

The Existence and Urgency of Customary Land In West Sumatra Province

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ABSTRACT

Customary land is land that is collectively owned by the local indigenous community. The tradition of customary land ownership has become an integral part of culture and community life in West Sumatra, and plays an important role in maintaining ecological balance and realizing the social welfare of indigenous peoples. However, in recent years, the existence of customary land in West Sumatra has faced various challenges and threats. This research aims to analyze the existence and urgency of customary land in West Sumatra Province. This research uses qualitative research methods. Data collection techniques were carried out by exploring journals, books and other information relevant to the research. The data that has been collected is then analyzed using three stages, namely data reduction, data presentation and conclusion drawing. The results showed that the existence of customary land in West Sumatra Province is still quite strong. Customary land is still used by indigenous people for various purposes, such as housing, agriculture, and plantations. The urgency of customary land in West Sumatra Province can be seen from various aspects, including social, economic and ecological aspects

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Introduction

Customary land is a part of Indonesia that is controlled or owned by customary law communities. In this context, customary land refers to the area of land that has customary rights recognized by a community of customary law communities. Customary land has communal rights characteristics, in accordance with the provisions contained in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) (Zakaria, 2016).

This customary right is a communal right granted to customary law communities to indicate their environmental territory which includes customary land. Customary rights authorize customary law communities to manage and utilize the natural resources contained in the customary land area. This includes land use and utilization of natural resources within the region, which are essential for their survival and livelihood (Wangi et al., 2023).

In customary rights, customary law communities have the authority to safeguard and protect their territories, as well as regulate the use of land and natural resources in accordance with their customs and culture. This right provides a legal basis for indigenous peoples to remain connected to land and natural resources that are an integral part of their lives and traditions (Welerubun, 2019).

In West Sumatra most of the existing land is customary land. The management of customary land is governed by social principles and family values, and is used for the purposes of the local community. Customary land is passed down through generations, either as a hereditary part of the ancestors or as a gift or reward for certain actions that have been done. Despite having the right to the land, customary land ownership in West Sumatra often becomes a complicated issue when switching to the next generation (Amran, 2018). In addition, in an effort to attract investors to their regions, local governments sometimes decide to relinquish customary land rights. Problems often arise due to the vagueness of legal regulations related to customary land, which is then used as an excuse to ignore the existence of customary land. In addition, the limitation of customary land, which is only determined based on memory or traditional maps compiled by traditional rulers, is also one of the complexity factors in this customary land issue (Fatimah & Andora, 2014).

In previous research conducted by (Sembiring & Riyadi, 2018) examining the impact of the construction of the northern ring road on the existence of customary land in Solok City, West Sumatra Province, it showed that the impact of the acquisition of north ring road land on the existence of customary land was quantitatively shrinking due to the release of customary land for development land acquisition, compensation payments received by the rightful party who was the object. The procurement of land in the form of customary land is not replaced with land and kinship relations are degraded because the compensation payment money is used for personal interests.

Another study by (Nasir, 2018) examined the recognition and existence of customary rights/customary land of customary law communities, the results of the study showed that the legislation on the existence of customary rights was still weak. In addition, in order to build a national land law system, in addition to regulating the position of customary rights, it is necessary to regulate the understanding of customary rights, their subjects, objects, characteristics, boundaries, rights and obligations inherent in customary rights. The absence of research on the existence and urgency of customary land in West Sumatra province is a novelty in this study. This study aims to analyze the existence and urgency of customary land in West Sumatra Province.

Research Methods

This study used qualitative research methods. According to (Moleong, 2017) qualitative research is research that intends to understand phenomena about what is experienced by research subjects such as behavior, perception, motivation, action and others holistically and by means of description in the form of words and language, in a special natural context by utilizing various natural methods. The type of data in this study is secondary data. According to Literature Studies (Sugiyono, 2019) Literature studies are related to theoretical studies and other references related to values, cultures, and norms that develop in the social situation under study. The data that has been collected is then analyzed using three stages, namely data reduction, data presentation and conclusion drawing

Results and Discussions

Land is a right that cannot be separated from human life. Land is a place to earn a living, build a house or residence, be a place where people are buried at the time of death and also a source of livelihood for the family. That is, the soil is an indispensable thing for man. Meanwhile, customary land is a constitutive condition of the existence of an indigenous people. The struggle for recognition of customary land is at the forefront of the indigenous peoples' movement in Indonesia and the world. At the international level the struggle has come to the *United Nations Declaration on the Rights of Indigenous Peoples* adopted by the UN General Assembly on September 13, 2007 (Jonaidi, 2018).

