

The Conflict of *Ulayat* Or Customary Land in Limo Koto Kampar-Riau

An Analysis from Sociological and Customary Law Perspective

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KEYWORD	ABSTRACT
FKUB Kerukunan Umat Beragama	Tulisan ini meneliti peran FKUB dalam menciptakan kerukunan agama dalam masyarakat. Diawali dengan pemaparan tentang pentingnya study agama untuk menciptakan suasana kondusif yang toleran, penelitian ini difokuskan pada deskripsi institusi yang dilanjutkan dengan evaluasi kinerja FKUB dalam menciptakan kerukunan beragama di Kabupaten Kampar dan Kota Pekanbaru. Temuan yang didapatkan adalah, walaupun usia FKUB masih terbilang dua tahun, peran atau kinerjanya cukup signifikan.

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INTRODUCTION

A. Background of Study

In Limo Koto Kampar-Riau, a land has an important meaning, namely as economical sources and as a symbol of social status. A land is a place of society and a place in which is buried. In limo Koto Kampar, there are some types of land: (1) customary land (*ulayat*) which consists of two kinds; customary land of tribe and customary land of society (2) land of inheritance ; a high or respected land of inheritance and low land of inheritance (3) land of property.

Limo Koto Kampar is a confederation which consists of five villages, namely *Koto Kuok*, *koto Salo*, *Koto Bangkinang*, *koto Air Tiris*, dan *koto Rumbio*. *Koto Kuok* and *Salo* are located in *Bangkinang Barat*, *Koto Bangkinang* is a subdistrict, *koto Air Tiris* and *Rumbio* are part of *Kampar's* subdistrict. Each village has some tribes formed by groups of family based on maternal principles. Each tribe is led by a tribe's chief called as *ninik mamak*. *Ninik mamak* as a tribe's chief in *Limo Koto Kampar* has a great authority in all aspects of their life. *Ninik mamak* is similar with a big tree in the desert, its branch used as hanger, its root used as site, its stem used as chair, and its leaves as shelter. This means that a *ninik mamak* must keep the safety and increase the prosperity of his tribes (called as his nephews) based on valid norms.

In Indonesia, the land of society is regulated by customary law and society's norm known as a customary land or *ulayat*¹. The term of *ulayat* is a term used in *Minangkabau* customary law. In usual term, *ulayat* can be defined as the land belongs to *persekutuan* or group of people based on customary law legalizing people's rights individually and communally.

The term of *ulayat* refers to a land owned by a society based on customary law as society's economical source. Community of customary law is a group of community tied by customary law having the same place of living and descendant.

Each of *ulayat's* land is owned by the society of customary law providing natural sources to be taken by them. There are rights of people to the *ulayat*, if people have three requirements as follows : (1) there is a group of community tied by customary law (2) there is land of *ulayat* as economical sources for the community and (3) there is customary law stating about *ulayat's* administration, its control, and its use in the society (BPN. 1999)

According to customary law, land of *ulayat* is used for the prosperity of society based customary law of Limo Koto Kampar. Members of this society called the nephews of *ninik mamak*. They can use the land of *ulayat* when they get the *ninik mamak's* permission. Also, they have to pay 'land's rent' or called as *pancuong aleh*. The regulation stated in customary law must be followed ; the land for each family is two hectares, has ditch and border. Also it is used for rice field and plantation.

Customary law also decides that the land permitted must be used. If it is not used for three years, the land will be given to the *ninik mamak's* authority. In this case, *ninik mamak* has a great authority in transferring of the rights for land use to other his nephews. This transferring always creates misunderstanding and conflict among his nephews and *ninik mamak*. His nephews view that the rights for using the land can be delivered from one generation to the following generation. However, customary law states that the the rights for using the land is temporary, not permanent. *Ninik mamak* decides that the land belongs to community of customary law.

