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To cite this article: Amiruddin *et al* 2018 *IOP Conf. Ser.: Earth Environ. Sci.* **175** 012125

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The Disputes Settlement of Land Rights between Kajang Tribal Communities and PT. PP London Sumatera Indonesia in Bulukumba

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Abstract: Communal land in Indonesia often encounter controversy with investment companies including customary land rights of the Kajang tribal communities in Bulukumba. The customary rights issue of land dispute of Kajang tribal communities with PT. PP London Sumatera Indonesia has long occurred. Settlement of the protracted debate led to growing problems of social conflict. The purposes of this study are to determine, to review and to describe the process of settling customary rights of land disputes between Kajang tribe communities and PT. PP London Sumatera Indonesia in Bulukumba, South Sulawesi. This study employs a type of juridical empirics and historical studies of the existence of Kajang tribal and PT. PP London Sumatera to determine the effectiveness of the process of dispute resolution through litigation and non-litigation and the settlement impact which is not comprehensive. Based on the research results, there are deficiencies of the implementation of the Supreme Court decision due to the occurrence of multiple interpretations and several unsuccessful mediations because the mediator is not independent. Inasmuch as the settlement of disputes did not achieve the legal certainty and it leads to social phenomena. It is suggested that when settling the land disputes issue, the people need the independent mediator who knows the ins and outs of community rights of Kajang land and the historical existence of PT. PP London Sumatera correctly and adequately to make a thorough study, involve all elements, and avoid involvement political concern in the settlement process.

Keywords: Disputes, Bulukumba

1. Introduction

Human life will always go side by side with the existence of land, even after the man's death, he would still be in contact with the ground. This illustrates the importance of the position of the land for human life. In other words, the land is essential soil which leads to the dependency of all aspects of life on the land, not only regarding the economic issue but all critical elements in life.

Implementation of "Pasang Ri 'Kajang'" as a source of law Indigenous Ammatoa Kajang community of Bulukumba regency of South Sulawesi as a manifestation of proper law enforcement can guarantee the sustainability of environmentally sustainable system. The Constitution has set the importance of soil for humans both as individuals and the state as a community organization which takes the highest place. It is outlined in the Act of 1945 (2nd Amendment in 2004), article 33,



paragraph (3) which states that the state controls the land, water and natural resources in it for the welfare and prosperity of the people altogether.

Further regulation of article 33, paragraph (3) of the Act of 1945 is related to earth or soil, then followed by Act number 5 of 1960 on Basic Regulation of Agrarian better known as Agrarian Principal Legislation. The primary objective is to release the Agrarian Principal Legislation 1960 as a basis for developing a national agrarian law, simplification in the land law and the legal certainty regarding the rights to land for the general population. The ideology of Act Number 5 of 1960 has a very close relationship with the Indonesian peasants. The Act indicates that due to the enactment of the formal judicial Agrarian Principal Legislation, there is a compelling desire for the proper functioning of the national agrarian law as a tool to bring prosperity, happiness and justice for all people, especially the peasantry in the framework of a just and prosperous society

In public life, especially in rural areas, the land is one of the sources of production which is very important because it becomes a source of life and their lives. Besides, the customary land is associated with the cosmic-magical-religious. Not only there is a correlation among individuals with the ground, but also among a group of members of the public with an indigenous alliance with Land Rights. The existence of the ground for the nation of Indonesia as an agricultural country has a vital function for the prosperity and welfare of its people. Enhanced tasks with increasing land and a very high economic value will result in a raised financial system of Indonesian society. Prosperity and welfare can be achieved by harnessing and using land that is part of the natural resources which should be implemented wisely and in the custody of the state. One of the government's efforts to realize the trust set in the Agrarian Principal Legislation to achieve a just and prosperous society is to improve the functioning of land not only for agriculture but also intended for investment companies both domestically and abroad or foreign.

2. Method

The nature of this research is descriptive. This type of research is a normative juridical empirical and historical research as a complement to the field data. This study is historical research in the case study of the customary land rights existence between Kajang tribe and early entry of PT. PP London Sumatera Indonesia in Bulukumba. The researchers employ this research design because the problems are entirely related to the way of settlement of land disputes covering the juridical field of legislation that regulates the procedures for implementation and dispute resolution implemented. Besides, it is also related to the effectiveness of the implementation of the dispute settlement agreement to the community and the company in fact.

