

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Dynamics of Ownership Rights of Land Indigenous/Marga in the Community Batak Toba

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Abstract:

The aim of this study was to determine the dynamics of land ownership of indigenous/ clans in Batak Toba indigenous community. The approach taken in this study is the observation method, which make the observation of the behavior patterns of village communities Sibisa to regain land rights clan/borrowed customary used by the District Forestry Office Tobasa. This method is used to record the behavior of the law in reality. The values in the patrilineal system of customary law derived from the legal materials in the form of primary legal materials, secondary, and tertiary legal materials.

The results showed that the control of indigenous land rights/marga has experienced a shift can be seen in the attitude of the District Forestry Office Tobasa are only willing to give back the land to the of village communities Sibisa not to the descendants of the clan who handed over the land clan. Changes in the structure of the District Forestry Office Tobasa who do not understand the origin of the land that once mastered and inconsistency of laws against the recognition of the existence of indigenous values leads to changes in the mindset of the customary land tenure/ clan.

Keywords: *dynamic, ownership rights, land ownership of indigenous,*

1. Background of Problem

Kinship system is the major joints in the Batak Toba culture, and the fundamental concepts within the kinship organization is clan. Clan/marga is a group of people who are descended from the same grandfather with interesting lineage of the father, called the patrilineal nature. Marga is a sign that the people who use it are the descendants of the same grandparents or with the belief that people who use the same clan established a blood relationship, with the result that there is a ban on married women and men who have the same surname. Kinship ties are known of dongan sabutuha/dongan tubu (descendants of the stomach).

Marriage can also give birth kinship system that spawned parilineal is hula-hula with boru. Third kinship families in Batak Toba, connected by a common thread that exists in kinship the Dalihan Natolu is a framework that includes relationships blood relatives and marriage that connects a kinship group consisting of men who collateral with him on the one hand collateral man who had their daughters marry men with the first group.

The various aspects of social life as well as many important things such as happiness and well-being of the Batak Toba greatly influenced relations kinship ties the Dalihan Natolu, including the control of land rights controlled by Indigenous Batak Toba, as expressed in the phrase "marga do nampuna tano" meaning that the land belongs to the clan which is a fundamental principle of customary law of the land in the patrilineal system (C. Vergouwen, 1986 : 133).

Sibisa village communities located in the district of Toba Samosir Ajibata controlled by patrilineal kinship system is subject to the Law of Batak Toba. Similarly, in the background of land ownership is still based on the descent. Village Community Sibisa controlled by descendants Nairasaon comprising clan Manurung, clan Sirait, clans and clan Butarbutar and clan Sitorus. In the procurement of land that every descendant of the clan already have certain limits, such as the Village Parsaoran Sibisa ruled by Butarbutar clan and clan Sitorus whereas Pardamean Sibisa village ruled by clan Sirait and clan Manurung.

In the process, the limits ownership of land controlled by the clan is no longer clear that due to the already snatched parties who have capital. As a result, these two villages losing land rights over the clan, while their descendants have started a lot and need the land to continue the life of the majority of farming. Such as ownership of land in the village of Parsaoran Sibisa along the causeway Sumatran formerly borrowed use by the District Forestry Office Tobasa of clans, they are clan Butarbutar and Sitorus. Rural population growth Parsaoran Sibisa very rapidly lead to clan Butarbutar and Sitorus are expecting the return of ownership rights over the land to be used by his descendants to meet their needs.

People's desire to regain rights to land the clan would lead to new conflicts, because indigenous people in the village Sibisa, has been developed in which people are no longer just a descendant of the clan who borrowed put the land of the clan while the District Forestry Office Tobasa just want to give back the land borrowed to the public use. Descendants of the clan who want to give up land so that the land be returned to the descendants of the clan is regarded as the land owner concerned.

2. Problems

Based on the background described above, then raised the problem that will be addressed in this study is, whether the customary land tenure/land patrilineal clan system in Batak Toba indigenous community has experienced a shift?

3. Method of Approach

This study aimed to describe the dynamics of ownership of indigenous land rights/clan in the village Sibisa based on the values of customary law in patrilineal system. The approach taken in this study is the observation method, which make the observation of the behavior patterns of village communities Sibisa to regain land rights clan/borrowed customary use by the District Forestry Office Tobasa. This method is used to record the behavior of the law in reality (Vredenberg, 1980 : 125). The values in the patrilineal system of customary law derived from the legal materials in the form of primary legal materials, secondary law, and tertiary legal materials.

