

It goes on: Oil Palm Plantations, Local Communities and Land Conflict in West Pasaman District, Indonesia

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Received: 10/05/2024.

Reviewed: 24/06/2024.

Published: 31/07/2024.

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Subject Area: agrarian studies and ethnography

Abstract

This research seeks to elucidate the conflict over PT PHP I's Cultivation Rights Title (HGU), claimed as customary land by some communities in Nagari Kapa. It aims to detail the customary elements that legitimized the 1997 land rights transfer to the West Pasaman Regency government. The issue stems from internal conflicts among Nagari Kapa's customary elites, impacting PT PHP I as the HGU holder. The disputed area encompasses 315 hectares of PT PHP I's land, occupied by the community since 2020. Using ethnographic methods, the study explores community and tribal leaders' (Ninik Mamak) perspectives on customs and land status. Interviews were conducted with 10 groups of tenant farmers on PT PHP I's core HGU land and 5 Ninik Mamak. Findings reveal that land status, under the Babingkah Adat system, is determined by the Pucuk Adat and transferred according to Adat Diisi Limbago Dituang and Silih Jahiah customary requirements. However, some community members oppose this mechanism, occupying land designated as PT PHP I's HGU, and thus, they collectively claim the land as customary territory of the Nagari Kapa community.

Keywords: Customary Land; Occupation; Conflict; Oil Palm Plantation.

Introduction

Oil palm plantations are an industry that has a strategic role in economic development in Indonesia (Kubitza et al., 2018; Zubir, 2017). Noted, Indonesia also occupies the highest level of palm oil producers with many palm oil companies spread throughout Indonesia (Herdiansyah et al., 2020). Quoting the Press Release of the Coordinating Ministry of Republic of Indonesia in 2021, the palm oil industry is a mainstay of the country's foreign exchange, where total exports in 2018 reached 28.1 USD or 393.4 trillion. Some of the areas that are the highest development areas of the palm oil industry in Indonesia are in Riau Province with a plantation area reaching 3.49 million ha (Bhinekawati, 2017). In Indonesia, the dominance of plantation land and the oil palm plantation industry is on Sumatra Island and Kalimantan Island (Ngadi & Noveria, 2017). The development of oil palm plantations is initiated in three schemes, namely Plantation Companies (5%), Large Plantations (61%) and Smallholder Plantations (34%) certified by ISPO (Indonesian Sustainable Palm Oil) in an effort to accelerate sustainable palm oil development and significant to the achievement of SDGs

(Sustainable Development Goals) (Erman, 2017; Fahamsyah & Pramudya, 2017; Purba & Sipayung, 2017). A total of 34 holding companies spread across Indonesia mainstream the palm oil industry. However, there is another side to this industry, namely land conflicts between companies and local communities (Herningtyas, 2021; Hutabarat, 2017). The Consortium for Agrarian Reform (KPA) recorded 241 agrarian conflicts throughout 2023. This figure increased by 12% from 212 cases in the previous year. Meanwhile, the plantation sector continues to occupy the first position as the sector with the highest conflicts. From this number of conflicts, KPA noted that the affected land amounted to 638,188 hectares of land and 135,608 households (KK) in 346 villages/cities.

Agrarian conflicts-particularly palm oil plantations-are conflicts over land exclusion (Hall et al., 2011). In this concept, they see how land is seen in terms of access. Access is defined as the ability to derive benefits from things. In this understanding of access, power is defined as something that consists of material, cultural and political-economic elements that are gathered in such a way as to form a “bundle of powers” and a “web of interests” which then determines access to resources (Afrizal, 2006). This way of looking at access to land that shifts from the perspective of rights to power can explain the process of acquiring land for 'market' interests. Thus, the Nagari Kapa community and PT PHP I are fighting over 'access' to land that they both recognize as having power over.

This has become a phenomenon that has no end to the problems. Thus, in several operational areas of palm oil industry companies these problems occur (Berenschot et al., 2023). One of them is the privately owned PT Wilmar International Plantation. Plantation operations, one of which is in West Sumatra Province. West Sumatra is an area that has an oil palm plantation area of around 555,076 ha and occupies the 9th position at the national level (Annur, 2023). Wilmar itself develops oil palm plantation companies in West Pasaman Regency with one of its subsidiaries PT. PHP (Permata Hijau Pasaman). PT PHP unit I located in West Pasaman Regency holds HGU certificates No. 54 covering 932 hectares and No. 55 covering 315 hectares in 2014 on the customary land of Nagari Kapa and Nagari Sasak which was handed over to PT PHP I through the Regional Government of West Pasaman Regency.

In Nagari Kapa, there was a prolonged problem due to the letter of handover of customary land to the West Pasaman Regional Government - PT PHP I in 1997 by Ninik Mamak (Gampo Alam, Ninik Mamak Ampek Didalam and Ampek Dilua) which was opposed by other Ninik Mamak (Ninik Mamak Langgam) and the people of Nagari Kapa (Colchester et al., 2006; Fitri, 2023; Fitri et al., 2023). In 2020 the community began to occupy the core land belonging to PT PHP I's HGU and claimed the land as the customary land of the Nagari Kapa community. This situation became the peak of the conflict in 2021, where the community held demonstrations on land that was considered illegal and deprived the Nagari Kapa community of their rights. This demonstration became mainstream and became the concern of various parties and at that time, the Regent of West Pasaman issued instructions for PT PHP I to stop cultivating the land until now.

This research was conducted on conflicts and problems that occurred regarding PT. PHP's HGU and the re-claim of land/customary land of Nagari Kapa, West Pasaman by several communities (actors). Thus, land that legally belongs to PT PHP has not been cultivated by the company due to the 2021 conflict and is feared by PT PHP to cause new conflicts. The land in question has also gone viral among the community and

has also become the center of attention by the media, academics and NGOs. So, it is necessary to find a resolution to the conflict and both parties between PT. PHP and (some of) the people of Nagari Kapa find a middle point and a new understanding of this dark situation.

