

The Minangkabau's Customary Land: The Role of "Orang Semenda" in Malaysia and Indonesia

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Abstract

The main economic resources of customary community is farming, therefore it is not surprising if the soil is the most important thing to them. The lineage of Minangkabau's mother system could work properly if there is land for farming. Thus, the customary community is encouraged to strive for the land because the community of 'perpatih' custom is known as a farming community. The ownership right that belongs to this community is particularly need a person who is responsible to work on it. Indeed, the person who is related by marriage play a crucial role in order to preserve his wife inherited land. So that, this person will be responsible to develop that inherited land even though it is not a large land, but the 'pertitih' proverb once said that "it has been given to you the four thresholds, which you should preserve, advocate it." Therefore, from the customary community point of view it was stated that for those who are related by marriage has a role in order to enhance the customary land. Therefore this article will focus on the role of a person who is related by marriage in order to address issues of customary land.

Keywords: orang semenda (persons related by marriage), customary land, Minangkabau, adat perpatih, Negeri Sembilan

1. Introduction

Generally, in the economic system of customary land, a land belongs to their ancestor which to be given to the members of family who are related by blood. While in the property concept, a land which has been given to other family members is called inherited land or '*tanah pusako*'. However, in the social contexts of Minang community, those who are related by marriage have responsibility towards the inherited land or *tanah pusako*. He will be responsible for harvesting and maintaining the land owned by his wife. The situation requires him together with his wife's relatives and neighbors have the responsibility to cultivate the land which according to custom was handed to every woman in his wife's hometown. Nordin Selat (1982), explains that the in-laws or person related by marriage system in *perpatih* custom must have the sense of belonging and cooperation.

The person who is related by marriage system should be advantageous to the customary community economic system in the context of harvesting and maintaining their own land. This is because the presence of this person would increase manpower for the wife (Norhalim Ibrahim, 1996). However, research on customary land ownership patterns in Malaysia and Indonesia found that the customary land in the area are faced with the problem of uncultivated land and become idle. If this situation is not addressed clearly and practically, it will have implications on the total area of customary land ownership or '*ulayat*' land in Malaysia and Indonesia.

In Malaysia, although there are some provisions of the land law under section 115, 116 and 117 National Land Code 1965, which explains that the land that was left vacant for a certain period of time (two years for land building and three years for agricultural and industrial) will be dealt by the government under Section 129 (4) (c), the National Land Code 1965. Section 129 (4) (c) provides that the Land Administrator may take temporary rights to the land as commanded by the State Council or make an order declaring the land be confiscated by the State if there is no command. In contrast, Indonesia is faced with a conflict over *ulayat* land or in other words customary land which becomes one of the most dominant cases. The loss of *ninik mamak* leadership or chieftain of custom and religion caused many problems related to *pusako* land or customary land unresolved.

The question is if the provision in land laws such as in Malaysia and Indonesia that provide efforts that land has to be cultivated or in use, what will happen to the customary land that was idle and furthermore in which it has been the identity of the customary community. Hence, the customary community should strive to strengthen the existing customary land by paying attention to the existence of the people who is related by marriage in order to overcome the problems that arise in disputes relating to customary land or '*ulayat*'.

Therefore, this article will focus on the role of people who related by marriage (*orang semenda*) in order to address the problem of customary land in Malaysia and Indonesia.

2. Methodology of Research

This research applied qualitative sampling within the areas of Negeri Sembilan, Malaysia and Sumatera Indonesia. Data on issues of customary land and relating with *orang semenda* were collected through structured interviews with selected people of customary land. Respondents are chosen using stratified samples within the areas of surrounding Negeri Sembilan, Malaysia and Sumatera Indonesia.

2.1 Background of Minang's People

The Minangkabau are a large, well known, matrilineal, Islamic people originating from the highlands of Western Sumatera. Many of them migrated to Negeri Sembilan in Malaysia and large numbers now also live throughout urban Indonesia (Thomas & Benda, 1985).

