

# **"Conflict of Land between Adat People, the Government, and Corporations: A State of Legal Plurality in Industrialized Indonesia"<sup>1</sup>**

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## **Abstract:**

*Industrialization has been so popularly established in the modern world, and it is justified by a perception that it can foster development in a country. So many countries are then encouraged to establish policies expected to promote industrialization, including in the realm of legal policy which is usually imposed through the politics of legal centralism. However, such perception may contain serious risk. In a pluralistic country like Indonesia where there are still so many social groups called as adat people (masyarakat adat) who are still living in traditional community based on traditional-customary law called as adat law (hukum adat), such centralistic policies imposed regarding to the development interest often neglect the existence of these people and this situation often leads into tensions and conflicts between the government and corporations in one hand and the adat people in another hand. This paper will elaborate a phenomenon of legal plurality as the cause of land conflict involving community of adat people in Indonesia, by taking a case study of land conflict between a community of adat people called as "Sedulur Sikep" and a cement company supported by the government regarding to a plan of industrial establishment in Central Java."*

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## Introduction.

What makes Indonesia to be so Indonesia? The most significant answer is its plurality. There is no doubt that Indonesia is one of the most plural countries in the world. This country is full of plurality of tribes, languages, and cultures and such pluralities also include the plurality of ways of life of the people in their society.

Long before the independent country called as Republic of Indonesia is established, the people of *nusantara*<sup>3</sup> was a stateless society. They lived separately in so many social groups based on tribe, family, or particular territory. Thus, they lived in various cultures which include variety of values and norms as the fundament of their way of life.

Such social structure has been changing since colonization period when the Dutch ruled all people in *nusantara* under a state governmental authority called the Netherland Indies. Since that time, the government of the Netherland Indies established a single system of law called as Civil Law System. This legal system originally came from the Netherland as the legal system of all continental European countries, and it was then transplanted into the the Netherland Indies as the Netherland's colony. According to such system of law, all the law is the state law, written and made by state's formal institution having a capacity to do so, and binding all citizen of such state (Apple, without year; Suherman, 2004, p. 68; Jamali, 1993, p. 67). Thus, the people's conduct was expected to be ruled and regulated by the law of the state, uniform for all people.

After the moment of independent on 17<sup>th</sup> August 1945, the social structure as a state built by the Dutch colonial government was then continued as a completely independent country called as Republic of Indonesia, and such decision is followed by a consequence. As a (greatest) social organization, an establishment of a state will always require an establishment of particular law to regulate internal relations among the members of such organization, in which such law must bind all the members. Thus, the Republic of Indonesia must also establish a legal system binding for the entire citizen as well as what implemented by the Netherland Indies, and continuing the legal system introduced and implemented by the Netherland Indies, which is the Civil Law System, is a logical decision in such situation. So, by establishing the Republic of Indonesia as an independent nation state, the people's life in *nusantara* are still ruled under a central authority, not by an alien nation but by their own self.

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<sup>3</sup> The term "*nusantara*" is an acronym of two words, which are: "*nusa*", which means archipelago, and "*antara*" which means in between. So, the term "*nusantara*" literally means the archipelago which is in between (two oceans, which are the Indian Ocean and the Pacific Ocean). This term then has general meaning as the area of archipelago belonging to Indonesia (*Kementerian Pendidikan Nasional, Kamus Besar Bahasa Indonesia*, <http://bahasa.kemdiknas.go.id/kbbi/index.php>, accessed on September 29, 2012).

However, even though the political situation developed as what described above, the socio-cultural situation didn't work in line with what happens in political realm. Though the concept of state as a social organization as a whole had been introduced and implemented for centuries by the Dutch and thus the life of all people were ruled under a central governmental authority with its positive laws<sup>4</sup>, such policy didn't totally change the way of life of the colonized people in *nusantara*. Instead of behaving like what the Dutch did, the colonized people in nusantara still lived according to their *adat*<sup>5</sup> based on their own norms and values. Such situation then forced the government of the Netherland Indies to impose a policy of legal pluralism, as regulated in article 131 and 163 of the *Indische Staatsregeling*<sup>6</sup>, in realm of private law. According to such regulation, the law in private matter was differentiated in accordance with the race differentiation among the citizens, in which the Dutch Civil Code (the *Burgerlijk Wetboek*, usually abbreviated as BW) was used for the Europeans while the indigenous people<sup>7</sup> were let to use their *adat* law (Jamali, p. 24; Wignjosuebrotto, 1994, p. 129).

