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# Legal Pluralism and Land Administration in West Sumatra: The Implementation of Local and Nagari Governments' Regulations on Communal Land Tenure

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## Abstract

Land administration has always been a delicate issue in the history of nations, and Indonesia, a country where a significant number of the population lives a pastoral life is not exempt from this reality. This paper discusses land tenure issues in West Sumatra, an Indonesian province which is home to the *Minangkabau* people with their long existing village management system known as *Nagari*, established to settle disputes based on *adat* (custom) principles as well as to protect the rights of the community members. These rights include communal land (referred to as *tanahulayat* hereafter). Long before the Dutch occupation of Indonesian archipelago, the *nagari* government was vested with powers to regulate communal land in West Sumatra. However, this authority was constantly overlooked by the then Dutch colonial administration as well as the post independence governments (both central and regional). To reinforce the *Nagari*government as the guardian of the customary law (*hukumadat*) and to specify its jurisdiction, the Regional Government of West Sumatra enacted two laws between 2000 and 2008: Law No. 9/2000 repealed by Law No. 2/2007 and Law No. 6/2008 on communal land tenure. Although these two laws provide legal grounds to address land issues across the region, land conflicts still prevail in West Sumatra due to negligence of customary law, unkept promises as well as unsynchronized and contradictory regulations. The protests against the local army (*Korem*) in *Nagari Kapalo Hilalang*, against the oil palm company in *Nagari Kinali*, and against a cement factory in *Nagari Lubuk Kilangan* are cited in this paper as case references.



**Key words**: Local Government, *Nagari* Government and *Tanah Ulayat.*



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## Introduction

The legal system in Indonesia did not change very much after the country proclaimed its independence on August 17 1945 as many believe it did. The newly born republic operated on the same legal and political logic as its colonial predecessor, handing out titles as it deemed fit (Franz and Keebet Von Benda Beckmann, 2001). Before the arrival of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of *adat* (Peter Mahmud Marzuki, 2011). In contemporary Indonesia, as in many other post colonial countries, three strands of laws prevail namely: State Law (*Negara Hukum*), *Transnational* Law (imposed by international organizations), and *Adat* law (comprising religious and traditional laws) as the government struggles to incorporate the rights of local people within the state legal system. However, the recognition of these rights either by the colonial administration or the political regimes that ensued was the starting point of a 'weak legal pluralism' as Griffiths put it, for it was done "rather in an ambiguous way and subject to the state's regulatory control" (Franz and Keebet Von Benda Beckmann, 2001). The political concept known as Reformation Era (*Era Reformasi*) ensuing the fall of the Suharto's regime in May 1998 is regarded as the Indonesian government's attempt to bring about political, legal and social changes in respond to the people's need for greater individual freedom, democracy, equality and justice for everyone. But more importantly it was a call for more regional autonomy and a greater recognition of *adat* rights to village resources (Kurnia Warman, 2010, 213-70). As a consequence, government power and authority were decentralized with more rights and obligations for districts and villages across Indonesia[1]. In West Sumatra this prompted the resurgence of the *Nagari Government* that was dormant (1979-1983) under Suharto's regime. This article explains what the *nagari* concept and *tanah ulayat* refer to. It discusses the relationship between both state and *Nagari* Governments in dealing with communal land registration in West Sumatra, especially the difficulties involved and how to cope with them. The study was conducted in four *Nagari* from April 2013 to December 2014. The use of empirical data was required– that is 'a people-based approach' consisting of gathering information through direct interaction with people and processes, such as questionnaires and surveys as well as interviews with *adat* and religious leaders, legal institutions, *nagari* authorities, and parliament members. The research also used the 'text-based approach' which is based on acquiring information through texts, including statures, books, articles, newspapers, and reports. The use of empirical method as data collection technique was essential and efficient in my research for it aims at taking a closer look at the phenomenon being studied.