Negeri Sembilan starts just 50 km south of Kuala Lumpur. Negeri Sembilan, which literally means nine states, is mainly rural with patches of urban development. Once mostly agricultural, the state's economy now reflects a commercial balance between agriculture and industry with the development of several industrial parks in recent years. Negeri Sembilan is noted for its strong Minangkabau influences which are still evident in its village houses and buildings. The Minangkabau people migrated across the Straits of Malacca from Sumatra centuries ago and their traditional houses are distinguished by sweeping roof peaks shaped like buffalo horns. Some examples of these influences can be seen in the State Mosque and the State Secretariat Building. The Minangkabau people of Negeri Sembilan still practise the matrilineal social system known as the "*adat perpatih*" making the state the only one to adhere to such social norms.

Minangkabau is the only ethnic of Malaysia using mother line or mother genealogy as the main lineage of family heir in Malaysia. In relation to the family genealogy and heritages, the Minangkabau has typical tradition which is called matrilineal or matriarch system. Children are owned by the mother and her sisters, not to the father and his sisters or brothers. A father seems to be out of the family, out of his wife and his children. He has no right to claim the heritages of the family and acts only as the guard for the whole heritages and heirlooms of the family, or just like a security for a company. The concept of a family in Minangkabau society is different from the rest of Malaysian ethnic group, the core family (father, mother and their children) is not a family, but is only part of a family. The understanding of a family in Minangkabau society is a unit consists of mother's sisters, mother's brothers, sons and daughters of mother's sisters. While father and his sons are belong to other family that is father's sisters. The core family has no right to the whole management of family heritages and heirlooms and in the society structure of obligation and rights. Yet the growth and education of the children sons or daughters is the full responsibility of father and mother apart. A father or son is not the heir of a family, but it is the daughters of mother and her sisters of mother. Husband has the duty to guard the family heritages, managing, and distributing to the heirs safely, not for the sake of himself. Wife or wife's sisters will not allow him to rent or sell the heritages. Heritages in the Minangkabau language are called "*Pusako*". *Pusako* is divided into 2 groups, the high *pusako* including land of rice field or dry land, estate or plantations, while low *pusako* is heirlooms, or gift. All these heritages are owned by the line of mother from generation to generation. All these heritages will go to mother's daughters, and in case the heir is absent, then based on consensus will be taken the girl from mother's line to be the family heir.

A unit of family in Minangkabau society as mentioned above consist of big family which is called *perut* or *suku*. But it shows the smallest unit of a family, reflected in the architecture of their house called "*Rumah Gadang*". Many experts say that matrilineal system of their society that force Minangkabau men to leave their land to gain wealth somewhere else.

2.2 Orang Semenda (Person Who Is Related by Marriage)

A person who is related by marriage in traditional societies is the person who came into a tribe through marriage. In the customary system, a husband needs to live in their wife's residential area or what has been called as *matrilokal*. This rule indirectly divides the *perpatih* customary community into two groups of people which are people who is related by marriage and the people who is in the residential area. A person who is related by

marriage is a person who is married to a woman who belongs to some tribe, while members of the tribe are called as the place of marriage. Hence, the emphasis in the concept of persons who are related by marriage and place of marriage is usually a man (Norhalim Ibrahim, 1996).

Persons who are related by marriage according to Norhalim Ibrahim (1996), while residing at his wife's residential area can be divided into five groups;

1. Persons related by marriage only – this refers to a husband who married without a children. Therefore he does not have extra member in his family as expected.
2. Persons who are related by marriage and have children – this refers to persons who adding members (children) in his wife's tribe. In other aspects of the marriage he does not give any contribution. However, the tribes members are still appreciate his contribution.
3. Persons related by marriage but leave their wife during her pregnancy period. This refers to those who will leave their wife during her wife pregnancy period. This is also includes the husband who harass other woman in his wife's tribe thus make them pregnant. They are considered as offensive by the customary community.
4. Persons related by marriage but wasting his wife's property. This refers to those who is useless and does not make an effort to increase his wife's property but they will spend his wife's property for himself.
5. Persons related by marriage in a wife's place. In the customary community this people is the best. They are versatile. They can be reliable, beneficial to the place of marriage and help to strengthen the tribe in all aspects.

Even though the people who is related by marriage is categorized into five groups but in many cases, these people are valuable and respectable by the people in his wife's residential area. As such it is the responsibility of the person related by marriage to make an effort to enhance the status and place of his wife's residential area. In the customary community, this people are considered as an important source in order to help cultivating the land that belongs to his wife in her residential area.