A little bit different with what implemented by the government of the Netherland Indies, the principle of Civil Law System as a legal system of unified, written, and state made law, is consistently implemented by the authority of the Republic of Indonesia, in which all people's conduct are ruled under the state's law even in the realm of private law. Though the Indonesian authority hasn't achieved a comprehensive work like the Dutch did with the *Burgerlijk Wetboek*, some fields of private matter have been regulated uniformly by the Indonesian legislations, and one of such legislations is the Indonesian Legislation Number 5 of 1960 (*Undang-Undang tentang Pokok-Pokok Agraria*, usually abbreviated as UUPA) as the Indonesian law of land.

However, the fact that socio-cultural matter doesn't change as easy as it does in political realm still remains. So, even though the state has established a legislation uniformly binding all citizen in particular field, the people's conduct in such field are factually not uniform as what expected by the legislation due to the plurality of cultural values factually existing in the society of Indonesia.

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<sup>4</sup> The term "positive law" is a legal term referring to the law established by the state / governmental authority (Merriam Webster Dictionary, <http://www.merriam-webster.com/dictionary/positive%20law>, accessed on September 29, 2012)

<sup>5</sup> The term "*adat*" originally comes from Arabic having meaning as custom (Koesnoe 1992, p. 36; Hadikusuma 1992, p. 8)

<sup>6</sup> *Indische Staatsregeling* is such a constitution of the Netherland Indies that regulates all the fundamental matters in the Netherland Indies.

<sup>7</sup> The term "indigenous people", according to the ILO Convention on Indigenous and Tribal People (ILO Convention Number 169 of 1989) article 1, refers to the peoples in a country who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Thus, this term is appropriate to be used in the context of Indonesia during colonization period.

Such situation then often leads into conflict in Indonesian society, especially between those who already submit them self under the state law and those who still defend their *adat* law, and one case that can be taken is as what will be described below.

### **Conflict of Land between *Sedulur Sikep* Community, the Government, and Corporation Regarding Industrial Establishment in Central Java.**

*Sedulur Sikep* community is a traditional community of the people believing and practicing the value of *Saminism* firstly introduced and disseminated by a person named Samin Surontiko at Blora, Central Java, since 1890 (Benda, 1969, p. 210). The members of this community spread along the area of *Kendeng* hills in Central and East Java which comprises of the Regency of Kudus, Pati, Blora, and Rembang in Central Java, and the Regency of Bojonegoro and Ngawi in East Java (ibid, p. 216-217). What makes this community becomes notable is its history in fighting against the Dutch colonial government. As what practiced by Samin Surontiko and his adherents, the members of this community rejected to pay tax as obliged by the government of the Netherland Indies (ibid, p. 211). That's why the *Saminism* is then often perceived as the traditional movement of Javanese people against the Dutch colonialism.

Nowadays, this community is well known due to their particular behavior based on the value of *Saminism* which is quite different with what practiced by the common people of Java. They have religion that we can only find on them called as *Agama Adam* (ibid, p. 226; Widodo, year unknown, p. 273-274). Another notable characteristic of this community is the fact that all of the members of this community are farmer. Different with the common people who become farmer by choice, the member of *Sedulur Sikep* works as farmer because the value of *Saminism* obliges them to do so and they are disallowed to work in another field. In land matter, this community perceives land as a communal property owned collectively, as reflected in following expression: "*lemah podo duwe, banyu podo duwe, kayu podo duwe*" which means land, water, and forest are owned collectively (Benda, p. 223).

