State Law *vs.* Customary Law:

The Problems in Indonesia's Legal Pluralism

Luh Rina Apriani

Law Faculty of Pancasila University
apriani.rina@yahoo.co.id

Abstract

Much of the debate regarding legal pluralism is characterized by polarized presumptions that disregard the complexity and variety of local situations. Plural legal orders lie at the centre of this contestation with both state and non-state actors mobilizing law and culture towards ends that can be either inclusive or exclusive. Recognition, incorporation, and decentralization are ways by which a non-state legal order may become part of a pluralized state legal order. All involve questions of: normative content; jurisdiction (over territory, issues and persons); authority (who has it, who bestows it, and how); adjudicatory process (procedure); and enforcement of decisions. Recognition presents numerous conceptual challenges and policy dilemmas. Claims to recognition based on religious, minority ethnic or indigenous identities each have distinct legal and socio-historical foundations. The incorporation or recognition of customary law presents particular challenges. One approach is 'translation', which attempts to find precisely equivalent rules or institutions that can be recognized or incorporated, but which is not always possible in practice. A different approach is to recognize customary laws without elaborating their content but this also raises questions about the state's adherence to human rights standards. The calls to recognize the 'customary' do not always imply a retreat into the past: they may legitimate present and future political claims. Such calls are often associated with claims to 'authenticity'. These are not only reminiscent of colonialism, but have policy and human rights implications: how is 'authenticity' and 'expertise' established and thereby whose knowledge and power is privileged. The demand to recognize cultural particularity in law is based on the principle of universal equality but, by definition, it implies acknowledging and giving status to something that is not universally shared. In addition, those who demand recognition of their cultural diversity may themselves prove intolerant of other differences and pluralities. Further, recognition by a state that is considered to be alien and inequitable can erode the non-state authority's legitimacy. Finally, when state recognition requires the formalization of custom, this may block the dynamic evolution of customary laws and the internal political contestation that drives it. Indonesia with its legal pluralism is facing the problems mentioned above. Conflict arises from the contestation between state law and customary law, especially in natural resources area. Land conflict in Mesuji, West Sumatera is one example of how legal pluralism cannot bridge differences and legal issues in the community. It happens since state law is placed in the top position and eliminate the existence of customary law. This paper will present some examples of conflict between state law with customary law in Indonesia. These examples are expected to be a reference to the ideal model in the implementation of legal pluralism in Indonesia.

Key words: *legal pluralism, indigenous peoples, customary law, agrarian conflict*

I. Introduction

Legal pluralism is generally defined as a situation where two or more legal systems work side by side in a similar area of social life, or to explain the existence of two or more systems of social control in one area of social life (Griffiths, 1986:1), or describes a situation where two or more legal systems interact in a social life (Hooker, 1975:3), or a condition in which more than one legal system or the institutions work together in activities and relationships within a community group (F.von Benda-Beckmann, 1999:6).

The concept of legal pluralism (legal pluralism) are generally opposed to the ideology of legal centralism. The ideology of legal centralism is defined as an ideology which requires the application of state as the only law for all citizens, regardless of the existence of other legal systems, such as religious law, customary law (*adat law*), and also all forms of inner-order mechanism which are empirically and thrive in society. In this context, Griffiths asserts:

> *"state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions. To the extent that other, lesser normative orderings, such as the church, the family, the voluntary association and the economic organization exist, they ought to be and in fact are hierarchically subordinate to the law and institutions of the state."* (Griffiths, 1986:12)

It is clear that the ideology of legal centralism tends to ignore the social and cultural pluralism in society, including local legal norms that are adopted and adhered to real people in public life, and even more frequently observed than in the law that created and enforced by the state. Therefore, enforcement of legal centralism in a community of people who have social and cultural diversity is just an impossibility. The concept of Griffiths's legal pluralism presented above is basically meant to highlight the existence and interaction of legal systems within a society, the state law, religious laws, and customary laws (*adat law*). In this regard, Tamanaha (Tamanaha, 1992:25-6) provide critical commentary on the concept of Griffiths's concept who tend to focus on reducing

the dichotomy between the existence of state law and other legal systems that works in the society, such as the following:

1. The concept of Griffiths's legal pluralism is basically divided into two kinds, namely strong legal pluralism and weak legal pluralism. Weak pluralism is another form of legal centralism, because despite the fact that state law recognizes the existence of legal systems to another, but state law still regarded as superior, and while the legal systems of other system is inferior in the hierarchy of state law. The example shows a weak legal pluralism is the concept of legal pluralism in the context of the colonial legal system interact with customary law (*adat law*) and religious law which took place in the colonies as described by Hooker,
2. Meanwhile, a strong legal pluralism refers to the fact that there is diversity in the legal order of all groups of people who viewed the same position, so there is no hierarchy that shows one legal system is more dominant than other legal systems. For this, the theory of living law by Eugene Ehrlich which states that every society has their own living law in a normative order (Sinha,1993:227; Cotterrell,1995:306), which is usually contrasted or opposed to the state law.