Therefore, this research shows and reviews the point where the customary elements that legitimize the transfer of land rights to the government-HGU PT. PHP-are understood in detail and accurately. Also, the actors of customary legitimacy recognized by the community are explored so that their understanding of the 'previous' agreement is also understood by the wider community of Nagari Kapa. On the other hand, it is true that this problem is rooted in horizontal conflict within the customary elite in Nagari Kapa and is the current that washed away PT PHP. However, the peak of the conflict was the land/land that became PT. PHP's HGU which became the triggers in the conflict arena. The conflict area includes 315 hectares of PT. PHP's HGU land in Nagari Kapa which was occupied by the community. Thus, this dispute culminated and until now has not found a bright spot.

Literature Review

Several previous studies have provided a fairly broad picture of the reality that occurred between PT PHP I and the Nagari Kapa community. Thus, it provides an initial view to dig deeper into the problem. Anderson et al (2013) article on PT Permata Hijau Pasaman I reveals that not all Induak (women) and Ninik Mamak members agreed to surrender land to the government; some clearly refused. According to them, the surrender of communal land is in direct conflict with Kapa customs, because communal land is intended for their grandchildren, for their future. Those who refused to surrender the land also refused to accept the *siliah jariah* money. As a result, they are ostracised from the community. One way to get rid of Ninik Mamak members is to replace them with new members. At that time, *datuak* (or *dato*) Mansurdin, who was directly elected by his community, was suddenly replaced without the consent of his community and without an appointment by the Ninik Mamak. His successor was one of the families who traditionally 'only lived' with datuak Mansurdin's people. The family then took the title *datuak* Rangkayo Mudo. It was he who, with several other datuaks, agreed to surrender the customary land to the government.

The second article from Fitri et al (2023) on Dispute on Use of Nagari Ulayat Land for Plantation Business by PT Permata Hijau Pasaman in Nagari Kapa, West Pasaman District. His research revealed that the dispute over the use of Nagari Kapa's Ulayat Land began with the transfer of control of Nagari Kapa's Ulayat Land to investors, namely PT Permata Hijau Pasaman, which was used for oil palm plantation business. This transfer of control is based on a statement of agreement to surrender 1,600 hectares of land dated 6 February 1997 which is submitted to the regent as the head of the region, as Article 9 Paragraph 3 of West Sumatra Regional Regulation Number 6 of 2008 concerning Customary Land and its utilization which reads "*Utilization of Customary Land for the benefit of Legal Entities or Individuals can be carried out based on tenure agreements and agreements of indigenous peoples*".

In the process of handing over the Nagari Kapa Customary Land, there was no transparency between Ninik Mamak and Ninik Mamak and the regent and Ninik Mamak, meaning that the handover of the customary

land did not include all Ninik Mamak Nagari Kapa, namely Ninik Mamak panghulu langgam, then in the handover there was no good faith from the regent to explain the status of the land after being granted Cultivation Rights Title. Second, the Cultivation Rights Title certificate issued by BPN only mentions Nagari Sasak, so there is an administrative legal defect that should include the name of the regency according to the type of right with the Regency / City area unit. Third, the way to resolve disputes in Non-Litigation by negotiating and mediating, while in Litigation by suing, to the Court with case number 15/PDT.G/2005/PN.LBS and Case Number 24/PDT.G/2020/PN Psb.

Thesis from Virliani (2021) on the Conflict over Control of Palm Oil Plantation Land Between PT PHP and the Kapa Community (Case Study: in Nagari Kapa, Luhak Nan Duo District, West Pasaman Regency). From the conflict that occurred, of course, the community and PT. PHP have made efforts to resolve this conflict both by way of deliberation to the court process. This conflict resolution is still ongoing, now the community and the company are still waiting for a decision from the court on the civil conflict case between PT PHP and the Nagari Kapa community. Rinche's research was conducted before the Supreme Court decision. The judicial process of PT PHP I's HGU land dispute in Nagari Kapa has finally reached the issuance of Supreme Court Decree No. 3535 K/Pdt/2023.

Rananto & Safrina (2023) on Unlawful Acts in the Transfer of Customary Land of Nagari Kapa West Pasaman Regency West Sumatra. The process of transferring the customary land of Nagari Kapa, West Pasaman Regency, West Sumatra, explains the consequences of the transfer of Nagari Kapa's customary land, and explains the efforts made against the transfer of Nagari Kapa's customary land. This research is an empirical juridical research. Data is obtained through literature research and field data by interviewing respondents and informants. The transfer of Nagari Kapa Customary Land by the Indigenous Chief of Nagari Kapa fulfils the elements of Unlawful Acts, because it was carried out without a written agreement between the Ninik Mamak and the indigenous community, causing losses to the indigenous community. The transfer also resulted in the loss of Nagari Kapa customary land and also the loss of trust of the indigenous people. Efforts against the transfer, namely conducting deliberations and consensus by involving all Ninik Mamak and indigenous peoples and making a written agreement so that it has legal force. It is recommended to the Pucuk Adat Nagari Kapa to communicate with Ninik Mamak and indigenous peoples before transferring Nagari Customary Land so that there is no uncertainty and avoid misunderstandings and losses.

From the various literature above, it can also be seen that the root of the problem stems from the ignorance of the Nagari Kapa community towards the transfer of land by Ninik Mamak, the lack of socialisation about the transfer of customary land to the Government and then to the Company's HGU. Therefore, in 2020 the community began to occupy land that was considered as customary land of Nagari Kapa by the community and prevented PT PHP I from managing it. Furthermore, the process raised the tension and escalated the conflict both vertically and horizontally. As the conflict progresses, there are also efforts to resolve the conflict, both through litigation and non-litigation processes that try to find a way out. But it has not yet reached its downstream point. So the dynamics of conflict are increasingly created both conflicts between communities, between Ninik Mamak and between them and PT. PHP I.

