



ANALYSIS OF THE OWNERSHIP STATUS OF REMPANG CUSTOMARY LAND AND ITS IMPLICATIONS FOR HUMAN RIGHTS VIOLATIONS

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ABSTRACT

Agrarian conflicts frequently lead to land disputes due to ambiguities in existing regulations, such as overlapping claims, which result in uncertain land status. This research focuses on the conflict involving Rempang land, where a dispute emerged between PT Elok Makmur Graha, an investment entity, and the indigenous Rempang community. This conflict culminated in forced evictions of the Rempang community, constituting a violation of human rights. The objective of this research is to examine land rights and assess the extent of legal protection provided by the government to uphold the human rights of the Rempang community. Utilizing normative legal research methods and a conceptual approach, the research finds that customary land, traditionally held by the community, is not adequately recognized under Law No. 24 of 1997 concerning Land Registration, specifically Article 9, paragraph (1), which excludes customary land from land certificate registration.

Keywords: Ulayat Land, Human Rights Protection, Agrarian Conflict.

ABSTRAK

Masalah konflik agraria sering menjadi penyebab sengketa tanah akibat ketidakjelasan peraturan yang ada. Ketidakjelasan ini menyebabkan tumpang tindih sehingga status tanah menjadi tidak jelas. Dalam kasus tanah Rempang, terjadi persaingan tanah antara pihak investasi dari PT Elok Makmur Graha dan masyarakat adat Rempang. Akibatnya, penggusuran paksa dilakukan oleh Aparat Gabungan terhadap masyarakat Rempang, yang melanggar Hak Asasi Manusia. Penulis memilih tema ini untuk mengidentifikasi hak atas tanah dan melihat bagaimana pemerintah memberikan perlindungan hukum terhadap HAM masyarakat Rempang. Penelitian ini menggunakan metode penelitian hukum normatif dan

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pendekatan konseptual. Hasil kajian menunjukkan bahwa tanah ulayat lebih berhak dimiliki oleh masyarakat adat, dan tanah ulayat tidak termasuk dalam pendaftaran sertifikat tanah berdasarkan UU No. 24 Tahun 1997 tentang Pendaftaran Tanah Pasal 9 ayat (1).

Kata Kunci: Tanah Ulayat, Perlindungan HAM, Konflik Agraria.

INTRODUCTION

In the context of national development, the Indonesian government has prioritized economic resilience to foster national progress and ensure the welfare of all societal levels, as mandated by Article 33, paragraph (4) of the 1945 Constitution. Achieving this objective necessitates a commitment to sustainable development. However, the implementation of large-scale development projects often leads to human rights concerns, particularly in relation to land acquisition policies and the mechanisms for evicting settlements (Chaerudin, 2023).

A recent case that has garnered significant public attention involves the land status on Rempang Island. This island, part of the Batam City area in the Riau Islands, spans approximately 16,583 km² and is the second largest island connected by the six Barelang Bridges. The controversy surrounding Rempang Island has sparked unrest among its inhabitants, many of whom have resided there since before Indonesia's independence. These residents now face

the threat of eviction to make way for the Rempang Eco-City National Strategic Project (PSN). This project, spearheaded by PT Makmur Elok Graha (MEG), aims to attract substantial investments and will occupy 7,572 hectares, or approximately 45.89 percent of Rempang Island's total area of 16,500 hectares.

The land transfer on Rempang Island is intended to allow private entities to acquire or control land for public interests, such as infrastructure development. In this context, customary rights play a critical role in land acquisition, as land often holds profound symbolic, cultural, and economic significance for indigenous peoples. The land ownership systems of indigenous communities may differ from the formal legal frameworks established in Indonesia. Although these traditional ownership rights may not be formally documented, they are recognized by indigenous communities and passed down through generations. Furthermore, the significance of customary use rights, which include the right to utilize land for daily needs such as hunting, gardening, or gathering natural

resources, must also be considered. Land acquisition processes that disregard these customary use rights risk causing harm to indigenous communities (Fath & Fawwaz, 2024).

A notable incident occurred on September 7, 2023, when clashes broke out between civilians and joint TNI/POLRI (army and police forces). This conflict arose from the planned eviction of the Rempang Island community to facilitate the national strategic development project, Rempang Eco City. Initially, this project aimed to enhance competitiveness with Singapore, but tensions emerged due to the ambiguous land status on Rempang Island. Local residents asserted that the land was their ancestral inheritance.

