Measuring the Necessity of Re-Engineering of Indonesian Land Tenure System by Customary Land Tenure System: The Case of Province of West Sumatera, Indonesia

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Key words: Custom, Indonesia, Land Tenure, Re-Engineering, West Sumatera

SUMMARY

Customary land tenure system has been taking an important role on ensuring sustainable development and environmental preservation, as well as enhancing welfare of indigenous people within area in question. Unfortunately, the customary land tenure system has not been practically adopted within the formal land tenure system of Indonesia. Custom was utilised as the fundamental consideration on the foundation of formal land tenure system of Indonesia. However, legal status of customary land in Indonesia is completely unprotected. The overlapping of area of interests of stakeholders on land management has restrained the role of customary land tenure management on maintaining sustainable development and environmental preservation, as well as increasing the welfare of indigenous people. In fact, conflicts have been continually arisen due to the indistinguishable status of customary land.

Considering the above facts, it is thus compulsory to measure the necessity of re-engineering of the formal land tenure system of Indonesia by customary land tenure system. In addition to protect the customary land, re-engineering of the formal land tenure system of Indonesia could allow the system to generate balance between national development and environmental preservation. To measure the essentiality of this effort, the characteristic, as well as its effects on balancing development and environmental preservation, of formal and customary land tenure system was compared.

In this paper, a question, whether it is necessary to re-engineering of formal land tenure system by custom, is posted. In order to answer this question, several secondary questions are posted as well. These secondary questions are whether (1) customary land tenure system provides security to land of indigenous people, (2) customary land tenure system links indigenous people to financial institution, (3) customary land tenure links indigenous people to natural resources preservation and (4) formal land tenure system creates disputes on possession and utilisation of customary land. Furthermore, the case study of Province of West Sumatera was taken in order to acquire the measurement on the necessity of re-engineering of Indonesia's formal land tenure system by customary land tenure arrangement in this area.

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1. INTRODUCTION

Customary land tenure system has been taking an important role on ensuring sustainable development and environmental preservation, as well as enhancing welfare of indigenous people within area in question. Indigenous community of Kasepuhan Banten Kidul in Sukabumi, West Java, Indonesia, who has been living in remote areas for more than a century, has been able to maintain its food resilience. On the other hand, this indigenous community has also been able to keep the balance between local development and environmental preservation. Furthermore, city management by means of customary land tenure in Yogyakarta, Indonesia, has been able to, not only uphold cultural sustainability, but also let the customary land to be functioned as capital on boosting city's economic development.

The customary land tenure system has been practically not adopted within the formal land tenure system of Indonesia. Custom was utilised as the fundamental consideration on the foundation of formal land tenure system of Indonesia. However, legal status of customary land in Indonesia is completely unprotected. The overlapping of area of interests of stakeholders on land management has restrained the role of customary land tenure management on maintaining sustainable development and environmental preservation, as well as increasing the welfare of indigenous people. In fact, conflicts have been continually arising due to the indistinguishable status of customary land.

In this paper, a question, whether it is necessary to re-engineering of formal land tenure system by custom, is posted. In order to answer this question, several secondary questions are posted as well. These secondary questions are whether (1) customary land tenure system provides security to land of indigenous people, (2) customary land tenure system links indigenous people to financial institution, (3) customary land tenure links indigenous people to natural resources preservation and (4) formal land tenure system creates disputes on possession and utilisation of customary land.

Considering that Indonesia consists of many customary regions, each with different land tenure arrangement, as well as, in fact, there are four types of customary land tenure system in Indonesia, the authors argue that it is necessary to, on one hand, adopt local arrangement and, on the other hand, constitute the formal arrangement in order to cope with all different arrangements in Indonesia. The four types of land tenure systems in Indonesia are colonised communal, nomadic communal, private and aristocratic land tenure system.

This paper is highlighting the necessity of re-engineering of formal land tenure arrangement from the point of view of custom of people of Province of West Sumatera. People of Province of West Sumatera are still upholding their custom, especially the customary land tenure arrangement. The existence of customary land tenure arrangement is of the reason of the failure of formal land registration process in Province of West Sumatera. Furthermore, this area represents a good colonised communal land tenure system. By identifying the necessity of re-engineering of land tenure system from the point of view of custom of people of Province of West Sumatera, the insight of necessity of re-engineering of formal land tenure system in areas with the same characteristic could be acquired.

2. BRIEF FACTS ON PROVINCE OF WEST SUMATERA

Province of West Sumatera is well-known for its customary governmental structure called *Nagari*. *Nagari* is a smallest unit of administrative region at Province of West Sumatera. This arrangement has been existed even before the Dutch Colonial Government took power in Indonesia, dated from mid of 14th century after the establishment of Kingdom of Pagaruyung. Kingdom of Pagaruyung was basically a federation of *nagari*. In the modern era, *nagari* is comparable to sub-ordinate of district in formal administrative structure. However, *nagari* is not a sub-ordinate of district as it is not a formal administrative structure and it has more extensive authority than it of the village, the sub-ordinate of district. On its further development, the status of *nagari* could be enhanced into a village, in which means that the smallest unit of customary administrative structure is equal to it of formal administrative structure.

