

THE IMPACT OF LEGALIZING CUSTOMARY LAND TENURE IN A LAST DECADE OF INDONESIAN LAW REFORM¹

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Legalizing land rights has inspired by Hernando De Soto to transforming informal property rights – he prefers to use the term extra-legal arrangements – into formal rights (Soto 2001:170-171). According to De Soto, legalization of property rights is central in creating more security of tenure to land, and that this tenure security will induce higher investments, which in turn will lead to economic growth and poverty reduction. However, it remains to be seen how such legalizations can be successfully carried out to communal land rights in areas like Indonesia that characterized by a fragmented legal framework of land tenure; an imbalanced allocation of land to the state, private companies, and people; and tight competition for land rights amongst local people (Safitri, 2009:549). This paper discuss the impact of legalizing customary land tenure in a last decade of Indonesian law reform. This topic is important to look how process and impact of legalizing customary land tenure to the structure of land tenure, economy and ecology that faced by community. This paper consists of five section. Firstly, an introduction and description of latest Indonesian law reform regarding accommodation of customary land in legislation. Secondly, it show trend of legalizing customary land tenure by local government in decentralization spirit post-New Order. Thirdly, describing the process and lesson learned in legalizing communal customary land tenure of Baduy Community. Fourth, show the process and obstacle in legalizing privat customary land for Dayak Community at Kalawa Village. The last section concluding impact of legalizing customary land regarding land tenure change, exclusion and relation of land tenure post-legalization.

Keyword: *Indonesia, legalizing, customary land tenure, law reform, Baduy, Kalawa*

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I. INTRODUCTION

The need for legalizing customary land tenure for the last decade in Indonesia has been increased. This marked by the existing national and local regulation regarding recognize or legalize customary land tenure. The effort of legalizing customary land tenure was not simple because its planned and implemented in mega diversity of customary land tenure context from various communities in Indonesia (Safitri, 2009). The complexity of customary land tenure in Indonesia is influenced by the geographical and social diversity. Indonesia consists of 17,504 islands with a large five main islands, 1,340 ethnic groups and 241,452,952 peoples (BPS, 2011) which is the fourth-largest population in the world. From that amount, according to the Alliance of Indigenous Peoples of the Archipelago (AMAN) stated that there are 70 million of the total Indonesian population as indigenous peoples.



Legalizing customary land tenure in post-New Order state policies shows how the reposition the state in faces pressure of environmentalists and indigenous peoples activist againts discrimination under the New Order regime. Therefore, the legalization of customary land tenure in line with the spirit to reposition discriminate against citizens, so it is part of the process of citizenship and overcome the conflicts that have occurred previously. However, for Hernando de Soto, legalization promoted as an attempt to uncover the mystery of capital embedded in the land as capital. According to him, legalization, is central in creating more security tenure to land, and this tenure security will induce higher investments, which in turn will lead to economic growth and poverty reduction.

In the last decade, almost all the legislation in the natural resources sector recognizes or legalizes the rights of indigenous peoples over their natural resources (Bedner and Huis, 2010). It was shown a trend of national legislation to accommodate the rights of indigenous peoples or customary land tenure, although the content of the rules are still require some conditionally recognition for their rights (Arizona, 2010).

The trend happen both in national and local level. Legalization is also develops the right people in the forestry regime with various schemes, both community forestry, and other social forestry schemes. Legal reform at the local level in order to strengthen and granting the rights and public access to land and other natural resources use some form of legal instruments such as regional regulation (*Peraturan Daerah*), Regent Decision (*Keputusan Bupati*) Governor Regulation (*Peraturan Gubernur*), agreements between community and state apparatus as conflict resolution. The recognition cover varied topic, begin from the

recognition of the existence of the community, land rights, native customary institutions and government. This shows the complexity of the various forms of the legalization of communities' rights over land and natural resources based on state initiatives. It become more complex when associated with compexity of existing land rights situation in society, among individual rights, collective rights and communal rights. Therefore, legalization of rights by the state should pay attention to the difference of character right there in the community (Safitri, 2010:18). This is to prevent coercive setting individual rights against communal rights which will cause a lot of problems.