## What does *Nagari* government refer to?

As stated earlier *nagari* is a traditional organization considered as the smallest unit of local government in the province of West Sumatra. A nagari is legally formed based on territorial and genealogical factors: its borders are defined and consists of four clan (orriginally) (Kurnia Warman, 2010). It is often refered to as the village republic in the[2]. To this day, the number of *nagari* is estimate up to 754 spread throughout twelve Regencies (*Kecamatan*) [3]. A *nagari* consists of several subdivisions called *Jorong* (subdivisions) and is governed by a *Wali Nagari* (representative) who is both a political and cultural leader, and a Nagari Council (Dewan Nagari) as the village legislative body. But this does not mean that the Nagari Council functions as a parallel legislative body in the

[1] Law No.22/1999 on Regional Governments.
[2] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation.* P. 39-60
[3] See Data Base Kerapatan Ada Nagari-Padang 2013.

region. The Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah) is the only law making body in the province of West Sumatra. Each *Jorong* is led by a *Wakil Jorong*. The legislative body (the Nagari Council) consists of representatives of kinship group leaders within the nagari (Afrizal, 2007-35). The existence of this traditional form of government dates as far back as the mid 14th century after the establishment of *Pagaruyung* Kingdom, a Melayu Kingdom consisting of the province of West Sumatra and its surrounding villages[4]. When the Dutch occupies Indonesia, They enacted on January 1, 1848 a law called *Regeringsreglement* (R.R) whose Article 62 gave certain rights to *adat* institutions to deal with family and land issues. In West Sumatra, it was *Nagari* government that carried out this responsibility back then and up to this day. This stature (R.R), patterned on the 1848 Netherlands Constitution was deemed as mere law in the Netherlands but was used in colonized Indonesia as a constitution [5]. However, from the *Pagaruyung Kingdom* to this day, *nagari* has undergone several social and legal developments. In fact, after the independence, a new regulation called *Makloemat* (announcement) was passed in 1946 [6] by the West Sumatran Local Government that split the leadership of *nagari* into three bodies: *Dewan Perwakilan Nagari* (Nagari Representive Council DPN), *Dewan Harian Nagari* (Nagari Daily Boards, DHN) and the *Wali Nagari* who is the head of both the DPN and the DHN [7].

Furthermore, *Nagari* Government was again restructured in 1963 by another provincial regulation that set up three new bodies: *Kepala Nagari* (Nagari Head), *Badan Musyawarah Nagari* (the Nagari Discussion Boards, BMN) and the *Badan Musyawarah Gabungan* (the Combined Discusion Boards, BMG) whose membership was open to all *nagari* community members. In 1974 however, the Indonesian government enacted No. 5/1974 on Local Government. This law as Well as the Law No. 5/1979 played significant roles in shaping local governments throughout Indonesia. In West Sumatra regulation No. 5/1974 changed both the BMN and the BMG into a single body called *Kerapatan Nagari* as the only *nagari* instrument having both judicial and legislative powers (Taufik, 2000, pp.2-6). KN's members consist of kinship group leaders, Islam experts (ulama) and *nagari* intellectuals (*cadiak pandai*) (Taufik 2000, pp.6-7). The *nagari* system had long been West Sumatran people's way of self governance until it was dismissed by the New Order Village Governmental Regulation No. 5/1979 and replaced with a new system of governance called *desa* (village) under the Suharno's Administration. In West Sumatra, this law came into effect in 1983 and this meant the retirement of *nagari* leaders as the concept itself was dismissed. All the then existing 543 *nagari* in West Sumatra (including the islands of Mentawai) were spilt into 3516 *desa*, but only approximately 1700 of them remained active[8]. Nethertheless, the West Sumatran Local government in order to preserve the Mnangkabau tradition through nagari enacted a provincial regulation No. 13/1983 which put in place a 'new-style of nagari'[9] with a new council called *Kerapatan Adat Nagari* (KAN) whose leaders are elected by its members and approved by the Head of the district (Bupati) (Afrizal 2007, 36-37). Although this new provincial law has reintroduced *Nagari* Government into the political arena and helped *nagari* recover its legitimacy in West Sumatra, *nagari* is yet to be free from the influence of the local government as its elected leaders though stripped from their power need to be approved by

[4] See Rizqi Abdulharis, Kurdinanto Sarah, Dr. S. Hendriatiningsih, M. Yamin and Andri Hernandi, Measuring the Necessity of Re-Engineering of Indonesian Land Tenure System by Customary Land Tenure System: The Case of Province of West Sumatera, Indonesia.

