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Resolution of Land Rights Conflict Resolution of Customary Law Community at Foreign Investments Company

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Abstract. The aims of this research are in order to identify, to examine, as well as to describe some essences of the best solution by empowering a comprehensive approach, as well as by examining a number of affective factors as its main path, for the sake of the communal land rights predisposing settlement according to Customary law community and to foreign investments company. This research is created by using a normative and empirical legal research and also historical study as its comprehensive supplementary data. The analytical method that is used in this research is analytical descriptive which is obtained from the qualitative and quantitative data about communal land dispute conflict customary law community at foreign investments company. The result of the research shows that the various ways to round off the dispute over the Communal Land of customary law community at foreign investments company, both The Litigation and The Non Litigation, have not been able to round off the dispute comprehensively, so that the new resolution is required by using a collaborative approach, between the legal and the custom law, based on local ability. But in its implementation, they still have got to deal with some obstacles, they are: politic, culture, social, economic as well as science and technology. As a recommendation, there is a hope that this communal dispute for the right of the custom law should not be used as a political intention of any factions for a personal and cluster interest as the purpose. In order to achieve a legal and human rights protection for the local people, regulation or deregulation should be initiated, related to the rearrangement for the using of the land. In addition, the distribution and utilization of Corporate Social Responsibility (CSR) companies should be in touch with the local people's live.

1. Introduction

The function of the land is as a basic human right that can provide some good benefits, so it is necessary in the use of arrangements in its use, in order to achieve equity and peace in public life. Therefore, the constitution has regulated the importance of land for human beings both as individuals and the state as the highest society organization, as described in the 1945 Constitution article 33 paragraph (3) which states that the state takes control over the earth, water and natural resources inside for the welfare and for the prosperity of the people in general [1].

For a further regulation of Article 33 Paragraph (3) of the 1945 Constitution relating to the earth or land, it is issued Law Number 5 of 1960 on Basic Regulation of Agrarian Principles [2]. The main objective of the issuance of Regulation of Agrarian Principles 1960 is as a basis in the preparation of



national agrarian law, simplification in land law and to have legal certainty regarding land rights for the people in general.

According to the ideology of Law No. 5 of 1960 has a very close relationship with the Indonesian peasantry [15]. This can be seen from the enactment of the Basic Regulation of Agrarian Principles which is legally juridical there is a very strong desire to function the national agrarian law which is the incarnation or development or that is born from customary law as a tool to bring prosperity, happiness and justice for the community, especially for the farmers in order to achieve a prosperous society [2,19,20,23].

Within the life community especially in rural areas including local people, land is the main source of production, shelter, socialization and very important, because the land is one of the source of people's live. In addition, communal lands which in the Basic Regulation of Agrarian Principles are referred as the right of communal land rights, often associated with cosmic-magical-religious values [3, 21, 22]. This relationship is not only between individuals and the land, but also among a group of its community members.

In order for prosperity and welfare of the people to be achieved then in the utilizing and the using of the land that is part of the natural resources, it should be wisely implemented and well manage handed over the state. One of the government's efforts to realize the mandate that is regulated in Regulation of Agrarian Principles to reach a prosperous society is with the issuance of Law Number 25 Year 2007 on Investment by improving the function of the land, which is not only for agriculture but also for investment companies either domestic or foreign [4, 26].

In addition, government policy through Law Number 23 Year 2014 on Regional Government in Article 31 paragraph (2) aimed at improving the welfare of the community and maintaining the uniqueness of the local customs, traditions and culture [5]. This obviously shows that essentially the government provides kind of legal protection and also want to emphasize on improving the function of community land, including custom law communities, to enjoy a better land utilization.

Philosophically, the existence and the function of the land is for the benefit of mankind and not to make people to be divisive or hostile. As explained in the Qur'an in Surah An-Nahl verse 90 which means "It is obvious that Allah enjoineeth you to be fair and do the good things, to give aid to the kin. And (Allah) forbade us for the commission of evil, unjust and enmity. Allah teaches you so you can take lessons" [6]. In addition, the other verses are also explained so that man always applies justly and upholds the truth because of Allah and never spread hatred against other people.

Based on the varies of regulation for the field, it is indicated that the government is so concern to improve the welfare of the communities, associated with the function and utilization of the land. The main purpose of the government in designing the land law in here is to get an achievement of prosperity and justice for the whole Indonesian besides as the legal certainty. But in the real life, the very important use of land in human life sometimes becomes a fragile object for the trigger of any kind of disputes or conflicts [13, 14] between the people.

Communal Disputes are prevalent throughout Indonesia, particularly in the disputes over the custom land rights involving the local people, as described from the National Agrarian Reform Commission data that land conflicts within communities are increasing in every year. In the brackets of 2015 cases of land conflicts only as many as 254 cases and in 2016 has increased to be 453 cases [7]. Increasing cases of land conflicts, occurred in almost all regions in Indonesia both in urban and rural areas and even in dispute that occur between the community with investment companies both Foreign Investment and Domestic Investment, which has lasted long even since the establishment of the company until now even still rife happen. Land disputes that occur as conflicts of interest of the parties covering the people [11,12,25] are faced with bureaucracy, state enterprises, private companies as well as with the people themselves.