One group of this community exists at Sukolilo village, the Regency of Pati, Central Java, where in 2008 some areas in this village were proposed to be utilized as the new location of cement industrial area of *P.T. Semen Gresik* as one of the biggest state-owned cement companies in Indonesia. Such proposal was then fully supported by the local government of Pati by issuing SIPD (*Surat Ijin Penambangan Daerah* / the letter of permit for local mining) (Kristianto, 2009, p. 11). Perceived as a threat for their culture as farmer, the proposal of a new cement industry establishment in Sukolilo village were highly opposed by the community of *Sedulur Sikep*. All the members of this community rejected to sell their land to *P.T. Semen Gresik*. Furthermore, this community then actively encouraged all people in Sukolilo to reject such proposal. Such

encouragement were done due to reason that the plan to establish a new cement industrial area at Sukolilo village will not only threaten the culture of the people, but will also potentially damage the environment of the *Kendeng* hills as the limestone hills planned to be exploited for the cement raw materials (Kurniawan, 2010, p. 22). Such encouragement was then quite successful, as shown by the establishment of a movement group to reject the plan of cement industrial area establishment called as JMPPK (*Jaringan Masyarakat Peduli Pegunungan Kendeng / the network of people caring about the Kendeng hills*), in which this movement group was led by Gunritno who is a member of *Sedulur Sikep* community at Sukolilo village (ibid, p. 23).

In another side, instead of accommodating the aspiration of the people at the location proposed to be the cement industrial area, both the local government of Pati and the provincial government of Central Java had completely different perception regarding to the proposal of *P.T. Semen Gresik*. Such proposal was perceived very positively due to a (classic) reason that the establishment of cement industrial area at Pati will give huge revenue for the government (ibid, p. 24), which is about 50 billion rupiah per year.<sup>8</sup> In accordance with the position of the local government of Pati, the provincial government of Central Java also supported any proposal of industrial and mining area establishment at Pati, regardless the opposition of people at such area, by issuing the Provincial Regulation of Central Java Number 6 of 2010 which declares the *Kendeng* hills at Sukolilo village as industrial and mining area. Therefore, the opposition against the proposal of cement industrial area establishment conducted by the *Sedulur Sikep* community and the people of Sukolilo village were perceived so negatively by both authorities. It is reflected by the statements given by Bibit Waluyo who is the governor of Central Java by saying that it would be a great loss for his government and especially for the local government of Pati if *P.T. Semen Gresik* cancels its plan due to the rejection of some people in Sukolilo (ibid, p. 25). Furthermore, the representative of the local government of Pati released much more hard statement by saying: "(For those who oppose the plan of cement industrial area establishment,) never try to bother a tiger!" (ibid, p. 24).

Perceiving that the plan to establish its new cement industrial area at Sukolilo village may cost a serious negative risk due to the people's opposition against such plan which was getting stronger day by day, *P.T. Semen Gresik* was then reported canceling such plan. However, according to the information I directly received during my visit to the *Sedulur Sikep* community at Sukolilo village at 2011, the proposal abandoned by *P.T. Semen Gresik* is then switched to be continued by the sub-corporation of *P.T. Indosemen*, as another giant company of cement industry in Indonesia. Different with the plan of *P.T. Semen Gresik*, the proposed area for the cement industrial establishment doesn't remain to be located at Sukolilo village, but it is switched to

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<sup>8</sup> According to the statement given by Desmon Hastiono who is the 2<sup>nd</sup> Assistant of the Secretary of Local Government of Pati (Kurniawan, p. 24).

Kayen village, in which interestingly, there is no member of *Sedulur Sikep* community living in this village.

However, it could be quite frustrating for the governmental authorities of Central Java because even though they have switched the plan of the cement industrial establishment into different area, they still encounter strong opposition from the people of Kayen village thanks to the effort done by Gunritno and his fellows who tirelessly keep encouraging people to reject any plan of cement industrial establishment, including with the people of Kayen village, and thus this conflict is still prolonged until nowadays.

According to my research on this conflict, I've found that one of the most significant factors serving as the background of this conflict is the difference of values and norms used by conflicting parties as the fundament and the guidance of their actions, in which this difference of values and norms derives from the socio-cultural plurality of Indonesian society. In the other words, this conflict happens due to the conflict of laws serving as the guidance of conduct of each party, and that will be described further in the following points below.

### **"Earth as Mother." The Regulation of Land Matters According to the *Adat* Law.**

According to the description above, it obviously can be seen that the *Sedulur Sikep* community at Sukolilo village is the most militant party opposing the plan of cement industrial area establishment. Thus, there must be a fundamental reason encouraging them to oppose such plan persistently.

According to the research I conducted on the *Sedulur Sikep* community at Sukolilo village, there are at least two fundamental values serving as the backgrounds of this community in opposing the plan of cement industrial area establishment.

