LEGAL CONSTRUCTION IN CULTIVATING THE VILLAGE LAND BY ANAK CUCUANG OF THE CLAN AT PASAR SEBELAH VILLAGE OF KOTA MUKOMUKO DISTRICT OF MUKOMUKO REGENCY

By:

Muchamad Adyansyah, Emelia Kontesa, Hamdani Ma'akir

ABSTRACT

In the Implementation of the Right to Work on Village Land by the Clan Offspring (Anak Cucuang) at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency there were irrelevancies done by the clan offspring. The objectives of this study were (1) to analyze and explain the implementation of the right to work on the village land by the clan offspring at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency, (2) to analyze and explain the legal construction in cultivating the village land by the clan offspring at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency. The type of this study was empirical juridical, because the materials covered prioritize a review of the terms of legislation and realities implementation associated with the Implementation the Right to Work on Village Land by the Clan Offspring. Research results show that 1) the implementation of the right to work on the village land by children cucuang at Market Village Next to Sub City Mukomuko where implementation is not fully in accordance with the customary laws in Market Village Next to Sub City Mukomuko mainly the result of customary deliberation during delivery village land to each - each tribe and tribe anak cucuang in 2005 and the division of work on this right can be seen in the range of 2005 to 2009. 2). Construction law of distribution rights work on village land by anak cucuang the presence handover state land occupied by the village is the village chief, secretary of the village, members of BPD and Chief BPD along with other village to The Enam Dihulung Sikumbang, The Enam Dihulung, The Empek Bleh and the Limo Sukung for managed and fished, after the land is controlled by the jointly - together the management mechanism governed by custom by the head of the respective joint - each clan through the conference (the conference).

Keywords: Mukomuko, AnakCucuang, Work
A. INTRODUCTION

1. Background

Customs is a timeless code of conduct and passed down from one generation to another generation as a legacy to make a strong integration with the behavior patterns of society. One of them is about the indigenous society of Mukomuko Regency located in Bengkulu Province. Mukomuko is one of the regencies in Bengkulu Province, Indonesia, as an expansion of Bengkulu Utara Regency.¹

Tribes in Mukomuko Regency embrace the type of unity relatives called Clan.² Clan is based on the similarity of origin, like Family Line in Batak.³ Meanwhile, according to Tabrani as the Chief of Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency of Bengkulu Province, the so-called clan is a group of people/communities that consist of a single lineage, and should not be married to each other if they have a relationship in birth, whereas if different in birth so the clan offspring (anak cucuang) can be married, and have the duty to help each other in life⁴.

Each Clan is led by a Clan Chief who directs all activities related to the clan. The chief is a person elected by the members of the clan and done according to the custom. He also became the customary leader who has duties to protect, guide, and solve each problems faced by members of the clan, Pasar Sebelah Village of Kota Mukomuko District was led by one Clan Chief, namely:

1. The Clan of enam in the upstream of Sikumbang, the Clan Chief was Yarita.
2. The Clan of enam in the upstream, the Clan Chief was Daipul.
3. The Clan of empat belas, the Clan Chief was M. Jais.
4. The Clan of lima suku, the Clan Chief was Bandar.⁵

In Mukomuko Regency especially at Pasar Sebelah Village of Kota Mukomuko District there was Free State land controlled by the village with an area of about 300 hectares, stretching from

⁴Based on the interview with the Chief of Pasar Sebelah Village, Mr Tabrani, on February 4, 2016.
⁵Based on the interview with the Chief of Pasar Sebelah Village, Mr Tabrani, on February 4, 2016.
Muara Baru to Muara Lama of Pasar Sebelah Village and 300 M from the beach. The land was owned by the village through the Village Chief, Village Secretary, the Chairman and members of the BPD, this land is the land of the former community of Pasar Sebelah Village who previously did farm cultivation.