Despite Initiative to legalizing customary land tenure adopted in regulation, the reality in the field is not easy implement. Consistency to involve in process should be continued to encourage the appropriate legalization. It was experience from many places. Inequality of understanding between the community and its supporters with policy makers at national and regional level is one of the obstacle in legalizing process. There are also other obstacles, like difficulty of identifying indigenous peoples as subject of customary land rights. This study examine those assumptions that, its not only to know how process of legalization, but also know the various factors that cause land tenure change in the community before and after the legalization of the right people. This research is also to examine assumption that the strengthen of customary land bring risk to cointinueing unequal land tenure relations in community (Bedner, 2010:8; Steni, 2010; Vel, 2010). This research expect to provide the reference for the ongoing policy reform related to legalizing customary land tenure.

II. LEGALIZING CUSTOMARY LAND TENURE BY LOCAL GOVERNMENTS

Eleven law that was created during the law reform in Indonesia since 1998 recognize and protect custormary tenure, Including the water, land, forest, mining located in territory of indigenous peoples. Although there are many positive trend legislation, those regulation is not implementable because each laws was not followed by the operational rules to regulate or administer customary land tenure. Another problem is that the law on sectoral and national level can not protect customary land tenure intact.

Only Minister Agrarian Regulation No. 5 of 1999 on Guidelines for Communal Land Settlement Problems that became operational rules for administering customary land (Rachman et al, 2012). This regulation authorizes local governments to follow the recognition of the existence of customary land by issuing local regulations. This regulation has not been able to do much to resolve the sectoral conflicts in natural resource management that caused the conflict of laws norms of national legislation. However, the immediate implementation of this rule is not spread in many location. This rule has inspired many local governments to deliver policies that are responsive to customary land tenure.

Conflict of legal norms in national regulations that have implications in the struggle for power over space in the area as well and not operational regulations that protect customary tenure and then making these areas take the initiative to make the regulations at the local level to legalize customary tenure. It is very possible because since the decentralization reforms took place that gives the authority more flexibility to local governments to regulate themselves.

Local initiative to legalizing customary land tenure took place in many forms. In Banten and Central Sulawesi province, district government enacted a regulation that specifically recognizes the existence of customary land tenure of Baduy community in Banten and Wana Community in Central Sulawesi. There are also regulations that became common guidelines for registration of the communal and collective customary land tenure like Kampar District,

Riau Province and Sumatra Barat Province. Meanwhile, in Central Kalimantan governor made regulations to register private customary land. Legalization which introduced through local regulation was not always create a new mechanism for the legalization of land that conduct directly by government agencies. In fact, in Central Kalimantan, Governor Regulation delegates authority to legalizing customary land to *Damang*, traditional leaders to issue a Information Letter of Customary Land (*Surat Keterangan Tanah Adat/SKTA*). Its difference with Sumatra Barat Provincial Regulation which regulates that legalizing of customary land tenure conduct by National Land Agency.

III. LEGALIZING COMMUNAL CUSTOMARY LAND TENURE OF BADUY COMMUNITY

Local Regulation No. 32 of 2001 regarding Protection of Baduy's Customary Land is an example of legalizing customary land tenure. The purpose of this regulation is to protect the areas of Baduy community who all belong to the Kenekes Village area covering 5.101.85 ha. Legalizing customary land tenure of Baduy Community often used as a best practice for the recognition of indigenous rights to land (Toha, 2010). Legalization of the Baduy's customary land tenure carried over to the demands of local Baduy community because they protected forest surrounding the village annexed by outsider and used as gardens and plants should not be planted based on Baduy customary law. This annexation has been happening since 1960s and continues at that time.

Baduy take advantage of the momentum in the annual ceremony performed by visiting the regents hall and the governor to convey the messages of protecting the environment and also the protection of their traditional territory. After the visit of President Abdurrahman Wahid to the Baduy territory in 2001, the drive to legalize policy concerning protection territories of baduy form from outsiders getting stronger. Finally, Lebak District Governments issued Regulation No. 32 of 2001 on the Protection of Baduy Customary Land.



The regulations orders mapping of customary territory, land consolidation by asking the outsider that anex Baduy land to return the land. In the regulations it is also mentioned that the lands in the area Baduy should not be titling, then it has implications which will be explained in a part of next chapter.