2.3 The Role of Orang Semenda (People Who Related by Marriage) in Customary Community

In the customary community the people who are related by marriage have their own role and responsibility in the society based on their own ability. There are some proverbs that explain the role of people who are related by marriage. For example:

- those who is blind can blow mortar
- those who is broken can wait for laundry
- those who is deaf could ignite cannon
- those who has ringworm can carry bamboo in their shoulder
- those who is brave can go to the war and so on

The above proverbs show how valuable and important the people that are related by marriage in order to help his wife's relatives, neighbors and others (people who live in the place where they are married). Every of them have their own responsibility without take into account their psychical condition. This situation reflect, whatever conditions of the people who are related by marriage, they will still be a part of the society in his wife residential area. In the meantime, there are also expected to give contribution to the community/society as whole.

Nevertheless, the presence of the people who is related by marriage is expected to ease the burdens for the community tribes. In addition, usually people who are related by marriage can be a reliable person for certain things. This situation reflects the importance that should be played by people who are related by marriage. Like some proverbs as below;

- Persons related by marriage shares the same custom
- One for all, all for one
- Walking together
- Pitching together
- Depending on each other
- Rely on each other
- People related by marriage in the place of their marriage
- If they are clever, they can be reliable

A person who can be dependable

A person who can be helper

3. Discussion

3.1 Customary Land Problem and Needs of Customary Land Empowerment

According to Buxbaum (1968) The fundamental principle that follows in *Adat Perpatih* is that property is tribal rather than personal. The social unit is not the family but the tribe is and therefore all rules affecting persons tend to maintain the integrity of the tribe and all rules affecting property are designed to converse the property in land for the tribe. The main objective of *adat* is to provide for the continuance of the tribe through its female members and to prevent alienation of property so that it may always be sufficient to provide maintenance for the women through whom alone the tribe can be continued (Nadzan, 2007).

It is the responsibility of the customary community to continue and maintain their traditional land as an important element in the culture. Without the customary land there is no more customary community's identity glorified by them. Therefore, back to the issue of customary land, whether in Malaysia or in Indonesia there is an area of uncultivated customary land which is now becomes a serious concern. Research by Azima (2009) explains there are several factors that rises the problem of customary land not cultivated. These include disputes over the ownership of customary land, customary land/*ulayat* become fragmented and owned by individuals and are no longer owned by the tribe.

3.1.1 Disputes over the Ownership of Customary Land

Earlier research found that there is a similarity in the cases between the two countries, which the problems happen after the legal system of land ownership has been introduced on both countries. The legal land ownership through a legal letter caused the perception that customary land is no longer considered to be jointly owned (owned by tribes), but owned by individuals. With individual ownership of customary land, the owner then has the right to collect revenues, collateral and receive compensation on the land (Norhalim, 2005). Finally, this will create disputes relating to customary land. In the region of Minang, Indonesia the problems related to land ownership disputation is an old story because there is no knowledge about the customs. Interviews with Sutan Mahmud explained that the application of the provisions of Law number 5 of 1960 in the province requires that Minang land owners to apply for a certificate of ownership to the land they own. Once the land is named under individual names, the tribes have no right towards the land. Furthermore, provisions of law number 5 of 1960 disposed the law of the land. This means that the principle of *ulayat* land "drinkable water, edible fruit, the land remains, cannot be sold and cannot be charged.

3.1.2 Customary Land/*Ulayat* Become Fragile and Owned by Individuals (Not Owned by the Tribes)

The structural in customary land of Malaysia and Indonesia has changed. In Malaysia, even there is a special enactment for the customary land but by giving the permission to the owner to register the name give an implication of customary land. Customary land then has been dividing into individual and no longer belonged to the tribe. This means that the estate has been privately owned compared to before. This situation happens because of some laws that enable customary land to be registered in the name of individual. As an implication, the customary land will be named with many nominees. The diversity of land ownership towards just a piece of land would create constraints on efforts to develop the customary land.

Since the land is no longer owned by the individual tribes, it gives consequences to the people who are related by marriage (her husband) to undertake/developing that customary land. It is because they are not confident of the benefits that can be earned when working on customary land, thus they prefer to seek other land to work on. Therefore, this will increase the number of customary land left cultivated, and ultimately contributing to the problem of vacant and idle land.