The legal framework governing land issues on Rempang Island includes Law Number 53 of 1999 and Law Number 13 of 2000. Specifically, Article 21, Paragraph (1) of these laws states that "If Batam City has become an autonomous region, the Batam City Government will include Batam's authority for regional administration and development" (Assyifarizi et al., 2023).

Land conflicts on Rempang Island have persisted for decades. The area has long been inhabited by both local populations and immigrants, predating the

establishment of BP Batam. However, residents of the island do not possess formal land ownership certificates, as much of the area was initially classified as forest land under the jurisdiction of the Ministry of Environment and Forestry (KLHK). BP Batam was established in October 1971 through the initiative of BJ Habibie, based on Presidential Decree (Keppres) Number 41 of 1973, and it was during this period that the concept of Barelang (Batam, Rempang, Galang) was introduced.

The three large islands were connected to bolster the economic sector, particularly after the Riau Islands separated from Riau Province. Due to its strategic location in the Strait of Malacca, this region was initially envisioned to compete with Singapore as a hub of trade and industry. However, over time, it has evolved into a supportive and complementary area that contributes to Singapore's economic growth.

To ensure more professional management, the central government established the Batam Authority, now known as BP Batam, which operates independently of the regional government. This agency is responsible for managing the Batam area and its surrounding islands, including Rempang Island.

Article 21, Paragraph (3) of Law Number 13 of 2000 stipulates that the employment relationship between the Batam City Government and the Batam Authority remains regulated by the central government. However, the division of authority between the Batam City Government and BP Batam remains unclear, which has contributed to land use conflicts on Rempang Island. This ambiguity is believed to have led to the eviction of the Rempang community, with allegations of human rights violations committed by the Joint Officers.

THEORETICAL REVIEW

Maria S.W. Sumardjono explains that Management Rights are implicitly derived from the interpretation of Article 2, Paragraph (4) of the Basic Agrarian Law (UUPA), which states that "The state's right to control can be delegated to Autonomous Regions and customary law communities, provided it is necessary and does not conflict with national interests, according to government regulations" (Arianto, Tjahjo et al., 2015).

Article 1 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 defines customary land as land owned by a particular customary

law community under customary rights. This definition highlights the intrinsic connection between customary land and the customary rights associated with it (Shebubakar & Raniah, 2021).

Land ownership rights, often referred to as property rights, grant the holder full authority and freedom to engage in any activity on their property, provided it does not infringe upon the interests of others. These property rights are hereditary and are not subject to time limitations (Halim, 1987; Rafiqi et al., 2021).

The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia recently issued Regulation Number 18 of 2019 concerning the "Procedures for the Administration of Customary Land of Customary Law Community Units." This regulation is grounded in the recognition that national land law acknowledges and respects the traditional rights of communities within customary law units, provided that these rights still exist and align with societal development and the principles of the Unitary State of the Republic of Indonesia (Hutama, 2021).

Sawir (Datuk Tandiko) highlighted that conflicts over customary land, particularly concerning Customary

Land or Customary Forests within Kenegarian, often arise due to unclear boundaries between Kenegarian, leading to competing claims (Lestari & Sukisno, 2021). Changes in regulations governing customary land and Cultivation Rights that are not clearly and comprehensively articulated can lead to differences in perception and interpretation, potentially resulting in disputes or other issues. These differences in perception may cause harm to certain parties, particularly when policies are made without adequate consideration or attention to directly related aspects (Camalia & Taupiqurrahman, 2021).

Indonesian positive law recognizes the existence of customary rights and customary land within the societal structure and integrates these rights into the legal system. However, the state's recognition of customary land or rights remains ambiguous and limited, particularly when such recognition is contingent on the factual verification of their existence (Jabarudin & Karmila, 2022).

Normative Background

1. Law Number 5 of 1960 on the Basic Agrarian Regulations
2. Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for Recognition

and Protection of Customary Law Communities

3. Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 18 of 2019 on the Procedures for the Administration of Communal Customary Land
4. Law Number 39 of 1999 on Human Rights
5. Law Number 14 of 2008 on Public Information Disclosure
6. Law Number 35 of 2014 on Child Protection
7. Law Number 25 of 2007 on Investment

Based on the conflict described above, this research addresses two main issues: first, the implications of utilizing land with unclear legal status; and second, the human rights violations experienced by the people of Rempang Island.

This research was performed to determine the party that holds the predominant right to land use on Rempang Island and to examine how the government safeguards the Rempang community, who are reportedly subjected to human rights violations by the authorities.

METHOD

This research was performed using a combination of normative legal method and empirical analysis, utilizing a conceptual approach to examine the legal protections available to the people of Rempang Island. The data of this research were collected through literature review and library research.