Article 3 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, and hereinafter referred to as the UUPA, contains a statement of recognition of the existence of customary rights of customary law communities as long as according to reality they still exist, meaning that if in reality they do not exist, then the customary rights will no longer be revived, and no new customary rights will be created. Customary rights are allowed to be regulated by their respective customary law communities. According to Article 5 of the Agrarian Minister Regulation, research and determination of customary rights are carried out by local governments by involving customary lawmakers, customary law communities in the area concerned, non-governmental organizations, and agencies that manage natural resources (Tari et al., 2015).

The requirements for the unity of customary law communities based on Constitutional Court Decisions Number 31 / PUU-V / 2007 and Number 35 / PUU-X / 2012 are as follows::

- a. As long as according to reality it is alive or still exists.
This can be interpreted if a unity of customary law communities to be said to be *de facto* still alive (*actual* existence) either territorial, genealogical, or functional at least contains elements of the existence of communities whose citizens have *in-group feelings*), customary governance institutions (such as in Marga in South Sumatra, Kuria in Tapanuli, Nagari in Minangkabau, Wanua in South Sulawesi, traditional villages in Bali), the existence of customary property and / or objects and the existence of customary legal norms and the existence of legal norms (awig-awig in Bali, Begundem in Lombok), and specifically in the territorial unity of customary law communities there are also elements of the existence of certain areas.
- b. In accordance with the development of society.
In this aspect, it means that the existence of the unity of indigenous peoples is recognized based on laws, regional regulations, both general and sectoral where the reflection, implementation of traditional values and rights are followed by these indigenous peoples and do not conflict with human rights.
- c. In accordance with the principles of the Unitary State of the Republic of Indonesia.
This aspect means that the unity of the customary law community is in harmony and in accordance with the existence of the Unitary State of the Republic of Indonesia, both legal norms or customary law values are in harmony and do not conflict with laws and regulations as positive law and their existence does not interfere with and threaten the sovereignty of the Unitary State of the Republic of Indonesia.
- d. Regulated in law.

In this aspect, it means regulation based on laws, regional regulations, both sectoral and general.

The types of customary land of the Minangkabau community in West Sumatra based on the Minangkabau Customary Land Regional Regulation in Citrawan, (2020), namely:

1. Nagari customary land is customary land along with the natural resources above and in it is the right of control by ninik mamak kerapatan adat nagari (KAN) and is utilized as much as possible for the benefit of the nagari community, while the nagari government acts as a party that regulates its use.
2. Tribal customary land is the right of ownership of a piece of land and natural resources that are above it and in it is the collective property of all members of a particular tribe whose control and use are regulated by the heads of the tribe.
3. Tribal customary land is the property of a piece of land and the natural resources above and in it is the property of all members of the clan consisting of jurai/paruik whose control and utilization are regulated by the mamak jurai/mamak head of the heir.
4. Tanah ulayat rajo is the property of a piece of land and natural resources above and in it whose control and utilization are regulated by the oldest male of the maternal lineage who is currently still alive in part of Nagari in West Sumatra Province.

The rights of the customary land community are no less important than the customary land itself. Here are the rights of the customary land community.

1. Heritage in Clans

Inheritance is all the property left by a deceased person. The property is the right of trust in the clan by all his heirs, according to their respective inheritances, it is also said that the inheritance is the property of a joint association by the person who is in line with the person who left the property. The inheritance must not be divided into individual rights: by the person who must be used to increase the size of the inheritance.

2. Distribution of Heritage in Clans

The division is called handheld, it does not mean that the division is to belong to each who holds the treasure, but that the property still belongs together as well. Only the proceeds expended from the estate are divided among those who hold according to the rules set.

3. Mamak's Obligations on Heritage

According to custom, the mother is obliged to keep all her inheritance safe, and divide the inheritance among all her nieces and nephews with fair rules according to the mamak scales. It should be a lot of much, it should be a little bit of it, so that all his nephews live happily with no envy of each other in terms of spending or using the inheritance.