The basis of *nagari* governance was promulgated by Regulation of Government of Province of West Sumatera no. 9 year 2000 on Principle of *Nagari* Governance. Since the promulgation of Act of Republic of Indonesia no. 22 year 1999 on Regional Governance, each province, as well as municipality, has a full authority to regulate its administrative management. According to Provincial Regulation on *Nagari* Governance, *nagari* governance is considerably effective for maintaining religion and cultural resilience based on custom and socio-culture of people of Province of West Sumatera. Considering as well its sustainability, *nagari* governance thus has been re-applied in this province by means of the above mentioned provincial regulation.

3. SECURITY OF CUSTOMARY LAND TENURE

Based on Article 7 of Provincial Regulation on *Nagari* Governance, communal land of a *nagari* is considered as an asset of *nagari* in question. Considering that the *nagari* governance was just re-applied after being left behind for more than 400 years, the above mentioned provincial regulation is also constituted the re-arrangement of the utilisation of communal land, which was managed by either central government and regional government, as well as the revoking of management rights of communal land by other public and private institutions besides *nagari* after the period of management right is over.

Moreover, van Dijk (1954) considers that arrangement on possession and utilisation of communal land could be applied both in indigenous community in question and other communities. In relation to arrangement on possession and utilisation of communal land in indigenous community, the implementations are as follows:

- Communal right allows member of customary alliance to benefit from communal land and everything attached to it, as long as it is for the individual or a small group of people purposes only. It is also forbidden to unlimitedly benefit from the communal land
- In case that the above mentioned right is utilised by means of management or preparation on management of communal land, it will further rise temporary individual rights. However, these individual rights are in anyways bounded by means of socio-cultural value of communal land
- Customary alliance has full authority to allocate communal land for public purposes, such as for cemeteries, herding, schools, religious structures, remuneration of high-rank official and so forth.

On the other hand, the arrangement on possession and utilisation of communal land is applied in other communities as well. The implementations of this are as follows:

- It is forbidden for a person whom does not belong to the indigenous community to benefit from communal land, except with permission from indigenous community in question and after paying for compensation
- More restrictions and regulations are applied on management of individual rights on agricultural land by outsider.

4. LINKAGE TO FINANCIAL INSTITUTION

According to Article 8 of Provincial Regulation of *Nagari* Governance, *Nagari* has 15 sources of income. Thus, *nagari* could be considered as a financially independent body. As an independent body, *nagari* acquires right to manage its assets, including communal land.

However, the security of communal land tenure in Province of West Sumatera has mostly contributed to lack of link to financial institution. On one hand, the authors have obtained oral confirmations that it is not necessary to provide land certificate for accessing credits from local banks, as long as *kepala nagari* (head of *nagari*) approves the credit application and guarantees the sustainability of member of his/her *nagari* regarding the credit application. Furthermore, by putting in mind that estates, in particular palm, cocoa and rubber plantation, have been contributing 23.57% of income of Province of West Sumatera, the Central and Regional Government have been provided several types of soft-loan, such as the Nucleus Estates and Smallholder Program since early 1990s and Estates' Revitalisation Program since 2007, for supporting small-scaled estates in this province. On the other hand, the absence of land certificate of most estates' land in Province of West Sumatera has become the main obstacle on issuance of most types of soft-loan (see further in Koran Marjinal, 2008).

5. LINKAGE TO NATURAL RESOURCES PRESERVATION

Unfortunately, unlike the enormous role of customary land tenure system in Kasepuhan Ciptagelar and Yogyakarta, there is almost no evidence on the role of customary land tenure system of people of Province of West Sumatera on preservation of natural resources. Government of Municipality of Sijunjung (2007) highlighted that community participation on natural resources preservation is quite low. This is particularly due to the absence of acknowledgement of local wisdom and rights of indigenous community, low standard of living and vagueness of boundary between state's land and community's land, including communal land.

6. DISPUTES ON POSSESSION AND UTILISATION OF COMMUNAL LAND

Since late 1990s, there have arisen disputes concerning possession and utilisation of communal land in Province of West Sumatera. The authors argue that the source of dispute could be classified into two, which are acquisition of communal land by government and land tenure system pluralism in Indonesia. The mass acquisition of communal land by the government in the period of early 1980s and early 1990s has been contributing to the arising disputes on the recent period. The land has been utilised for plantations, mostly palm, cocoa and rubber. Having possessed communal lands, the government issued usufruct for the enterprises that would run the plantation. Unfortunately, most indigenous communities in Province of West Sumatera did not benefit at all from the mass land acquisition and, further, from the plantations itself. This in fact violated the custom of people of Province of West Sumatera, in particular customary land tenure system in this area. Besides facts on customary land mentioned in Section 3, the outsider has to pay compensation for community development, called *siriah jariah* in Minang Language, in the case of the utilisation of communal land. Furthermore, Afrizal (2005) mentioned that most people in Province of West Sumatera were not demanding their land back but the restitution from the past and future profit of utilisation of their land by outsiders.