In addition, the category included a strong legal pluralism is a theory of Semi-Autonomous Social Field which Moore introduced on the capacity of social groups in creating mechanisms for self-regulation, with its own coercive mechanism powers. Therefore, the Griffiths notion of legal pluralism adopted Moore's concept describe as:

> *"Legal pluralism refers to the normative heterogenity attendant upon the fact That social action always take place in a context of multiple, overlapping" semi-autonomous social field "*(Moore, 1978).

Meanwhile, the law in Griffiths's concept of legal pluralism is not limited only to the state law, customary law or religious law, but later expanded to the normative system of self-regulation mechanisms as Moore introduced which is *Law is the self-regulation of a 'semi-autonomous social field'* (Tamanaha, 1992:25). In subsequent developments, the concept of legal pluralism is no longer emphasizes the dichotomy between the state law on the one hand with customary law (*adat law*) and religious law on the other side. At this stage of development, the concept of legal pluralism is more emphasis on interaction and co-existence of different legal systems that affect the operation of norms, processes, and legal institutions in society.

Study of legal pluralism is helpful to give an explanation on the reality of the social order that was not produced by state law (Simarmata, 2005b: 3). The issue of social order is denied in a centralized legal thinking as adherents of the only centralized order due to state intervention in the form of law. In fact, the reality is there are 'forces of law that does not come from the state' (Irianto, 2005:53). For example, customary law, religious laws, customs, rules that apply in the semi-autonomous field, transnational trade agreements, or agreement between the international donor agencies with NGOs in one country (Benda-Beckman, 2005).

One of major criticism of legal pluralism is its legal certainty, although this can be answered by the argument of legal certainty realistic. There are several characteristics associated with a realistic legal certainty, First, there are a clear legal rules, consistent and accessible which are declared by or representing the state; Second, governmental institutions to implement these state law consistently and their own well obeyed; Third, most citizens obey the principle of majority rule; Fourth, if there is a dispute then the judge in an impartial and independent to apply these rules consistently; Fifth, the judge's decision is actually implemented (Otto, 2002:25) .

II. Agrarian Law Politics in Indonesia

The debate that continues to this day on customary law in Indonesia generally revolves around the choice between unification and pluralism. Historically, the unification has been supported as a prerequisite for national development, a process that said requires a national entity. While legal pluralism is seen as a social necessity, logical impact on the diversity of the “living law” The fact is, it is unavoidable for Indonesia, with a long history of colonization by the Dutch and the diversity in the community with each rules, not to practice legal pluralism by giving a recognition to other laws than the state law (Bell, 2006:315). Modernization in law is a strategic choice to support modern law as an instrument of capital[1]. Through this concept all social relations are classified under state law relationship. Furthermore, this state law relationship deliver some kind of political economic relationship, where money and power is generated. In relation to land and natural resources, the legal relationship between the modern state led to the formal categories, which ultimately excluded the indigenous peoples from the legal protection regime. For example, because it has no proof certificate on the land, they should lose their livelihood sources, such as houses, rivers, forests, the sea and all relationships with the natural shape of their civilization.

Post-reform, local and national political demands the government to accommodate indigenous peoples’ right in policy instruments. But soon felt that the government's response is to repeat the colonial legacy and the political era of the New Order, both in concept and practice of indigenous peoples. This heritage is visible from at least two of the following: *First*, existence of indigenous people exist only in the context of unification of law and political stability of the

[1] See Adji Samekto, *Studi Hukum kritis Kritk Terhadap Hukum Modern,* (Bandung: Citra Aditya Bakti, 2005), pg. 23-32.

state; *Second*, the relationship of indigenous peoples to land and natural resources are bounded by at least three conditions: (1) the community, who still feel bound by the existing customary law, recognizing and applying theses customary laws in their daily life; (2) territory, the existence of communal land; and (3) the relationships between the indigenous peoples and its territory, where the legal order of administration, control, and management of communal land is still valid and obeyed by the citizens of the legal community.