RESULTS AND DISCUSSION

Utilization of Land with Uncertain Status

Rempang Eco City project is anticipated by the government to attract investments of up to IDR 381 trillion by 2080. However, the initiative has generated significant issues for local residents, who feel disadvantaged by the development plans. Land conflicts on Rempang Island have a long history, with the area being inhabited by communities long before the establishment of BP Batam.

A central challenge in these conflicts is that many residents do not possess formal ownership certificates for their land. One of the critical social issues that frequently arises is the forced eviction of residents, raising concerns about the legal frameworks and their implementation in providing protection against such social problems. In various regions of Indonesia, forced evictions

have occurred in the name of development, recovery, and other legitimate purposes (Jurnal et al., 2024).

The contested land is part of a forest area under the supervision of the Ministry of Environment and Forestry. BP Batam was established in October 1971 by BJ Habibie through Presidential Decree Number 41 of 1973. Initially, the Batam-Rempang-Galang region was envisioned as a competitor to Singapore as a hub of trade and industry. However, over time, it has become more of a support and driver for Singapore's economic growth.

To enhance management efficiency, the central government created the Batam Authority as an entity separate from the regional government. This authority is tasked with overseeing the Batam area and its surrounding islands. The plan to develop Rempang Eco City has been in discussion since 2004, and the project was officially targeted for national strategic development under the Coordinating Minister for the Economy Regulation No. 7 of 2023.

The Impacts of National Strategic Plans in Rempang

The Rempang Eco City project is set to impact the relocation of approximately 7,500 residents from Rempang Island, which spans a total area

of 16,500 hectares. This planned relocation has sparked significant concerns, particularly among residents who rely on fishing for their livelihoods. These individuals fear that being moved from coastal areas to the mainland will disrupt their ability to sustain their livelihoods.

Media reports indicate that around 1,000 personnel were deployed to conduct forced land measurements, leading to tensions and conflicts between the residents and the authorities. The regulation of customary land rights is outlined in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. This article underscores that the exercise of customary rights and similar rights by customary law communities must align with national interests and adhere to the provisions of existing laws, provided these rights are still recognized.

Furthermore, Government Regulation Number 24 of 1997 concerning Land Registration, which amended Government Regulation Number 10 of 1961, specifically excludes customary land from the objects of land registration as stipulated in Article 9, paragraphs (1) and (2). Paragraph (1) states that the objects of land registration include land plots held with ownership

rights, while paragraph (2) clarifies that customary land is not included in the objects of land registration.

The first provision of land registration regulations addresses various aspects such as waqf land, ownership rights to flats, mortgage rights, and state land. The second provision stipulates that state land registration involves recording land plots in the land register. The primary goals of land registration are to provide legal certainty, equitable legal protection for community land rights, and to promote economic growth both at the national and community levels. To achieve these objectives, efforts have been made to expedite land registration across Indonesia through programs such as the Complete Systematic Land Registration Acceleration Program (PTSL) (Riardo, 2019; Djatmiati, 2012).

Land registration can be conducted through two main methods: systematic and sporadic. Systematic registration involves a comprehensive, simultaneous process that covers all unregistered land within a specific village or sub-district area, based on a work plan established by the Minister of State or the Head of the National Land Agency (BPN). Programs such as the National Agrarian Operations Program (Prona) and PTSL exemplify this

approach and are central to the article's focus.

In contrast, sporadic registration pertains to the first-time registration of individual or multiple land plots in specific parts of a village or sub-district, either individually or collectively (Warman, 2006). To affirm the status of customary law communities and their land rights, the Government has streamlined the provisions regarding customary rights ownership. This process is governed by the Regulation of the Minister of Home Affairs Number 52 of 2014, which provides guidelines for the recognition and protection of customary law communities ("Permendagri 52/2014").

Violations of Human Rights

Since the 1998 Reformation era, the Indonesian national legal system has increasingly focused on human rights principles, as outlined in MPR Decree Number XVII/MPR/1998 and the 1945 Constitution, with further elaboration in Law Number 39 of 1999 concerning Human Rights.

Human rights are recognized as inalienable and cannot be revoked, reduced, or eliminated for the sake of group interests. Kofi Annan, the UN Secretary-General from 1997 to 2006, emphasized that rights are fundamental

and must be acknowledged and respected by all societies. He advocated for placing human beings at the core of all activities, despite the presence of other fundamental issues within the international system.

Human rights are generally categorized into two types: negative and positive. Negative human rights involve protection from governmental interference in individual freedoms related to civil and political matters. In contrast, positive human rights require government action to ensure and enhance community welfare.