Registering territory

After enacted of Local Regulation No. 32 of 2001, the Lebak District Government allocate budget for land surveying and mapping activities. Budget for those activities are Rp. 322.145.000 from the 2002 district budget to carry out the measurements and determine the boundaries of Baduy Customary Land.

Measurement and mapping of Baduy customary land conducted with the National Land Agency (BPN) from 2001 to 2002. Result of those activities confirmed by the Regents

through District Decree No. 590/Kep.233/Huk/2003 on the Determination Boundaries of Baduy Customary Land Rights in Kanekes village, Leuwidamar Lebak District. Baduy customary land recorded in the base map of land registration in the Land Office Lebak and has also recorded in National Land Agency. Mapping of customary land is an early implementation to recognition of Baduy customary land.

Another implementation of the recognition conducted by Ministry of Rural Development during Minister Syaifulah Yusuf by expense a program to made fence around Baduy territory. This program is only able to make the border fence in parts of Baduy community. Boundary fencing was not completed due to lack of funds. In recent years, the border fence already marred by outsiders. Programs in implementation was supervised directly by the Baduy community. Some of the programs contribute to strengthen Baduy rights over land.

Land consolidation

This regulation became the basis for the Baduy community to take legal action when there are violations or encroachment of their traditional territory from outsiders. This land occupation has occurred since the 1960's and make them increasingly narrow areas. Before there was Baduy's Local Regulation, there are many outsiders who occupied Baduy's land like 400 Ha in Cilebang.

The presence of this regulation became tools to resolve conflicts or violations of their customary lands from outsider in three ways (Arizona, 2010), namely:

- a. Socialization and reconciliation facilitated by the National Land Agency, *Babinsa*, local government, police, and prosecutors.
- b. Baduy community sent a letter to several people who pilfer Baduy customary land to return the land to the Baduys, which then followed up with the signing of the contract land returned to the Baduy.
- c. Resolved through the courts. This way takes when the above methods could not do. In this way, there ar 5 people who get criminal sanction because it occupied Baduy customary land.

Police is the most frequently used by the community in implementing this regulation, especially to outsiders who occupied Baduy's land. Baduy leader then make a report or complaint to the police while outsiders could not return the land. This Report is carried out in stages, starting from the police chief, if not taken by the police chief they will go to higher police in provincial level and so on. This show that implementation of the regulation shoul collaborate with state agencies to implementing its norm.

Land consolidation has succeeded to return the lands from 56 people outsider. 51 people voluntarily return land after a letter delivered by the Baduy community. But there are 5 people who refused to hand over the land under their control. Therefore, based on Regulation No. 32 In 2001, 5 people are processed through state law. Finaly 5 people also eventually return the land to the Baduy community after facilitating by state apparatus. These lands located in the southern region Baduy which is protected forest that maintained by the Inner Baduy. Outsiders who used to manage the Baduy land become suffered losses, but did not mention how many losses. They further said that the names that are listed do not want to give information for fear of being arrested by security forces.

The outsiders plant crops in the Baduy protected forest are rice, coffee, cingkeh, bananas and durian. According Saidam 27 years he quite knew such things as directly involved in the resolution of the case, for coffee and cloves in Saidam, felled by the Baduy In

picong for planting trees and other forest tree species, while the tree durian and banana split in two, in the sense that 10 durian trees are divided into 5-5 means between the planted trees (tenants) and Baudy customary institution. To control the claim by the former outer Baduy people, then once a week Baduy peoples from Cibeo, Cikertawana and Cikeusik village control the location to make sure that there is occupation any more.

From sale of durian fruit distributed by Baduy custodian and share the result for Inner Baduy, *Babinsa*, police, because the apparatus is also traveling once a week. In the division of income between Rp.5000 depend on number - 10,000. ± 35 durian trees from each of the division of people into the outer Baduy.

Reforestation

Community in around of Baduy customary land like Nyalindung village cultivate Baduy customary land in his village because of his own narrow that would cultivate productively. Almost all of the Baduy customary land that occupied by outsiders is protected forest which is guarded by a Baduy Community. After enacting of local regulation regardings Baduy customary land, implementation of this regulation address to outsiders who occupy Baduy land. Baduy people then do reforestation to recover the environment. They cut off all of crops that forbidden by Baduy Customary Law. The still maintain the other crops that allow by customary law.