Around 2005 raised the question, each clan at Pasar Sebelah Village of Kota Mukomuko District in holding ceremonies (both for bad or good events) requires funding as well as to purchase inventory for the clan, usually the source of funds was only obtained from the Village Chief or from the clan offspring, and the claiming of the land of the village by a couple of offspring namely "Sf, My and Sn", they controlled 2-4 hectares of village land for their own interests, by claiming that the land belonged to their ancestors who earlier previously did farm cultivation, this event had been reported to the authorities but the case was withdrawn and can be solved by custom by the village chief along with the village officials device and the Clan Chief.

To overcome the problems mentioned above, in 2005 Mr. Saharudin as Village Chief along with Tabarani as the Chairman of BPD of Pasar Sebelah Village of Kota Mukomuko District and all the Clan Chief at that time, village officials, customary leaders, and representatives of clan offspring from each clan gathered at the village hall to hold a meeting of indigenous using state land occupied by the village which has not managed or worked on.

So that in the meeting it was agreed orally that each Clan at Pasar Sebelah Village will get the village land as much as 1 Ha after in which the land will be handed over from the village to the Clan, then the mechanism of management will be depended on each clan through the clan chief, to determine who will manage and the results should be kept in clan for the necessities of the clan, while for each clan offspring at Pasar Sebelah Village of Kota Mukomuko District who has married and has a clan the village gave the land to them as much as ½ Ha to possess and grow crops on the condition that the land should not be in traded, as well as the village can only be issued the SKT to the first party who get the land.6

Based on the description above, the writer intends to conduct a study that is intended to look at the legal construction

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6 Based on the interview with the Chief of Pasar Sebelah Village, Mr Tabrani, On May 5, 2015.
in cultivating the village land by the clan offspring. Therefore, in the writing of this study, it was taken the title of “Legal Construction in Cultivating the Village Land by Anak Cucuang of the Clan at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency”.

2. Identification of the Problem
How was the legal construction in cultivating the village land by anak cucuang of the clan at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency?

B. RESEARCH METHODS
1. Types of Study
This study used empirical juridical approach which intends to describe the reality of the application of law in a society that is implicitly applicable according to the ideologist rules of law. Legal study is done by examining the primary data, ie data obtained from field research done by conducting interviews and using a questionnaire that had been developed previously and elaborated during the interview with the respondent (structured interview).

2. Design of the Study

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7 Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: King Grafindo Persada, 2005). P. 159

Descriptive method is a method in researching the status of a group of people, an object, a set of conditions, a system of thought, or a class of events in the present. The purpose of descriptive study is to create a description, overview in systematic, factual and accurate information on the facts, nature and the relationship between the phenomenon investigated.8

In this study, descriptive research method was intended to illustrate, describe, discuss and elaborate how the Legal Construction in Cultivating the Village Land by Anak Cucuang of the Clan at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency.

3. Data Resources
In this study, the data used was primary and secondary data.

a) Primary Data
Primary data is the data obtained directly from society. Soerjono Soekanto said that primary data is gotten directly from the main source which is the attitude of society through research.9 Primary data is

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obtained directly from the respondent which is the society of customary law in the location of research through interview. The interview done toward the respondent is to:

1) Head of Division of Local Government of Mukomuko Regency
2) Head of Pasar Sebelah Village
3) Secretary of Pasar Sebelah Village
4) BPD of Pasar Sebelah
5) Head of Customary of Pasar Sebelah Village
6) 4 (four) Heads of Tribe of Pasar Sebelah Village
7) 3 members of each tribe pf Pasar Sebelah Village
8) 2 Civil Servant Workers of National Land Agency of Mukomuko Regency they are Head of Section of Conflict and Head of Section of PHT (Land Rights Arrangement)

b) Secondary Data

Secondary data is the data gotten through literature. This study not only used primary data, but also secondary data obtained from books, references, Law, theses, documents, articles and others related to this study.