Article 18A, Paragraph (2) of the Indonesian Constitution acknowledges customary law and its traditional rights, provided these are still relevant and align with societal development and state principles.

In the context of the Tanah Rempang case, human rights violations reportedly began on September 7, 2023, when violence was alleged to have been committed by joint officers from the TNI, POLRI, and Satpol PP (Army, Police and Public Order Police). This incident incited significant public outrage and criticism from various groups, with the clashes arising from disputes over land staking at several locations.

Following the riots on September 7, 2023, the National Police provided an explanation regarding the use of tear gas,

which was criticized for being excessive and poorly controlled. While the National Police asserted that no fatalities occurred, the deployment of tear gas was deemed excessively aggressive. Residents of Rempang felt apprehensive due to the lack of clarity surrounding social security, health insurance, environmental conditions, and relocation plans. The community was not given the opportunity to consent to the development and was instead instructed to register for relocation without formal written approval.

On the ground, five guard posts were established on Rempang Island, with approximately 60 vehicles and 1,010 joint personnel from the TNI, POLRI, Satpol PP, and Ditpam BP Batam (Army, Police and Public Order Police) deployed on September 7, 2023, according to the Balerang Police Public Relations release.

The situation escalated as joint officers acted without clear justification. Residents faced further threats as they were evicted from 16 villages under the pretext of relocation. They were required to present proof of land ownership at the Galang District Office in Sembulan and the Special Infection Hospital between September 11 and 20, 2023. The registration process at the Galang District Office was heavily guarded by Brimob

personnel armed with long-barreled weapons.

The events of September 7, 2023, have had a detrimental impact on the local economy, particularly affecting fishermen who were forced to halt their primary occupation to focus on defending their land rights. This disruption has negatively affected their ability to support their families. The mayor of Batam, who also heads BP Batam, is perceived as exacerbating the community's fears, which some view as a form of psychological intimidation by the state.

Additionally, the incident led to the arrest of eight residents who were advocating for their right to livelihood, which is protected under Article 6 of Law No. 32 of 2009. This law guarantees that individuals advocating for a good and healthy environment cannot be subject to criminal prosecution or civil lawsuits.

The situation on Rempang Island has highlighted several critical issues related to human rights and governance. The intimidation, restrictions on freedom of speech, and arrests of residents have been notable concerns. Some residents have been charged under Articles 212, 213, and 214 of the Criminal Code, which pertain to violent resistance against officials. The use of rubber bullets by

police officers has led to injuries among residents, exacerbating tensions.

According to Law Number 39 of 1999 concerning Human Rights, residents under investigation are entitled to protection and legal assistance. This includes safeguarding their rights during legal proceedings and ensuring they receive fair treatment. Additionally, Law Number 35 of 2014 addresses child protection and managing social unrest, emphasizing the need for special care in such situations.

One troubling incident involved the use of tear gas near SMPN 22, which resulted in panic among students and teachers. Preliminary reports indicate that eleven students and one teacher were hospitalized at Embung Fatimah Hospital and the Marine Hospital. This incident raised concerns about child protection violations under Articles 52, 58, and 63 of Law Number 39 of 1999, particularly relating to the impact on children's safety and their right to education.

BP Batam's actions, executed without residents' consent, have been criticized for lacking transparency. Law Number 14 of 2008 on Openness of Public Information guarantees the public's right to access information regarding public policies and development plans. Furthermore, Law Number 25 of 2007,

Article 15, stresses the importance of respecting the cultural traditions of communities affected by business activities.

In the context of business and human rights, the Rempang Eco City project has been criticized for undermining the community's right to their living space. The company involved in the project is expected to uphold human rights standards by considering the impacts of development on the affected communities. Komnas HAM (National Commission on Human Rights) has agreed to investigate the case, reflecting the serious nature of the human rights violations reported.

Problem Management

On August 23, 2023, Rempang residents held a protest to demand legal assistance concerning their eviction and relocation issues. In response, the Riau Islands Malay Customary Institution issued a circular outlining six key demands directed at the government and relevant parties.

The first demand was for an immediate cessation of the eviction and relocation process, highlighting the lack of valid consent from the Rempang community. The circular emphasized the importance of respecting customary rights

and ensuring that the community's right to a decent living environment is upheld.

Second, the residents requested fair compensation for the loss of land and livelihoods caused by the project. This includes not only financial compensation but also support to help restore their lives after the relocation.

Lastly, the circular called for transparency and openness in all processes related to the Rempang Eco City project. The community demanded clear and open communication about the project's plans and decisions to ensure they are fully informed. These demands reflect the community's deep concerns about their rights and the impact of the development on their lives.