Moreover, customary land also cannot be sold or as a pledge, except three following reasons: to arrange the burial, to marry of daughter, to construct customary house, and to install a new *ninik mamak*. Based on the above explanation, the problem will be dealt is the conflict of customary land in Limo Koto Kampar Riau. To get a clear description, it will be focused on ; factors influencing the change of regulation in using customary land; factors of conflict of customary land; the solution of the conflict in Limo Koto Kampar.

B. Investigation

This study focuses on the issue of conflict in customary land of Limo Koto Kampar. This study is not new since, previously, there are some researches related to customary land in Limo Koto Kampar. However, this study is important since it focuses on the contemporary issues, particularly after 1998. Through this study, the issue of customary land in Limo Koto Kampar can be explained. It tries to explain the factors of conflict related to customary land in Limo Koto Kampar. This study is hoped to get solution for the problem of that conflict as well as the conflict due to social changes.

This study, conflict among nephews, conflict between the nephews and *ninik mamak* and conflict between *ninik mamak* and the state will be studied in a deep way. In Limo Koto Kampar, *ninik mamak* and the state are those who have a great authority in giving the permission for the use of the land. Through this study, the writer tries to give solution the conflict based on customary law and civil law.

Some researches were done related to customary land in Minangkabau. There were De Josselin de Jong (1960), the Dutch researcher, who studied socio-political structure in Minangkabau. In his study, De Josselin de Jong sees that the region of Minangkabau consists of three regions or *luhak nan tigo* , namely *luhak Tanah Datar*, *luhak Agam* and two *luhak 50 (Limapuluh Kota)*. According to De Josselin de Jong, tribes in Minangkabau are part of political tradition called koto-Piliang or Bodi Chaniago. Both of them consist of four main tribes: Koto, Piliang, Bodi dan Chaniago. The conceptor of Minangkabau's custom are Datuk Katimanggungan and Datuk Perpatih Nan Sebatang. In Limo Koto Kampar, there are some tribes but their number and names are different from in Minangkabau (de Jong, 1960).

An Indonesian scholar, Hamka (1963), stated that the property in Minangkabau divided into: (1) Property of inheritance (great inheritance) delivered from one generation to the following generation based on maternal principles and customary law. (2) property of earning obtained by both wife and husband and inherited based on Islamic law. According to Hamka, custom may be changed but consensus can not be changed. It is based on customary idiom, *bulat air kerana pembuluh, bulat kata*

kerana mufakat. It means that a consensus can be decided because there is a discussion. Hamka says that a man in Minangkabau is unfortunate since he is only an outsider (*sumando*) and in his parents' house, he just eats and drinks. And he goes to mosque if he wants to take a bed. All properties they earn are given to their nephews. Moreover, the obligation to take responsibility of son and wife is uncle's task, not husband. It caused many cases of polygamy in Minangkabau. If there is a divorce, a husband has to leave from his house. When a husband died, his properties are nephew's right. While in Limo koto Kampar, the properties of inheritance are delivered from one generation to the following generation based on maternal line and customary law but the properties of earning are inherited based on Islamic law.

Muchtar Naim (1968:17) studies about the law of land and law of inheritance in Minangkabau's society. According to Naim, in Minangkabau, there are two types of properties of inheritance: (1) respected properties of inheritance consisting of the forest, customary house (*gadang*) and land for the grave are inherited based on customary law from uncle to his nephews. And (2) low properties of inheritance are the properties earned both wife and husband can be sold or as a pledge inherited based on Islamic law. In his other writing, Muchtar Naim (1979:30) states that there are many Minangkabau men going out from their native lands because they face problems in their wives' houses. They do not get the properties of inheritance. Other factor is that they want to get more income since the lands for agriculture are decreased. He views that leaving from their native lands are motivated by the fact that the lands for earning money are limited each year.

A western scholar, Franz Von Benda-Beckman (1979) studies the concept of properties' right in Minangkabau. According to Franz Benda-Beckman, the changes of political system in the west Sumatra influence people's understanding about the concept of properties' right. In other words, the social changes resulted the change of their focus from large family to basic family. The focus is now based on the basic family, not maternal family. At the same time, the economic development increases the autonomy of each family to use the properties of inheritance as a pledge. Moreover, Benda-Beckman sees the possibilities that the properties earned by both wife and husband will eliminate the properties of inheritance and maternal line. Benda's findings are also found by the writer in Limo Koto Kampar.