4. Method of Collecting The Data

a) Primary Data Collection

Primary data collection is done by interviewing. Primary data collection is conducted by interviewing as one of techniques in a research that has a mean to gather the information or data. Interview is applied directly and deeply to respondent according to the list of questions that is ordered and developed right on the interview with the problem of the research in order to answer the problems offered.

b) Secondary Data Collection

Secondary data collection is the data gotten from the literature such as books, references, law, documents, articles, theses, and others.

5. Method of Processing The Data

Data processing is the initial part in science method, because by processing the data, the data could give useful meaning and significance in solving the
research problems. Raw data that has been gathered needs to be broken into groups, categorized and processed in such way in order to make the data has a significance to answer the research problems.

Simply data processing is meant as the process in interpreting the field data in line with the goal, plan, and nature of research. In qualitative research, data processing is using non-statistical technique, considering the field data gotten in form of narration or words, not numbers.

6. Method of Analyzing The Data

Method of analyzing the data used was qualitative analysis by compiling and gathering the data, and then it is arranged in such frame, after that it is analyzed by using interpretation. Data analysis conducted qualitative analysis method which was done continuously since the beginning of the field till the ending of research.\(^\text{14}\) In this case, it is to get more understanding of regulation by using various sources regarding to give satisfactory explanation and give juridical meaning. To analyze the data, this study did the data collection from interview result in the field and the data of some literatures or internet to get conclusion of the facts of research.

C. RESEARCH RESULT AND DISCUSSION

Legal Construction in Cultivating the Village Land by Anak Cucuang of the Clan at Pasar Sebelah Village of Kota Mukomuko District of Mukomuko Regency

Answering the Law Construction in Tilling the Village Land by Anak Cucuang of Desa Pasar Sebelah of Kota Mukomuko District of Mukomuko Regency, then this issue would be examined from the perspective of indigenous treaty, in other words land transactions in customary law.

That advance would be described types of land transactions in customary law, according to Dewi Wulandari, land transactions in customary law essentially consists of two aspects:

1. Transactions of land which is a unilateral legal act, as an example of the establishing of village and opening of land by a national alliance.

2. Transactions of land which is the legal act of the two parties, for example, transfer or delivery of a parcel of land that is accompanied by a cash payment from the other

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party at that time to the beneficiary of land and land payments.\textsuperscript{15}

Understanding this land transaction is a kind of reciprocal agreements or bilateral agreements / faceted nature rill in the legal field of wealth that is one form of deeds cash / cash (contante handeling) which land objected.

Associated with the explanation above, Muhammad Bushar in the book of Djamanat Naidoo, split the types of land transactions by referring to the contents purchase transaction, namely:

1. Submission of land with cash payments accompanied by provisions that were handed over payment of a sum of money (by appointment).
2. Submission of land with cash payments without terms, so should / forever, called adolplas (Bogor), runtemurun (Java), sell Jada (Borneo), sell off (Riau and Jambi).
3. Submission of land with cash payments with the agreement that if there is no other legal acts, one, two or multiple harvests, the land is returned to the original land owner, called the annual selling, odol oyo don (Java).\textsuperscript{16}

Meanwhile, Djamat Naidoo, who mentioned transactions involving customary land can also be "Giving or land grant" this is not necessarily a piece of land given to be exchanged for certain amount of money or in kind, but in this transaction is in form of submission of an object or right transfer material from one person to another, with certain reasons such as a sign of devotion, as a sign of related, as a sign of payment, as a sign of giving in a marriage, and as luggage in a marriage.

In harmony with the explanation above, the results of consultation undertaken by the Village, each head of tribe, and citizens of Pasar Sebelah Village based on the Results Deliberation Indigenous and villages, the decision to distribute a piece of land to individuals or Anak Cucuang tribe or to a certain groups of people in Mukomuko Regency called the Right to Work and the provision of a land plot could be validated according to customary law, even only in spoken and not in written.