These conditions seem merely to repeat the approach of the Dutch colonial political economy of natural resources controlled by natives. The difference is, the colonial era still recognized the traditional structures as a governance system that regulates itself. Through the IGO (Gemeente Indlanshe Oronantie), Staatsblad No. 1906. 83, the Dutch government acknowledged *Pemerintahan Desa* in Java and Madura, while IGOB (Gemeente Indlanshe Ordonatie Biutengewsten) *Staatsblad* No. 1938. 490 recognizes indigenous governance structures in the surrounding areas outside Java and Madura. Therefore, in the Dutch colonial era, the government does not try to create a new structure for the village community, but give legal recognition to the structure of the traditional governance in rural areas (Zakaria, 2000: 46-46, Wignjosoebroto, 2004).

Meanwhile, post-independence, traditional structures applicable to a tightened condition, New Order regime even eliminate these structures by Act No. 5 of 1979 on Village Governance. Reform Order then pass through the above terms. These conditionalities deliver procedures and administrative hassle to the indigenpus peoples. In any claim for indigenous forests, according to Rikardo Simarmata findings, at least there are three steps that must be taken, (1) the forest must be recognized by the provincial government; (2) customary forest's territory should be established by the Minister of Forestry; (3) forest use permit granted by the Minister / Governor /

Regent / Mayor. These stages, the complexity of it (bureaucratic, unfriendly, high cost), so it is almost difficult to be reached by the indigenous people who are not familiar with the formal procedures (Simarmata, 2006: 24-27).

Legacy of colonialism and the era of independent states, thus, similar in outlook and political character, conquer and rule the indigenous identity. Integration of indigenous peoples into the modern state (the Republic of Indonesia) was also followed by reduced claims to territorial rights inherent in their identity as agrarian rights. According to Daniel Lev (1990), the concept of customary law has long been removed from the socio-political context, to make way for the political unification of colonial law. The colonial government regarded as the only existing government, while the indigenous peoples shall be subject and subordinated under colonial control and mastery. In a similar way, Indonesia is also treated by recognizing indigenous identity but at the same time get rid of the others. In many cases, the identity of the other is often related to natural resources such as capital accumulation[2].

From the view of legal pluralism, today's agrarian law politics described the fact that there are systematic neglect of the existence of customary laws governing land rights of indigenous people including land, forests and mines.Hak menguasai negara (state's right over the land) based on two concepts, namely the concept of a welfare state and communal concept known in customary law. The welfare state is a critique over the concept of classical state law which influenced by liberalism and socialist staste. In the concept of the welfare state, the state is not seen merely as a tool of power, but the state also stand as an agency of service (Abrar, 1999: 1-98). Meanwhile,

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[2] See Dianto Bachriadi dan Anton Lucas, *Merampas Tanah Rakyat,* (Jakarta: Gramedia Pustaka Utama) dan Rahmina, "Kami Masig Disini: Perjalanan Status Yang Belum Selesai Untuk Pegunungan Meratus" dalam *Tanah MAsih di Langit: Penyelesaian Penguasaan tanah dan Kekayaan Alam di Indonesia Yang Tak Kunjung TUntas di Era Reformasi*, (Jakarta: Yayasan Kemala, 2005), hal. 213-230.

the concept of communal right gives the indigenous peoples the sovereignty in management over their natural resources. This right is implemented by their representatives, such as *kepala adat*. In Minangkabau, where the term of customary land rights are often found, the communal land rights contained in all natural resources. It is run by *pangulu* as ownership representation of land rights holders. *Pangulu's* rights to 'master' did not mean it as the 'owner'. Customary arrangement is then followed by setting how the utilization of communal land by a third party.

Ideally, the authority contained in the state's right to control is also the content of customary rights of indigenous peoples. So in other language, communal land rights can be referred to the rights of indigenous people. Basic Agrarian Law put authority in the scope of customary rights of indigenous people within the framework of the state's right. This framework gives the state a right to intervene over communal land rights. In the other hand, the communal land right cannot do so. It stops in the maze that limit its authority where the government stands as an actor who runs the state's right.