In more recent developments, several non-governmental organisations (NGOs) have also contributed to the coalition of peasant resistance movements such as the Indonesian Farmers Union (SPI) and the Padang Legal Aid Institute (LBH). The conflicts that occurred have transformed into a community resistance movement that is carried out secretly or on a daily basis. This rural peasant movement, which was originally less organised or only organised internally within the customary law community, has now developed into a more organised movement through the formation of peasant groups that are strengthened by coalitions with outsiders.

The existence of oil palm plantations in Indonesia is a two-sided coin. On the one hand, the existence of oil palm plantations is beneficial for regional and state revenues, which are allocated for the welfare of the community. However, on the other hand, oil palm plantations leave a handful of agrarian problems, especially with local communities. Agrarian conflicts between indigenous communities and oil palm plantation companies in Indonesia continue to occur. The expansion of oil palm plantations, competing land claims, and overlapping policies on oil palm plantation business licences are the causes of the increasing number of agrarian conflicts (Fahrimal & SAFPURIYADI, 2018). This is what is happening in Nagari Kapa, West Pasaman Regency today.

Methodology

This research was conducted in Nagari Kapa, Luhak Nan Duo District, West Pasaman Regency. The approach in this research uses ethnographic (qualitative) methods. Ethnography is an attempt to describe the phenomena experienced by a community in terms of social and cultural life. The key to ethnographic research lies with the ethnographer, namely the anthropologist, to provide a new understanding from the native point of views. In ethnographic research, an ethnographer cannot simultaneously perform all methods in data collection even though it appears to be possible during fieldwork (read: in the field). According to Spradley *“Both ethnographic interviewing and participant observation. Whether done separately or in combination...”* (Spradley, 2006). In this case, Spradley reminds that the first thing an ethnographer must do is to place the social situation when conducting participant observation and interviews with informants. Also, in ethnographic studies, the researcher collects descriptions of behavior through observations, interviews, documents, and artifacts (Atkinson & Hammersley, 1994; Creswell, 2015; Ishtiaq, 2019; Spradley, 2006). Similarly, Fine adds that peopled ethnography is to describe texts that provide an understanding of the setting and that explain theoretical implications through the use of vignettes, based on field notes from observations, interviews, and group member products. This so-called fieldwork involves the researcher *“active viewing, memory enhancement, and informal interviews (DeWalt & DeWalt, 2011; Dwyer, 2012).*

The technique of selecting informants based on purposeful sampling used in this qualitative research is in line with the view of Creswell (2015) which defines purposeful sampling that researchers choose individuals and places to study because they can specifically provide an understanding of research problems and phenomena in the study. According to Patton's view sampling in qualitative research all includes purposeful sampling and the focus in qualitative research is a relatively small sample, sometimes a single case,

selected purposefully (Coyne, 1997). Informants consisted of 5 Ninik Mamak, 10 tenant farmer groups and the Indonesian Farmers Union (SPI) Kapa base and PT PHP I.

Ethnography is an attempt by anthropologists to describe a cultural phenomenon owned by the community under study. For this reason, it is necessary to pay attention to the point of view of the community under study, often referred to as emic perspective or to grasp the native's point of view. Describing community symptoms through an emic perspective by reaching out, embracing the views of the actors (natives). After the researcher or anthropologist manages to capture and understand the native's point of view, it is necessary to have a perspective from the researcher's or anthropologist's understanding. This perspective is called the ethic perspective (Ahimsa-Putra, 2022).

It seems to be (the anthropologist's) dual task to uncover the conceptual structures that reveal the actions of our subjects, the “sayings” of social conversations and also to construct a system of analysis whose terms are generic to those structures. What constitutes these structures as they are, will stand in contrast to other determinants of human behavior. Of course, culture itself is woven by humans into the fabric of an in-depth ethnographic painting in the hope of giving scientific eloquence to events as they are. The aim is to draw general conclusions from the particular, but very full array of facts and to support general statements about the role of culture in the construction of a common life by using those statements in definite and complex subtleties (Geertz, 1992). It is this complexity that will be observed and traced in relation to each other, especially the issue of the dynamics of conflict that occurs between local communities and companies that “take over their land”.

Result and Discussion

Nagari Kapa: Customary Land, Customary Structure

West Pasaman Regency is a Luhak Agam region that adheres to a governance system based on customary rules led by the king and supported by a hierarchical structure of customary leaders. The government system adopted is based on the Koto Piliang¹ harmony (system), where this system upholds the principle of “*Bajanjang Naiak, Batanggo Turun*” (Umar & Riza, 2022). This principle emphasizes that the Koto Piliang customary governance system has the highest leader and the lowest customary stakeholder structure. Overseas, Pasaman is under the rule of the 'King' of the Minangkabau Realm, administratively centered in Pagaruyung (Tanah Datar Regency). At the local level, the government of this part of the kingdom is controlled by Daulat Yang Dipertuan Parit Batu², the council that governs the customary territory, Nagari Lingkuang Aur-Simpang Empat in West Pasaman. The Parik Batu Kingdom began to be built on the slopes of

¹ In Minangkabau there are two alignments or customary government systems, namely Koto Piliang and Bodi Caniago. The Bodi Caniago alignment is an egalitarian system that prioritizes deliberation and is “*Duduak Samu Randah, Tagak Samu Tinggi*”. This means that there is no higher customary leader structure, only elevated to the same level (*Ditinggikan Sarantiang, di Dahulukan Salangkah*) as Penghulu.

² Daulat Jang Dipertoean di Parit Batoe or Daulat Yang Dipertuan Parit Batu Het Minangkabausche Gebied is the highest customary leader (Siregar, 2010).

Mount Pasaman and is now led by Tuanku Hendri Eka Putra S. E Daulat Yang Dipertuan Parit Batu Pucuk Adat Pasaman³.

