

Problems and Resolutions of Traditional Land Disputes in the Minangkabau Region

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ABSTRACT

The Indonesian Constitution recognizes indigenous legal communities as part of the wealth of the Unitary State of the Republic of Indonesia whose existence and rights are guaranteed. One such group is the Minangkabau community, which is often involved in customary land ownership disputes. Internal and external conflicts in society. Many things cause these conflicts: non-transparent deliberation processes, lack of openness in the termination of customary land, inadequate compensation, and lack of guarantees from private companies. This study uses a descriptive empirical legal approach with primary data sourced from the field. Disputes are resolved through customary procedures, which usually involve the implementation of customary systems, deliberation, consensus through negotiation or mediation between local customs and companies (or representing companies) → Formulation of customary land disputes. Then the decision is formalized by registering the agreement with a notary or court so that it can be [legally] enforced. However, dispute resolution can be facilitated by a third party, for example, the territorial government approach that provides support in negotiations or finding agreements.

ABSTRAK

Konstitusi Indonesia mengakui masyarakat hukum adat sebagai bagian dari kekayaan Negara Kesatuan Republik Indonesia yang keberadaan dan hak-haknya dijamin. Salah satu kelompok tersebut adalah masyarakat Minangkabau, yang sering terlibat dalam sengketa kepemilikan tanah adat. Konflik internal dan eksternal dalam masyarakat. Banyak hal yang menyebabkan terjadinya konflik tersebut: proses musyawarah yang tidak transparan, tidak adanya keterbukaan dalam penghentian tanah adat, ganti rugi yang tidak memadai, dan tidak adanya jaminan dari perusahaan swasta. Penelitian ini menggunakan pendekatan yuridis empiris yang bersifat deskriptif dengan data primer yang bersumber dari lapangan. Sengketa diselesaikan dengan tata cara adat, yang biasanya melibatkan pelaksanaan sistem adat, musyawarah, konsensus melalui negosiasi atau mediasi antara adat setempat dan perusahaan (atau mewakili perusahaan) → Perumusan sengketa tanah adat. Kemudian keputusan tersebut diresmikan dengan mendaftarkan perjanjian tersebut ke notaris atau pengadilan sehingga dapat [secara hukum] ditegakkan. Namun, penyelesaian sengketa dapat difasilitasi oleh pihak ketiga, misalnya, pendekatan pemerintah teritorial yang memberikan dukungan dalam negosiasi atau menemukan kesepakatan.

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1. Introduction

In the Preamble of the 1945 Constitution, Paragraph 4 states: "The Government of the Indonesian State which protects the entire Indonesian nation and all of Indonesia's blood" (Fartini, 2018). This statement emphasizes that the Indonesian government must be capable of safeguarding the diversity within the nation. One such form of diversity is the presence of traditional law communities, which have existed since ancient times. Among these communities is the Minangkabau, which has established customary law provisions to resolve local issues without involving state institutions such as the police, prosecutors, or courts (Sulistiani & Sy, 2021).

The Minangkabau people often face disputes over customary land, which is passed down through generations as communal property (Siregar, 2019). However, traditional leaders (*mamak*) sometimes misuse their authority by selling customary land for personal gain, creating tensions within the community. Such land disputes not only disrupt relationships among Minangkabau residents but also threaten the social harmony and unity of the community. (Hutabarat *et al.*, 2024). The erosion of trust in traditional leaders further exacerbates the social instability. In Minangkabau, West Sumatra, customary land, inherited from one generation to the next, cannot be sold because it is not part of the formal land registration system (Elkas, Pujiwati & Nugroho, 2023). This aligns with local customary law, which aims to preserve communal land for future generations.

This principle is supported by Article 9, Paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, which distinguishes communal land from land typically registered in the formal system. It stipulates that such land is collectively owned by customary law communities and cannot be registered individually (Nur, 2022). Furthermore, Article 3 of the Basic Agrarian Law recognizes the rights of customary law communities to customary land (Azami, 2022). This provision is essential for regulating the relationship between customary law and state law, especially regarding land control and utilization. While the law and its supporting instruments acknowledge the existence of customary rights, practical challenges arise due to the differences between Minangkabau customary law and the national legal framework. For instance, the prohibition on buying and selling customary land, as stipulated in customary law, has not been fully incorporated into national regulations.