[5] For detail on the R.R read Peter Mahmud Marzuki (2011), *An Introduction to Indonesian Law*, and for the recognition of nagari government see Kurnia Warman (2010), *Hukum Agraria Dalam Masyarakat Majemuk, Dinamika Interaksi Hukum Adat dan Kukum Negara di Sumatera Barat.*

[6] See Makloemat No. 20/1946 on Nagari Government.

[7] See Afrizal referring to the Ministry of Information 1953, pp. 326-336).

[8] See Kroesen 1873, Willinck 1909, Westenenk 1918 a, b, Bachtiar 1967, F. van Benda-Beckmann 1979).

[9] See Afrizal 2007, pp. 36

the head of the district (Bupati), and they could be removed from office by the Local government[10]. The reason for returning to the *nagari* system of governance is that many local politicians and traditional village leaders (*Panghulu*) claimed that the *desa* system had not functioned well, that it had destroyed *adat*, the unity of the *nagari* population and eroded the authority of the elders over the young (Franz and Keebet Von Benda Beckmann, 2001). In 1999 the structure and governance in Indonesia changed (again) when the Government enacted the Decentralization Act, No. 22 of 1999 which improved with Act No. 32 of 2004. This time, the Indonesian central government allowed room in the country's legislation for more district (rather than provincial) autonomy in political and economic affairs. Article 93 of this law stipulates that village must be created, abolished or integrated in consideration with the origin, on the initiative of the people and with the consent of both the district government and district People's Representative Assembly [11]. In 2000, West Sumatran local government responded to this law by enacting provincial regulation No. 9/2000 on *Nagari* Government which came into effect on January 2001 and from then on, nagari has remained the lowest unit in the state hierarchy in the province of West Sumatra except in the city [12].

## The understanding of *tanah ulayat* and its registration

It is important to note that even though a flimsy recognition was given to communal rights during the Dutch colonial administration through the Article 62 of the colonial constitution called *Regerings Reglement* (RR) January 1854 along with the colonial agrarian law *Agrarische Wet* 1870, it is the Indonesian Basic Agrarian Law No. 5/1960 known as *Undang Undang Pokok Agraria* (UUPA) enacted under president Soekarno that really gave recognition to communal rights throughout Indonesia [13]. Besides the UUPA many other statutes contributed into building legal bases and legal protection of these communal rights at the national level. These statutes are: the Forestry Law No. 5/1967 replaced by the Law No. 41/1999, the Basic Mining Law No. 11/1967, the Fishery Law No. 31/2004, and the Water Resource Law No. 7/2004 [14]. As a recognition of communal rights at a regional level, West Sumatra provincial government enacted the Regulation No. 16/2008 on communal land tenure as mentioned in the outset of this paper. Explicitly, this regulation states that *tanah ulayat* management is aimed to protect the existence of *tanah ulayat* under the *Minangkabau*'s customary law and ensure benefits of land resources including natural resources for the survival and life of all *anak nagari* (nagari community members) [15]. *Tanah ulayat* refers to all land within the jurisdiction of a *nagari*, the *Minangkabau* lower unit of government and is managed according to *adat* (customary) law [16]. The appellation *ulayat* is typical to the *Minangkabau* people. In other provinces different terminologies are used i.e *patuanan* in Ambon, *panyampeto* or *pawatasan* in Kalimantan, *wewengkon* in Java, *prabumian* in Bali, *limpo* in South Sulawesi, *paer* in Lombok etc… *Tanah ulayat* consists of three types: *ulayat nagari* (nagari communal land) land that belongs to the community as a whole,

[10] A nagari leader at *Lembaga Kerapatan Adat Alam Minagkabau* (LKAAM-Sumbar-Padang) told me during an interview on December 17, 2014 that the new style of *Nagari* has weakened they power in the eyes of their community members. He complained that they no longer have any real influence over the community. He mentioned that the supervision of the *gotong-royong* (community gathering for social work) by the police is a proof of they lack of influence over the community.

[11] See Art. 3 Law No. 22/1999 on Regional Government in Indonesia.

[12] See Afrizal, The Nagari community, Business and the State.Sawit Watch, 2007, p37

[13] See Kurnia Warman (2010) *Hukum Agraria Dalam Masyarakat Majemuk. Dinamika Interaksi Hukum adat dan Hukum Negara di Sumatra Barat,* Ed.1. –Jakrata; Huma; Van Vollenhoven Instutute; KITLV-Jakrata.