In spite of the more technical source of problem from above, the source of problem in possession and utilisation of communal land in general is land tenure pluralism in Indonesia. According to Abdulharis (2008), besides Agrarian Principle Act from 1960 that is constituted general tenureship in urban and rural areas in Indonesia, there existed other acts related to possession and management of land, such as Forestry Act, Excavation Act and Coastal Area Management Act. It should also be put in mind that every customary regions in Indonesia implements different customary land tenure arrangements. This pluralism has basically contributed to the arising disputes, particularly in relation to possession and utilisation of communal land. Fortunately, the rights of indigenous communities are acknowledged by the above mentioned acts, as long as the customary land tenure system is existed in reality and they are not in conflict with state's interest on promoting the unity of the nation. However, the custom has been practically ignored in the implementation of the above mentioned acts (Abdulharis *et al.*, 2007).

Furthermore, communal land could not basically be registered under the formal land tenure system of Indonesia. In formal land tenure system, it is only recognised individual tenure. Even though it is possible to register joint ownership of land, it is argued that formal land tenure system gives no guarantee on maintenance the socio-cultural value attached to communal land as individualisation of land tenure mostly contributes to individualisation of utilisation of land, in which intolerable in utilisation of communal land.

In return, these obstacles have played an important role on breaking the links among customary land tenure arrangement, security of customary land tenure, financial institutions and natural resources preservation. In fact, state's control over the land has not yet implemented for the greatest benefit of people of Indonesia, in particular indigenous community in Province of West Sumatera.

7. CONCLUSION

Land tenure system pluralism is basically the main, important rationale on re-engineering of formal land tenure system of Indonesia. This pluralism has directly disseminated the authority on issuing tenureship, including permits on management of natural resources, to different public institutions in various administrative levels. In return, this pluralism has created overlapping of area of jurisdiction of tenureship-related public institutions in Indonesia.

Customary land tenure system of Province of West Sumatera has been practically ignored. On one hand, the mass acquisition of communal land for plantations in this area has violated the custom, which allows the possession and utilisation of communal land by outsiders only after being approved by head of *nagari* in area in question. Furthermore, the violation of custom of people of Province of West Sumatera has been physically identified from the unpaid compensation for community development.

Principally, customary land tenure system of people of Province of West Sumatera, in most ways if not all, has been contributing to sustainable development in Province of West Sumatera, especially before the period of governance of Dutch Colonial and after late 1990s period. The authority of *nagari* governments on providing security of customary land tenure, particularly the communal one, in the above mentioned periods is of evidences of the previous statement. Not until the intervention from Dutch Colonial Government and Government of Indonesia on tenureship was the security of customary land tenure of people of Province of West Sumatera in vague. Furthermore, the security of customary land tenure has been guaranteed since late 1990s due to the promulgation of Provincial Regulation of Province of West Sumatera on *Nagari* Governance. The previously mentioned regulation constitutes that customary land, in particular the communal one, is of the assets of *nagari* government.

As the asset of *nagari* government, customary land will be managed by *nagari* government. This in return provides firm linkage to financial institution, which is *nagari* government itself. Unfortunately, the land tenure pluralism in Indonesia, in particular the one between Agrarian

Principle Act and customary land tenure system of people of Province of West Sumatera, has become one of obstacles on linking indigenous people in this area and other formal financial institutions, such as banks. Land certificate has become of important means on accessing credits, while, on the other hand, it is not yet impossible to possess customary land and to acquire certificate showing validity of indigenous people on utilisation of customary land.

Unfortunately, there is almost no evidence on linkage between customary land tenure arrangement and natural resources preservation. However, the absence of this link is due to the indistinct state of customary land in formal land tenure system of Indonesia.

In spite of looking at the absence of link among indigenous people, financial institutions besides *nagari* government and natural resources preservation as negative measures, the authors add the above mentioned details as important facts on the necessity of re-engineering of formal land tenure system of Indonesia by custom of people of Province of West Sumatera. This paper shows evidences that customary land tenure system of Province of West Sumatera, in particular period, has been able to promote sustainable development by means of providing the security of customary land tenure and linkage to financial supports from *nagari* government. In case that the re-engineering of formal land tenure system is in place based on the custom of people of Province of West Sumatera, absence of link among indigenous people, financial institutions besides *nagari* government and natural resources preservation could be avoided.

Last but not least, the case study of Province of West Sumatera provides a good example for initiating the re-engineering of formal land tenure system of Indonesia based on custom. The Regulation of Provincial Government of West Sumatera on *Nagari* Governance has provided security to customary land tenure in this area. This scheme could also be implemented in other provinces in Indonesia, as well as in other countries that has been experiencing land tenure system dualism. However, the promulgation of this provincial regulation on custom, in particular regarding customary land tenure system, should also be followed by the promulgation of land tenure act in national level that, in one hand, allows the regional governance to govern the specific aspects of land tenure, especially those related to customary land tenure system in region in question, and, in the other hand, promotes unity of the nation through land tenure arrangement. This is due to the fact that land is of important assets of Indonesia as a nation. Thus, land should be controlled by the state for the greatest benefit of the people of Indonesia.

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