Coffee trees cut off because its prohibits plants in protected forests. While the results of some of the existing trees in the area was divided between the planter with Baduy people, namely people in the village of Cikeusik. On average each family earn Rp. 20,000 of these results.

Excluded groups

Local regulation on protection of Baduy customary land become a basis to excluding outsider who occupied Baudy's land. The exclusion has made them lose money because it reduced source of their production. Meanwhile, the existing arable land in their own narrow village. Excluded group that some are later became a laborer for arable land has been lost. They became a laborer in the village Sinarjaya Cilebang. This exclusion derived from 4 villages around the village Hariang, Sukajaya village, village east Sinarjaya processing part and the western part of the village Cibarani process.

Basically all the people of the village realized that some areas that they manage is Baduy customary land or Baduy village. Therefore, most of them voluntarily return the land as mandated by local regulation. Submission made in the form of an agreement between the government and the people who witnessed the village by village custom devices or device to sign the minutes. Execution was witnessed by police and *Babinsa* it happens peacefully and no fuss.

People who excluded not completely lose the benefit of the results of their crops planted in the area Baduy. Results of crops they planted it split into two with the Baduy, especially for durian and banana plants. As for the coffee plants and cloves are all cleared for re-planted with forest plants.

IV. LEGALIZING PRIVATE CUSTOMARY LAND TENURE OF DAYAK COMMUNITY AT KALAWA VILLAGE

Kalawa villages in Central Kalimantan Province bound by policy and control of land and forest in Central Kalimantan. Before Ministerial Decree No. 292, forest area in Central

Kalimantan covering 95% of the total area of the province. Even the governor's office was included in the forest area. It made land administration can not run because the officers did not dare to issue a certificate of land ownership over forest land. Because they fear could be criminalized when issuing land titles in the forest area.

Situations of conflict and uncertainty protection of community rights to land that are then pushed the local government through the governor of Central Kalimantan Governor issued Regulation No. 13 of 2009 on Indigenous Lands and rights in land. In essence, this rule gives delegated authority to the Damang, customary leader, to issue a Certificate of Customary Land (SKTA) as a form of legalization on customary lands. The present regulations for the inability of the state to provide legal certainty for the lands held by the community. SKTA through it, then the public has been able to make it to conduct research agreement with investors in collaborating in the management of natural resources.

SKTA dilemma

SKTA previously unknown in the land registration system in Indonesia. Government Regulation No. 24 of 1997 on Land Registration is not give authority to the head of customs to issue SKTA. The absence of regulation regarding the existence SKTA in Government Regulation No. 24 of 1997 on Land Registration into its own problems. This is actually a major problems of registration customary lands. Regulations have yet to be fully able to recognize and protect the existence of customary lands tenure. Therefore, SKTA is an innovation to complement national legislation to regulate the registration of customary lands tenure.

During this time, one of the requirement to legalization of land titles is the Information Letter of Land (Surat Keterangan Tanah/SKT), then turn into the Land Statement (Surat Pernyataan Tanah/SPT) or briefly became Statement Letter (Surat Pernyataan/SP). The difference, SKT issued by the Head of village, while SKTA issued by Damang as an customary custodian. In addition, SKT is a statement made by the applicant to be known by the Village Chief and Head. While SKTA filed by the applicant for the letter issued by Damang. So if there is a land dispute in court, it Damang can be witnesses at the trial.

Based on SKT, SP, SPT and SKTA, people can take care of the land titile to the Land Office. Land title or land certificate was positioned as a letter of proof applicable rights as a strong evidence of the physical and juridical data contained therein on the land, all the physical and juridical data in accordance with the existing data in the measurement certificate and land book (Article 32 paragraph 1 of Government Regulation No. 24 of 1997).

The Governor Regulation is not only innovative in complete the regulatory void that recognizes the existence of customary lands, but also became a technical guide. Attachment of the Govenor Regulation contains various forms of customary land administration. Although there has been raw format, in the implementation of a number of modifications that occur cause difference between one place to another place. One of the differences in SKTA is about banning the sale of land. SKTA encountered some mention in writing in which the ban on selling the land for 25 (twenty five) years from the date of enactment. An example of this is found in SKTA in Sub District Banama Tinggang, District Pulang Pisau. While in the Kalawa Village or in sub-district Kahayan is not mentioned such restrictions. Moreover when the Governor Regulation No. 13 revision with Governor regulation No. 4 of 2012 is also never explant of the ban on selling land for 25 years.