[14] Ibid.

[15] See Regional Regulation No. 6 2008, Art. 4

[16] See Art. 1 of Law No. 13/1983 on nagari government.

*ulayat suku* (clan communal land) which consists of sub-clans and its size depends on the number of its members, and *ulayat kaum* (sub-clan communal land) (Kurnia Warman 2010, 33-50). *Ulayat* land is under the authority of either clan leaders or the kinship group leaders (*ninik mamak*). *Tanah ulayat* is to be differentiated from *adat* land. The former refers to land that belong to a kinship group or the *nagari* community while the latter implies land unregistered and that can be owned by individuals [17]. *Tanah Ulayat* designates village land or territory and includes land, forest, water and minerals. Village land was mostly under the socio-political control of the village government, but it could also be distributed among the founding clans of the villages, and then administered by the heads of the clans (van Vollenhoven in Holleman 1981: 137). A *tanah ulayat* is usually freely accessible to the members of the village or clan respectively. It can not be alienated. Temporary access and withdrawal rights could be given to nonresidents against a fee of recognition contrarily to what many scholars and researchers argue [18]. The Dutch called this right of socio-political control *beschikkingsrecht*, right of disposition or right of avail (Holleman 1981: 287, 431). A *tanah ulayat* can be registered at the District Land Administration Board (Badan Pertanahan Kabupaten/Kota), only if all members of the matrilineage (*kaum*), or clan (*suku*), or the heads of all clans agree (*atas kesepakatan*). Such titles can only be used as security for loans with the consent of all members of the respective communities [19]. From what precedes it is clear that power administrate *tanat ulayat* is vested in the hands of the clan leaders or kinship group leaders as they can levy taxes on those willing to use land, forest, rivers. 'They may negotiate the pawning or sale of communal land, block transactions or take the land for themselves (Kahn 1980, 55). But despite government intention to regulate land tenure in west Sumatra by reviving the *Nagari* Government, lots of difficulties remain in *tanah ulayat* registration in the Province of West Sumatra.

## Obstacles to *tanah ulayat* registration

Before we get to discuss the obstacles in communal land registration in the province of West Sumatra, it is important to remind what the Indonesian Government Regulation No. 24/1997 in its Article 9 Section 1 says about the types of lands that can be registered throughout Indonesia. According to this regulation, only the following can be registered:

1. Land property, the right to cultivate, the rights to build, and the rights to use.
2. land management rights;
3. Property for religious and social purposes;
4. apartment ownership;
5. mortgage;
6. State land.

From the above provision it is clear that the Indonesian government did not include *tanah ulayat* within land registration objects within its agrarian law. Did the government do so on purpose or by omission? Or for fear that registering communal land would stir up tensions among the *nagari*

[17] Afrizal referring to Mirwati 2000, p.9 in his foot notes.

[18] Many scholars especially Franz von Benda-Beckmann who has significant publications on Minangkabau people argues in his article: *Legal Pluralism and Social Justice in Economic and Political Development*, that voluntary and involuntary migration has led to increasing contacts between population groups that until then had been living in relatively closed communities. Group migration, movement of individuals or individual families settling in new communities and intermarriage, produce great problems about the rights of newcomers in their new host communities. My research finds that this might be the case in other part of Indonesia but not in West Sumatra. Even if it was, it would be related to land as none of the land conflicts that I researched on has to do with new comers.

[19] See Article 13 of the Law No. 16/2008

community? Boedi Harsono, an Agrarian Law professor gives an account to this question:

> Communal rights will not be registered. Basic Agrarian Law does not rule its registration, and the Government Regulation No. 24/1997 on land registration, communal land is intentionally not included in the registration objects. Technically, this is impossible because the boundaries of the land may not be delimited without the occurrence of legal dispute among the community.

The complexity of *tanah ulayat* makes it harder to put in place satisfactory policies for everyone. Yet there is a crucial and constantly growing need for its registration as everyone wants to do business: on the one hand you have the local government willing to use the land to support social welfare programs, and *nagari* community members claiming land certificates so they can rent out their land to pay off a debt or send their children to school (Afrizal 2007), and you have on the other hand *nagari* and kinship leaders, as part of the state hierachy and *adat* defenders. This constitutes a quandary to all parties involved, thus counterproductive. Brian Z. Tamanaha acknowledges this by saying:

> A great deal of land in development contexts is not officially titled, especially where registering title is a lengthy and costly process. In the absence of legal recognition,… property cannot be used as collateral to secure loans, people are less inclined to improve the property (fearing they will lose it), and the market for real property is artificially constrained. As a result, much of the potential wealth and capital in developing societies is locked up unproductively[20].