The population in this study are Kajang tribe community who have been and are experiencing disputes in the field of land with PT.PP London Sumatera Indonesia and the parties directly involved in settlement of land disputes in PT.PP London Sumatera Indonesia Bulukumba regency. The sample in this study is the community around the area of PT.PP London Sumatera Indonesia Bulukumba regency which in this case Kajang community who had and or are experiencing land disputes and the parties directly involved in settlement of disputes. This research uses purposive sampling technique because the sample in this study has the same characteristics in which they are the member of society who has been and is experiencing tribal land disputes issue scattered in some regions. To complete the required data, the researcher conducted interviews continuously with those who are engaged in the conflict or controversy. They are some indigenous peoples of Kajang tribe as a community and PT.PP London Sumatera Indonesia, particularly in Bulukumba; officers at PT.PP London Sumatera Indonesia Bulukumba regency; Head of Sub-Section of Land Dispute and Problems of Bulukumba regency. In this study, the authors use deductive techniques, which are assessing a general event into a specific one that describes the problems occurred in Bulukumba regency. Given that the process of completion and the impact of termination are not comprehensive.

3. Findings and Discussion

The disputes of customary land right of Kajang tribal communities and PT.PP London Sumatra Indonesia through litigation (judicial process) is expected to be solved efficiently, but in fact, even a conflict is growing. Ineffectiveness decision through litigation is indicated on the Supreme Court of the Republic of Indonesia Number 2553 K/Pdt/1987 dated July 31, 1990, about Cassation plaintiff. It states in favour of the claimant and the decision of the Supreme Court of the Republic of Indonesia Number 298 PK/Pdt/1991 dated March 16, 1998, on Revision of the PT.PP London Sumatera who claims to reject the petition. They consider rethinking because of several factors. First, it is about law point of view; the Supreme Court makes rules which do not correspond with the reality in the field (object). It means that the decision win plaintiff (community) of 200 ha with boundaries are incompatible when measured by the National Land Agency (540.6 ha). Second, law enforcement devotes that the Supreme Court should decide the case after doing field verification. In this case, they check the files submitted and the testimony of the parties only. Third, facilities and infrastructure factors involve the lack of size of the land area (object) which would have been good for Kajang community and PT. PP London Sumatera (only use natural boundaries). In addition, community factors cover the lack of legal understanding about the lawsuit of Kajang tribal community of 350 hectares just in the estimates (natural boundary), resulting in significant differences in reality. Finally, cultural factors imply the Supreme Court decision that is not in line with the local wisdom of the tribal people in their daily lives. Kajang tribal community responds to the conclusion of the Supreme Court, so the settlement process cannot run well. Figure 01 explains this issue below:

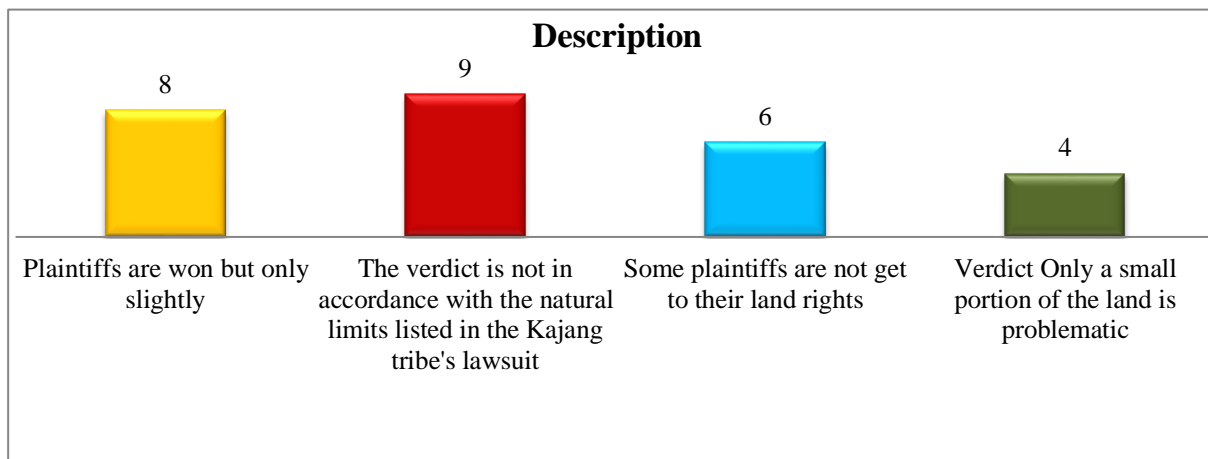


Figure 01. Community Assumptions of ex-Plaintiff against Supreme Court decision Number 298 PK/PDT /1991