The lack of publication

A number of factors become obstacle of implementation of legalizing customary land in Central Kalimantan. The first is about disseminate the program to the community in the villages. The project of legalizing customary land tenure is not fully supported by regent. This is can show form the alocation budget form the local government. There is inadequate budget to accelerate the legalization of customary land.

Implementation of SKTA in Kedamangan Kahayan Hilir are reaches 97 SKTA, at Kalawa only 1 SKTA. This data shows that the rate of registration of customary land is very small. People do not assume registration of customary land as a thing to be done. In addition because the cost is not cheap, about the practical usefulness of SKTA also not so visible. When vulnerability tenure experienced by the villagers, they just feel it is important to have SKTA as evidence to defend their land.

Most people do not know about the Governor Regulation No. 13 of 2009 that legal basis of legalizing customary land tenure. According to Mr Lepes unknowing citizens on the Governor Regulation Is confirmed that the weakness of District Pulang Pisau because there is no ongoing socialization at Kalawa Village residents. Customary mantir position to this day have not received a decision letter (SK) from Regent of Pulang Pisau, so the funds as well as activities to promote the regulation could not implement. Position mantir village level strategic roles to disseminate these regulation.

Lack of socialization also lead to confusion regarding the status of the SKTA whether or not recognized by the government in this regard in accordance with BAL 1960. How differences in letter revelation SKTA, SPT, SKT which was signed by the village head this sort of thing is still a maze information in Kalawa Village residents. If referring to the Government Regulation No. 24 of 2007 position of SKTA and SKT is scratch proof as a prerequisite to be a certificate issued by the national land agency (BPN).

Expensive cost of SKTA

Innovation to introducing SKTA as a form to legalizing customary land tenure is can not be fully implemented. For the people of Kalawa are investigating for this research, SKTA is a matter of spend a lot of money. It's because of the Governor Regulation on legalization of customary land, in particular in Article 13 explains that the cost of making a Certificate of Customary Land (SKTA) responsible entirely by the applicant, through subsidies grants, financial assistance from the Regional Budget District / Municipal or Revenue of Provincial Expenditure. In less than three years of the regulation, in the Village of Kalawa to making SKTA still responsible by the applicant. There is no cost incurred by the budget to take care of SKTA.

For villagers, the cost of making SKTA quite expensive. As presented by Edy (Secretary Damang Kahayan Hilir) SKTA manufacturing costs for the administration of the registration money of Rp. 250,000, - plus the field visit to make money commission inventarisation, peg and the others are determined by the members of the commission itself. One member of the commission within the next will get as much incentive Rp. 50.000. Mr. Edy also added if the location is far from the district where the commission field visit fee be increased. Consumption and accommodation in the field also in responsibility by the applicant. Until recently from archival records Kedamangan Kahayan Hilir has registered 57 sheets of SKTA.

Registration of customary land tenrue also become part of land disputes. Agreement of land dispute then formalize in form of SKTA. Relating to this process, an applicant should pay Rp. 750,000 to register and plus Rp. 750.000 to arrange per session meeting in resolve

dispute over land. There were 7 cases in Kedamangan Kahayan Hilir relating to customary land disputes since in Governor of Central Kalimantan enacted this regulation. These cases consist of 4 cases in the village Gohong, 2 cases and 1 case Mintin Village in the Village Kalawa. The background of the case is usually overlapping land ownership about a place to building shallow nest by investors from outside the region of Central Kalimantan. The second case problems arise due to the boundaries of the land at the site *Handil*.

SKTA is quite expensive as delivered by Mr. Punding that he get to spend for Rp.1.200.000, this was done because he was forced to land at the time he is in dispute between Handil Terusan I with Handil Mahikei. To strengthen his control over land, he arrange to get SKTA to become secure.