The forms of the non-comparative land disputes resolution [27] that does not make any detail for the root of the cause (the non-community-based), will cause the communal dispute that happened for a long time. Even if it can produce peace from a settlement, it is usually only for a temporary which can be termed again in a time of dispute. However, once there are fewer triggers of dispute, so it will be

happened again for the incoming time. Similarly, what happens in general Foreign Investment Company (PMA) in Indonesia, including one of those which is very interesting to examine the dispute that have always occurred in PP London Sumatra Indonesia Ltd. in The Bulukumba District of Southern-Sulawesi.

2. Methods

Nature and type of research. The nature of this research is a descriptive analytical research [8] that gives description for the arising conflict, then analyzed systematically to get data/informations about some factors causing the dispute, implementation of various rules relating to the dispute, the history of the existence of custom law community and how to solve the dispute. While the type of research used is normative legal research and empirical or normative empirical legal research, which is an approach that refers to written regulations or other legal materials that are secondary to see how the implementation through a field study has been done with sociology and interviews, so that obtained clarity about the subject matter. In addition, the authors also use historical research as a complement of field data. Historical research writer use in case study of local law community especially the law of customary law community and the origin of the transformation of the management of communal land right towards the foreign investments company.

Site of The Research. This research was conducted at PP London Sumatra Indonesia Ltd. At The Bulukumba District of Southern-Sulawesi. The designated location is based on a certain characteristics of the region concerned. Sampling in this research be done by using purposive sampling technique [8], because the samples in this research have the same characteristic that is the member of society who have been and are experiencing land conflict especially the customary rights land of customary law community spread in some areas which is the jurisdiction of legal community indigenous customary law community before. The method of purposive sampling is done by not all populations have equal opportunity for sampling with the technique of taking the subject on a particular purpose.

Data collection technique. Data collection techniques used to obtain some sufficient data in this study are as follows: 1) By using questionnaires; 2) By doing Interviews.

Data analysis technique. In this study, the method of analysis used is descriptive [17]. To obtain the description in question, the researchers collect data that are qualitative and quantitative [9]. Qualitative data collection from data cannot be measured by numbers, while the quantitative data collection through data obtained from the sample which is then processed by using quantitative analysis.

Analytical techniques used in analyzing primary and secondary data were collected using a qualitative and quantitative analysis approach or Mixed Methods [10]. Qualitative analysis techniques are used to describe and explain various data obtained from primary and secondary data. While quantitative analysis that is by collecting and processing data in the form of numbers from the primary data which is then processed and analyzed to obtain scientific information on the numbers. Quantitative data will be calculated to obtain percentage, using the frequency distribution.

3. Result and Discussion

3.1. *The Essence of Communal Dispute Solution of The Right of Ulayat of Local People Ammatoa Kajang*

The communal land right in the understanding of Kajang people is called butta pangangreang or Rabbang. Communal land (Rabbang) Kajang tribe is divided into 2 parts, namely rabbang seppang (limited communal land) located in the community area of Kajang tribe who still adhere to the noble tradition (ilalang embayya) or lies in Kajang and rabbang Luarayya (broad communal land) which is located outside the community that holds the adat or lies in the out Kajang. The second thing is also referred to as the land kuasayya (customary land Kajang tribe).

Starting from the development of the plantation area based on the 1982 HGU of 5,784.46 hectares in which there is customary rights of Kajang tribe community is the starting point of conflict with Ammatoa Kajang People Community. However, according to Mr. Rusli, as Public Relations PP

Lunsum Ltd., that people who enter the land of HGU owned by PP Lunsum Ltd., had previously made an agreement for not to plant any crops for a long term. Thus, the community worked based on the permit of PP Lunsum Ltd..

Based on the fact that both parties respectively recognize the right to the land for various reasons, the government is trying to settle in various ways, either through long litigation channels or through non-litigation channels (by the government mediation). In addition, the increased of the dispute to be the social conflicts because the majority of ex-farmers think that Lunsum Ltd. has no contribution either to the community directly or to where they live. This can be seen in the following table 1.

Table 1. Distribution of CSR PP Lunsum Ltd. (N = 40)

Remarks	Quantity	Percentage (%)
Always get the distribution	0	0
Sometimes get the distribution	8	20.0
Have no idea about the distribution	5	12.5
Never get the distribution	27	67.5

Based on these data, it is clear that the CSR distribution claimed to have been implemented by the company is not felt significantly by the community, especially the former plaintiffs. This occurs because the allocated CSR funds are not in accordance with the planning and lack of socialization of CSR use to the public (data on the implementation of CSR 2015 - 2016).

