

ADAT LAND CONFLICT IN RELATION TO INVESTMENT IN INDONESIA

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The purpose of this study is to analyze the relationship between customary land conflict and its relationship with investment in Indonesia. The unit of analysis of this research is land conflict and its impact on investment in Indonesia. The type of this research is qualitative descriptive research. The result of the research concludes that the model of expansion and strengthening of national and international capital accumulation and non-litigation dispute resolution. In the absence of agreement on the form and amount of compensation, the investor (the project leader) may take the steps of compensation, the investor (the project leader) by the consolidation of the indemnity at the local District Court.

Keywords: land conflict, investment, litigation and non-litigation.

1. INTRODUCTION

Land conflict between native citizens and immigrants/entrepreneurs/government is among the most intractable problems faced by countries such as Indonesia. Legal certainty and societal sense of justice, economic and political interest, societal welfare and traditional identity, political savvy and strength, are among important aspects to be considered not only in resolving land conflict, but also in ethical fulfillment (Suseno, 2005).

In addition to land conflict, agrarian dispute, or natural resource control controversy which involves the adat or peasant communities in Indonesian villages, severe land conflict also occurs in Indonesian cities. Land and society are inseparable, they are related in civil law, for example in terms of common ownership right, and in public law, for example in terms of management and control. The relationship between land and society, civil and public law, can fall under the term of *ulayat*right (Harsono, 1994). Hence land conflicts do not only revolve around clash between individuals, but also around the utilization and application of urban land by the government, society, and entrepreneurs. Cities are facing land shortages due to urbanization which necessitates the building of housing, business, industrial, and waste management complexes, among other land usage (Sirojuzilamet *al.*, 2016). On another hand, the city government as 'regional authority' is expected to be able to regulate and manage the utilization and application of land by society. In short, the limited amount of land in urban area and the unlimited need for land by society and government in the same area may potentially cause conflicts in cities. These conflicts may surface in the future or maybe hidden for some time (Muliono, 2005).

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Violence is a universal phenomenon, unlimited by time and space. It is as old as human civilization. If in the past, violence was committed by the colonialists, now it is committed by the state to fulfill the demand of investors. Citizens always get the short end of the violence stick. Natural resource exploitation is a means of the government to obtain funding for national economy (Lutfi *et al.*, 2016). To this end, any means is justified. This is the slogan which has been shouted at Indonesians' ear. Worse, Indonesian societal welfare is measured by the value of export and amount of investment.

People's land is sold to fulfill this investment insanity. The government enthusiastically invites foreign investor to fund natural resource exploitation. For example, in the palm oil sector, the ambition to compete with Malaysia as crude oil exporter has caused the government to offer incentives for investments. Malaysian palm oil entrepreneurs are given the red carpet to move their plantations to Indonesia. It is thus understandable that almost 20% of palm oil plantation in Indonesia, covering 5.1 million hectares of land, is owned by the Malaysians (Sawit Watch, 2004). Not only virgin forest has been converted into plantations, but also people's farms and fields (Sawit Watch, 2004).

2. METHODOLOGY

The type of research is empirical juridical that is analytical descriptive. As well as the descriptive method was selected as the way in solving the problem. Then the data in the analysis of this descriptive method with a qualitative approach (Muda *et al.*, 2016, Sirojuzilam, *et al.*, 2016; Muda *et al.*, 2017 and Tarmizi, *et al.*, 2017). The qualitative approach so that it is more in reference to the approach of the description or overview of the objects examined, based on the data that appear as is, and describe systematically will facts the situation factually and closely.

3. DISCUSSION

Natural resource conflict is dominated by plantation cases. Investment protection by involving state officials is an effective method to protect investment and capital assets. The case below is an example of "state and capital illegitimate affair" in destroying citizens' rights dalam with the excuse of societal welfare. The state considers its citizens as enemies who must be annihilated, and capital as friends who must be protected. No wonder the "legal" violence committed is then reproduced by unscrupulous agents in society.

Dahlan (56 years old) and four of his friends were arrested by the police (Brimob) hired by the company PT Asiatik Persada (51% share owned by CDC-Paerim). When the arrest occurred, he happened to be in front of his house on the inherited land of his grandfather where there were some palm oil trees planted by the company. He was rightly perplexed when he and his friends were accused of

stealing palm oil fruits (TBS) and being disruptive of the plantation in general. His confusion compounded when he heard from his wife who visited him in prison, “our rubber trees were cut by the plantation company”.