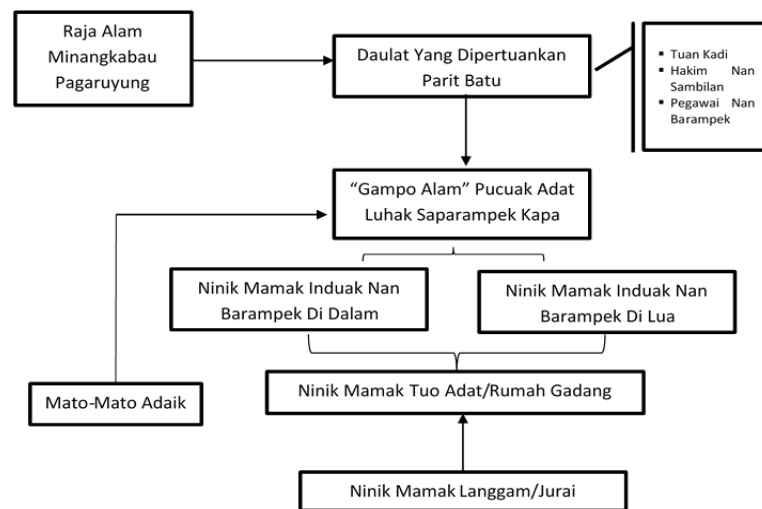
The Parit Batu Kingdom encompassed several areas, one of which was Nagari Kapa⁴ which was traditionally referred to as Lubuak Pudiang and governed by a customary institution called Pucuk Adat. Today Nagari Kapa is referred to as “Luhak Saparampek Kapa” under the leadership of Gampo Alam (regarded as Penghulu Pucuk). Under the customary system, Gampo Alam consists of two main institutions, referred to as Ninik Mamak Ampek Didalam (*Pananai Sako*) and Ninik Mamak Ampek Dilua (*Panyambah Tuah*). The former is tasked with managing natural resources, while the latter is responsible for protecting the honor of Gampo Alam and enforcing customary criminal and civil laws. As seen in Figure 1, the customary structure consists of:

1. Pucuk Adat, namely the Customary Leader of Luhak Saparampek Nagari Kapa who functions to head the Adat Salingka Nagari Kapa, is Ninik Mamak who has the title Gampo Alam.
2. Ninik Mamak Ampek Didalam, headed by traditional leaders with the titles Datuk Rajo Mahmud, Datuk Jando Lela, Datuk Rangkayo Mudo and Datuk Sutan Ameh.
3. Ninik Mamak Ampek Dilua, headed by traditional leaders with the titles Datuk Majo Basa, Datuk Jalelo, Datuk Tan Kabasaran, and Datuk Bungsu.
4. Ninik Mamak Tuo Adat (Ninik Mamak Rumah Gadang) whose position is considered as Dubalang (supervisor). Ninik Mamak Tuo Adat consists of 5 *sako* (traditional titles) and does not have the title Datuk. The position of Ninik Mamak Tuo Adat is a position that is still in the core structure headed by Gampo Alam.
5. Ninik Mamak Ampek Penghulu Langgam is a Ninik Mamak who is planted and grown by the sovereignty of the Pasaman Customary Parit Batu Pucuk in Luhak Saparampek Nagari Kapa. Which is headed by Datuk Rangkayo Basa and Datuk Rangkayo Mulia. However, in terms of power over customary land they have no authority because they are considered 'migrants' and titles are given.

Figure 1 Customary Structure of Nagari Kapa

³ However, there is dualism in the leadership that holds the power of Parit Batu, where Tuanku Jailani Alidinsyah, SM, M. Ak is legitimized by the Regional Government and LKAAM as Daulat Yang Dipertuan Parit Batu. However, customarily, it is not recognized and legalized by the Kingdom of Pagaruyung.

⁴ Nagari (Village) Kapa is located in Luhak Nan Duo District with a Nagari Area of 41.94 km², or 24.07% of the area of Luhak Nan Duo District (BPS, 2023). Nagari Kapa stretches straight 87 km² and consists of 6 (six) *orong* (hamlets), namely: South Kapa, East Kapa, Padang Laweh, North Kapa, Lubuak Pudiang and Malasiro. The total population of Nagari Kapa is 12,449 people (6,303 male and 6,146 female) consisting of 3,606 households (BPS, 2023).



In the provisions of customary law in Luhak Saparampek Nagari Kapa, Gampo Alam is Basa Luhak Saparampek Nagari Kapa or called Pucuk Adat, while Ninik Mamak Ampek Didalam is the customary judge of Luhak Saparampek Nagari Kapa *Pananai Sako* Gampo Alam, and Ninik Mamak Ampek Dilua is the Chief Mamak of the *Tuah Gampo* Alam Worshipers. This means that Gampo Alam and Ninik Mamak Ampek Didalam and Ninik Mamak Ampek Dilua are the owners and rulers of the Nagari customary territory, Nagari Customary Land, Nagari Mosque, Nagari Market and Nagari Cemetery.

The Ninik Mamak comes from each tribe in Nagari Kapa, both indigenous and migrant tribes. Some of the original tribes consist of Tanjung, Koto, Malayu, Jambak, and Sikumbang. These tribes are led by Ninik Mamak Tuo Adat or Ninik Mamak Rumah Gadang. This is based on the fact that each tribe or clan is led by its clan datuak as a liaison with Ninik Mamak Ampek Dilua and Ampek Didalam to Gampo Alam. This Ninik Mamak Tuo Adat has authority in terms of tribal or tribal groups only, regulating the course of tribal life. In some terms in other regions, this is the same as the function of the Mamak Tungganai tribe or Ninik Mamak who controls a Rumah Gadang filled by members of the tribe who are *saparuik* or blood (one mother).

The difference in its function with Ninik Mamak Langgam is about its authority and status. Ninik Mamak Langgam and his tribe members are migrants who are given the right to manage land in Nagari Kapa. His authority is only within the scope of his tribe (tribe level). Because they are not considered indigenous people, they are separated from the Ninik Mamak Saparampek Kapa structure and do not have authority and power over customary land in Nagari Kapa. They only have the right to manage what has been transferred (given management rights) to their tribe. In the current case, the position of Ninik Mamak Langgam is the inheritance of *sako* (customary title) given because he is considered as *Kamanakan Dibawah Lutui*⁵. Thus, his authority is limited to policy, customary land and position in the socio-cultural life of the Nagari Kapa community.