As a conclusion, the customary land of both countries faced two major problems which involves individual ownership of customary or *ulayat* land. Then, the people who are related by marriage are needed. Nordin Selat (1982) explains the pros and cons of *pusako* land largely dependent on the person who are related by marriage. Accordingly, in order to strengthening of customary land which is uncultivated and vacant it is very useful to returning the roles and functions of people who are related by marriage.

3.1.3 Constraints from Bureauracy

In terms of implementation, despite the legal provision that allows members of the indigenous woman who inherited the property search to register the land as Customary land but the implementation is difficult and easily the transaction will be rejected. Indirectly, land prices will decrease. Thus, the common law is limited to the land

which is registered as a "customary land" only. Customary laws that were enacted as law in customary land administration began with Customary Tenure Enactment 1909, Customary Tenure Enactment (Cap 215) 1926, Customary Tenure (Amendment) Ordinance 1949, and the Small Estate (Distribution) Ordinance 1955 (Special Provisions Relating to the state of Negeri Sembilan) is a preservative to the administration of customary law in the land which is registered as customary land *perpatih*.

This law requires the role of all levels of custom in the implementation. *Buapak*, the Board, Headman of custom and law have their respective roles in the administration of customary land. This requirement makes custom heads remained, where customary of *Perpatih* in Negeri Sembilan are now increasingly being challenge by modernization and fortunately it is still intact. Without preservation of these customary laws, *pepatih* customary would have long been abandoned by the present generation (Nadzan, 2007).

3.2 Empowerment of Customary Land and Its Relationship between Orang Semenda (People Who Are Related by Marriage)

According to Nordin Selat (1996), people who are related by marriage have an obligation to support his wife and children. In the meantime, they must also cultivate his wife's *pusako* land, protect and care as opposed to destroy the land. Although the lands are in the supervision of people in his wife's residential area, but the pros and cons of *pusako* land largely depends on them.

Hence, it is not surprising if the needs of people related by marriage are not only those who live with their wife but also at the same time they need to cultivate their wife's customary land. (Nordin Selat, 1996). This situation reflects the importance of this person in the context of customary land. The presence, role of the people who are related by marriage is basically as a helper for their wife's tribe. Through their efforts it is hoped that the productivity on existing land will increase. Besides, all the task of the customary land will be handed over them in order to diversify their family income.

The arrival of the person who is related by marriage, is hope to increase the property for the tribes. Thus, the search of property in a wife's tribe will increase. So in this case the marriage is expected to help people at their wife's residential area. These include working on land owned by his wife. Hopefully, the people who are related by marriage could understand the aspiration like what has been said in customary community's proverbs.

However, there are lot of confusion relating to the role of people related by marriage and customary land in terms of harmonious living. Persons related by marriage is related to this proverb : like ashes on the stump or it means they are like strangers to their wife's people, if they asked them to come they will come and if they asked them to go they will go. There is a misunderstanding towards this proverb. Nordin Selat (1996) interpreted that the ashes refer to the wicked in his wife's place. The wicked will threaten the community. While the proverb come after being asked and go after being chased refer to specific conditions such as the feast goes up. A feast in the *perpatih* custom is like a social stucture where a person in it is the most responsible one he is the one who is related by marriage. Furthermore, it means there are people who govern and be governed, some people has to do this and that, there must be some who need to be instructed. The misunderstanding towards the proverb cause the people who is related by marriage will no longer cultivate their wife's land.

The understanding of the marriage ethics must also be recognized and conscious. If the marriage has been recognised it would definitely not arise a sense of inferiority among people related by marriage. In the place of marriage ethic, the people related by marriage wife's tribe have no right to interfere in personal matter. For example, in the case of people related by marriage's right towards their wife's customary land. If the land that was managed by *orang semenda* has produce something, permission must be gained from *orang semenda* before taking the product. In this regard, there is no doubt that the person related by marriage is the most important person in customary community. Therefore, strengthening of customary land can be done if the person who is related by marriage play its role as required by custom.

4. Conclusion

In conclusion, the basic custom of *perpatih* custom is not only involved people in the place that a person's married to but also people who are related by marriage. Therefore in the context of customary land which uncultivated, there is a need to return the role of people who are related by marriage. In order for customary land to be strengthened, the role of people who are related by marriage must be recognised. Therefore both Malaysia and Indonesia must strengthen the customary land and people who are related by marriage, it is a very important issue and solution.

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