Before the company, which has relations with DFID (100% of DFID shares were invested in CDC), was in operation, Dahlan and his grandfather have resided on the area since hundreds of years ago. They are the native people, who go by the title Orang Batin Sembilan. The arrival of the English company immediately disrupted their way of life, as the company with the state police (BRIMOB) conducted illegal raids on them, arresting and chasing them away from their residence. The alliance of adat community of West Kalimantan stated: “*adil ka talino bacaramin ka’saruga baeingat kajubata*” which means “being just to fellow humans, taking inspiration from heavenly life and surrendering to God:”, an expression in response to their countless land problems.

The latest development is genetic engineering innovation which produces biotechnological farming of transgenic plants. Often called the second Green Revolution, this development is an existential threat to the traditional farming systems of developing countries. FAO in 1993 had stated biotechnological research in reality did not pay attention to the interest of developing countries. Researchers even developed products and processes which could replace the high-value export commodities of developing countries, such as tropical oil, *vanilla pyrethum* and rubber. A result of this development was many developing countries’ farmers could no longer rely on their traditional farming sources. They were also unable to develop alternative farming methods.

TABLE 1: TOP 10 AGRO-CHEMICAL CORPORATIONS

No	Corporation Name	Share Value Yr. 2000 (US\$)	Market Share
1	Syngenta (Novartis+Zeneca) <i>pro forma</i>	6.100.000.000	20%
2	Pharmacia (Monsanto)	4.100.000.000	14%
3	Aventis (AgrEvo+Rhone Poulenc)	3.400.000.000	11%
4	BASF (+Cyanamid) <i>pro forma</i>	3.400.000.000	11%
5	DuPont	2.500.000.000	8%
6	Bayer	2.100.000.000	7%
7	Dow AgroSciences	2.100.000.000	7%
8	Makhteshim+Agan	675.000.000	2%
9	Sumitomo	625.000.000	2%
10	FMC	575.000.000	2%

Note: The top two controls 34% of global agro-chemical share; the top 5 teratas control 64%; the top 10 control 84%. The world agro-chemical market is valued at about \$ 29.880 million in the year 2000. Source: RAFI, 30 April 2001 (www.rafi.com).

TABLE 2: TOP 10 SEED CORPORATION

<i>No</i>	<i>Corporation Name</i>	<i>Seed Sale Value Yr. 2000 (US\$)</i>
1	DuPont (Pioneer) AS	1.938.000.000
2	Pharmacia (Monsanto) AS	1.600.000.000
3	Syngenta (Novartis) Swiss <i>pro forma</i>	958.000.000
4	Groupe Limagrain (Perancis)	622.000.000
5	Grupo Pulsar (Seminiis) Meksiko	474.000.000
6	Advanta (AstraZeneca and Cosun) Inggris dan Belanda	373.000.000
7	Dow (+ Cargill North America) AS	(estimation) 350.000.000
8	KWS AG (Jerman)	332.000.000
9	Delta & Pine Land (AS)	301.000.000
10	Aventis (Perancis)	267.000.000

Note: Top 10 corporation controls about 30% of commercial seed market in the world, which amounts to US\$ 24,4 juta. Source: RAFI, 30 April 2001 (www.rafi.com)

TABLE 3: TOP 10 PHARMACY CORPORATION

<i>No</i>	<i>Corporation Name</i>	<i>Sale Value 1999/2000 (\$)</i>	<i>Profit Margin Yr. 2000</i>	<i>% of World Market Share</i>
1	Glaxo+Smith Kline Beecham	22.209.500.000	Glaxo-30,9% SKB-25,1%	7,0
2	Pfizer (inc. Warner Lambert)	20.500.000.000	N/A	6,5
3	Merck & Co	17.481.600.000	26,4%	5,5
4	AstraZeneca	14.834.000.000	18,3%	4,7
5	Aventis	14.808.500.000	17,6%	4,7
6	Bristol-Myers Squibb	14.309.000.000	28,1%	4,5
7	Novartis	12.697.700.000	28,5%	4,0
8	Pharmacia (inc. Monsanto dan Upjohn)	11.117.000.000	19,6%	3,5
9	Hoffman-La Roche	10.973.800.000	44,2%	3,5
10	Johnson&Johnson	10.694.000.000	33,6%	3,4