Reconsideration of the Supreme Court verdict rejected the Reconsideration filed PT.PP London Sumatera party with a permanent and final decision. It does no longer enable propose other remedies. Thus, the legal process against the traditional rights disputes has expired but cannot solve the problems that have been long-awaited.

3.1. Through a Non-Line Dispute Resolution Litigation

Based on the research in the field, the mediation undertaken during this way cannot resolve the disputes of customary land rights of Kajang tribal communities and PT.PP London Sumatra Indonesia because of non-neutrality of mediator in the implementation of the mediation. As the local government, it is challenging to be a neutral mediator in the mediation process. It is based on several reasons. The first is that local government as a mediator is a political position that always stands for all groups to secure his voice barns. Second, the regional government mediator is heavily dependent on the central government because of the concession of PT.PP London Sumatera issued. Therefore, the central government should arrange the settlement through the central government. Last, local

government as a mediator has considerable doubts on the choice, which on the one hand protects the investor to improve the regional economy in particular and the country in general, while on the other hand create a favourable situation to the public as part of development success.

According to the authors, the settlement through mediation should be based on the rules in the dispute resolution process, which involve an applicable law and the basis for the implementation of the mediation. In addition, it should be entrusted to a mediator who is independent and has high integrity as well as involves all the components of which include the government, traditional leaders, community representatives, employers and academicians.

A mediator is not only independent and has ethical integrity, but she/he should also know the culture of the Kajang people and Bulukumba society in general as well as the existence of PT.PP London Sumatera. Various reasons are pushing the parties to choose which disputes over customary rights are alternatively mediated. The idea can be seen from the results of 27 respondents indicated in the following figure 02:

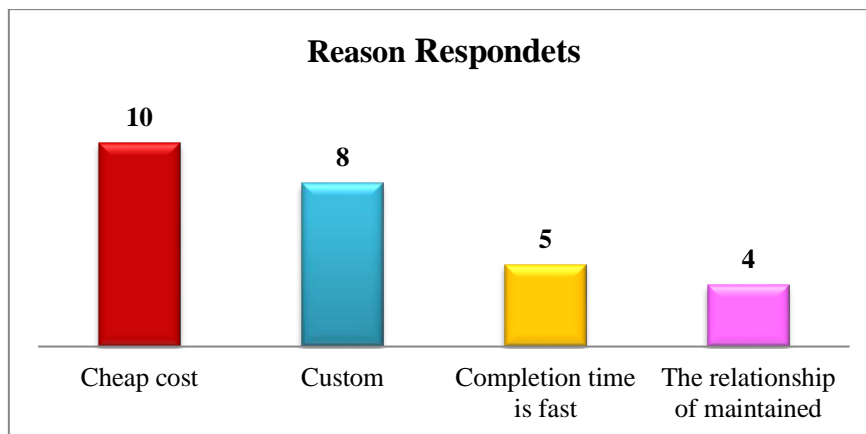


Figure 02. The community reasons in choosing non-litigation or alternative

Based on the preceding description, according to the author concerning alternative dispute resolution, a mediation will achieve the agreement of both parties if the settlement through mediation is undertaken in a correct procedure. It is based on interviews with respondents (community, PT.PP London Sumatera and government elements of Bulukumba) which are in line with the mediation process in question.

3.2. Impact of Non-Comprehensive Settlement

Efforts to resolve the disputes of customary land rights of Kajang tribal communities with PT.PP London Sumatera Indonesia through litigation (in-Krach) and non-litigation settlement through the mediation meeting cause the various problems arising from the dispute. Ineffectiveness of Supreme Court decision and the failure to find an agreement on the mediation process causes the negative impact that is very influential in public life, activity and the operation of PT.PP London Sumatera government system in Bulukumba. Based on the research, there are two impacts in connection with the settlement of disputes which has not been solved yet.