Handil is the water boundary between one group with another group. In the Village Kalawa, Handil function as a boundary between the group with another group of farmer. Forest opened together for their land after the land is ready for planting these lands should be shared equally by the head Handil. But in fact there are many who do not make distributions Handil. Members Handil is notified that they have in the ground-Handil some have directly made a statement on land but when members want to know the location of the land where Chief Handil do not want to mention a variety of reasons such as that delivered by Mr. Tandai and Suparto resident of Kalawa Village.

According to a number of residents there who abuse the Chairman Handil authority and its function as a regulator of land distribution. Land that exist in Handil there are some that can be bought by other people in the curved member Handil. There are some local officials who have land in the grounds as Handil gratitude because Handil has been in repair and so on. Handil unresolved division that hampers publishing SKTA by *Damang*.

Limitation of customary land register

To accelerate the legalization of customary land through Damang, then in the regulation set of deadlines for registering customary land. In Article 14 section 3 mentioned that the act does not make the effort to inventory in 6 (six) years commencing from the promulgation of Governor Regulation, subject to customary sanctions in the form of non-recognition of the right of ownership or possession and intended utilization of Indigenous Lands and additional sanctions in accordance with customary law. If Governor Regulation correctly upheld the customary land that has not been registered in accordance with the regulation, then customary land is not recognized. Issues that will confront the citizens are losing their customary land.

In addition to time limitations, there are also limits to the area of land that was authorized through SKTA. Regulation determines the minimum that can be taken for SKTA are 2 hectares. With such limits, then the lands are registered and obtain SKTA pretty good value. However, in practice there is no minimum limit for people to register and acquire SKTA. There is a lot of land that is registered and obtain SKTA less than 2 ha, so the price of land is also relatively lower.

SKTA for partnership

The SKTA letter can be used as a requirement to hold partnership with other parties (Article 8, section 3). It is clear that Governor Regulation can make the existence of customary land not become an obstacle in the development of large-scale enterprises. Regulation also wants to convince entrepreneurs who want to partner with the community to do with the people who already have a legal right to land based on SKTA. The reason for local governments to create regulations that accommodate customary land for investment purposes also occurred in West Sumatra. At the location of this study, we have not been able to find a cooperative partnership between the community and employers who conducted using SKTA as evidence of customary land ownership by the community.

Although the Governor Regulation set that can be used as terms of SKTA partnership, but the 'efficacy' of SKTA as a transaction that has value as a guarantor is not so obvious because SKTA can not be used as collateral to apply for credit at banks or other lending institutions. It is spoken by Mr. Hamdani that SKTA can not be used as collateral for credit to something. This is different from SKT. Mr. Hamdan would like to credit the motorcycle with a guarantor crediting SKTA but the manager did not accept the SKTA.

Prohibition to transfer the land

The purpose of Governor Regulation No. 13 is to give legal certainty as well as a protection of the customary land rights, but if it can be converted to functioned customary land or move right then surely there is no customary land. In regulation 13 of Article 11 paragraph (4) "Holder Customary Land Rights and the Rights of Customary Land Above the status of the commons, can not transfer or relinquish rights to another party unless it has been determined based on consultation and partnership in accordance with the legal provisions prevailing custom.

In another sense when analyzed to these provisions, it may dispose of or relinquish rights over common property if there is mutual agreement by consensus. Well, if the commons is converted to functioned in other words sold to another without mutual consent then how legal sanctions. The same rules are also contained in the law for the Protection of Baduy customary land. However, the prohibition to move the Baduy customary land is very tight and it should not be at all. While on Kawala by Governor Regulation it can be done with the approval of the people who have more heterogeneous than the Baduy community.

Bureaucratization of customary institution

A trend that can be observed from the legalization of customary land through customary institutions are increasingly making traditional bureaucratic institutions. A number of traditional institutions that bureaucratization tendencies apparent in terms of the implications for the division of sub-division *Damang*. Traditionally the number *Damang* not follow the number of districts, whereas formerly *Damang* determined by community based residential settlement formed along the river. Now there is a tendency that the district there is one *Damang* so when there is division of the district based on formation of new district. Currently there are eight districts in Pulang Pisau District, which means there are also eight *Damang*.

Bureaucratization tendencies also appear in the selection *Damang*. Now *Damang* directly elected. Local Regulation No. 16 of 2008 concerning Customary Institution does not mention who may become voters for the election *Damang*. According to Edi (Secretary *Damang*) Kahayan Hilir, the voters to elect *Damang* is the Village Head, BPD and mantir.