Note: The sale of global pharmacy was about \$ 317.000 in the year 2000. The top 10 corporation controls about 47% of world market. Source: RAFI, 30 April 2001 (www.rafi.com)

The story of teak forest in Java: for hundreds of years teak wood was taken from the forest by non-natives; natives were only employed as workers. Over the years, teak wood becomes scarce, the forest was heavily exploited, as was the natives. Conflict has also arisen in the seas. Fisheries under province control have been sabotaged by unscrupulous parties who use unsustainable methods such as cyanide poisoning, area bombing, and wide netting. Traditional fishermen can no longer catch *pelagis fishes* by the beach or small islands, as well as *demorcial fishes* by the corrals. Even pristine sea areas are contested between the fishermen and investor who wants to convert the area into upscale housing or tourist areas. The following are reasons for permanent land conflict.

1. The process of expansion and strengthening of national and international capital accumulation.

This causes social inequality. The takeover and management of plantations revolves solely only around one concern, the creation and maintenance of profit. The salary difference of plantation managers and workers seems as wide as heaven and earth. Plantation becomes an exclusive environment, an enclave of prosperity among poverty. Thus, the communities around plantation have no stakes to the security and sustainability of the plantations.

2. The authorization character of the state in agrarian reform. With regards to the adat community, there are several important notes:

- (a) The adat community is always in the minority position in a state's political life;
- (b) State bureaucrats usually has an over-simplified view on the issues of cultural heterogeneity and diversity;
- (c) The demand of autonomy which arises from groups who are not accommodated in the power structure;
- (d) Conflict becomes even more intensive and violent when the state becomes more authoritarian);
- (e) The domination of an ethnic group in a multi-ethnic society in the practice of power;
- (f) "Domestic colonialism" (Nababan, 2012).

3. The transformation of development strategy and orientation of agrarian resources starting from a populist agrarian strategy (building socialist society) into a capitalistic agrarian strategy and integration of Indonesian society as part and a development of international capitalism (Sembiring, 2003).

- (a) By looking at customary land disputes, the facts of the cause and the impact (loss) of this land disputes on the community then want to be designed to resolve this land dispute. Looking at the follow up of the above objectives, this study places 3 (three) major issues:

1. Indigenous land dispute model related to investment activity;
2. Constraints in customary land disputes. Models in customary land disputes relating to investment activities are two ways:

1. Dispute Settlement by Litigation

The judiciary or often referred to as the judiciary is an institution that has the ability to provide a sense of justice in society. Normatively the main task is:

- a) Giving fair and humane treatment to justice seekers;
- b) Providing good service and assistance needed for justice seekers;

- c) Providing the settlement of the case effectively, efficiently, thoroughly and final so as to decide all parties and the community (Mu'adi, 2010).

2. Non-litigation dispute resolution

Alternative Dispute Resolution (ADR) is a responsive expression of dissatisfaction of land dispute settlement through litigation process. The settlement of disputes in the judiciary is very long-winded, a waste of time, very expensive, making people enemy and paralyze people.

Robert N. Codey and O. Lee Reed: The Fundamentals of the Environment of Business, people tend to vote for the reason: "much quicker, no delay, and less expensive," compared to litigation paths (in Muadi, 2010). There are several reasons behind the emergence of interest and attention to ADR:

- (a) The need to provide a more flexible and responsive dispute resolution mechanism for the needs of the disputing parties;
- (b) To strengthen community involvement in the dispute resolution process;
- (c) Expanding access to or achieving justice so that every land dispute has its own characteristics that are sometimes incompatible with one form of settlement, will be compatible with other settlements, so that parties can choose the best mechanism (Rahmadi, 1996).

1.1. Negotiation: Negotiation is the settlement of disputes through direct negotiations between the parties to the dispute to seek or find acceptable forms of settlement of the parties concerned (Rahmadi, 1996).