4. Discussion

4.1. The Procurement of Indigenous Lands/Highways

Toba Batak society kinship system is patrilineal, which draw lineage from the father. The lineage of the fathers will be forwarded by the son, and become extinct if not born in a family of boys. Patrilineal system is what controls the entire life of the Batak Toba, which consists of descendants/ *semarga* all connected with the male lineage. Patrilineal kinship system which greatly affects the joints of the Toba Batak community life which includes the system of inheritance, marriage, land ownership and habitation patterns.

In the patrilineal system, children men who formed the kinship group, while girls create relationships *besan* (affina relationship) because he must marry the son of another patrilineal group. The creation of a relationship *affina*, through this marriage created kinship (*mamungka partondongan*) that is not just about a couple who had been married and the first generation were born, but also enforce a state that will continue between the generations of boys who unloaded girls earlier in the parties and generations of young children derived by the father as well as groups *agnatanya* (*semarga*) on the other. This gave rise to marriage as a bond of kinship *hula-hula* with *boru*.

Marga which is a sign that the people who use it are the descendants of the same grandparents or with the belief that people who use the same clan established a blood relationship with the result that there is a ban on married women and men who have the same surname. Kinship ties are known with *dongan sabutuha/dongan tubu* (descendants of the stomach). In Batak Toba, the arrangement of the people based on the clan, each clan has its own area, but in certain areas of a clan there are other clans that joined the alliance/*huta*. Clan that originally founded the alliance called the clan origin or *sipungka huta* control over land in the area, is being clans then enter people's so-called clan/*clan boru*, because the clan with clan origin people close marital relationship exists.

In society, Batak Toba, land ownership based on the clan that founded the village (*sipungka huta*) as well as the basic principles of the law of the land in accordance expression *clan do nampuna tano*, who interpreted liberally that the landowner is the clan. background of land ownership is still based on the descent. Village Community Sibisa controlled by descendants *Nairasaon* composed of clans *Manurung*, *Sirait* clan, clans and clan *Butarbutar Sitorus*. In the procurement of land that every descendant of the clan already have certain limits, such as the Village *Parsaoran Sibisa Butarbutar* ruled by clans and clan *Sitorus* whereas *Pardamean Sibisa* village ruled by clans and clan *Manurung Sirait*.

As presented by R Supomo (1987 : 47), that factors other than *genelogis* (offspring), fellowship customary law is also influenced by the environment (territorial), that person's membership in the communion of the alliance depends on residence. Land tenure in Toba Batak society is also based on the location of the region, since the establishment of the community can occur because it comes from one strain (*partubu*) as well as the location of the area (*parhundul*) (J.C. Vergouwen, 1986 : 116). Village community Sibisa, in addition owned by the clan but also occupied by other clans who inhabit Sibisa Village area.

Under customary law Batak Toba, who controlled patrilineal system in the Village Sibisa, land ownership can occur due to marriage, in the sense of giving parents/clan to his daughter (*boru*) are married to other genera, so that the law becomes clans *manompang/clan boru*. In addition, fragments of another clan with clan inhabits a location called *buis*. *Buis* in contrast to the alliance based on the *marga/clan*, but *buis* is based on a geographical area, which consists of fragments of pure *agnata* group in the sense of lineage that inhabits an area. Village Community Sibisa controlled descent *Nairasaon* comprising *Manurung* clan, clan *Sirait*, and clan *Butarbutar* and clan *Sitorus*. In the process, the groups/descent *Nairasaon* joined with *Silahisabungan* groups that have split from the clan that is included in the group *Silahisabungan*, so that land tenure is not only controlled by the clan group *Nairasaon* but to the group *Silahisabungan*.

Based on the research results revealed that control of land in the village of Sibisa based the group/clan consisting of *buis Butarbutar*, *buis Manurung*, *buis Sitorus* and *buis Sirait* in addition there are *buis Nadadap* of *Silahisabungan* group. Based on observations made, the land in the village *Parsaoran Sibisa* along the causeway *Sumatran* borrowed used by the District Forestry Office Tobasa is the property of the *buis Butarbutar*, *buis Sitorus* and *buis Nadadap*, while land in the village which is also borrowed *Pardamean Sibisa* use by the has been restored. Returns clan land in the village of *Parsaoran Sibisa* can not be implemented because the District Forestry Office Tobasa found that the return of the land to be handed over to the people who now inhabit the village *Parsaoran Sibisa* not be returned to heirs who handed over the land to the Forest Service. This gives rise to new conflicts because the villagers *Parsaoran Sibisa* many immigrants who have the capital to manage/work the land the clan despite the same surname with heirs who handed over the land the clan but not related blood ties with the people Sibisa, while the heirs assume that land a legacy left to them to support his family of descent *marga/buis* that put the borrowed the clan land