The Riau Islands Malay Customary Institution's circular also emphasized the need for the protection of human rights throughout the eviction and relocation process. It requested that human rights be guaranteed and protected, specifically advocating against violence, intimidation, and arbitrary arrests. This demand highlights the community's concern over the potential for abuse and the need for clear and justifiable grounds for any actions taken against them.

Furthermore, the circular demanded compliance with all relevant laws and regulations, particularly those

concerning the protection of indigenous peoples and land rights. The community stressed that the parties involved in the Rempang Eco City project must adhere to legal standards that safeguard their rights and interests.

Lastly, the circular called for open dialogue and negotiation with all stakeholders to seek a fair and sustainable resolution. The residents requested to be actively involved in every decision that affects their lives, ensuring their voices are heard and considered in the development process.

This statement underscores the community's dissatisfaction with how the situation has been handled and their determination to advocate for their rights through legal channels. It reflects a broader call for the government and related parties to address these concerns with seriousness and respect for human rights and indigenous rights principles.

1. The Riau Islands Malay Customary Institution, as the state's overarching authority, fully supports the government's development programs across both central and regional levels.
2. The relocation plan for 16 Old Malay Community Villages on Rempang Island and Galang Island should be canceled.

3. All individuals detained as a result of the incidents occurring on Thursday, September 7, 2023, should be released.
4. The Riau Islands Malay Customary Institution strongly condemns the repressive actions, intimidation, and violence perpetrated by the joint forces against the residents of Galang Island and Rempang during the events of September 7-8, 2023. These actions resulted in injuries, trauma, and material losses for the community.
5. The Institution calls on the President of the Republic of Indonesia, the Chief of Police, the Army Commander, the House of Representatives (DPR) and the Regional Representative Council (DPD), the Governor, the Riau Islands Regional House of Representatives, the Regional Police Chief, the Batam City Regional House of Representatives, the Mayor of Batam, BP Batam, and all relevant stakeholders to cease all acts of violence.
6. The government is urged to establish a written agreement with the Malay communities on

Rempang and Galang Islands concerning both the short-term and long-term impacts of the national strategic project on the islands (Chaerudin, 2023).

CONCLUSION

Based on the preceding description, the author concludes that use of land with uncertain status results in several adverse effects. Specifically, it leads to a lack of land ownership certificates for the community while both the government and developers assert claims over the land. This situation generates conflicts between long-standing community residents and the government and developers seeking to repurpose the land for development projects. Furthermore, there is a lack of transparency in the community's involvement in land use decision-making processes. Consequently, land use practices that are poorly planned and exclude local community participation can significantly disrupt the social and economic life of the community.

In this context, it is imperative to establish clear and transparent policies regarding land ownership status and to ensure the active involvement of local communities in decision-making and land use planning. The observed Human Rights

violations include intimidation of residents, arrests of the Rempang community members, the deployment of tear gas on schoolchildren, and infringements on social security, health, environmental standards, and community residency. These actions contravene several legal provisions, including Law Number 39 of 1999 concerning Human Rights, Law Number 14 of 2008 concerning Public Information Openness, and Law Number 35 of 2014 concerning Child Protection. Human Rights are fundamental entitlements inherent to every individual, bestowed by divine authority, and must be respected and upheld without reduction or deprivation.

To effectively address customary land dispute cases, the government must consider both legal and humanitarian aspects. This dual focus is crucial, as balancing these elements can present a dilemma for the government, given their significance to national integrity and progress. Based on the outlined issues, the author proposes several solutions, derived from a thorough analysis of the problems at hand. These solutions include:

1. Enhancing Communication: Improve communication between the BP Batam local government and the community to achieve

transparency through legal opinions.

2. Clarifying Land Status: Provide clarity on the status of customary land by issuing valid certification as a document protecting land rights.
3. Strengthening Human Rights Protections: The government should take a firmer stance on protecting human rights.
4. Supporting the PSN Program with Alternatives: Support the PSN program by finding alternative solutions that benefit both the investment parties and the community, such as collaborating on Eco City project with the Rempang community as managers and the investment party as overseers without displacing their homes.
5. Optimizing Marine Resource Management: Improve the economy through the optimal management of marine resources.
6. Redirecting Investments: Place investments in nearby areas that are not customary land to ensure the Rempang community does not lose their livelihoods.
7. Engaging Local Residents in the PSN Program: Implement the PSN

program with the active involvement of local Rempang community members, with government oversight and capital provision.

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