usaman (2003), conflict is “*feud between parties to solve problems of which if not properly solved might disturb the relationship between the parties involved*” (Usaman, 2003).

In this study, conflict of interest within the community is to compete for a certain “*land*” happened in the Buru District. The land conflict that happened in certain villages in Buru is caused by following issues:

1. Land cultivated by transmigrant farmers from Java Island is believed as land owned by the indigenous community.
2. Difference perception in understanding the status of the land, between Land Rights, Ulayat Rights and Indigenous land.
3. Unclear size and borders of new paddy field lands.
4. Lack of formal documents which proof the existence of rights and legal actions one over the land.
5. Different perceptions towards legal principles and rules of agrarian law over land by the indigenous community.
6. Skill and knowledge gap in rice production between local and transmigrant farmer that lead the social-economic gap between them.

As results, local community sue the transmigrants farmers to return the paddy field to them since transmigrants/non-local farmers earn more money from their rice field. They ban those farmers to cultivate paddy field with Ulayat Rights reason.

Conflict settlement in Buru is assessed using non litigation mechanism according to written or unwritten legal instruments. One of the written legal instruments is Indonesian Arbitration and Alternative Dispute Settlements Act number 30 Year of 1999. Unwritten legal instruments are based on the values and principles embraced by Indonesians, known as *musyawarah*. In Maluku, well-known unwritten local wisdom to solve certain problem is *Pela Gending*, which is to bond the unity of communities living in different village and raise the brotherhood between each other. This local wisdom includes helping the poor one by the richer.

Before paddy field introduce to Buru at late 60, the local wisdom of Buru people was to organize food consumption according to what they have in the garden which is indigenous land with indigenous right (Ulayat right). Their home garden or garden in remote area is a food reserve of sago (Metroxylon sagu), upland rice, coconut and cocoa. However, their land development for paddy field which is legal based on Presidential Regulation number 54 year 1980 disrupt their food habit and food security. Before getting to know the religion of the Buru people adhering to belief in ancestral spirits or an ancestor called Animism. Their ancestors is believed to protect important places such as certain mountains, forests and gardens that were useful for human beings and areas that are not cultivated including fallow land. Their local wisdom is a logical reason for them to ban transmigrant farmer to cultivate their used to be garden.

Land conflict resolve in Buru District should be based on *musyawarah* due to complicated man-land relation and land ownership specificity in Buru. *musyawarah* is one of important point in “*Pela Gendong*” Maluku’s local wisdom that point up familial and communal discussion with significant mediation by a neutral third party. This land conflict settlement method has been developed in Sumatera Barat Province, Indonesia through a customary

institution regulated by regional regulations (Sumardjono, 2008) which prioritize the social community and their welfare (Poesoko, 2014).

The land conflict settlement in Buru is aimed to achieve a win-win solution through discussion and mediation. Mediation is a problem solving negotiation process between the conflict parties and a neutral third party that does not have significant interest to help them obtain satisfied agreement (Bernhardt, 1980). In case of Buru, mediation becomes the best choice because the two parties still has interest but have no land ownership rights. The recognition of indigenous land ownership in Buru only based on indigenous law and unwritten information from witnesses. This recognition is fortunately supported by Letter of Land Ownership issued by the Village Chief/Head of the Sub-District. However this Letter is not ownership certificate which is recognized by Indonesian Land Agency.

These conflicts mainly influence rice productivity in Buru District and indeed cause direct impact on the fulfilment of the daily needs of food for the local community who used to be the owner of the land. Therefore this land conflict in Buru involves the object of land as the source of Indonesian people live-being as stated in the Republic of Indonesia Constitution Article 33 Paragraph 3 year 1945.

Conflict settlement based on *musyawarah* provides a sense of justice because in *musyawarah* process, they point up the consensus is. Conflict settlement through *musyawarah* is prevalence in Indonesian people life from by win-win solution strategy for restoring brotherhood relationship, reintegrating familial ties that were broken by disputes, healing the traumatic impact (Nurlinda, 2009). These principles include how a problem in community is resolved to achieve a best social and prosperous life within a familial bond (Poesoko, 2014).

Conflict settlement "*musyawarah*" is based on the original law of Indonesian people, this indigenous law implemented by indigenous communities in certain regions in Indonesia resolve the conflict between them (Poesoko, 2014). The mediator is usually indigenous elder's people, public figures or member of local nstitution who are believed to have the ability to handling and settling the problem (Kurniati & Fakhriah, 2017) in order to gain peace agreement.

The voluntary nature of peace agreement is based merely on "*moral power*" without juridical enforcement (Kurniati & Fakhriah, 2017). To obtain a legal power of agreement, the peace agreement should can be submitted to the court so that the parties have an obligatory to obey the agreement (Gusrizal, 2013). The role judicial institution in this conflict settlement by "*musyawarah*" is as a legal enforcement over the "*deal of peace*".

FINDINGS

The effective way to resolve the fallow land conflict in Buru is outside the court by using a discussion and mediation mechanism, known as "*musyawarah*" which is a method of settlement based on indigenous (customary) law. To resolve Buru's conflict comprehensive knowledge of individual behaviours within a community, local values, is required to choose appropriate conflict settlement method. The principle that underlies the land conflict settlement in Buru by "*musyawarah*" is as follows:

1. "*Musyawarah*" becomes the philosophical foundation for a peaceful settlement;
2. Neutral third party is respected indigenous elders people or public figures who play a key role to direct the discussion and suggest problem solving alternatives;
3. Principle of kinship becomes the foundation to make better relationship and reconcile the parties, by giving advice and opinion on conflict resolve;
4. Local wisdom and religious principle should be obeyed and recognized by communities as values of life.

5. Maintaining togetherness and brotherhood among residents is very important due to the belief towards the Great Ruler of Life who guides and demands that every being is to maintain their companionship and push every conflict away.

Fallow land in Buru as a results of land conflict between communities in Buru is believed would reduce food especially rice productivity. Fallow land has a potency to disturb National Program on New Rice Development. However, for indigenous people fallow land is remains important due to their local wisdom: Unused land is protected important places. This local wisdom is along with environmental friendly society.

CONCLUSION

The granted ownership rights over farmlands in Buru District to trransmigrant farmers from Java Island is legal, based on provisions of Indonesian Agrarian Act and Presidential Directive year 1980 on New Paddy Field Development. The occurrence of horizontal conflicts in several Village areas, namely Waetina Village, Grandeng, and Waepo of Waelata Sub-District over farmlands under the status of indigenous land in trigged by several factors. Social and economic status between local community and transmigrant farmers who has better knowledge and of rice cultivation is the primary factor.

SUGGESTION

The dispute settlement of land conflict settlement in Buru based on the principles of *musyawarah* and kinship should be suggested as an effective way of settling farmland ownership conflict in Buru. Both of local laws are guided by indigenous elders who act as mediators who do not take sides, and emphasize on the achievement of an agreement of peace by win-win solution. The social value of land based on local wisdom is different with that based on legal regulation and public policy.

Local communities consider land mainly as sustainable well-being of people, and not just an economic object. In order to resolve and prevent other land conflict, government should have a better appreciation of local land value which is important for their identity. In contrast increasing rice productivity is a must to maintain Buru food security. Rice cultivation is not habit to local people, but the passion to do rice cultivation should be built especially for young generation because nowadays rice is primary staple food in Buru District. The deeper study to mapping the will of young people to involve in agriculture and to determine Buru's people and government vision to resolve the conflict is needed.

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