Damang formerly appointed, sometimes with deliberation, rather than elected. Existing *Daman* in Kahayan Hilir designated by parents in law in the past. *Damang* elections would follow the trend of the direct election of public leaders who are implicated as one of the results of reform are rolled up into the villages.

local regulation on customary institution make dependences of customary institution to formal government become intensified. It is also related to the issue of the legality of the position of traditional institutions and budget to expend activity of traditional institutions. *Damang* after selected then appointed by decision of the regent. The budget allocation for customary institution customs is also one of the important factors to look at the relationship between traditional institutions with government agencies. In 2011, the Government of the District Pulang Pisau budgeted Rp. 50 million for traditional institutions provided through Dayak Traditional Council (DAD) district level. *Damang* sometimes receive Rp. 600 thousand to Rp. 700 thousand from the budget available.

V. IMPACT OF LEGALIZING CUSTOMARY LAND TENURE

Land tenure change

What is true that legalizing customary land tenure would strengthen imbalance tenure in the community? Let's exercise this question on the Baduy community. In Baduy, this study surveyed 100 people Baduy to see how land tenure changes before and after the legalization of customary land tenure. The survey was conducted at random with the assistance of two people to the Baduy Community members. Surveyed conducted in nine villages such as Kampung Kaduketug, Kaduketug 3, Gajeboh, Cisaban, Cipondok, Kadu Tall, Cicakal, Balingbing, and Marengo.

Survey appears there is no gap land tenure in the Baduy community. Almost all of the Baduy people are farmers, some of them have agricultural land in the region Baduy village, while others have extensive land in outside their village. If they does not have the land, they will hire or work on other people's land with a profit-sharing system in a society that is better known as intercropping (*tumpang sari*). The absence of striking inequality of land ownership appears from the data prior to the legalization of customary tenure, that only 7 of the 100 respondents who did not own or control agricultural land in the village Kanekes. 58 people have land between 0.1 to 2 acres. 29 people have land area of 2.1 to 4 acres. Only 6 people who have more than 4 acres of land in the village Kanekes.

So what happens after 11 years of the enactment of the Lebak Local Regulation on legalizing Baduy customary land? After 11 years, it appears that there is not increasing of land tenure among society. From the survey it was found that 50 people do not have additional land in the village Kanekes, but 70 people have additional land outside the village of Kanekes. That is, the expansion of land ownership along with the number of Baduy people will experience any expansion of the land outside the village Kanekes. This increase is due to land ownership certification program conducted by the village government Kanekes adjacent to the village. Moreover, the regulation states that the communal land of the region Baduy village should not be granted a certificate of property rights and property rights based on BAL

Exclusion

Experience in Baduy shows that the legalization of customary land tenure is could be based concolidation and exlude outsider who occupy their land. However, the experience of

Baduy, 56 people was partly excluded assume that they have indeed made a mistake and therefore they return the land voluntary for the land that they had been occupation.

Kalawa did not found similar with Baduy regarding exclusion. That's because in Kalawa and Central Kalimantan is still do not massive customary land tenure legalization. Therefore, measure the impact to see excluded parties can not be measure in the near future. Regulations in Central Kalimantan which does not limit the parties will be subject to customary land tenure may in the future result in excluded local residents as a result of the legalization of customary land tenure. But it could only be proved in the next few years.

Consideration

When Baduy seen as successful legalizing of customary land tenure, it is due strong customary institution that meets the good willingness of governments and land agencies to protect Baduy customary land. This was evidenced by the formation of the team and also the budget allocation for the implementation of Legalization. In contrast to the Kalawa village where districts government are not in line with the province government on this purpose. At Central Kalimantan is also lack of independent of customary institution because they have dependency on local governments as well to get the legalization their position and budgets for their operation.

Certification of land by formal land agency is important to consider in legalizing customary land tenure. Baduy community experience that prohibits a certificate on their customary land have made their land can be consolidated. But it cause expansion of Baduy to own land in areas around the Baduy village. In contrast, there is no prohibition in Kalawa done on customary land tenure certificates. Even legalization by SKTA can serve as the basis for obtaining land certificates. This can have an impact on the lack of collective and communal relationships among people on their land.

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