RECLAIMING ADAT LAND

THE Summit Conference on Adat Law took place last October in Jakarta, attended by legal experts from 22 provinces of Indonesia. They agreed that adat (customary) law—seen as the better defender of public interest—must be integrated into the state legal system. For so long, many adat people have suffered or been placed at a disadvantage when their lands were taken over by companies or confiscated by the government. Today, hundreds of legal aides and facilitators voluntarily help adat people to fight for their rights over their ancestral land. *Tempo English* reports from West Sumatra and South Sulawesi.
A VICTORY FOR CUSTOMARY LAND

More than 40 years after villagers in West Sumatra were intimidated into giving up their land to a man who threatened to brand them as communists, his daughter brought a lawsuit against them. Thanks to some generous lawyers, the locals were able to win the case.

As light rain fell as Edrinal walked through the thick afternoon fog. Trotting along a tiny path, he hurried to a cowbarn on the lower slopes of Mount Sago in Nagari Sungai Kamuyang. Nagari is the local name for villages in West Sumatra; the nagari of Sungai Kamuyang lies in Limapuluh Kota regency, West Sumatra. As soon as Edrinal arrived at the barn, he spread out some king grass (Pennisetum purpureum) feed for the 23 cows there. "Actually we should have fed the cows around noon, but the rain held things up," he told Tempo one afternoon three weeks ago.

Behind the barn, two women working in the field seemed reluctant to go home. They carried sacks of peanuts harvested that afternoon. Nearby, some men had their motorbikes loaded up with grass they had cut that morning. "The rain made us disperse," Edrinal said with a laugh.

It is thanks to the rain, however, that the 266 hectares of king grass on this part of Mount Sago is so lush. The plant constitutes the main source of food for the villagers' cattle. But they did not plant it on purpose, Edrinal said. It actually came from the government's Center for Development of Superior Cattle, one kilometer from the village. The seeds of the grass blew in the wind to the villagers' customary land. There they grew rapidly. "It is free. Each and every resident of the nagari can take it," he said.

It is not only grass they grow, but also beans, carrots, red peppers, onions and other vegetables. Around 150 households cultivate the land. In the farming area they built a mosque and 30 semi-permanent huts where the farmers and cattle breeders can stay temporarily to look after their animals and crops.

The land is the villagers' customary property, said Nagari Sungai Kamuyang resident Luzon Lanjunin, 71. But a dispute over its ownership almost tore it away from them. A cattle breeding company called Jeynita Ranch tried to assert ownership authority over those 266 hectares. But the villagers, assisted by a team of legal advisers led by Nurul Firmansyah, an NGO activist, defended their claim. "The people have had their rights restored," Luzon said.

The case arose in 2001 when the West Sumatra government issued the Regional Regulation on the Nagari, which shifted the lowest level of government administration from desa (village, controlled...
The peace did not last long. In 2004, a woman named Jane, the owner of Jeynita Ranch, an animal husbandry and farming company, approached Luzon. She claimed that 66.6 hectares of the customary land belonged to her. She was awarded a 30-year concession from the National Agency for Land Affairs of North Sumatra in 1966, she argued, and that it had been extended until 2027. Jane said she planned to open a ranch there, and she asked the locals to clear out.

Luzon did not accommodate Jane. He told her the plot of land was an asset under nagari ownership. In addition, he said, not a single person in the nagari knew about the extension to her concession. “Jane went home disgruntled,” he said.

TIME went by, and no further news was heard. Then in 2012, Jeynita sued the new nagari chief, Yol Herdiyanto, and some other nagari officials, for letting the locals use the land.

The company took legal action against parties using the land, telling them to leave and ordering the defendants to pay compensation of Rp20.34 billion. “We’re simple villagers. Therefore the charge of Rp20 billion made our hearts skip a beat,” Luzon said.

Azrizal, Jeynita’s lawyer, insisted that his client was the legitimate owner. “More than that, from 1967 to 1997, none of the residents or customary leaders laid claim to the land. Why are they making claims to it now?” he queried.

The company filed a lawsuit demanding a compensation for material and immaterial losses. Jane said she had taken out loans worth Rp150 million to prepare the second concession in 1997. But her efforts could not be sustained because the land had been occupied by residents of the nagari. Her debt swelled to Rp831 million.

Bewildered, Luzon summoned the elders to find a solution. They decided to hire a lawyer. But they did not have the money to pay for one. Jomi Suhendi, one of the villagers, asked for help from Qbar, the NGO where he worked. Qbar focuses on research, empowerment, conflict resolution and advocacy.