The recognition of customary land rights by the regional government is crucial, especially as these rights are officially regulated for the first time in the Basic Agrarian Law (Tara Nadya Andiani & Jose Gama Santos, 2023). The philosophy of the Basic Agrarian Law is grounded in customary law, which recognizes the existence of customary land rights, though the legal provisions regarding these rights remain insufficiently detailed (Putri, 2020). This lack of clarity may lead to legal discrepancies within the Minangkabau community, prompting the government to issue Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999, an important legal tool aimed at protecting the land rights of indigenous peoples (Dewanto, Hutomo & Widyanti, 2024). However, the successful implementation of this regulation depends on various factors, including the cooperation of the government, indigenous communities, and other stakeholders.

The regulation emphasizes the recognition of customary land rights and similar rights of the Minangkabau customary law community. For the Minangkabau people, customary land is a binding element that defines their community's identity, and it is constitutionally protected by the 1945 Constitution (Geme, Lay & Rade, 2023). Therefore, it is the responsibility of the Minangkabau people to protect their customary land from the pressures of modern development. Despite this, disputes over customary land remain unresolved. This issue prompts the author to explore the underlying factors causing these land disputes and to examine the methods of resolving them within the Minangkabau region.

2. Methodology

This study employs an empirical juridical or sociological legal research method, which focuses on observing law as it manifests in real social situations and human behavior within society (also referred to as law in action). The approach aims to analyze customary land disputes as a social phenomenon, utilizing both a legal and sociological perspective, integrating State Law and Customary Law (Djulaeka & Devi Rahayu, 2020). The research is descriptive-analytical in nature. It seeks to describe the occurrence of customary land disputes, systematically explaining the underlying factors and mechanisms. Through a legal lens, the study analyzes each fact and event related to the disputes. This methodological approach enables the exploration of how legal frameworks—both state law and customary law—are applied to resolve these disputes, and how they interact in practice.

Additionally, the research has an exploratory dimension, particularly in examining the root causes of customary land disputes within the Minangkabau community. It explores the social, cultural, and economic factors that contribute to the emergence of such conflicts, alongside the challenges that arise from the intersection of customary law and statutory regulations. Furthermore, this study investigates potential alternative dispute resolution mechanisms, focusing on non-litigation methods such as mediation and negotiation, which are integral to customary legal practices. In terms of data collection, the study primarily relies on field research, gathering qualitative data through interviews, case studies, and direct observation. Key stakeholders such as traditional leaders, community members, legal experts, and government officials are interviewed to understand their perspectives on land rights, dispute resolution, and the application of both state and customary law. Secondary data is also used, including legal documents, regulations, and relevant literature, to support the analysis and ensure the robustness of the findings.

3. Results and Discussion

3.1 Results

3.1.1 Factors Causing Ulayat Land Disputes

Several factors contribute to the emergence of customary land disputes based on interactions and insights from the Minangkabau community, including:

- 1) Lack of Transparency in the Deliberation Process

At the onset of cooperation involving the use of ulayat land, the regional government transferred control of the land to a private company after it was handed over by Niniak Mamak (customary leader). However, the nagari community was either completely unaware of this handover or not involved in the decision-making process. This gives the impression that private companies are only interacting with the regional government, which is seen as the de facto owner of the customary land. This situation was observed in Nagari Pangkalan Koto Baru District, where Niniak Mamak handed over customary land to the regional government with the hope that a private company would be identified, after which the land would be transferred without consulting the community.