*Tanah ulayat* as was stated earlier belongs to the *nagari* community as a whole. This implicitly means that such a land cannot be registered because doing so would mean private ownership which is contrary to *Minangkabau* tradition [21]. There is a saying in *Minangkabau* tradition that goes: “dijua indak dimana bali, digadai indak dimana sando” meaning: if it is to be sold, it may not be eaten up by the buyer, if it is to be pawned, it cannot be eaten up by the pawner. Kurnia Warman, an Agraria Law professor with whom I had an interview has a view pretty similar to what precedes. He thinks that it is not that communal land cannot be registered, but problems rise because the land certificate can not bear the name of a single person according to *adat*. He commends that many of land related conflicts would be prevented was a solution to this issue found[22]. This state of unclear ownership over *tanah ulayat* has pushed land predators to rush in and create chaos which has led to many land related conflicts whithn the region.

## Land conflicts in West Sumatra

From 2004 to 2008 there were 116 cases of conflict over 125.924 hectares of *tanah ulayat* in West Sumatra[23]. Of these 116 cases, three are worth discussing due to their intensity:

[20] Brian Z. ‘Tamanaha Rule of Law and Legal Pluralism in Development’. Legal Studies Research Papers No. 11-07-01. Washington University in St Louis, School of Law p. 14
[21] Interview with a leader the *Nagari Adat* Counsel in Padang on September 23, 2013
[22] Discussion with Dr. Kurnia Warman an Agrarian Law professor at Andalas University. He has conducted significant research on Legal Pluralism and the Indonesia Agrarian Law with focus on communal land in West Sumatra.
[23] Database of Padang Legal Aid Agency (LBH-Padang), 2010

**Conflict 1**: A community protest against the Army sub-district headquarter (*Korem*) over a rubber plantation located on a *tanah ulayat* annexed by the local Army in *Nagari Kapalo Hilalang*. In fact, in 1998, the community of *Nagari Kepalo Hilalang* rose against the *Korem* demanding the return of *Tandikat Lama-Baru*, a rubber plantation located on their communal land that had been under military control since the 1950s. The disputed land was deemed state property based on a colonial law called *Erfpacht*, a 75 year land use right granted to private investors by the Dutch colonial administration. Dutch and German investors back then established two rubber plantations at *Nagari Kapalo Kilalang* on a 75 year lease: *NV. Java Rubber Masschappij* established in 1904 at *Tandikat Lama* (Old Tandikat), and *G.O.E Kreeber* established in 1923 at *Tandikat Baru* (New Tandikat) (Afrizal, 2007 p. 58). The use of these two plots of land by foreign investors ended with the withdrawal of both the Dutch and the Japanese which also left the abandoned plantation with no clear claimant nor explicit law. After the departure of the two foreign investors, both plots of land were combined under the name of *Tandikat Lama-Baru* and were once again controlled by both the Indonesia Military Retirement Association and the Tandikat Planters Association in 1957. However, due to political unrest within the region the plantation was abandoned for the second time. Between 1960 and 1965, *Tandikat Lama-Baru* got another owner; Burhanuddin, a native of the region who established a company called *PT. Tandakat Baru Corp*. But Burhanuddin was accused of being a communist by the military and was arrested in 1966. Consequently, *Tandikat Lama-Baru* was left again without ownership. After the arrest of Burhanuddin, the military seized the plantation on the ground that it was being used by the Indonesian Communist Party (PKI) and that investigation had to be run. The head of the Army local headquarter was appointed administrator of the property and *Korem* auto-proclaimed itself owner of the plantation in 1969. Unable to properly run the plantation, *Korem* passed it to a company called PT. Purna Karya in 1974 (Afrizal, 2007-59). In 1979 discontents began to grow as the 75 year lease ended. In mid 1998, leaders of *Nagari Kepalo Hilalang* began to protest against *Korem* demanding that *Tandikat Lama-Baru* be returned.