Qbar also runs the School of Law Education for the People, whose mandate includes dealing with customary land management. Graduates can work as Citizens Legal Facilitators (PHR), who provide free paralegal assistance. PHRs usually have other professions; providing legal aid is something they do on the side.
Jomi arranged a meeting between Luzon and Nurul Firmansyah, Qbar’s director. Nurul agreed to help, requesting further assistance from Padang Legal Aid, the Association of Legal Aid and Human Rights of West Sumatra and a lawyer. A team of nine was established to assist the people of Nagari Sungai Kamuyang.

The team paid the villagers a visit and held a meeting with fifty residents. They described in detail their own historical perspective of the customary land in question. In 1967, Jane’s father, Amran Bur, a military officer in Padang, obtained a 30-year concession. According to the residents, they were intimidated into giving up their land, under threat of accusation of being followers of the Indonesian Communist Party (PKI) if they did not surrender it. “Who wasn’t afraid of being labeled PKI? Your life was at stake!” Luzon said.

Amran opened a ranch there. But when he died some time in the 1970s, the land fell into neglect. In 1995, Jane started cultivating ginger, but she only harvested three times before abandoning it again.

After studying the history of the plot, Nurul’s and her team designed their strategy. They used the Nagari Regulation and the Principal Agrarian Law as the basis for their plea. The agrarian law, Nurul said, allows for customary rights to serve as a legal resource in matters pertaining to conflicts over land and other natural resources.

Based on the data they obtained, Nurul’s team concluded that the 1967 concession had been based on intimidation and violence, and as such lacked legitimacy. Therefore the land had never changed ownership status under Minangkabau customary law.

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AFTER a week collecting data for the legal defense, Nurul and her PHR team assisted the three Nagari Sungai Kamuyang officials being sued. The first court session took place in May 2012.

Nurul asked the farmers to attend the court sessions in their farm clothes and to carry farming implements. The PHR team also brought in expert witnesses from the Minangkabau Customary Council to provide explanation about customary law.

Although customary law has been applied and is binding in West Sumatra, Nurul said, there are state laws that can be used to annul it. In the Sungai Kamulang case, the people held to their customary laws, while the plaintiff wanted to use state laws that strengthened her position.

According to the PHR team, the appropriate defense was to utilize the principles of regional autonomy implementation and the acknowledgement of people’s customary rights in West Sumatra. They defended the status of the customary land by holding firmly to the Nagari Regional Regulation issued by the West Sumatra government in 2001.

There were 20 court sessions in all. During the legal proceedings, the judge, the defendant and the plaintiff paid a visit to the disputed land in question. “When they arrived at the spot, the judge was startled because the land was well cultivated. There were also public facilities and evidence that government aid had been implemented,” Nurul said. “Jeynita Ranch, on the other hand, was incapable of showing the borders of the land it claimed.”

Finally, on October 16, 2012, the judge deemed Jeynita’s lawsuit unacceptable. The case was thrown out on technical grounds. The judge said the company should have also filed a suit against the people who were using the land. Azrizal, Jeynita’s lawyer, said indeed his team had told Jane to file a lawsuit against those people. “But she wasn’t able to collect data on them,” he said.

In future, Nurul plans to use the Sungai Kamuyang case as a template for Qbar’s work in other regions. She was in awe of the initiative of the people successfully cultivating their customary land with no outside assistance. “In this nagari, the chief created regulations to oversee management of customary land to benefit the people, not for the benefits of nagari elites,” she said.
RECAPTURING THE LAMASI RIVER

With mining permits issued upstream of the Lamasi River in South Sulawesi, farmers downstream saw a threat to their livelihoods. With the help of local activists, they drew up an ordinance laying claim to their land.

THE LAMASI RIVER

The basin of the Lamasi River in Luwu regency, South Sulawesi, was a lush emerald-green. Rows of bamboo and fruit trees filled the 50 hectares of land. The crystal-clear riverwater had endowed this earth with great fertility. Paddy fields and plantations lay scattered around the area. Some 75 percent of the 60,000 residents here were farmers, with fish and shrimp breeders also among them.

One of the farmers, Habibah Amalia Haq, 39, owned three hectares of paddy field. For eight years running, she had reaped bountiful harvests. Each one yielded at least five tons of rice, with each ton selling for some Rp4 million. “The soil was fertile and the water flowed profusely,” she told Tempo two weeks ago. Great attention should be paid to one particular thing, Habibah said. “The upstream area must not be destroyed nor contaminated. It might cause a crop failure,” she said.

Such destruction almost occurred in 2005. The Luwu government laid claim to the land, arguing that it belonged to the state. The river area contained iron and gold, so they issued a mining permit upstream.

Sainal Abidin, 42, was shocked at the news. This man, better known as Enal, worked as a Citizens Legal Facilitator (PHR). He had lived in Luwu since 1985.

Sainal feared that the mining operations would ruin the livelihoods of those who depended on the river basin. “The paddy fields and fish ponds stood a good chance of losing their productivity from the waste dumped into the river,” he told Tempo.