The first one is the value that the people of *Sedulur Sikep* are farmers, and they must defend the culture of farming. The question is then why must farming? The people of *Sedulur Sikep* are well known as people who never lie in their life because they hold the principle of honesty very tightly, and according to such principle of honesty, the people of *Sedulur Sikep* are prohibited to enrich them self by taking advantage from others. That's why they forbid them self to work as merchant. Thus, the people of this community always avoid using money in their life, and if they factually use it, it's just to enable them to exchange their goods with another thing they need and not to be saved to enrich their self (Benda, p. 47). So, according to these values, the only possible work that can be done to fulfill the daily need without taking any advantage from other people is only farming.

The second, and the most important one, is the value which perceives land as "the mother", and it is the value encouraging the people of *Sedulur Sikep* to oppose the plan of cement industry establishment according to reason to protect the environment. As explained by Gunretno, the *Sedulur Sikep* community perceives *bumi* (the earth) as "*ibu-mami*" (the mother or the mommy) which is the mother giving birth all mankind living on "her" and therefore all mankind as the children of the mother-earth will obviously rely their life on "her" (Kurniawan, p. 24). Gunretno explained further (ibid):

"As a mother who usually experiences some bad habits and bad behavior of her children, the earth also usually suffers misconduct done by mankind, such as being used as the disposal of human waste. However, as the common characteristic of a mother, the earth still always gives its best for the mankind, and as a mother who always feeds her children, the earth gives many resources and plants used by humans as their food. Therefore, as what children usually do to their mother as their duty due to all the best things given by their mother to them, the humans are obliged to respect and protect the earth by keeping it from any kind of destructing conduct such as exploitation and mining activity."<sup>9</sup>

Such explanation given by Gunretno above obviously gives a clear picture why the community of *Sedulur Sikep* are so persistent in opposing the plan of cement industrial establishment because they perceive such plan as a serious threat which can be really harmful for the environment and the earth, and thus as the children of the "mother earth" they are obliged to reject this plan.

A notion about the earth or land as "the mother" is actually the fundamental value of land regulation according to the *adat* law. According to Koesnoe (2000, p. 6), there is a mythology serving as the fundamental value lies behind the norms of *adat* law regulating about land matters, which is a notion that all creatures living on the earth are born as the result of the marriage between the sky as "the father" and the earth as "the mother". Thus, according to this philosophical notion, there is a strong-metaphysical relationship between a man and the land where he or she belongs with its all environment, as well as the relationship between a man, the mother, and the brothers and sisters, and such intimate relationship will obviously entail a responsibility to love, help, and protect each other (ibid, p. 7). That's why, as the children of the "mother-earth", the humans living on land are responsible to defend and protect the preservation and the prosperity of the environment of the land where they belong as the responsibility of the children to protect and defend the dignity of their mother and their family (ibid, p. 11). This is also the reason why there is no any harmful conduct to land and the environment allowed according to *adat* law.

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<sup>9</sup> Translated from Javanese by the writer.

Furthermore, according such philosophical notion above, land with its all natural resources are not simply perceived as properties or material goods which can be owned and enjoyed individually, or even to be exploited. Instead, they are things that can only be enjoyed collectively along with the responsibility given by nature to protect and defend their preservation (ibid, p. 22). Therefore, land, according to *adat* law, is a communal property owned by a community (of *adat* people) collectively, and such collective ownership of land is called as *ulayat* (ibid; Sudiyat, 1981, p. 2; Wignjodipuro, 1979, p. 248). The notion of *ulayat* as the collective right of land owned by a community of *adat* people then determines further the regulation of *adat* law about land ownership. Due to the existence of *ulayat*, a particular land area on the highest level is under the authority of *adat* law community living on such land, and thus such area is forbidden for any party outside such community (Koesnoe, p. 39; Wignjodipuro, p. 250). So, according to such regulation, those who can utilize the land with its resources are only the members of *adat* people community which has the authority of *ulayat* of such area, and thus the right to utilize the land can only be distributed among the member of such community. Therefore, according to *adat* law, it is forbidden for any member of *adat* community to sell their land to any outsider because principally the existence of *ulayat* always binds the community living on such land and such authority can never be given to another party (Wignjodipuro, ibid). Such regulation is in accordance with the notion of the eternal exclusive relation between a mother and her children which can never be intervened by another party.