4. Livelihood Treasures

As for what is said to be livelihood property, it is all property obtained by his own efforts, or because it was given by others.

The existence and urgency of customary land can be seen from various aspects. The following is the existence and urgency of customary land in West Sumatra seen from social, economic, and ecological aspects.

1. Social Aspect

- a. Cultural Identity

Culture is a product created by humans where the culture also shapes humans in everyday life (Larasati, 2018). Identity refers to the specific character of an

individual or member of a particular group or social category. Thus, cultural identity is a basic awareness of the specific characteristics of a group that a person has in terms of living habits, customs, language, and values (Santoso, 2017). The existence of customary land in Indonesia, especially in West Sumatra, characterizes the identity of the Indonesian state which has cultural diversity.

- b. **Indigenous Peoples' Lives**
Culture and development are two things that are actually closely related. Both are interrelated and influence – cultural changes and the pace of development will always continue to shape the development and civilization of society going forward. In this context, the two cannot be separated at all. Culture cannot be separated because it is the mattress of civilization and development is inevitable along with the growth and development of a constantly changing society (Iriani, 2015).
2. **Economic Aspect**
 - a. **Source of Livelihood**
The existence of MHA is known and respected by the constitution, this is stated in article 18B paragraph (2) of the 1945 Constitution. Recognition and respect for MHA's traditional rights is essential, ensuring MHA's existence in an increasingly modern world is not lost. One of MHA's known traditional rights is customary rights. The function of customary land as a place where MHA depends on life plays an important role for MHA members to meet economic needs because it is related to the function of land as agricultural land used to improve welfare in MHA (Arrasid, 2020).
 - b. **Potensi Investasi**
The customary land can be cooperated with investors, but becomes state land after the land rights expire. Leases are also not possible for customary land. Management rights can only be assigned to recognized indigenous peoples. For this reason, local governments should have good faith and actively make efforts to provide recognition to customary law communities in their regions. Mapping and recording of customary land needs to be carried out. To strengthen customary rights, a draft law on the protection of the rights of indigenous peoples also needs to be ratified immediately (Cahyaningrum, 2022).
3. **Ecological Aspects**
 - a. **Nature Conservation**
Law No. 5 of 1967 concerning Basic Provisions of Forestry (UUPK), which was marked by the termination of customary rights to forests through the designation of forest area functions accompanied by strengthening state forests in forest areas. The UUPK only recognizes hutan rakyat as a forest that is above hak milik, while hutan adat (hutan above hak ulayat) is no longer known. With the enactment of the UUPK, the government has unilaterally determined the state forest area of 143 thousand hectares, or less than more than 70% of the entire land area of the Indonesian state. This determination is carried out unilaterally and is not based on recognition of the existence of customary territories that existed long before the Indonesian state was established (Widihastuti, 2008).

b. Natural Resources Management

MPR Decree No.IX / MPR / 2001 concerning Agrarian Reform and Natural Resources Management Article 4 that the principles of natural resource management through: (a) recognize, respect and protect the rights of customary law communities and the nation's cultural diversity over agrarian resources / natural resources; (b) strive for a balance of rights and obligations of the state, government (central, provincial, district / city, and village or equivalent), community and individual; (c) carry out decentralization in the form of division of authority at the national, provincial, district / city and village levels or equivalent, related to the allocation and management of agrarian resources / natural resources (Ismi, 2013).

Thus, it can be concluded that customary land in Indonesia is still recognized in Indonesia with its various rights and needs to maintain its existence and urgency as a characteristic of Indonesia which has various diversity.

Conclusion

The existence of customary land in West Sumatra Province is still quite strong. Customary land remains an integral part of the lives and culture of local indigenous peoples. Indigenous peoples still actively use customary land for various purposes such as shelter, agriculture, and plantations. The social aspect of the existence of customary land can be seen from its important role in maintaining the culture and identity of indigenous peoples. Customary land also plays a role in maintaining social relations and the hierarchy of indigenous peoples. Economically, customary land has urgency because it provides resources for the livelihoods of indigenous peoples. Farms and plantations that rely on customary land remain the main source of income for many families. Meanwhile, from an ecological perspective, customary land also has urgency in maintaining environmental sustainability. Indigenous peoples have deep local knowledge of land and natural resource management in their territories. This sustainable management helps maintain ecosystems and biodiversity.

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