In the past, he recalled, a crude palm oil (CPO) tank was built along the North Luwu coast. The waste from the tank was dumped into the river. “People’s ponds were poisoned, killing all the fish,” Enal said.

What’s more, the area was prone to flooding in the rainy season. A decade earlier, the basin area was heavily flooded. The disaster washed away five houses and killed three people.

Enal did not want this to happen again. So he took immediate action by mobilizing the people of 25 villages around the river to reclaim their land. At the time, he was already well-known in the area. In 2001, he had helped the locals draw up a map of their communal land.

The process was not easy. For two years Enal visited almost every village, one by one. It was tough go-
ing, with no public transportation and the roads in poor condition. Enal had to travel by motorcycle.

Each time he arrived at a village, he would first pay homage to the elders. The community leaders held public discussions to encourage residents to strive for their cause.

Bhakti Aksa, chief of Sangandung village, is one of the elders that helped the cause. He did not want his territory to turn into one similar to that of around the Asahan River in North Sumatra. Once he had visited there, witnessing for himself the factories scattered around the river basin. “Despite the abundant natural resources, the paddy fields and the fish ponds in that area had become unproductive,” he said.

Early on, not everyone was behind the struggle. “They weren’t yet aware of the consequences,” Bhakti said. So the village chief invited his people for discussion.

As time went by, the effort developed. Twenty-five villages joined together to form the Forum for Walendrang-Lamasi (DAS Walmas) River Basin. With the help of Enal and another NGO, the Organization of Community-based Legal Reform, they drew up a local regulation. The forum consolidated the people’s argument that they had been living and using the land for generations and that therefore they could not be sued.

The activists held legal trainings for the locals. Hisma Kahman, an activist from the South Sulawesi branch of Telapak, an environmental NGO, also helped. He coordinated the training sessions by visiting each village. “We trained them in legal drafting which covers the methods of drawing up rules and how to draw up ordinance articles,” he said.

Through discussions, they learned what the people in all 25 villages wanted. They started formulating the academic texts, which is usually done by experts from universities. “The people are capable of doing it themselves,” Enal said. Eventually the framework of the local ordinance was completed.

With the text finalized, DAS Walmas Forum forwarded the bill to the government. Almost 2,500 people participated. But the process did not go so smoothly, Bhakti said. “The local legislature (DPRD) thinks that the people don’t have the experience to draft a local ordinance,” Bhakti said. “We’ve had to go to the DPRD 32 times.”

Eventually, though, the Luwu administration finally ratified the Local Ordinance of the Lamasi River Basin No. 9/2006 on the management and preservation of river basin areas in Lamasi sub-district. Following the approval of the local rules, the people set up the Lamasi River Basin Committee (KDL) to maintain the continuity of the local ordinance.

The ordinance’s ratification had already had a positive impact, Habibah said. The farmland had become more productive since there were continued water resources. The mining concessions that were issued would not be implemented.

Nevertheless, not every problem had been addressed. Certain environmental problems still exist. In the rainy season, for instance, the paddy fields often flooded, resulting in crop failures. The cause: rampant illegal logging. “Government control over illegal logging is limited,” Habibah said.

Drs. H. Basir, head of Luwu Forestry Service, refuted Habibah’s statement. According to Basir, the trees had been felled to fulfill the people’s needs, which were growing all the time. “We can’t possibly imprison people who chop down trees to build houses,” Basir said.

The environmental problems, he continued, were rooted in the inadequate implementation of the local ordinance. The KDL had yet to fulfill its mandate. “Many members of society have not been thoroughly informed about environmental conservation,” he said.

The local ordinance did not address all the issues, he added. “There ought to be a plan for the utilization of land for five to 10 years to come,” he said. Enal disagreed. “I think that from the planning point of view, it has been very sufficient,” he said. “It’s the local government that has not been totally involved in implementing the local ordinance.”
ANDIKO, EXECUTIVE DIRECTOR, ASSOCIATION FOR COMMUNITY AND ECOLOGY-BASED LAW REFORM.

INDONESIA NEEDS SPECIAL COURTS TO ADDRESS LAND AND FOREST CONFLICTS

FOR 14 years the Association for Community and Ecology Based Law Reform (HuMa) has promoted community rights to manage the natural resources that they depend on for their way of life. In the last five years they have trained over 1,000 people and 200 of these have become Citizens Legal Facilitators (PHRs). They are based around Indonesia, helping local communities resolve conflicts involving land tenure and natural resources. *Tempo English* contributor, Chandra Kirana interviewed Andiko in Jakarta, during a *Konferensi Tingkat Tinggi Hukum Rakyat* (Summit on Citizen's Law) on October, where legal facilitators from 22 provinces gathered to share their experiences. Andiko, who is also a Forestry Conflict Mediation Committee commissioner in the National Forestry Council, shared his views on improving Indonesia’s forest and land governance.