Legal collisions that occur in the allocation of land and natural resources cause a social conflict with indigenous peoples as the biggest victim. Conflict shows that the relation between state law with customary law does not run in complementary concepts but rather the conflict between the superior (state law) and the inferior (customary law).

This paper use agrarian conflict to describe the condition of legal pluralism in Indonesia, especially with the rise of agrarian conflict that occurred Indonesia in recent years. Source of conflict will be discussed in general by comparing the differences between state law's agrarian concepts with the concepts that has been acknowledge by its indigenous people.

III. Agrarian Conflicts In Indonesia: A Result Of Agrarian Legal Pluralism

Conflict is a situation that arises because of the seizure of the object or the position of the person or persons who caused the loss of recognition of the rights of the person or group to another person or group of objects and their position (Wijardjo, et.al., 2001:50). Agrarian conflicts are conflicts that arise due to the seizure of power and ownership of land and natural resources by different actors with different interests. One of the important actors in the agrarian conflicts in Indonesia are indigenous people. It is well known that indigenous peoples have their land and natural resources in a region long before the establishment of the country.

Long before the concept of monarchy or sultanate, throughout the archipelago has been alive and growing several sovereign social and political entities. They are autonomously organize and manage themselves over land and other natural resources in their respective habitats. These communities have developed rules (law) and institutional system (political system / government) to maintain a balance between people in the community and also between those communities with the environment. These communities is known globally as the indigenous peoples, and Indonesia has some terms refer to these as *masyarakat hukum adat*, native people, local community who generally have some difference one community to other. The diversity of the local system is often also appear in one race or ethnicity or even on the same part who generally also have a native language and original religious systems (World Agroforestry Center (ICRAF), the Alliance of Indigenous Peoples of the Archipelago (AMAN), the Forest People Programme (FPP), 2003: iii-iv).

However, by the state law, the state and investors or capital holders are often control the lands and natural resources that originally owned by *masyarakat hukum adat*. This is what led to

agrarian conflicts involving indigenous people is also a legal conflict. Conflict of laws is defined as:

> *"A difference between the law of different states or countries in a case in the which a transaction or occurrence central to the case has a connection to two or more jurisdiction." (Black's Law Dictionary, 2004: 319)*

For the Republic of Indonesia, the 1945 Constitution is a "social contract" to unify the various regional differences in background, ethnicity, and religious sense, as well as guidelines for every element of this country, especially the government in serving the people. As the constitution which has a religious foundation, the 1945 Constitution recognize and acknowledge the fact, that Indonesia was built and consists of diverse communities or ethnic groups. Therefore, the 1945 Constitution states that the state recognizes and respects the local government units that are special or extraordinary (Article 18B Paragraph (2)). In addition, the community's cultural identity and traditional rights must be respected in accordance with the times and civilizations (Article 28 Paragraph (3)).

As one of the implementing regulations of the Constitution and serves as the basis of national agrarian law, Undang-Undang Pokok Agraria Law Number 5 of 1960 (hereafter Basic Agrarian Law/BAL), have created a new concept for the existence of diversity in the field of agrarian law in Indonesia. By removing the dualism of agrarian laws passed by the Dutch colonial government, BAL created agrarian law unification. BAL simultaneously also stated that the agrarian law applies to the earth, water, and airspace, including the natural wealth is the *adat law* (Article 5). BAL seems in line with the TAP MPR No. IX/MPR/2001 who wear the principles of “diversity in legal unification". Therefore, formally, there are a recognition on legal pluralism in

agrarian law and the implementation of this principle will lead to interaction between the two legal systems in the field.

This concept apparently has failed to create unity and legal certainty (Fitzpatrick, 1997:174-177). The failure main caused is BAL's syncretic approach to the unification by taking the principles of *adat law* and carelessly combined it with western styles, such as land registration. The end result is rather disastrous as the traditional indigenous land rights in practice were not displaced by the BAL and in fact very little land was ever registered under BAL. The people simply ignored the law and national posited their continued life and land tenure according to their own *adat laws*. Yet BAL does not recognise unregistered traditional land rights. This creates a new legal pluralism, That Is Generally state law and traditional customary law ignored no longer fully recognise by the state but the which in reality is the law that people follow (Bell, 2006:325).

It has generally been understood that land conflicts that initially simple, in timely be the most complicated conflict due to uncompleted undertaken. In the mean time agrarian conflict happens everywhere and needs sound resolution in juridical and political ways. Agrarian conflicts could be identified as latent problems, meaning that although an agrarian conflict has been undertaken and assumed to have been resolved, similar problem or case could arise unexpectedly the other day.