3.2.1. Effect of Legal Certainty

Legal certainty would exist if the enforcement either by using the appropriate line of thinking of the statute or other legitimate sources exists as well. Legal certainty is needed in the life of the nation, especially in the resolution of land disputes of Kajang tribal communities and PT.PP London Sumatera

Indonesia to create peace, applicable law and good order society.

a) Based on the ineffectiveness of the Supreme Court's decision and the failure of mediation in an attempt to find a deal in which disputes of customary rights to legal uncertainty which is very clearly illustrated, some of the regulations are not synchronized. One example of discrepancies in the legislation is the Regulation of the Minister of Agriculture of the National Land Agency Number 3 of 1999 stating that the authority granting leasehold for investment which has a land of more than 200 ha must be issued by the central government, while the object is in the local government. However, another regulation; Presidential Decree Number 34 of 2003 on the article (2), point 7 of the local authorities in the land sector states that the local government authorities are in charge in the utilization and dispute settlement land issues in the area. Thus there is a legal dualism in the land sector authority and the power of the Central and Local Government. As a result, there is a discrepancy in the legislation that led to hesitations in law enforcement impact on not achieving legal certainty in land rights between Kajang tribal society, PT.PP London Sumatera and Bulukumba government. The legal uncertainty disrupted the stability of the security, political and economic in Bulukumba;

b) The decision of the court as one of the sources of law to ensure legal certainty in land disputes especially land disputes between Kajang tribal communities and PT. PP London Sumatera indicates multiple interpretations, especially on the Supreme Court of Cassation Decision Republic of Indonesia Number 2553 / K / PDT / 1987, dated July 31, 1990;

c) The culture of Kajang tribal communities grown and developed in the community influences on customary land rights of Kajang tribal in the past and present. However in reality, the existence of PT. PP London Sumatera does not notice or do not accommodate the noble values that are alive and thriving. In addition, the efforts of government in mediation process also tend to ignore the existence of customary rights of Kajang community even in Presidential Decree No. 34 of 2003 Article (2), point 6 mandates to local governments concerning determination and settlement of the communal land.

3.2.2. Social Impact Community

Land dispute resolution of Kajang customary rights and PT. PP London Sumatera Indonesia which is protracted periods of time and not comprehensive causes a shift in social values. Social disintegration encourages the onset of symptoms which are not normal social life (social issues). Some social problems are arising as a result of the settlement of land disputes. Firstly, Kajang tribal communities demand their customary rights of land since it can be the source of life of their family. Secondly, the occurrence of protests and demonstrations by Kajang tribes, non-governmental organization activists agrarian reform various other community alliances in Bulukumba. Such action may create a conflict among the people, society and security forces as well as between communities and local government officials. It is very vulnerable and likely to cause disruption of stability Bulukumba in particular and Indonesia in general; c) The occurrence of crime against PT. PP London Sumatera society. In this case, unscrupulous people began to go vigilante characterized by sweeping or attempting to obstruct the activity of PT. PP London Sumatera and security forces in certain situations. In addition, the occurrence of rubber theft by unscrupulous people as a form of resistance to the customary rights that have been taken by PT. PP London Sumatera and many other types of crimes.

Societal changes mentioned above describe the overwhelming influence on the social life of the Kajang tribe as a manifestation of land dispute resolution with PT. PP London Sumatera which is handled ineffectively and inefficiently.

4. Conclusion

The settlement of land disputes of Kajang tribe with PT. PP London Sumatera Indonesia has been attempted through litigation (judicial proceedings) and non-litigation (alternative). The settlement of land disputes through litigation cannot resolve disputes comprehensively and adequately. Alternative dispute settlement (mediation) as non-litigation settlement form also cannot solve the disagreement because mediator is not neutral.

The settlement of land disputes is not comprehensive, and protracted result in failure to achieve legal certainty over land community land rights and the operation right of PT. PP London Sumatera and social impact on Kajang tribal communities. The social impacts involve the social disintegration that led to social change in the society marked by the upheaval of society regarding the demands of customary rights, widespread protests and public demonstrations, non-governmental organizations and other community alliances and the occurrence of crime in the form of vigilante and rubber theft.

It is suggested to have neutral mediator who is independent and knows the ins and outs of community land rights of Kajang community and historical existence PT. PP London Sumatera correctly and adequately to make a thorough study and involve all elements (stakeholders) and avoid involvement political in the settlement process.

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