How have the current land use and forest conversion impacted local communities in Indonesia?

In 2012 alone, HuMa documented 232 natural resource and land conflicts in 22 provinces. These conflicts involved more than two million hectares of land, 315 communities, 119 plantations, 72 timber and 17 mining companies. This resulted in increased poverty, worsened environmental degradation and a breakdown of social trust. In cases where local governments and companies have been able to respect and incorporate local rakyat (local people) laws into the land use negotiation process, communities have been able to manage their land and forests in a sustainable way.

What is the role of rakyat law so central for good natural resource governance?

Our recent history of forest and land governance is replete with stories of communities whose livelihoods have been affected by policies that neglect their existence. To date, this exclusion continues. The state must realize that if this trend is not reversed, it can spiral into total governance breakdown. People must be integrated into the law.

How does HuMa propose to integrate rakyat law with state law to resolve conflicts?

It will not be easy, nor will we see changes overnight. Education will play a key role. We launched a school to educate our PHRs. We will develop a systematic approach based on sharing to renew the nation’s agrarian and natural resource management laws so as to include the rakyat legal perspectives. Another part of the strategy is to positively engage the Supreme Court on how rakyat laws can be integrated into the state legal system and training judges to understand rakyat laws.

How achievable is the drive to include rakyat law as an integral part of state law to resolve land and forest conflicts?

The reason we see the need for rakyat law to be integrated into state law is reality. We are a nation founded on pluralism, which is why it is important to understand the perspective of rakyat law in delivering justice. We cannot just adopt a uniform legal system as the state has done so far. This will not deliver justice and in the final analysis, no justice means no rule of law. Sustainable development needs strong rule of law. The state law must evolve more realistically, organically. Similarly rakyat law is also evolving. The evolution of the two must be combined. The state needs to provide the appropriate facility to ensure this integration works. We could, for example, develop special ‘land conflict courts’ at the Supreme Court level.
IDEALLY, adat (traditional/customary) law should be a source of state law. People’s sense of justice can only be fulfilled if the law originates from their own values. As such, “adat land conflicts—which happen often—can be averted. Investors would also be happy because it would mean legal certainty,” said Lilik Mulyadi, who holds a doctorate in law from Padjajaran University and who was recently appointed chief justice of the North Jakarta District Court.

Lilik has taught at a number of universities and conducted research on adat law in five Indonesian provinces. The Supreme Court is one state institution which has used the results of his research as a reference in forming state and adat law. Sadika Hamid dan Amanda Siddhartha from Tempo English interviewed Lilik at his office in North Jakarta two weeks ago:

What is the position of adat law within Indonesia’s legal system?
The Constitution recognizes it implicitly, but the state so far has not done anything to include it in our legal system. The adat dimension actually has often been accommodated in the practice of state law. According to the Supreme Court, a person who has been tried under adat law cannot be tried again in a state law. The integration of adat law into state law is something that is urgent.

How far has the government attempted to do that?
It already exists in the law on the courts, although it is not too clear. In determining a case, judge are required to look into the legal values and citizen’s sense of justice. But the model remains unclear. Should the legal values come from adat law? In a way, the 2012 Criminal Code Bill is an attempt to harmonize the two legal systems in a formal but flexible legalistic way. But this Bill is not creating just an article but also a framework or a concept. To create a law originating from culture needs time. The problem is adat laws differ from region to region, complicating their integration into the state legal system. We should seek the common basis of each adat law first, then integrate into the state law.

Why do you think the attempt has never progressed?
It depends on the government’s politics and what it wants to achieve. Some people still think in terms of the old law. They say the law must be firm and hard, not based on adat law. Others feel that since Indonesians are pluralistic, although adat law is not written down, the reality is that it is obeyed. Just look at the legislators at the House of Representatives (DPR). Legal issues are discussed in Commission III, yet how many legal experts are there? Many often think only of improving the economy. They think that if adat law is integrated, investors won’t come. Yet, the law should reign supreme, not the economy.

So how should conflicts involving adat land be resolved?
Three concepts could be applied. First, an independent adat court or tribunal. Like it or not this means developing and constructing the facilities and structure. Secondly, the adat court could be integrated with state courts. State judges must be trained to be knowledgeable about adat law. Thirdly, state judges could be accompanied by ad hoc judges on special cases. The second and third concepts are more pragmatic and efficient but the first concept is ideal. Furthermore, there must be a mapping which distinguishes adat land borders from those belonging to the state.

How should this mapping be done?
Each region must look at their own land history. This map will then be integrated in the state law through a process of legislation. A clear legal umbrella will appease the investors.