Besides Benda-Beckman, Kato (1977), a Japanese scholar, discusses about the maternal system and travel tradition in Minangkabau, Indonesia. He explains some main aspects of maternal system in Minangkabau family, like the formation of family's system, the division of authority, the decision of socio-economical obligation, the division of properties' inheritance related to house after the marriage. Kato also explains about the dynamical relation between village and travelers. Kato has the similar idea with Naim stating that travel tradition in Minangkabau is caused by a man is regarded as an outsider and he does not inherit the properties. Another factor is that there is a motivation to increase the family's income because the lands for agricultural use are decreased. He sees that a travel tradition is motivated by the decrease of the lands in West Sumatera, particularly for agriculture and plantation.

Joel Khan (1980) studying Minangkabau states that maternal line is a model of social organization made consciously by *Minangkabau's* people to perpetuate a myth that Minangkabau's tribe is a group of great and strange ethnic. Khan also argues that, recently, maternal line still plays an important role in the following cases; marriage, the selection of house after the marriage, the estimation of descendant, the inheritance, and the ownership of the land.

An indigenous researcher, Syamsul Alam (1988), studies the shape of authorizing the land and social mobility in Limo Koto Kampar. According to Syamsul Alam, the form of authorizing the land influences the shape of inheritance's system. He adds that, in Indonesia, there are two types of authorizing the land to the heir: (1) the system of inheritance gives the equal rights to the heir and the ownership of land is individual. (2) the system of the land's ownership is individual so that the land is not divided. Syamsul Alam's research related to social mobility and migration is important since it is closely connected with the issue of economic development to improve the society's prosperity. His research focuses on the shape of the inheritance's system in Limo Koto Kampar, while in this research, the writer tries to investigate the problem of the land's ownership and the conflict of customary land in Limo Koto Kampar.

Sudirman (1997) also investigates the customary land (*ulayat*). The aim of his research is to get an understanding about the use of customary land in Limo Koto Kampar. He tries to know those who have

the rights to the customary land and how it is used. Moreover, Sudirman wants to know the authority of *ninik mamak* to the customary land. However, he focuses on the problem of the use of the land and the making use of the customary land.

Sudirman studied in 1997, i.e before reformation era. Before the reformation, the conflict of the customary land between *ninik mamak* and his nephews was not open. However, since 1998, nephews have not been satisfied to the *ninik mamak* and his deviation on the customary land. They demonstrated in oil palm's plantation. Even, they wanted to burn the oil refinery since it is located in the customary land.

Eraldi Chatra (2000) studies the changes in Minangkabau caused by modernization led by the state. According to him, the changes from local government (*nagari*) to system of village's administration decided by the state eliminate not only the institution of local government, but also obscure the identity of Minangkabau's society. As a result, the customary institution is less function. It only becomes symbol of the society. Eraldy Chatra (*ibid*) says that the traditional leader, like the *ninik mamak*, does not have an influential role in his community. He adds that the problem of customary land is not solved based on clear customary law. Moreover, traditional values are not respected instead of modern values. It also happens in which the writer studies. The role of *ninik mamak* related to his nephews and the use of customary land have changed.

According to Max Weber, a conflict is a social relation will be referred to as conflict in so far as action within it is oriented intentionally to carrying out the actor's own will against the resistance of the other party or party or parties (Weber 1947: 132)

A conflict can not be avoided since it becomes productive sources for the behavior of human beings. Conflict of Interpersonal is natural potency of human beings. Conflict can be found in any situation consciously or unconsciously. There are some definitions proposed by some scholars. They generally can be defined as difference, resistance, imbalance, emptiness, interference, perception, and so on. Coser (1956) proposes that conflict is the struggle of value or the struggle of avoiding from intervenes. The effective management of conflict will help to reach the satisfaction and strengthen the commitment of relation. There are some types of conflict related to internal conflict and external conflict. To understand the conflict, it needs a deep research focusing on the factor of conflict and the stages of conflict.