The people of Nagari Kapa are part of the Minangkabau entity. They have customary rules towards organizing life including land. Land is the lifeblood and most valuable asset for the Kapa people and is strictly regulated by custom. Where the Minangkabau system which is matriakat (inheritance of female lineage)

⁵ Another person who is of a different tribe and a different Nagari but asks for refuge in the place where he is now.

requires land to be inherited to women as heirloom property (*pusako*⁶) or communal property or communal land and control of this communal land is controlled by Ninik Mamak. The land tenure system adheres to the Babingkah Adat system. *Babingkah Adat*⁷ is the control of land in Nagari Kapa by Ninik Mamak, namely Pucuk Adat and Ninik Mamak Ampek Didalam and Ampek Dilua. Customary land can be managed by the Nagari Kapa community (grandchildren and nephews) if given permission to manage by Pucuk Adat.

In the transfer of customary land, customary law provides ways to gain access to land. The first is “*adat di isi, limbago di tuang*” which implies a series of efforts to fulfill customary provisions to obtain certain rights. After that, they can manage the land with the status of use rights (cultivators), then the customary provisions apply to their management “*ka rimbo babungo kayu, ka lauik babungo karang, ka sawah babungo ampiang, ka sungai ba bungo pasie*” meaning that the manager must set aside a portion of the results of his management to be handed over to Ninik Mamak. Secondly “*Siliah Jariah*” which is compensation for the energy and thought put into cultivating a piece of land by the owner or customary money (*limbago dituang*) (Undri, 2006). These two terms are well-known mechanisms in the land acquisition process. However, subsequent research found that both the “*adat di isi, limbago dituang*” and “*siliah jariah*” institutions do not result in land rights transferring, only management rights.

Roots of Conflict and Land Occupation

Land conflicts carried out by the Nagari Kapa community against PT PHP I land, stem from: First, in the process of handing over the Nagari Kapa Customary Land there was no transparency between Ninik Mamak and Ninik Mamak and the regent and Ninik Mamak, meaning that the handover of customary land did not include all Ninik Mamak Nagari Kapa, namely Ninik Mamak Panghulu Langgam, so in the handover there was no good faith of the regent in explaining the status of the land after being granted the Cultivation Rights Title (Fitri, 2023). Second, the Cultivation Rights Title certificate issued by BPN only mentions Nagari Sasak, so there is an administrative legal defect that should include the name of the regency according to the type of right with the Regency/City area unit (Dingin, 2014; Fitri, 2023; Fitri et al., 2023). Third, the misuse of the customary system and legal fraud. Where, the concept of *Siliah Jariah* is interpreted differently by the government and companies with the views of the community (Afrizal, 2007; Berenschot et al., 2023; Colchester et al., 2006) and Fourth, the problem of landlessness and the economy of the local community.

The handover of land by Ninik Mamak to the local government of West Pasaman Regency on February 6, 1997, a letter was born entitled "Letter of Agreement of Ninik Mamak/ Indigenous Chiefs of Customary Land Holders in the North Kapar and South Kapar Village Areas to the Kapar Nagarian District of Pasaman Regency Dati II Pasaman on the Surrender of Customary Land in the North Kapar and South Kapar Village Areas of Pasaman District of Pasaman Regency Dati II Pasaman for Palm Oil Plantation Purposes by PT

⁶ Pusako is customary heritage property consisting of wealth and customary power. Wealth assets are in the form of gold, silver and domestic livestock, while customary power assets are in the form of territorial areas (ulayat) in the form of land forests.

⁷ This is different from the *Babingkah Tanah* system adopted by the Kinali community (Daulat Rajo Kinali). That the *Babingkah Tanah* system refers to each Ninik Mamak in Nagari Kinali, has clear boundaries and control of land and only the children of the Ninik Mamak's tribe can work on it.

Permata Hijau Pasaman". This letter places Ninik Mamak as the First Party and Taufi K. Marta, Regent Head of Pasaman District II as the Second Party.

Thus, this basis is used by PT PHP I to apply for a HGU (Cultivation Rights Title) permit to be used as an oil palm plantation. Regarding the HGU, in order to ensure legal certainty in the land sector and as evidence of its maintenance, the company, namely PT PHP I, then registered the HGU after the submission agreement was litigated by the Regional Government, namely the Regent of Dati II Pasaman, which is now changed to West Pasaman based on Law Number 38 of 2003 which was formed from the expansion of Pasaman Regency. The first HGU was issued in 2004 and then revised in 2014 by the National Land Agency (BPN) at the West Pasaman Regency Land Office, including:

1. HGU Certificate No. 54 of 2014 covering an area of 9,320,000 m² (measurement letter No. 747/2014) located in Nagari Sasak, Sasak Ranah Pasisie Sub-district, West Pasaman Regency, West Sumatra Province.
2. HGU Decree No. 55 of 2014 covering an area of 3,150,000 m² (measurement letter No. 748/2014) located in Nagari Sasak, Kec. Sasak Ranah Pasisie, West Pasaman Regency, West Sumatra Province.

Based on the two HGUs, there is a view of two locations when viewed from the map, where HGU No. 54 owned by PT PHP I is in the Nagari Kapa area covering an area of 9,320,000 m², but what is written is not Nagari Kapa but Nagari Sasak. Whereas administratively, Nagari Kapa was established since 2009 and was legalized as a Nagari (in the Nagari Kapa Monograph). However, because the utilization of customary land in this HGU is in two Nagari which predominantly comes from Sasak customary land, it is only mentioned in Nagari Sasak. This does not mean that PT Permata Hijau Pasaman's HGU on the Kapa Nagari Customary Land does not exist, because in the Decree to the National Land Agency Number 135/HGU/BPN RI/2014 states that it grants PT Permata Hijau Pasaman Cultivation Rights for 20 (twenty) years from the date of the decree, on State land covering an area of 1,247 ha (one thousand two hundred and forty-seven hectares) located in Nagari Sasak and Kapar, Sasak Ranah Pasisia District and Luhak Nan Duo, West Pasaman Regency. So, this is a gap for the indigenous people of Nagari Kapa to claim their customary land and declare the HGU issued by BPN invalid because the Kapa indigenous people consider the non-recognition of their Nagari customary land in the HGU certificate.