According to the authors that the settlement of land rights conflict Indigenous People Ammatoa Kajang through litigation (Judicial process) and Non Litigation (Mediation) is not expected to solve problems effectively, because Settlement through the process of trial with a long time and with high cost is not effective both from the legal factors themselves namely the decision of the Supreme Court that is produced is not compatible with the reality of the field (object), law enforcement factors namely the Supreme Court judge in the previous case was not done field verification (object disputes), and culture factors namely the Supreme Court Decision which is not based or not in line with local wisdom of indigenous people Ammatoa Kajang.

While the settlement of conflict through mediation cannot complete comprehensively because Based on research, found the existence of perceptions that store. The perception is that mediation led by the government as mediator is considered as a mediator in favor of one party. The lack of socialization of various regulations, especially the Supreme Court's decision to indigenous people of Ammatoa Kajang, has less understanding of the purpose of the decision (see table 2). The extension of HGU PT.PP Lunsum (1997) prior to the existence of a legal ruling with permanent (in krach) (1998) law led to a reaction from the public who considered that PT.PP Lunsum broke the agreement, while the government continued to issue a letter of extension of the HGU:

Table 2. Stages of Communal Dispute Solution of The Right of Ulayat of Mha Ammatoa Kajang n = 40)

Remarks	Quantity	Percentage (%)
Have no idea about the solution	21	52.5
There is no solution	8	20.0
There is solution	4	10.0
Feel in doubt about all of these	7	17.5

Source: Primary Data 2017

Based on the above mentioned tables, it is clear that the lack of information received by the community in terms of efforts to resolve the communal land conflicts of Indigenous People Ammatoa Kajang with PP London Sumatera Indonesia Ltd. The Bulukumba District of Southern Sulawesi.

3.2. Comprehensive Solution Approach for the Communal Dispute

Based on the facts in various efforts to resolve land rights conflicts, customary rights [18] of Ammatoa Kajang customary law community, including Litigation and Non Litigation cannot complete

comprehensively, a new approach called resolution is required [24]. The approach that can be used is a collaborative approach between the settlement of litigation and non-litigation systems based on local wisdom which in this case the elaboration through the traditional system Ammatoa kajang. This is particularly evident in the expectations of people who have a strong desire to resolve the conflicts that occur as in the following table:

Table 3. The Forms of Solution for The Happened Communal Dispute Which Are Expected by Mha Ammatoa Kajang ($n = 40$)

Remarks	Quantity	Percentage (%)
Court	5	12.5
Mediation	7	17.5
Custom Law	9	22.5
The Combination of three above	19	47.5

Source: Primary Data 2017

3.3. Some Factors Which Affect The Communal Dispute

In applying the approach to settlement of land rights conflict of customary law community of Ammatoa Kajang, there are things that can hamper its implementation so that very influential on the result to be achieved. By knowing the obstacles in applying the approach, it will facilitate in overcoming it so that the settlement of conflict can be achieved comprehensively. The influential factors are: 1) Emotional. Emotional society especially indigenous law community Ammatoa Kajang very unstable caused by conflict which has lasted long and has caused casualties; 2) Education. Based on the research results, it is known that the majority of respondents (Indigenous People) who are one of the conflicting parties have relatively low level of education (generally never school). So they sometimes have trouble understanding what is the focus of the conflict discussed, causing the conflict to be more complicated to solve; 3) Politics. The political situation of a region is very influential on the settlement of the conflict because the conflict is generally used as a political vehicle to achieve its objectives. It is also very apparent in the application of the concept of resolution of land rights conflict resolution of customary law community that is used by politicians both government and legislature; 4) Economics. Increasing the economic needs of the parties as a result of increasing the economic value of the land resulted in the parties tend to ignore the process of resolution of the conflict that occurred, but the public only believes what its demands even though lacking even no strong evidence. This is influenced by social institutions that promise the return of land previously worked on by the community; 5) Social and Culture. Excessive fanaticism and egoism from the parties to the demands, defeating the will of the parties to resolve the conflict peacefully. This is a misnomer of "Siri" culture.

4. Conclusion

That the various ways of settling the conflict on the land of customary land rights of Ammatoa Kajang customary law community in PT.PP London Sumatera Indonesia, both Litigation and Non Litigation in the form of mediation and negotiation, have not been able to resolve the conflict comprehensively because it does not involve all stakeholders including customary institutions. In order to resolve the land rights conflicts of customary law community of Ammatoa Kajang, is a resolution required by using a collaborative system approach between Formal law and customary law based on local wisdom. In the application of the collaborative system approach, there are constraints, namely: Emotional, political, cultural, social, economic and science and technology.

In order for land rights conflict Customary Law Community is not used as a political vehicle for the parties for personal and group interests. In order to achieve legal and human rights protection for indigenous and tribal people, regulation or deregulation should be issued in relation to the restructuring of the use of commercial land derived from the ex-colonial control in the form of erfpacht rights. Should the distribution and utilization of Corporate Social Responsibility (CSR) company should be in direct contact with the existence of surrounding communities, especially the Indigenous People.

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