This is due to an agreement in the customs and transfer ownership of the village to the individual or Anak Cucuang tribe and to each tribe in the Pasar Sebelah village, with specific requirements such as should not be traded and must be managed which results could be utilized for the welfare of Anak Cucuang tribe or for each tribe.

\textsuperscript{16}Ibid
Construction of law in the Mukomuko District of Mukomuko Regency could be seen in the following table:

Table 1

Year of 2005 Granting Rights of plots of land to each tribe and Anak Cucuang tribe in the Pasar Sebelah Village of Kota Mukomuko District namely;

State’s Land Authorized by Village Administration through Village Chief, Village Personnel and Villagers

Village land of ±300 ha, 300 m from coastline along Muara Lamo to Muara Baru in Desa Pasar Sebelah Village will be given to each clan in Desa Pasar Sebelah Village through Clan Chief. Regarding to Kaum land, Clan Chief will have the authority regarding to its management through clan meeting. Related to land given to clan offspring/160 families of ½ ha, Village Chief and Village Personnels shall give directly to clan offspring through a special team with the help of clan chief to list the eligible offspring based on their marital status and clan relation.

Adat Meeting in 2005 attended by:

Village Chief, Village Secretary, BPD, Adat Chief, Clan Chiefs and Villagers to form a team of village land distribution and to draw a map that will be given to each clan and clan offsprings. Total land given to 4 clans in Desa Pasar Sebelah villages is 4 Ha, to clan offsprings is 80 ha. The management of Land for clan is given through clan chief while land for 160 clan offsprings/families is given directly by Village chief and Village Personnel under conditions that it cannot be sold and shall be farmed for the prosperity of those families.

Decisions on Adat Meeting of Desa Pasar Sebelah Village Agreed Orraly

Kaum Enam Hulu gets 1 Ha
Kaum Enam Si inHulu Sikumbanggets 1 Ha
Kaum Empat Belasgets 1 Ha
Kaum Lima Sukigets 1 Ha
And each clan offspring of 160 families gets land of ½ ha.

Rights and Obligations of each Clan and Clan Offspring toward the Decisions Achieved in Clan Meeting Regarding to Land Given from Village Chief and Personnel:

Rights of each clan and clan offspring toward the Kaum land:
1) The authority of the land is collective through Clan Chief.
2) It is necessary to protect and keep the land to be utilized through generations for the prosperous of clan and clan offspring.

Obligations of each clan and clan offspring toward the Kaum land:
1) The land is given to be used for farming and the profit gained is allocated to fulfill the needs of clan and clan inventory.
2) The land given cannot be sold.
1. In case of Clan Chief cannot manage the mechanism of *Kaum* land management, and there is a report from clan offspring that cannot be solved in clan discussion level, then Village Chief and Personnel could take the authority of the land management mechanism through Village meeting.

2. In case of illegal selling of *kaum* land of ½ ha by clan offspring without the permission of Clan Chief and Village Chief, then the buyer cannot get the approval of ownership towards the land.

### Table II
Farming rights of Village Land given to each clan offspring in Desa Pasar Sebelah Village of Mukomuko Sub district in 2009:

Village land of ±216 ha, 300 m from coastline along *Muara Lamo* to *Muara Baru* in *Desa Pasar Sebelah* will be given to each clan through Clan Chief. Regarding to *Kaum* land, Clan Chief will have the authority regarding to its management through clan meeting. Related to land given to clan offspring/160 families of ½ ha, Village Chief and Village Personnel shall give directly to clan offspring through a special team with the help of clan chief to list the eligible offspring based on their marital status and clan relation.

### Adat meeting in 2009 attended by:
Village Chief, Village Secretary, BPD, Adat Chief, Clan Chiefs and Villagers to form a team of village land distribution and to draw a map that will be given to each clan and clan offspring. Total land of 40 ha for 160 clan offspring/families is given directly by Village chief and Village Personnel under conditions that it cannot be sold and shall be farmed for the prosperity of those families.