In *Limo Koto* Kampar, the conflicts between the *ninik mamak* and his nephews can be examined by the theory of conflict. This is because there are the changes in the *ninik mamak's* policies since the *ninik mamak* does not follow the customary law instead of giving a permission that the customary land can be sold and taken as a pledge. As a result, his policies create conflict between the *ninik mamak* and his nephews. His nephews oppose these policies and do not believe in the *ninik mamak* to solve their problems.

According to Marx (Giddens.1986; Ritzer.2000), in the history of human beings, there are a lot of conflicts. Generally, according to Marx's theory, conflict can be caused by factor of economy, namely the exploitation of the production's facilities. The conflict is between two social classes, bourgeoisie (employer) class and *proletar* (labourer) class. This conflict happens since there are some difference in their life styles, their way of thinking, and their management of conflict. When a society prefer using the feeling of *gemeschaf* to the feeling of *geselschaf*, the conflict may also appear.

C. Some Types of Conflict in Limo Koto Kampar

In Indonesia, the political reformation was followed by reformation of land. It created some conflicts of land both local and national conflict. In *Limo Koto* Kampar, Riau, the conflicts of land sacrifices the poor people. Since their educational level is not high, they could not protect their rights and their interests. Recently, they can not discharge their own lands because they think that the lands were inherited and used as the sources of their life. As a result, the bloody conflicts occurred.

1. Conflict among The Nephews

According to *Datuk Penghulu Besar*, an informant of the *ninik mamak* in *Limo Koto* Kampar, there are a lot of conflicts connected with the customary land or *tanah ulayat* among the nephews.

This conflict is caused by a nephew who does not ask a permission to the *ninik mamak* to use the *tanah ulayat*. There is a customary idiom stating as follows; *duduk berguru, datang bertanya, adat di isi lembago di tuang, ke sungai berbuah pasir, ke hutan berbunga kayu*. It means that a nephew should ask a permission to his *ninik mamak* when he wants to use the *tanah ulayat*. He also should ask whether there is other person who already used the land or not. Referring to the customary law, the nephew is obliged to pay the rent called *pancuong ale* based on his ability when he used the land. Some years ago, it was paid with agricultural produce and staple crop. However, nowadays it can be paid with money.

There was a conflict between, Hs, a nephew in Limo Koto Kampar who already had asked a permission to the *ninik mamak* to use the *tanah ulayat* for the rubber plantation. Then, he did it for 4 years but it was left. After that, Bakar, another nephew in Limo Koto Kampar used the land which had been used by Hs, without asking a permission to the *ninik mamak* and Hs. As result, it caused a conflict between Bakar and Hs. According to Hs, he had authority in using the *tanah ulayat* because he had asked a permission to the *ninik mamak* first. While according to Bk, he had the rights to use the land since Hs already had left it. The cases like the above example can create the conflict among the nephews in *Piliang's* tribe.

According to Datuk Hasan Paduko Tuan, an informant of the *ninik mamak* in Limo Koto Kampar, he says that the conflict among the nephews is influenced by the fact that they have less understanding about the customary law. Based on the writer's finding, the nephews are not only the people who are accused on that conflict. However, there is the *ninik mamak's* fault since he does not inform the nephews about the customary law related to the *tanah ulayat*. Based on the information given by informants in the field research, in former times, the *ninik mamak* provided information to the nephews about the norms of life as well as the regulation of the *tanah ulayat*.