- 2) Lack of Transparency in the Handover and Compensation Process

As the rightful owners of nagari customary land, the local community often remains unaware when a cooperation agreement is made between Niniak Mamak and a private company regarding the use of their land. The agreement, usually negotiated between the customary leader and the private company with the regional government's involvement as a witness, is not disclosed to the community. This lack of transparency breeds suspicion and conflict among indigenous groups. Furthermore, when compensation for the land use is not properly disclosed or

distributed, it exacerbates the issue. In some cases, Niniak Mamak receives compensation (customary money) directly without passing it on to the nagari treasury or informing the community. Such actions benefit only individual leaders and regional government officials, causing further conflict.

3) Unfulfilled Agreements by the Private Company

After transferring the customary land to the private company, the company began operations, and although some progress was made, it did not fulfill its original commitments. For example, in Nagari Pangkalan Koto Baru District, a private company promised to develop a community plantation (plasma), but this promise was only partially realized. This failure to implement the agreed-upon terms has led to growing dissatisfaction among the community. Additionally, the use of cultivation rights exceeded the initial provisions, further complicating the dispute.

3.1.2 Resolving Ulayat Land Disputes

Several efforts have been made to resolve customary land disputes, including the following:

1) Through the Negotiation Process

In this process, all parties attempted to resolve the issues through discussions aimed at agreeing on compensation amounts, including customary money for the use of land. However, these negotiations were unsuccessful, and no solution was reached that satisfied all parties involved.

2) Through the Mediation Process

Mediation, involving a third-party mediator (in this case, the local government), was another approach used to settle the dispute. Despite this effort, the mediation process also failed to yield a satisfactory resolution, with private companies emerging as more influential in the process.

3) Failure of Negotiation and Mediation

When both negotiation and mediation proved ineffective, the community resorted to formal legal channels by bringing the case to court, starting at the District Court level and progressing through the Appeal Court and even the Supreme Court. However, these efforts did not result in a favorable outcome. The dispute continued, leading to actions by the nagari community, including boycotting the companies and holding demonstrations. While these actions sometimes faded, they occasionally reemerged when the private company successfully quelled the protests. These outcomes illustrate the ineffectiveness of the dispute resolution methods employed, leaving the community longing for a fair resolution that benefits all parties involved.

From the perspective of Minangkabau Customary Law, disputes are ideally resolved through deliberation and consensus. According to Minangkabau tradition, disputes are settled by bringing together all stakeholders, emphasizing fairness and justice. The customary principle is expressed in the proverb: "Kamanakan barajo ka mamak, mamak barajo ka panghulu, panghulu barajo ka mufakat, mufakat barajo ka alue, alue barajo ka patuik, and patuik barajo ka nan bana. Bana will lose and become rajo." This proverb signifies that the truth must be pursued through a structured process of dialogue, and those with authority—such as traditional leaders and elders—play a key role in guiding the decision-making process. However, the dispute over ulayat land has not been resolved through these traditional methods. The community now seeks direct deliberation with the private company, involving company leaders or decision-makers. This approach ensures that the community's concerns are communicated directly, and any resulting agreement must be binding for all parties involved. To guarantee the enforceability of the decision, the community proposes registering the agreement with the Notary's Office and the Court to ensure its executorial power.

(Laksito, 2023). To date, companies have been reluctant to formalize agreements by registering them with the Notary's Office or the Court. If third-party mediation is required, the most appropriate mediator would be the Regional Government, which is already well-versed in the process and history of the land handover. The Regional Government, having facilitated the initial transfer of customary land, has the knowledge and resources to oversee the resolution process, thus minimizing costs and ensuring a fairer resolution (Hastowo & Laksito, 2024).

3.2 Discussion

The issue of customary land disputes in the Minangkabau community is multifaceted, influenced by a combination of social, economic, and legal factors. Based on the findings of this study, several key factors contribute to the emergence of these disputes. One of the primary causes is the lack of transparency in the deliberation process when ulayat land is transferred to private companies. In many cases, such as in Nagari Pangkalan Koto Baru, the local community was unaware of or not involved in the decision to transfer their ancestral land to a private company. The decision-making process was confined to the Niniak Mamak (customary leader) and the regional government, creating an impression that the land was "owned" by the government and disregarding the collective rights of the community. This lack of community involvement breeds mistrust and can lead to conflicts.