**Conflict 2**: The protests against the oil palm plantation in *Nagari Kinali*.

From 1993 up to 2002, member of *Nagari Kinali* protested against Oil Palm Companies asking them for compensations, the transfer of smallholder plantations, and the return of the annexed *tanah ulayat* to the community. In fact the existence of the first oil palm company in this region dates back in 1934, but the number increased to over 6 large oil companies by the end of 2002, thus making *Nagari Kinali* the oil palm plantation nagari. At *Nagari Kinali* as well as at many other *nagari*, the use of land for oil palm plantation is granted at no cost by the kinship leaders (*ninik mamak*), the only authorities vested with power over land [24]. During the 1980s, the local government of the region (Pasaman) persuaded the kinship leaders to provide their land to oil palm investors for the development of the region as well as for the welfare of all community members (*anak nagari*). No written agreement from either the oil palm companies or the local government was issued though. The kinship leaders agreed (by signing a land alienation/transfer letter or *Surat Pernyataan Pelepasan Hak*) and were promised stakeholder (Nucleus Estate and Smallholder) in companies to be built[25]. At this *nagari*, the head of the *Kerapatan Adat Nagari* (KAN), the Adat Council stirred up the contempt of the people by misusing land alienation money (*bungo siriah*) provided by oil palm plantation companies. The people urged the head of the district (*Bupati*) for his resignation, but the accused remained in office until he died [26].

In addition to this case of corruption, local people began to protest again oil palm plantation

[24] Interview with KAN leaders at Nagari Kilangan on December 30, 2014, 14:30

[25] See Afrizal, The Nagari Community, Business and State, p. 96

[26] Ib.

companies to claim their Smallholder plantations (Kebun Plasma) as agreed earlier [27]. The community also claimed customary dues (*adat diisi limbago dituang*), irrigation schemes and plantation partnership to kinship leaders as no land was purchased at the start. Similar events occurred at *Nagari Lubuk Kilangan*- Padang.

**Conflict 3**: the clash between indigenous people, the local government and *PT Semen Padang*, a cement company at *Nagari Lubuk Kilangan* (the biggest and oldest cement factory in West Sumatra). In fact, between 1997 and 2001, the community stood up against their local government as well as *PT Semen Padang*, much for the same reasons as their counterparts. But unlike the two other cases reported above, the protest against *PT. Semen Padang* was not directed toward the return of the being exploited by the cement factory as the community leaders themselves acknowledge the advantages it brings to all community members. Instead, the protesters demanded that more factory workers be recruited from the *nagari lubuk kilangan* and that families affected by the company's activities be treated decently. They also claimed a fair share in the revenue of the cement business. They did not want handouts of any kind as this would signify begging. Instead, they asked for levies and royalties, and more importantly, the 'respect for *adat* legacy'[28]. Besides these claims, community leaders also demanded that neighborhood schools and mosques be renovated and looked after.

All these three protests along with many others are the results of unkept promises by local governments and investors, opaque and non-*adat* confirming land acquisition procedures and land inacessibility in the concerned area. Most of the *Minangkabau* people I interviewed agree that this has contributed into slowing down the economic development of West Sumatra as compared to its counterparts, North Sumatra and Riau provinces. 'Property in many societies is conceived of and controlled in a variety of ways that do not match freehold ownership by individuals. In such societies, family and clan members possess various capacities to use land—to cross it, graze their animals on it, collect its fruits, till it—and others must be consulted about uses of the land. The process of titling extinguishes much of this because use and access rights are not recognized by standard legal titles… When property is titled in situations like this, individuals are confronted with conflicting rule systems as Brian Z Tamahana points out [29].