The HGU issued by the BPN also contradicts Article 169 Paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 which reads "The land book of Management Rights and Cultivation Rights is arranged according to the type of right with the Regency/Municipality area unit". Thus, this is what triggers conflict and questions for the Kapa community. That PT PHP I does not have HGU on the customary land of Nagari Kapa and they claim that the land belongs to the Nagari Kapa community and there is no right of PT PHP I (Fitri, 2023).

In addition to claims, it is also the basis of conflict that the status of the land is handed over. When referring to several regulations, namely Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land

Agency Number 18 of 2019 concerning Procedures for Administration of Customary Land for Indigenous Peoples, it states that Cultivation Rights are rights to cultivate land directly controlled by the State, thus customary land granted for Cultivation Rights is released from its rights as customary land to become State land, and when the HGU period has expired, it returns to land controlled by the State (HRW, 2019b, 2019a). Thus, the customary land of indigenous people becomes extinct after going through the process of granting HGU to investors. However, this regulation clashes with other regulations, including Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration and Regional Regulation Number 6 of 2008 concerning Customary Land and its Utilization, which states that if the agreed period for the utilization of customary land in the context of capital investment has expired, the status of control and ownership of the land returns to its original form, meaning that it returns to being customary land controlled by customary law communities. Thus, from 2020 until now, PT PHP I cannot work on their land because it has been occupied by the Kapa community. This is a form of land occupation by local communities who "defend their land" but PT PHP I consider this a form of occupation of the company's legal land.

The trigger for land occupation carried out by the Nagari Kapa community stems from the appeal of the Indigenous Chief. Based on the results of interviews with land cultivators, the main reason they entered the land was when there was an announcement at the mosque (precisely during Friday prayers) at the Kapa Grand Mosque in 2019 from one of the Ninik Mamak (Alman Gampo Alam) that the license (lease) from PT. PHP I had expired. So that in 2020, the community flocked to enter the core land owned by PT. PHP I, which at that time was indeed in the period of replanting oil palms to plant new seedlings. The announcement was not just once, but there were about 3 times announced by Gampo Alam that the community could work on the core land because the lease period had ended.

From 2020 until now the community has controlled the core land owned by PHP I which is claimed to be the customary land of the Nagari Kapa community "which must return to the Kapa community". Even though they are also aware, so far they do not know that the problem of the HGU permit from PT. PHP I will last until when. They are consumed by the assumption of some unscrupulous Ninik Mamak that it is the customary land of Nagai Kapa which is free from control. In addition, so far, the people of Nagari Kapa do not know the time span and see the HGU certificate from PT. PHP I which will end until 2034. Thus, the occupation of PT PHP I's core land led to prolonged conflict and culminated in 2021, when PT PHP I wanted to take over the land to which it was entitled, it had to deal with the tenant communities on the land.

However, the main reason for the community's desire to enter the land is the absence of land that can be cultivated and economic problems. The results of interviews with cultivators said that many of the people of Nagari Kapa did not have land to work on and in 2019 the beginning of the emergence of Covid-19, so that due to economic pressure and accompanied by Ninik Mamak to control the core land owned by PT. PHP I is increasingly wide open. At present, the people who occupy the core land of PT PHP I are around 303 people who are members of 10 farmer groups. These farmer groups are fostered by agricultural extension workers, namely BPP (Agricultural Extension Agency) Luhak Nan Duo District. In addition to the farmer

groups, the tenant farmers are also members of SPI (Indonesian Farmers Union) and are members of KPPI (Indonesian Farmer Producer Cooperative) Kapa.

In addition, the "Siliah Jariah" process has been undermined and has become a *modus operandi* for obtaining customary land from indigenous Minangkabau communities in large plantation areas. Traditionally, Siliah Jariah payments only recognize the transfer of use rights, but not the transfer of property rights. The lack of transparency also makes these transactions subject to manipulation, even in collaboration with adat leaders by extending their authority to finalize deals without the consensus of the grandchildren first. So, according to the adat view, there has been no transfer of ownership rights (Coubut, 2015). Thus, the cessation of plantation operations must be followed up with the return of land to local communities. Land owned by indigenous communities should not be granted Cultivation Rights Title (HGU) because HGU is only granted on State land. However, according to the government's view, when communities transfer their land rights to the government, the land then becomes State land and can be allocated to companies as HGU. When this HGU expires, the land is returned to the State, not to the community. As a result, the agreement to hand over the land to the plantation company creates a permanent transfer of land rights, although this is highly unlikely under customary law.

In this case, regarding customary land in Nagari Kapa. We can see that the customary land tenure system adopted by the Nagari Kapa community is the customary *Babingkah Adat* system. In our analysis, this system divides the authority between two elements. Where Ninik Mamak-Customary Chief of Gampo Alam and Ninik Mamak Ampek Didalam and Ampek Dilua become Tenure of Customary Land and Customary Land Rights of Authorization in Nagari Kapa absolutely. While the second element, namely the Nagari Kapa community-grandchildren-nieces and nephews are as management if given permission by the Ninik Mamak of the customary land ruler. Grandchildren who can be given permission to manage (with conditions) are also regulated based on the classification, namely grandchildren who are appropriate and obedient to Ninik Mamak, not those who are being discarded throughout adat. These grandchildren must also prioritize those who are close in lineage to Ninik Mamak, namely grandchildren (*kamanakan dibawah daguak-dakek aia kadinginan, dakek api kahangekan*) (Murniwati, 2023; Putri, 2021). Thus, Pucuk Adat Gampo Alam is the holder of customary land power in Nagari Kapa and Ninik Mamak Ampek di Dalam and Ampek di Lua are elements that cannot be separated from that power. This is related to the *kelarasan* system adopted, namely Koto Piliang, where higher status and position can decide something including in the control of heirloom property (*manitiak dari ateh*).