4.2. *The Existence of Value Law in Patrilineal System*

The existence of entry into force of the values of customary law in the legal system of Indonesia can be seen from two things, namely the recognition of the state for the entry into force of customary law and the reality of a society that still adhered to the traditional atmosphere prevailing in the society. In general, living together in religious indigenous people, community, authority and appointment of government by the people (R. Soepomo, 1987:68).

Religious magical properties in Toba Batak society, judging from all the events that occur in the community has always been associated with magical powers and religious. If the customary philosophy of Batak Toba society namely the principle of the Dalihan Natolu being a vagabond local wisdom that the Dalihan Natolu which is a three-legged furnace implies as a balance while maintaining harmonious relations in the family hearth. Principle of the Dalihan Natolu as a sub-system of customary law Batak Toba built with the belief that the hula-hula, are endowed with special powers (sahala) that exceeds the strength of pent-exist in tondi (spirits), which can emit influence beneficial and save for boru. His power creates fear and respect him. This means, boru should refrain from actions that could harm or offend hula, and boru never negligent show gratitude for the goodness derived from hula-hulanya.

The atmosphere of togetherness in Batak Toba indigenous peoples, tied to kinship. Kinship in all the various lives of kinship and other important things such as happiness and well-being of families in the community Batak Toba summed up in a tangle of red thread called Dalihan Natolu in which there are close links all kinship relationships. Dalihan Natolu is a framework that includes kinship relationships by blood and kinship by marriage, or kinship that occur as a result of marriage that connects a kinship group consisting of men who collateral (dongan tubu) with a party man collateral that has been marry off their daughters (hula-hula) with men other blood kinship group (party boru) (J.C. Vergouwen, 1986 : IX).

As a sub-system of customary law which constitute the basic framework for all kinship in social organization among the Batak Toba, consisting of three elements, namely hula-hula (the male collateral/having an incestuous relationship with his wife, boru (the man who married the daughter of a hula-hula) and dongan tubu (male party collateral /having an incestuous relationship with hula-hula) is built with the belief that the hula-hula is given supernatural powers, so as to reflect the splendor and glory and vitality to the his boru .

Atmosphere authority of the head of the people in indigenous communities in the fellowship is based on the oldest member of the ruling family and the fellowship of the territorial heads of the people in the village of descent opener selected from the village (sipungka huta/king of clan). Head of the people also believed to have magical powers. Against the king's command, will cause disruption/disaster in the community and should be punished severely (dang mangoloi hata ni raja = not fulfill the king's order).

The principle of the Dalihan Natolu a legal system that has been rooted in social life in the area Batak Toba, and the kinship structure in Toba Batak society, people's behavior patterns are arranged in a regular pattern and continuously into a legal system. Mertokusumo (2007 : 25) confirms that the system is a unity in which has been provided an answer or a solution for all the problems that arise in the system . In a legal system, is never allowed to be a conflict between elements or parts protracted, because in fact the nature of the legal system is consistent and steady. If there is a conflict, it will not be allowed to drag on, as consistently be resolved by the legal system and the legal system itself has provided the principles of law as a solution.

Thus, the principle of the Dalihan Natolu as a sub- system of customary law is the basic framework for all kinship in social organization among the Batak Toba society. These three elements, have value and their respective duties in the social patterns in society Batak Toba, and in case of conflict in society, the Dalihan Natolu have procedures for the settlement of its own in and by the system Dalihan Natolu, such as the dispute between the hula-hula with boru will be addressed in an atmosphere of kinship. Mediator/arbitrator in the matter will be resolved by traditional and customary legal system with the phrase: "sinabi laitu, binahen tu ni hoda Harang, molo gulut boruna, amana do martola, molo gulut amana, boruna do martola." That is, the grass mown, incorporated into a food cart horse, if the fight boru then hula-hula that mediate; if the fight hula-hula, then the party boru that mediates. If it is associated with the opinion that the value of conceptually understood in the double meaning in the sense of subjective and objective sense. (F.X., Sutrisno, Mudji, 1993: 20). Subjectively can be expressed as a value, if the requirements are met element (need) and the estimated (estimation). Objectively speaking, something considered to have value if it fulfilled the element of benefit (utility), and interest (importance), then the value of the law described in the expression/proverbs in indigenous communities Batak Toba called contains the value in the sense of subjective because the proverb/ phrase customary already fulfilled the needs and forecasts .