So, according to all description above, it's clear that what conducted by the *Sedulur Sikep* community at Sukolilo in opposing the plan of cement industry establishment is due to the *adat* law regulating them, as a traditional community who still defends their particular *adat* values (*Saminism*), to do so. This kind of law is what Eugen Ehrlich called as "the living law", which is the law factually regulating the daily life of the people though it is not made and enforced by the formal institution of the state (Griffiths, 1986, p. 26).

However, if the people (of the *Sedulur Sikep* community) have their living law, then the government has the state law, in which according to the Civil Law System as the legal system formally implemented by the state, this law is the strongest law and expected to bind all citizen without any exception.

How do the Indonesian positive laws regulate about land matters? That will be elaborated in the following point below.



## **Land as the Authority of the State. The Regulation of Land Matters According to the Indonesian Positive Laws**

In order to understand the way of working of the Indonesian positive laws, we have to know first that these positive laws are structured in a hierarchy in which the constitution serves as the fundamental law. Therefore, what we firstly have to look is the regulation of the Indonesian Constitution (*Undang-Undang Dasar 1945*, usually abbreviated as UUD 1945).

The fundament of land regulation according to the Indonesian positive laws can be found in the article 33 paragraph 3 of the UUD 1945. Such article states that the earth, water, air, with all resource contained by them are under the authority of the state for the biggest prosperity of people.

Such regulation of the constitution above is then regulated further by the Indonesian Law of Land, which is the Indonesian Legislation Number 5 of 1960 (*Undang-Undang Nomor 5 Tahun 60 tentang Pokok-Pokok Agraria*, usually abbreviated as UUPA). According to the article 2 and article 4 of the UUPA, it is emphasized that the earth, water, air, with all resources contained by them are under the authority of the state and therefore the state has the sole authority to award rights over land to the people, either individuals or corporation. So, according to such regulation, the state has the control over land ownership, and therefore no one can obtain a right of land except it is given by the state.

Based on the regulation of UUPA as described above, it is clear that on the perspective of the state law, the state has the highest authority over land and thus it also has the authority to determine the usage of particular land area, whether it is for individual ownership of a person or for an industrial area. It is emphasized by the article 41 and 42 of the UUPA regulating about the right of land that can be given by state either to a person, a company, or even a foreign company to use the land and exploit its resource.

So, according to the regulation of the Indonesian positive laws about land, such plan as proposed by *P.T. Semen Gresik* is fully legal, and therefore it's not a surprise if both the provincial government of Central Java and the local government of Pati fully support such proposal and insist that such plan should be actualized.

Regarding the existence of an *adat* or traditional community, the UUPA regulates it on the article 3 which states:

According to the article 1 and article 2, the implementation of *ulayat* right, or any other right equal with it, as long as it still exists, has to be in accordance with state's and

national's interest based on the national unity, and should not be contradictory with any legislation and regulation of the state.

So, according to the article 3 of UUPA above, it can be seen that the *ulayat* of an *adat* community on particular land area is allowed to exist, as long as the state has no interest on such area. So, if the state has an interest on it, such existence of *ulayat* can be disregarded.

### **Concluding Remarks.**

According to the description of the last point above, it can be known that the regulations of the Indonesian positive laws about land are completely constructed based on the sole perception of the state as the highest socio-political institution of the people, and it tends to disregard any interest outside the interest of the state.

However, such construction is laid on a fictional perception that the social life of all people can be merged into a single centralistic institution called as state and thus the only one law regulating the people's conduct is only the state law, meanwhile the fact of social life is far from it. As what explained by Sally Falk Moore, the social space between the state and a subject is not a normative vacuum, but it is full of social institutions with their own regulation (cited Griffiths, p. 34).

The conflict between *Sedulur Sikep* community, the government, and corporation regarding the plan of industrial establishment at Pati, Central Java, clearly shows that there are plurality of laws factually existing in society, in which according to this case, such laws are the *adat* law and the Indonesian positive laws about land matter, and all of them have their own institution where such law is applied.

The philosophical notion of development is bettering the life of all people, and therefore it is the responsibility of a state through the government to conduct the project of development to better the life of its people. However, according to such philosophical notion, the mission of development can only succeed if the targets of development perceive that such project is good for them. Thus, the social fact of legal plurality, as one of effective indicators of the plurality of values existing in society, should highly be considered by any party planning to conduct a project of development. Otherwise, such project will simply be absurd.

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