Therefore, the transfer of customary land power is regulated in the "*adat diisi limbago dituang*" system in accordance with the Ninik Mamak agreement and customary rules. *Adat diisi, limbago dituang* is a customary money requirement. When the power over the communal land has been transferred, the power and authority over the land is released from the Ninik Mamak. The release of power is on the basis of *siliah jariah* which is interpreted as compensation for control of customary land rights. The compensation of *siliah jariah* is compensation money to Ninik Mamak who has been controlling and supervising customary land. *Siliah* can be interpreted as changing, replacing while *jariah* is difficult, difficult. So, the money or agreement made between Ninik Mamak and the investor is *siliah jariah* for Ninik Mamak which is enshrined in the custom of

being filled. However, this is the point of difference in understanding, where other Ninik Mamak consider that *siliah jariah* is not a transfer of control over customary land rights, but rather a lease. That is true, when *siliah jariah* is paid in the form of money, it is a lease, not a compensation or compensation for profit. What about *limbago dituang*? *Limbago dituang* implies that Ninik Mamak as an institution or customary structure, then as long as the customary land is used by the investor or PT PHP I, then there must be compensation during the management such as rent as long as the management is running.

However, our analysis is that what is a strong witness in the transfer of power rights over customary land is the custom in the content of *limbago dituang* agreed in 1997 by Ninik Mamak with the Regional Government to PT PHP I in the form of money IDR 75,000 / ha including other agreements. This is the absolute strength that there has been a transfer of power rights over the customary land of Nagari Kapa to the West Pasaman Regional Government-HGU PT PHP I. Thus, resulting in management and management rights over the customary land of Nagari Kapa. So, as a result, the rights of management and management and power are no longer owned by the community (Grandchildren and Nieces) and Ninik Mamak Nagari Kapa.

This is the origin of the current conflict over customary land in Nagari Kapa. The concept of *Siliah Jariah* agreed upon by Ninik Mamak and the company (PT PHP I) is only a limited agreement. This means that it does not involve all elements of Ninik Mamak. In addition, according to the customs and rules of adat salingka nagari, the authorized institution in agreements and customary issues is followed up by the KAN (Nagari Customary Density) of Nagari Kapa, not Ninik Mamak or Pucuk Adat individually. Although Pucuk Adat Gampo Alam is the chairman of KAN, it must be discussed in customary institutions and the involvement of all elements first. This is the 'sledgehammer' that creates tension between Ninik Mamak and the community. In this case, also the highest decision is not the Customary Head or Ninik Mamak, but deliberation and consensus as the highest decision in culture. Therefore, the agreement was not implemented at the level of the traditional elite of Nagari Kapa.

The Road Not Taken: Community Conflict and Oil Palm Plantations

The case of land disputes between the community and PT PHP I in Nagari Kapa, according to researchers, is a case of deulayatization that has occurred throughout the country. The fate of the local community is exactly like an old parasite that grows on its host. This is a paradox: from "landowner" to "beggar in one's own land"-from host to parasite. The fate of the Kapa people's living land is limited by the provisions of Ninik Mamak as the holder of *ajimumpung* power in carrying out the mechanism of transferring rights to customary land in the customary way filled with *limbago dituang* and *siliah jariah*. As if it was finished at the Ninik Mamak level and ignored consensus with elements of the community, especially in order to take into account the benefits for grandchildren.

Why does this happen? So far, it has been widely cited that it happens because of the external deulayatization process due to the presence of government policies since the colonial period until now still denying the existence of Masyarakat Hukum Adat (local communities). However, the results of our research show that de-ulayatization also occurs internally within the Masyarakat Hukum Adat themselves. This is shown through the existence of power competition and conflicts of interest between customary elites and the dynamics of

local community relations, in this case the peasants with their own customary elites as well as with State and Non-State actors who are outsiders. Ironically, the conflict that occurred was followed by the resistance struggle of the peasants of Nagari Kapa which was carried out through land occupation or re-occupation of the disputed customary land until now. What can we learn from this? The result of deulayization is a conflict over customary land rooted in the loss of living space for the Kapa people. This also intersects with the law of pluralism, which challenges the strengthening of resistance and opposition.

Legally, the company has legal power that gives them authority over the control of land located in Nagari Kapa. However, the Nagari Kapa community (grassroots) and the agreement are not known to transfer power over customary land. So, they occupy land that is claimed as customary land belonging to the Nagari Kapa community. This is the dilemma over customary land in Nagari Kapa and is like eating a *simalakama* fruit for the company. If they take action against people who work on the core land, it is feared that the conflict can trigger riots between the community and PT PHP I. However, related to the Babingkah Adat system, the power over customary land or rajo customary land is held by the Pucuk Adat and Ninik Mamak Ampek Didalam and Ampek Dilua. Ninik Mamak Langgam and Ninik Mamak Rumah Gadang do not have the position and authority to manage the customary land of the nagari, because they are Ninik Mamak who are only limited to taking care of their respective families and customary land.