### Decisions on Adat Meeting of Desa Pasar Sebelah Village Agreed Orally
Each clan offspring of 160 families gets village land of 1/4 ha.
Rights and Obligations of each Clan Offspring toward village land given from Village Chief and Personnel

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<th>Rights of each clan offspring toward the land of ¼ ha:</th>
<th>Obligations of each clan offspring toward the land of ¼ ha:</th>
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<td>1. The authority of the land is individualistic.</td>
<td>The land given cannot be sold without the permission of Clan Chief and Village Authority</td>
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<td>2. The land is given to be used for farming.</td>
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Penalty

In case of illegal selling of kaum land of ¼ ha by clan offspring without the permission of Clan Chief and Village Chief, then the buyer cannot get the approval of ownership towards the land.

Regarding to Adat Agreement in Desa Pasar Sebelah, Kota Mukomuko Subdistrict, legal construction of Farming Land given to each clan and clan offspring is strengthen by the opinion of Hilman Hadikusuma concerning on the nature of Adat law is traditional, magical, holistic religious and unity, not praes Existent, not general, open and flexible, has crime of Adat, has crime of accusation, reaction and correction, responsible on mistake and its territorial validity.\(^\text{17}\)

Regarding to those village land, Article 67 paragraph (1) point a of Law No. 6 of 2014 concerning on Village Affairs states that: “organize and manage people’s interest based on the origin, tradition, and cultural and social values in the village society. It is also said in paragraph (2) points a and d that: “protect and keep the unity and integrity and the harmony of village society under the national harmony and integrity of the republic of Indonesia, and to build village community development”.

This is in accordance with the theoretical framework of legal certainty explained in the prior sub units. Thus, with the certainty, there will be neither any misconception nor contradiction and it can be implemented. Law should be applied firmly in the society, show transparency that let anyone to understand the meaning of legal requirement. One law to another shall not be contradictory to create hesitation. Legal certainty becomes law

instrument of a nation that is clear, free of misconception, not contradictory and applicable to assure the rights and obligations of every citizen based on the social and cultural values.

It is also concluded that in Adat meeting, the agreements are in form of spoken agreements among Village Chief, Village Secretary, BPD, Adat Chief of Desa Pasar Sebelah village, Clan Chiefs in Desa Pasar Sebelah village, and Clan offspring in Desa Pasar Sebelah village. However, majority of those agreements are still obeyed and implemented by each Clan Chief and Clan Offspring in Desa Pasar Sebelah village, thus intern regulations are still applied in the society of Desa Pasar Sebelah village.

C. CLOSING
1. Conclusion

Based on the explanation above, the conclusions in this study are:

Legal construction in farming village land by clan offspring in Desa Pasar Sebelah village, Kota Mukomuko subdistrict, Mukomuko Regency concerns on the transfer authority of State’s land from Village government namely Village Chief, Village Secretary, BPD Members and BPD Chief and Village personnels to clans Kaum Enam Dihulu, Kaum Empat Belas and Kaum Lima Suku for farming. Since the management is collective then the mechanism shall be managed by each Clan Chief through a clan meeting while for state’s lands authorized by Village are given to clan offspring that have been married and related to the clan. After those lands given to clan offspring then they have the authority on those lands to be used and utilized but cannot be sold to other parties, village authority in form of SKT can only be given to the first benefactor or offspring related by blood of the clan.

2. Suggestions

Ideally for all parties an agreement should be formally written that covers the rights and obligations of both parties clearly to avoid any trouble regarding to provisions in the future. It also expected that all parties in the agreement could find the solution for any trouble easily. Moreover, to assure legal certainty regarding to village land, village government shall develop Village Regulations that arrange the village land management based on article 67 paragraph (2) point d of Law No. 6 of 2014 concerning on Village Affairs.
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<p>| : | Muchamad Adyansyah |
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| :| Hamdani Ma’akir, S.H.,M.Hum |</p>
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Bengkulu, Januari 2017

Muchamad Adyansyah