Traditional proverb as the value intended to meet the needs of the parties in resolving the conflict, and is expected to unmet needs of the parties concerned, it can create justice, and rule of law in society. In the Indonesian legal system, recognition of the entry into force of customary law based on the Constitution of the Republic of Indonesia, namely the Constitution of the Republic of Indonesia Year 1945 (UUD Negara RI Tahun 1945), which was then implemented in several laws such as the Law on Judicial Power, Law No. 48 of 2019, which requires judges to keep up to date the values of law and public justice to hear and decide the case that confronted him.

Konstitusi Court Decision No. 35/PUU-X/2012 regarding the judicial review of Law No. 41 of 1999 on The Forestry of Law is a legal decision that reinforce recognition of indigenous peoples as groups that have constitutional rights over their traditional territory. Constitutional Court decision is supposed to be important in the decision to change the state policy on indigenous peoples and their rights to indigenous areas in Indonesia, although in reality the government is still halfhearted recognize the existence of customary law and remove it from the forest region of the country. In the Constitutional Court's decision to grant the petition in part of Article 1 Paragraph 6 of Article 4 paragraph (3) and Article 5 paragraph (1), paragraph (2), and paragraph (3) of Act No. 41 of 1999 on The Forestry of Law. In the ruling said that Article 1, Paragraph 6 does not have the force of law so that indigenous forest is a forest located in the area of indigenous peoples. Under Article 4 Paragraph (3), state recognition of indigenous forests along the fact still exist and be recognized and not contrary to the national interest, after testing of the passage, then changed to the recognition of

indigenous forests along the still alive and in accordance with the development of society and the principle of the Unitary Republic of Indonesia as regulated in law. With the test of Article 5 (1), Paragraph (2), and Paragraph (3) of Act No. 41 of 1999 on The Forestry of Law, which divides the forest based on its status as a state forest and private forest, into the state forest, forest rights and indigenous forests all according to the reality of indigenous communities concerned are still there and acknowledged. However, the Constitutional Court ruling that gives reinforcement on the recognition of indigenous rights in their customary environment can not be immediately implemented, because of the recognition of indigenous peoples still requires the rules to determine the whereabouts through local regulations. This causes indigenous peoples to this day can not enjoy their rights in their traditional environment which is inherited from ancestors.

4.3. *Shifting Value Customary Law*

From the results of the approach that has been done against the Forest Service Toba Samosir, obtained information that in essence, the government in this case the Forest Service would not mind restoring the land to the community, but the problem is the village community Sibisa there is no agreement on the boundaries of land ownership, so there are some people who do not want the land is returned because the communal land is already controlled by newcomers and long-standing, so feared when the land is returned to the community, not provide solutions, but create new problems. Given all land transactions according to the Batak Toba is not always done with a certain formality to make land transactions between the descendants of the clan Butarbutar and clan Sitorus the forest service no written evidence, but some villagers Sibisa still aware of the transaction. Therefore it is very necessary community involvement Sibisa to immediately regain possession of land rights for the existence of descendants of the clan Butarbutar and clan Sitorus in their own homelands.

The dynamics that drive the development of society tetentu towards a change in the order of a society can be seen through the element that is the power boost both from internal and external communities that foster change. Arnold M. Rose in Hendroyono (2005 : 46), put forward three general theories about the changes associated with the law, namely komulasi progressive than the discoveries in the field of technology, contracts or conflict between cultures and social movements. According to Ter Haar (1990 : 7) is meant by customary law society is organized gang is fixed by having its own power and wealth alone. Relation to the shift in land tenure can occur because of the technological developments that lead to conflicts between local culture with a culture that is absorbed through the development of technology.

Based on the theory of conflict that saw society as a system of group competition in the struggle to obtain the resources for basic material needs, and the main factors behind this struggle is a matter of social organization itself is social change and the system of division of labor or human nature itself (Graham C. Kinloch, 2005 : 103). Karl Marx, who developed the theory of conflict looked ecological conditions of an economy that explain the behaviour oriented conflict. If linked to the dynamics of land tenure in the indigenous Toba Batak conflicting, due to the struggle to meet the needs in the field of economics.