In order to ease and to efficiently undertake the agrarian conflicts, in general agrarian conflicts are grouped in 8 big classifications, they are:

1. Estate Land Conflict caused by:
    a. Unaccomplished compensation process;
    b. Inherited land of the people taken over for plantation;

c. The width of the land in field is larger that it is stated in the certificate of Rights to Building Use (HGU);

d. The estate land is a district land inherited from a sultanate or the certain communal;

e. The estate land which is not well cultivated, under scoring of appraisal to be in the Fourth (IV) or Fifth (V) class.

2. Conflicts to proposal of right to land located in forest areas and the agrarian conflict between community and public corporation of Indonesian Forestry.

3. Agrarian Conflict of registration to land rights related to the overlapping rights or conflict to land territorial border.

4. Agrarian Conflict related to land occupation and/or compensation demand of community whose land is exempted for developer to real estate, industrial estate, office buildings and tourism areas.

5. Agrarian Conflicts related to claims of sultanate land which is difficult to determine the existence rights to the land.

6. Agrarian conflicts related to exchanging the "*bengkok*" land for use of village employees as a replacement of salary.

7. Other agrarian conflicts such as conflicts of abandoned land and vacant land.

Agrarian conflict is spread from sea to land, from the fisheries sector to the plantation sector, forestry and mining. Indonesia Forum for Environment (Walhi) notes, since 2003 until the first half of 2010, the number of conflicts related to the acquisition and management of natural resources as much as 317 cases. At the same time Palm Watch documented more than 630 oil

palm conflict occurs. National Land Agency (BPN) in 2008 released the data of land conflicts in Indonesia's 8,000 small and large-scale conflicts. Agrarian Reform Consortium (KPA) in 2008 noted a 1753 land conflicts that resulted in 1,189,482 households victimized.

Based on the research Center for International Forestry Research (CIFOR) and Forest Watch Indonesia (FWI), forestry conflict peaked in 2000 and 2002. One form is the conflict to forest use. The conflict occurred in the area of Industrial Plantation Forest (*Hutan Tanaman Industri/HTI*), area of Tenure Rights of Forest (*Hak Penguasaan Hutan/HPH*) and the conservation area. The mode varies from area to area. Nevertheless, in general, these conflicts involve the indigenous peoples, private companies, Central and Regional Government.

Forest conflicts are usually occur due to forestry companies and the government makes the licenses issued by the Central Government and Local Government as the basis of forest utilization. In the other hand, land ownership by indigenous peoples adhering to their historical background and their *adat laws*. CIFOR’s research concluded that the causes of conflict can be specify in 5 category, ie encroachment, illegal logging, environmental destruction, boundary or access to and land use change and forestry (Wulan, et.al., 2003:65).

When many forest conflicts have not found a permanent settlement, the recent outbreak of conflict also plantations, especially the conflict over control of oil palm plantations. The rapid growth of the palm oil industry adds to the intensity of the last ten years and the number of conflict. Sawit Watch noted, until the year 2007 occurred in 513 conflicts involving oil palm plantations of indigenous people (Sawit Watch, 2009).

Agrarian conflicts cannot be denied caused due to a variety of state laws governing natural resources. This can be seen from the birth of various laws and regulations that accompany the implementation associated with the earth, water, natural resources contained therein. Indonesia

has Law No. 4 of 2009 on Mining, Mineral and Coal, Law Number 41 Year 1999 on Forestry, Law No. 31 of 2004 on Fisheries, Law No. 7 of 2004 on Water Resources, etc. In practice, all legislation is simultaneously experiencing overlapping applicable law, for example, between the area of land, forestry and mining. Finally, the diversity that is out of sync and harmony delivered conflicts among state officials who eventually also impact on indigenous peoples. Another issue is unsynchronized between BAL with the legal system of local government, as regulated in Law Number 32 Year 2004 on Regional Government. This Act gives authority to the regions to take control and manage the resources of agriculture, but the provisions in many things is not in line with the BAL and other sectoral agrarian law resources.

Agrarian conflicts are also occur because of a conflict of interest between the countries represented by the capital owners and indigenous people who had been generations to controlled their territory, both communal and individual. Indigenous peoples have their own customary principles of agrarian ownership and utilization (land or water). The principles of togetherness where the agrarian resources, especially land, is not only belong to one individual but also the rights of all members of society within *hak ulayat*.