2. Conflict between the nephews and the *ninik mamak*

According to *Datuk Pandak*, an informant, there was conflict between the nephew and the *ninik mamak*. The nephew of *datuk Pandak* had sold the land without asking permission to the *ninik mamak*. His nephew was Sh. Previously, Sh had asked a permission to the *ninik mamak* to use the *tanah ulayat*, 10 hectares, for the oil palm plantation. The *ninik mamak*, then, gave his permission to Sh. Sh also paid the rent of the land or *pancuong ale*. However, his nephew did not use the land for the plantation. He sold the land to the outsiders without informing the *ninik mamak*. According to *Datuk Pandak*, he knew that there was a transaction of the *tanah ulayat* after he had been informed by his other nephews. *Datuk Pandak*, then, met Sh to ask the truth and suggested him to cancel the transaction. However, Sh did not follow the *ninik mamak's* suggestion. According to Sh, the *tanah ulayat* belonged to his personal property, not the customary property or tribal property. He added that he had the rights to sell the land to other people. It is clear that there is different idea between the *ninik mamak* and his nephew resulting the conflict between both of them. This conflict still is not solved yet nowadays.

Other case is the *ninik mamak* gave his permission to Amir to use the *tanah ulayat*. Amir, then, had used that land for some years but he left it. After that Amir sold the *tanah ulayat* to Salim without informing the *ninik mamak*. Next, Salim sold the *tanah ulayat* to the outsiders without informing the *ninik mamak*. The outsiders were Javanese, Acehenese, and Batak people. This has made the difficulties of the *ninik mamak* to solve the problem. Even, some people who bought the *tanah ulayat* were unknown.

3. Conflict among the *ninik mamak*, the nephew and Companies

The conflict of the *tanah ulayat* between the *ninik mamak* and the company can be found among some companies and a group of farmer in Petambor and a community in pulau Berandang. Formerly, the area in which a group of farmer lived was under the administration of Siak Hulu, and nowadays they live under the administration of Desa Pulau Birandang. This is because there is an

expansion of Kampar's subdistrict. Nowadays, this area is under the administration of Kampar's subdistrict.

In 1997, a group of farmers in Petanbor Kampar Jaya had planted oil palm. However, in the following days, a part of their land was taken forcefully by a community in Pulau Birandang. This community believed that that land was under the administration of Pulau Birandang. As a result, there are violence, burn, and destruction in the plantation. A group of farmers in Petanbor suffer a financial loss about Rp 980 juta. In fact, the seizure of the land was influenced by persuasion of PT. Erind Perkasa to use it as oil palm plantation. The involvement of PT. Erind Perkasa is real because the land is under the authority of PT. Erind Perkasa now. However, the oil palm plantation is not given to community of Pulau Birandang.

This fact proves that PT. Erind Perkasa is an agitator. It has an ambition to take away the rights of a group of farmers and a community of Pulau Birandang. Therefore, the action of PT. Erind Perkasa is clearly illegal because it damages the rights of both a community of Pulau Birandang and a group of farmers in Petanbor.

Besides that land, it is about 900 hectares of the *tanah ulayat* in which PT Erind Perkasa uses for oil palm plantation is illegal. This is because the transaction of the *tanah ulayat* was done between the company and an individual in the society who does not have the authority of the *tanah ulayat*. The *tanah ulayat* does not belong to an individual. The existence of PT. Erind Perkasa in Pulau Birandang is unwanted since it only offers 'empty' promise to the society. Local community views that PT. Erind Perkasa does not give any advantages for the society. The dissatisfaction of the society reached the crest in May 2003 when the local community demonstrated to PT. Erind Perkasa.

To solve the above problems, there were some agreements done under the village administration and the subdistrict administration and even PT. Erind Perkasa signed the agreement on 5 January 2003. Those agreements state that PT. Erind Perkasa does not use the land until there is legal solution. However, PT. Erind Perkasa broke the agreements. Therefore, in May 2003, there was demonstration done by a society of Pulau Birandang. Unfortunately, in that demonstration, a police shot one of the demonstrators, Erfan. This proved that there was arrogance of PT. Erind Perkasa since it used the police to protect its interest. That incident provoked the demonstrators to burn and damage some facilities of PT. Erind Perkasa. In the end, to solve this conflict, a group of farmers in Petanbor and customary community of Pulau Birandang asked the legal authority to NGO *Lembaga Bantuan Hukum Bela Negeri* (LBH-BN) led by Tamrin. SH. M Hum.