Another significant factor is the lack of transparency in the handover process and compensation distribution. As the rightful owners of nagari customary land, the community often remains unaware of the agreements made between Niniak Mamak and private companies regarding land usage. These agreements, typically made behind closed doors, not only cause suspicion among the community but also fuel internal conflict. Additionally, when compensation for the use of customary land is not disclosed or shared with the community, it exacerbates the situation. In some cases, Niniak Mamak has been found to keep the compensation (customary money) for themselves, failing to distribute it to the nagari treasury or inform the wider community, which undermines trust in leadership and further fuels the conflict.

The third major factor contributing to land disputes is the failure of private companies to fulfill their promises. After customary land is handed over to a company, the company often fails to implement what was agreed upon, such as the development of community plantations or "plasma" farms. In Nagari Pangkalan Koto Baru, a company promised to establish a plasma plantation, but this promise was only partially realized. Such breaches of agreement lead to dissatisfaction and frustration among the community, worsening the dispute.

Efforts to resolve these disputes have been varied, but the methods employed have often proved ineffective. Negotiation, for instance, has been attempted multiple times, but these discussions have failed to produce satisfactory outcomes. The interests and expectations of the different parties involved—namely the community, the government, and the private companies—are often misaligned, preventing a fair resolution. Mediation, assisted by third parties such as the local government, has similarly been unsuccessful in resolving the disputes. Despite the regional government's involvement, the power imbalance between the private companies and the local community often results in an outcome that favors the companies.

When both negotiation and mediation fail, the community has resorted to legal channels, taking the case to court at various levels, including the District Court, Appeal Court, and even the Supreme Court. However, these legal efforts have not yielded favorable results, and the dispute persists. As a result, the community has engaged in protests, including boycotts and demonstrations against the companies involved. While these actions sometimes subside due to company influence, the underlying tensions remain unresolved.

From the perspective of Minangkabau customary law, disputes are ideally settled through a deliberative process that emphasizes consensus and justice. Minangkabau law places great importance on reaching a mutual agreement, guided by traditional leaders and community consensus. The proverb "kamanakan barajo ka mamak, mamak barajo ka panghulu, panghulu barajo ka mufakat" reflects this, highlighting the importance of dialogue and mutual agreement in resolving disputes. In this case, the community prefers direct negotiation with the private companies, bypassing the lengthy formal legal processes that have proven ineffective. The community seeks binding agreements that can be formalized through the Notary's Office and the Court, ensuring that the resolution has legal force.

The role of the regional government in the dispute resolution process is crucial. Given that the government facilitated the initial handover of the land and is aware of the full history of the transaction, it is well-positioned to mediate the dispute. The regional government has the necessary resources to facilitate the resolution process without incurring significant costs, making it the most effective third-party mediator. Its involvement could ensure that the community's interests are respected, and a fair resolution is achieved.

4. Conclusion

Based on the research findings, several factors contribute to the occurrence of ulayat land disputes. The primary causes include: first, a lack of transparency in the deliberation process, where decisions are made solely by a private company, Niniak Mamak (the customary head), and the Regional Government, excluding the wider community. Second, the process of transferring customary land lacks openness, and the compensation for the use of the land is not disclosed clearly. The form and amount of compensation to be provided to the sub-village for the use of the customary land by the private company are not explained. Third, private companies often fail to fulfill initial agreements made with the community during the handover of customary land, frequently breaking their promises. These issues result in significant distrust and ongoing disputes between the community and the companies involved.

Regarding the efforts to resolve these disputes, several approaches have been attempted. One method is through negotiation and mediation, where the community and the company management engage in discussions, and the resulting agreement is then registered with the Notary's Office or the Court to ensure it has legal enforceability. Another approach involves the involvement of a third party, such as the Regional Government, which plays a crucial role in resolving the disputes. The Regional Government is familiar with the history of the land transfer and has the necessary resources to facilitate negotiations. This approach is cost-effective and has the potential to lead to a fair resolution, as the Regional Government is well-positioned to mediate and ensure a balanced outcome for all parties involved.

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