As mentioned above, the BAL only recognizes lands that have been registered and certified. Assumptions inherent in the soil sertification program is to clarify who is entitled to a piece of land so as to facilitate the land transaction process. Of course this cannot be separated from the goal of commercialization of the land embraced by some international financial institutions and the investors. On the basis of this assumption is communal land tenure led to additional costs and time for the process of tracing ownership. As a result, the economy will occur in the calculation of the high cost burden to the corporation that will use the land. In other words, the communal land tenure, which is a basic concept of land ownership by indigenous people, will complicate

the process of transfer of land rights and at a more distant, it's inefficient for land market system. In addition, communal land tenure is also prone to conflict, when the commercialization of the property is owned communally (Andiko, 2003:1).

In addition to land registration, agrarian conflicts are also caused by farm/plantation legislation. Plantation land, in the perspective of state law is, *Hak Guna Usaha* (HGU). Acquisition of land for the benefit of the plantation began with licensing of regents or the location of the local governor as provided in Regulation of the State Minister of Agrarian Affairs / Head of the State Land Board No. 2 of 1999 on the Location Permit. Conflict of understanding between *adat law* and state law occurred in the granting of locations associated with the use of the lands of indigenous people. In general, the perspective of indigenous peoples, there is never a process of transfer of rights over their land to the state. Indigenous and tribal peoples of the view that the agreement is an agreement that they made loans to farm lands, so that when the HGU is complete, then the former plantation land will be returned status under customary land tenure of indigenous peoples. Problems occurs when these indigenous peoples demand the return of the land after the period expires. The best argumentation given by states officials is that the state is not acknowledge the communal ownership over land. This is because there is no agrarian law granting of land rights by the government in the form of communal land, customary land, or similar terms. BAL only recognized Property Rights, Right to Build, Right to Use and so forth. Even if the lands were returned to the former customary land, the distribution can only be given in the form of individual ownership.

In the field of forestry, with the birth of Law Number 41 of 1999 on Forestry, indeed as if to give recognition to the indigenous forest. But this recognition contains a trap for the existence of indigenous forests was followed by the phrase "state forest in the region for indigenous people".

So the message to be conveyed is that the indigenous forest that does not exist at all. This law has been confirmed that indigenous people, in the form of collective, not entitled to have its own forest. This article assumes that all of Indonesia's forest area has been designated and established as state forests and forest rights, thus there can be no remaining forest areas, including those located in the area of indigenous people (Laudjeng, 1999:81).

The mining sector also experienced a tough struggle of peoples' rights over the territory governed by customary law. Indigenous and tribal peoples often experience conflicts in mining deals with the determination of the mining area, that are originally customary land, which has been approved by the positive law.

IV. Conclusion

Legal pluralism, at this time, should no longer merely accentuate the dichotomy between the legal system on the one hand and the legal system of the people on the other side. Legal pluralism more emphasis on "a variety of interacting, competing normative orders - each mutually Influencing the Emergence and operation of each other's rules, process and institutions" (Kleinhans and MacDonald, 1997:31). The diversity of the law must be followed by a mutually beneficial interaction between the legal system. Conflict shows that the relation between state law with customary law does not run in complementary concepts but rather the conflict between the superior (state law) and the inferior (customary law).

The above explanation giving facts of the systematic neglect of the existence of adat laws governing customary rights of indigenous people which includes land, forest and mining. Customary law competed with state law and tend to always lose. Therefore, we judge the worth, generally, in the matter of the agrarian law in Indonesia there was a weak legal pluralism. In the midst of this limitation, agrarian legal pluralism soread sporadically in various places as a result

of political turmoil and the antithesis of the tensions between central and local governments. Special autonomy granted to Aceh and Papua, for example, a wide range opportunity on *adat law* in regulating agrarian affairs. Meanwhile, West Sumatra interpreted autonomy as an opportunity to restore local government (well known as *nagari*), although not yet have a significant impact in the field of agrarian . Regardless of the political tide of agrarian law in strengthening governance and management of indigenous peoples to land and natural wealth, the struggle for recognition of the rights of indigenous people, including communal rights to organize themselves in terms of customary law is ongoing. Search model of the relationship between state law with customary law in regulating the agrarian matters needs remain to be done to find the ideal model in the context of contemporary Indonesia.

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