1.2. Mediation (Mediation): The lexical meaning of mediation is: Informal dispute resolution process in which a neutral third person, the mediator, help disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties (Black, 1991). In principle, mediation is a negotiation involving neutral and impartial mediators and can help the parties to bargain equally. Without negotiation there is no such thing as mediation, mediation is an extension of the negotiations as an ADR mechanism with the help of a mediator.

1.3. Conciliation: Black (1991), suggests: "Conciliation, the adjustment and settlement of a dispute in a friendly, unantagonistic manner (Black, 1991). Conciliation as an attempt to resolve the dispute through negotiation by involving a neutral third party to assist the parties to the dispute in finding agreed forms of settlement that may be agreed upon by the parties. Neutral third party assistance in conciliation is usually passive or limited to procedural functions.

1.4. Arbitration (Arbitration): Settling disputes through arbitration means by submitting to a neutral third party who has the authority to decide (arbitrator) (Black, 1991). The settlement of land disputes that intersect with the interests of investment in a mediasi model varied, namely:

1.4.1. Land Dispute Settlement according to Deliberation Mufakat

The sub-district head as mediator, as the mediator of the sub-district, gathered all the citizens including customary figures by way of consensus (mufakat).

1.4.2. Settlement of Dispute through the agency of the National Land Agency.

The process starts from:

1.4.2.1. Complaints/Objection from the Community

Because the parties wishing to obtain an administrative settlement with the so-called corrections of the competent authority immediately.

1.4.2.2. Research and data collection

Parties BPN (National Land Agency) conducted a research file that complained. From the results of this study can be processed further or can not. If not complete then BPN will request an explanation to the head of BPN regional office. However, after complete data is required, then a review of the proposed issue is held.

The Differences of Theory and Concepts of Indigenous Land. For indigenous peoples, land has a religious kumunalistic relationship (Parlindungan, 1998). As for society, investors as object of exploitation are :

1. Conflict of Norm:

- (a) Land ownership laws and Government Regulations on the occurrence of property rights under customary law, as well as the types of customary land rights as mandated by the LoGA(UUPA) have not yet been implemented.
- (b) There is a conflict of norms between fundamental values and implementation values, implications for implementation gaps in land registration, especially conversion of customary land rights.
- (c) The customary law's customs has the potential to create a substantial gap, in particular the types and titles of property rights according to their respective customs.
- (d) Negative publication system, weak because it is still open to be canceled if it can be proven.

Overlap the central and local government authorities, the problems of bureaucracy, the investigative process, the problem of land dispute resolution procedures and decision-making.

So that the right model for resolving disputes pertaining to customary land investment is: in ADR, alternative dispute resolution through "mediation begins

deliberation involving: dean local custom, the government / local government and the investor”. The non-litigation method is generally divided into a stages:

A. Stage deliberation

- (a) Preparation, determined who will be the mediator / arbitrator, studying the substance of the dispute, the completion, timing, and parties involved;
- (b) Opening, obtained information from the parties, witnesses related to the dispute;
- (c) Concluding remarks: inferences of speech, peace certificates, agreements of the parties;
- (d) Implementation stage of deliberation result;
- (e) Phase closing deliberation (Limbong, 2011).

- B. In case there are obtained the agreement regarding the form and amount of compensation, the investor (the project leader) can take steps to use the institution followed by the Conciliation offer compensation to the Local District Court.

4. CONCLUSION AND RECOMMENDATION

4.1. Conclusion

1. Model in the settlement of customary land disputes related to investment activities by way of (1) The process of expansion and strengthening of national and international capital accumulation and (2) Non-litigation dispute resolution.
2. Overlapping authority of central and local government, bureaucratic problems, investigation process, problems of land dispute resolution process process and decision making in Indonesia.
3. Appropriate models for resolving customary land disputes involving investments are mediation beginning with consensus deliberations involving: local adat constituents, government/local government and investors.

4.2. Recommendation

To avoid land disputes in Indonesia, the following steps are taken:

1. The need to provide a more flexible and responsive dispute resolution mechanism for the needs of the disputing parties;
2. To strengthen community involvement in the dispute resolution process;
3. Expanding access to or achieving justice so that every land dispute has its own characteristics that are sometimes incompatible with one form of settlement, will be compatible with other settlements, so that parties can choose the best mechanism.

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