The above cases put the society as the unequal object. In fact, those cases do not only involve two parties instead of three or four parties :

- a. members of society (as the object)
 - b. leaders of company (as the object or mediator)
 - c. local government / central government (as mediator or the subject)
 - d. Investor (as the subject or scenario)
- a. The above conflicts appeared because there were two different interests on the same object. Moreover, they were provoked by two different regulations used by both sides. In the reality, there is marginal process of customary law. The customary law is marginalized by the positive law (the state law).

Generally, the conflict are solved by local government by suggesting the company to be tolerant to indigenous society. The local government also suggest the company to give to the society some positions in the company as a promise. This solutions are only to switch interests of the society. It means that there is no real solution of the above conflicts.

4. The Causal Factor of the *tanah ulayat*'s Conflict

There are some problems related to the land in Limo Koto Kampar. The problem related to the customary land is closely connected with the social changes in the customary society causing;

- a. The limited area for agricultural land.
- b. The growth of population.
- c. It is unclear related to the border among the customary lands owned by the society and the land owned by the investor and the government.
- d. The expansion of oil palm plantation.
- e. The price of land is expensive.
- f. The society is more conscious.
- g. The political freedom is open, particularly after the reformation era.

D. The techniques of problem solving related to the Customary land in Limo Koto Kampar.

Basically, the problem of land is conflict of interest between an individual with other individuals; an individual with a body of law; a body of law with other bodies of law.

The solution can be found through the customary meeting, or through *Badan Pertanahan Nasional* (the body of National land affairs) and the court.

1. The Customary meeting

If there is a conflict in the society, it will be solved by each tribe in that society led by the *ninik mamak*. If there is no solution in that meeting, the problem will be brought to a higher meeting, namely *Lembaga Kerapatan Adat Ninik Mamak*.

2. Solution through the BPN

The conflict of land occurs because there are claim and demand of society to the decision of the national administration court in *Badan Pertanahan Nasional*. The decision is considered by the society as unfair.

If the data given to the *Badan Pertanahan Nasional* are still unclear and incomplete, the *Badan Pertanahan Nasional* will ask the explanation and the data to the head of provincial body of national land and the head of regional body of national land in which the land is in a dispute. To protect the rights of an individual and a legal firm, -if it is needed-, the head of national land (*Badan Pertanahan Nasional*) can blockade the land. This policy can be found on circular letter of the head of national land or *Surat Edaran Kepala Badan Pertanahan Nasional* on 14-1-1992 No 110-150 regarding the withdrawal of the instruction of ministry of the interior or *Pencabutan Instruksi Menteri Dalam Negeri* No 16 in 1984.

The case of land reported to the *Badan Pertanahan Nasional* needs a solution. If the case can be solved through a discussion among those who are in a dispute, the *Badan Pertanahan Nasional* will be a mediator. If the discussion is followed by an agreement, the agreement must be written as the legal proof.

3. Through the Court

If the discussion does not find a solution, the conflict or the case must be brought to the court. If there is not the fixed legal decision yet, it is forbidden for the officer of national administration to transfer the land which is in a dispute. To avoid any problem in the following days, the officer of national administration should keep the rights of those who are in a dispute while they are waiting for the fixed legal decision from the court.

Basically, the dispute or conflict which is solved through the court is not popular since it needs the extra time. Sometimes, people prefer solving the dispute through the discussion to the

court. In article 1 number 10 and the ninth paragraph of the general explanation of regulations number 30 in 1999, it is stated that a community has the alternative choice to solve the dispute. The alternative choice can be done through consultation, negotiation, mediation, and the expert's evaluation. In this case, the alternative choices are other institutions except the court or stop the dispute through the state court.

E. Conclusion

The process of political reform in Indonesia is followed by land's reform. The land's reform also causes some conflicts of land both local and national conflicts. Those conflicts also appear in Limo Koto Kampar, Riau.

The alternative choice can be done through consultation, negotiation, mediation, and the expert's evaluation. In this case, the alternative choices mean other institutions except the court or to stop the dispute through the state court.

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