Even though the Indonesian 1960 Basis Agrarian Law remains silent or ambiguous vis-à-vis the registration of *tanah ulayat*, the west Sumatra local government enacted Law No. 16/2008 which, unlike the Basic Agrarian Law, instructs on how *tanah ulayat* can be registered provided that all members of the matrilineage (*kaum*), or clan (*suku*), or the heads of all clans agree. In fact, the Article 5 of this local regulation classifies *ulayat* land in four categories of lands that can be registered at the District Land Office: *tanah ulayat nagari* (Nagari communal land), *tanah ulayat suku* (clan communal land), *tanah ulayat kaum* (sub-clan communal land) and *tanah ulayat rajo* (State land). But what seems ambiguous is the fact that the four categories of *ulaya lands* change their statuses once registered at the District Land Office. Thus, according to the regulation a *ulayat land* once registered becomes: *Hak Guna Usaha* (HGU) Commercial Use Leases, *Hak Pakai* HP) use rights, and *Hak Milik* (property ownership). This means that if registered, a *ulayat nagari* becomes State land which also means the rights owner cannot fully use his property[30]. He can only use the land for agriculture,

[27] Padang Ekspres November 1-4, 2003
[28] Interview with Depute Head of KAN Lubuk Kilangan on December 12th, 2014 16: 04
[29] Brian Z. 'Tamanaha Rule of Law and Legal Pluralism in Development'. Legal Studies Research Papers No. 11-07-01. Washington University in St Louis, School of Law p. 15
[30] See Septria Yanto, Tinjauan Yuridis Atas Berlakunya Peraturan Daerah Provinsi Sumatera Barat Nomor 6 Tahun 2008 Tentang Tanah Ulayat Dan Pemanfaatannya).

fishing, farming and livestock for a maximum time period of 30 years extendable up to 25 years [31] and he's required to pay revenue to the state [32]. The changing of *ulayat land*'s status to HGU (Commercial Use Leases) has raised discontent among the community fearing that this decision might use up all *tanah ulayat* without any guarantee to get them back from the third party at the end of the contract (Kurnia Warman 2010, 226). Furthermore, the same law on land registration also recognizes two different types of ownership: *hak milik* (property rights) and *hak menguasai* (right to control). *Hak milik* holders i.e. the local government, State companies (BUMN), government institutions, district government companies (BUMD) and corporations can own and fully use the object (land) any way that pleases them [33]. *Tanah Ulayat* as a property belonging to the *nagari* community as a whole falls under the *hak menguasai* meaning that the rights holder has control over the object but he/she cannot use it as he/she sees fit. I find this separation of rights ambiguous because the object of *hak milik* is located within the *ulayat nagari*, and therefore it is the domain of the *nagari* just like any other *tanah ulayat*. With the enactment of the Local Government regulation No. 9/2000, *nagari* government is vested with authority over *tanah ulayat* for the benefit of all community members, yet there is a Presidential Decree promulgated in 2001 that says land administration throughout Indonesia should be centralized[34]. This, to my view is a mess as it does not provide a clear authority to turn to when conflicts over land arise. The state of collective land ownership whereby power rests in the hands of some community leaders and government officials strips community members of their autonomy and privacy[35]. 'Although ownership per se is not essential to privacy, titles to property are a way of expressing the claim to privacy' as David Dyzenhaus (1997) puts it.

Finally, problems in *tanah ulayat* registration are not only caused by regulations competing or contradicting one another but also for lack of clear pretender from pre-colonial time to this day. In fact, it is not always clear who the legitimate claimant is. Of the village government, the Nagari Adat Council, the head of a given clan, all lineage heads within the clan, or even one particular lineage who really has legitimate control over a *nagari*'s resources and revenues is till a unsloved riddle. In some *nagari*, the authority over *nagari* resources has been officially handed over by the head of the Nagari Adat Council to the Local Government. In other *nagari* compromises between the two are negotiated, which makes the land tittling process ambigous and tedious. The lack of clear ownership resulted in massive land takeovers by the then colonial administration as well as the military during president Suharto's New Order [36]. In fact the ambiguity surrounding the registration of *tanah ulayat* in west Sumatra region did not begin in recent years; it dates as far back as during colonial time. When the Dutch occupied the island, they denied local communities' rights over land as they were based on *adat* law which was not recognized as a proof of ownership in Dutch law [37]. To run its land expropriation agenda the Dutch administration (King William III) enacted on july 20th, 1870 a law called *The Domain Declaration* of Sumatra's West Coast [38]. Its sections 2 and 3 declared land, for which "ownership" could not be proven, to be the domain of the state [39]. The State could decide that this land be put to economic use, usually in the form of a long lease (*erfpacht*) of 75 years. Since each piece of