Through land occupation and communal land claims carried out by the Nagari Kapa community, it can be seen as a collective claim. They consider that land is a cultural heritage that is not museumized or refer to Fredrik Barth's term as Ethnic Boundary Maintenance (Social Boundary Maintenance) to support the collective claim, both in the form of claims to identity, ownership/rights claims (Fredrik, 1969). These collective claims arise with the aim of interests such as economic interests and the political interests of a handful of people. Occupation carried out by farmers is a step taken to fight back. The purpose of this resistance is to take control of land that is considered the customary land of Nagari Kapa. To achieve the goal, farmers need to strategize the right movement. There are two general forms of strategies that can be carried out by farmers, namely: (1) through legal channels and (2) direct mass action by farmers. Mass action according to Bose (2019), can be divided into four, namely: (1) reclaiming; (2) expansion of new members; (3) support for local peasant organizations; and (4) demonstrations. These four strategies are carried out by cultivators (farmers), namely taking legal action (litigation) through Ninik Mamak Langgam, conducting demonstrations in 2021, forming farmer organizations and adding cultivator members to the conflicting land and asking for legal assistance, namely LBH Padang and collaborating with NGOs, namely SPI (Indonesian Farmers Union) in the Nagari Kapa area since 2020.

At present, since the 2021 demonstration, tenant farmers, Ninik Mamak Langgam and SPI/LBH have not made any overt efforts or acts of resistance against PT PHP I. However, Ecstein (1989) in Mustain (2007) states that although farmers appear to be passive, reluctant and silent, they can resist their unhappy conditions by continuing to farm and increasing their land area. However, Ecstein (1989) in Mustain (2007) states, although farmers seem passive, reluctant, and silent, they can resist conditions that they do not like by continuing agricultural activities and increasing the area of land to be cultivated, or not heeding important information such as Supreme Court decisions, company warnings. Silent or covert forms of resistance are more

common than overt resistance. Scott (1993) explains the difference between "real" resistance and "incidental" resistance.

"Incidental" resistance is characterized by: (a) it is unorganized, unsystematic, and individual, (b) it is fortuitous and self-serving, (c) it has no revolutionary consequences, and (d) in intent and logic it implies adjustment to the existing dominant system. In contrast, "real" resistance is characterized by: (a) more organized, systematic, and cooperative, (b) principled or selfless, (c) has revolutionary consequences, and (d) contains ideas or goals that negate the basis of domination. Scott also said that -any activity carried out by farmers can be seen as resistance such as stealing crops if it fits the purpose of the definition of resistance. Peasant resistance also does not have to take the form of collective action. The effort that became the basis of farmers' resistance to the control of customary land by PT PHP I was a land reclaim effort. According to Bose (2019), based on the mode of land reclaim movement, the typology of agrarian reform is divided into three, namely: (1) annexation, (2) integration, and (3) cultivation. The division of agrarian reform typology from below refers to the way of gaining access to land. The first type is annexation where the community directly occupies the core land area of PT PHP I's HGU by force and illegally for agricultural activities. The second type is the integration type where the movement collaborates the state and local communities in land resource management. This can be seen in their efforts to form farmer groups facilitated by the Kapa Nagari Government, BPP (Agricultural Extension Center) Luhak Nan Duo and SPI (Indonesian Farmers Union). The third type is cultivation, combining both annexation and integration. On the one hand, land is reclaimed and factually planted or cultivated by residents but on the other hand land is also still claimed and also factually managed as part of the Agrarian Reform (TORA) program through the KPPI (Indonesian Farmer Producer Cooperative) Kapa group.

Conclusion

In general, the utilization of customary land in West Sumatra begins with the submission of customary land by the customary law community to the regent as the regional government/head of the region, whether it is included in the forest area or not, then the regent hands over the land to the investor/ or company to be used as a plantation business. However, the regent actually did not hand over the land to the company but only granted the application for the provision of plantation land submitted by the company to him. After that, the customary land is converted into State land and then the land is granted HGU on behalf of the company that will carry out plantation business activities. These methods are indicative of the colonial legacy of *domeinverklating*.

Article 12 Paragraph (1) of Law Number 39 of 2014 concerning Plantations as amended by Law Number 11 of 2020 concerning Job Creation states: "In the event that the land required for the plantation business is the Customary Land of Customary Law Communities, plantation business actors must conduct deliberations with Customary Law Communities holding customary rights to obtain approval regarding the transfer of land and its compensation." Then in Article 17, it states: 1) Authorized officials are prohibited from issuing Plantation Business Licenses on customary land of indigenous peoples; 2) The prohibition as referred

to in paragraph 1 shall be exempted in the event that an agreement has been reached between the customary law community and the plantation business actor regarding the surrender of land and its compensation as referred to in Article 12 Paragraph 1.

This means that the transfer of customary land from the regent to the investor/company cannot be separated from the approval of the Pucuk Adat and Ninik Mamak with the provision of compensation which in the Nagari Kapa custom is called *Siliah Jariah* in accordance with *Adat Diisi Limbago Dituang*. The utilization of customary land by investors/companies actually aims to improve the welfare and prosperity of indigenous peoples with the principle of mutual benefit, as stipulated in Article 3 of the Regional Regulation of West Sumatra Province Number 6 of 2008 concerning Customary Land and its Utilization which states: 1) The main goal of utilization of communal land is to improve the welfare and prosperity of indigenous peoples; 2) Utilization of communal land by other parties who are not members of the indigenous community concerned is carried out with the principle of mutual benefit and risk sharing with the principle of "adat diisi limbago dituang" through consensus deliberation. In addition, in the case of land occupation by the Kapa community who are members of 10 farmer groups on PT PHP's core land is illegal. Where they recognize that the land that becomes PT PHP I's HGU as their customary land. This is contrary to the principle of land tenure in Nagari Kapa. Where, the *babingkah adat* system does not give authority to the Nagari Kapa community over customary land unless given permission by Pucuk Adat (the highest customary leader of Nagari Kapa).

The case in Nagari Kapa and PT PHP I have been resolved by deliberation, lobbying, litigation and non-litigation. So that the last verdict No.3535 K/PDt/2023 stated that all lawsuits filed by the plaintiffs (4 unscrupulous Ninik Mamak Nagari Kapa) were rejected and the land was valid according to the Supreme Court's ruling belonging to PT PHP I. However, this did not lead to conflict resolution, instead it added to the ongoing conflict. However, this did not lead to the resolution of the conflict, instead it added to the ongoing conflict and until now, PT. PHP I have not been able to manage the core land of their oil palm plantation.

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