The changes are driven by the legitimacy of the law also can transform the life of a traditional local ethnic communities into a modern life with the national mood. Such transformative change often pose a problem because this progression can not always be offset by the dynamics of change, therefore does not understand the contents of the policy and legal content of the law by indigenous peoples (Soetandyo Wignjosoebroto, 2008 : 242).

The changes are driven by the legitimacy of the law can occur on land tenure in a patrilineal system that distinguishes between the men and the women. Article 5 of UUPA namely Law of National Agrarian, that the agrarian law that applies to the earth, water and air space is the customary/adat law does not contradict national interests and the state based on the unity of the nation. However, in the control of land based on customary/adat law is not received reinforcement again in other settings even seemingly laws do not consistently receive customary law as a basis for setting land law in Indonesia as defined in Article 9 paragraph (2) UUPA determines that every citizen both men and women have equal opportunity to acquire a land rights for the benefit and good results for themselves and their families.

In adat law with the patrilineal system, the position of men and women are not the same, so Law of Adat Batak Toba as if it contains discrimination on the social and legal status between boys and girls. This is understandable because customary law with patrilineal system born from experience and history that the boys in the family occupies a position of priority to the rights of the more than girls. This is because children men who carry on the lineage of her parents. Differences between boys and girls in society have an impact also on the acquisition of land for girls, in which a boy who is entitled to retain and inherit the land of his parents. In the legislation that is parental, where the position of boys and girls balanced, giving equal opportunities to boys and girls in the landholdings.

Related to village elections that were once removed from the descendants of landowners clans that have authority over the control of land, but in its development has been determined by the government through legislation that is not partial to the values of customary law. Appointment of the head of the village is now more concerned with sheer power not to set the order in rural communities, so that in addition to not having the authority to members of the community also has no magical power that is trusted by the people, if any community members who disobey the village head, can cause chaos in society.

5. Conclusion

From the above, it can be concluded that the acquisition of land rights of indigenous / patrilineal clan system on indigenous peoples Sibisa Batak Toba village has undergone a shift. It can be seen from the following:

- i. Forest Service only willing to give back the land to the descendants of the people not to cede ground clan clans / indigenous causing conflicts in society because villagers Sibisa not only the descendants of the clan that controls the indigenous lands but already consists of several genera that do not have kinship with the clan that controls the land clan.

- ii. Submission of land to the public by the Forest Service, because the Forest Service has experienced a change of personnel did not know the origin of the customary land.
- iii. Community descendant indigenous land owners had plenty left Sibisa village to make a living and do not bother with the customary land tenure.
- iv. The existence of customary land by law only recognized to the extent they exist, without giving efforts should be made public to maintain the existence of customary law itself.
- v. Election of the village chief who was once removed from the descendants of landowners clans that have authority over the control of land, the development has been determined by the government through legislation that is not partial to the values of customary laws.

6. Reference

- i. Kinloch, Graham C., 2005, *Perkembangan dan Pardigma Utama Teori Sosiologi* (Terj. Pustaka Setia) CV Pustaka Setia, Bandung.
- ii. M.A, Hendroyono, M.A, 2005, *Sosiologi Hukum dan Pengaruh Perubahan Masyarakat dan Hukum*, Srikandi, Surabaya.
- iii. Mertokusumo, Sudikno. 2007, *Penemuan Hukum Sebuah Pengantar*, Edisi Kedua, Cetakan Keempat, Liberty, Yogyakarta.
- iv. Mudji, F.X., Sutrisno, 1993, *Manusia dan Pijar-Pijar Kekayaan Dimensinya*, Kanisius, Yogyakarta.
- v. Soepomo, R.-, 1987, *Bab-Bab tentang Hukum Adat*, Pradnya Paramita, Jakarta
- vi. Ter Haar, 1990, *Asas-Asas dan Susunan Hukum Adat* (Terj. K.Ng Soebekti Poesponoto), Pradnya Paramita, Jakarta
- vii. Vergouwen, J.C., 1986, *Masyrakat dan Hukum Adat Batak Toba*, (Terjemahan Pustaka Azet), Pustaka Azet, Jakarta.
- viii. Vredenberg, 1980, *Metode dan Teknik Penelitian Masyarakat*.
- ix. Wignjosoebroto, Soetandyo 2008, *Hukum dalam Masyarakat, Perkembangan dan Masalah, Sebuah Pengantar ke Arah Kajian Sosiologi Hukum*, Cetakan Kedua, Bayumedia, Publishing, Malang.