[31] Art. 8 of the Presidential Decree No. 40/1996 on land tenure.
[32] See the Presidential Decree No. 40/1996 Art. 12, Section 1
[33] See Art. 20 Section(1) The Basic Agrarian Law 1960
[34] See Presidential Decree No. 10/2001
[35] In a book entitled Recrafting the Rule of Law: The Limits of Legal Order. Hart Publishing edited by David Dyzenhaus, Christine Sypnowich, talking about the importance of the Rule of Law quoted Thomas Scanlon:
"ownership is relevant in determining the boundaries of our zone of privacy, but its relevance is determined by norms whose basis lies in our interest in privacy, not in the notion of ownership"
[36] See Donald K. Emmerson (1999), Indonesia Beyond Suharto, Polity, Economy, Transition. P. 31
[37] Dr. Afrizal quoting Harsono 1999, p. 4142
[38] See Law No. 15, S. 1870
[39] Read Mahadi, Uraian Singkat Tentang Hukum Adt Sejak RR Tahun 1854, p. 101

land needed to have an owner in the colonial legal logic, it was considered inevitable that the state became the owner of that land given the absence of any specific owner (Franz and Keebet Von Benda Beckmann). Notorious are the declarations of state domain over resource areas that, in colonial interpretation, were deemed to be 'waste lands' or 'terra nullius'. Most post-colonial states have retained and even expanded proprietary rights over vast resource environments[40].

In my enquiry of legal pluralism over land tenure in West Sumatra province, I have presented an overview historical development of the *nagari* government. I have argued that it is a traditional government system at the village level vested with power to control all aspects of life in the community in accordance with (*adat*). I have also discussed what a *tanah ulayat* refers to and the difficulties involved in its registration. And finally, I have pointed out that unsynchronized regulations, unclear land ownership, unkept promises and the non-respect of *adat* have contributed into the outbreak of several land-related conflicts throughout West Sumatra province.

## Conclusion

Collective land ownership as that of *tanah ulayat* in the province of West Sumatra is meant to prevent clashes among community members on the basic of commonness. It could also be seen as a democratic system for it is oriented toward promoting the general interest of its members. However, as the *Minangkabau* society evolves from an agrarian to an industrial one, conflicts over communal land become more and more inevitable (community protests at Nagari *Kapalo Hilalang*, *Semen Padang*, *Lubuk Kilangan*, and *Kinali*). Legal pluralism helps reduice the gap between West Sumatran local government and the nagari. But it also brings about contradiction, and contradiction implies not only a flaw in reasoning process, or lack of understanding of the issue at play [41] , but it also shows distinct institutions fighting for legitimacy (Jon D. Unruh, 2003). The co-existence of a plural normative and institutional orders offers opportunities for many actor groups to pursue different economic and political objectives (Benda-Beckmann and Taale, 1992:83). Brian Z. Tamahana[42] agrees with this when he argues: 'two coexisting bodies of law, state and customary, are brought into clash in a manner that unsettles both, allowing competing claimants to point to different legal sources in support of their conflicting positions'. This situation is rather a *forum shopping* (K. von Benda-Beckmann (1984), and does not comply with the Rule of Law concept as there is no legal certainty. Not only does the fact that *tanah ulaya* is the property of the *Minangkabau* people as a whole based on their tradition make its registration difficult, but it does also make it vulnerable to predators. Governments should respect local people's tradition and stop encroaching on *tanah ulayat* and side with the people whenever an intruder invades and seize their land and other land related assets. A government that takes away or can not protect the rights and properties of its people is no government at all (John Locke, 1689). For transparency, *Nagari* leaders should declare all lands and other assets under their control, make annual land management reports, and be held accountable for every one of their actions by the community. The local government together with the provincial parliament should remove ambiguous and competing agrarian regulations, provide legal training to *nagar*i leaders and ensure that land regulations are made with their effective participation and consent.

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[40] See . Franz von Benda-Beckmann, Legal Pluralism and Social Justice in Economic and Political Development, IDS Bulletin Volume 32 issue 1 2001

[41] *N. W. Barber*, Legal Pluralism and the European Union, *European Law Journal, Vol. 12, No. 3, May 2006, pp. 306–329*

[42] See Brian Z. Tamanaha, *Rule of Law and Legal Pluralism in Development*. Legal Studies Research Paper No. 11-07-01, Washington University in St Louis, School of Law.

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