Religion In Land Dispute Settlements
In The Post-Tsunami Aceh *)

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Abstract

This paper would like to investigate how and the extent to which Islam plays a role in land dispute settlements. As many Muslims believe, Islam is an all-encompassing teaching which regulates different aspects of social life, including matters related to land. This paper seeks to look at whether Islam in its various forms, such as the practice of musyawarah (consultation and consensus), has been a norm or a mechanism to resolve land disputes within a Muslim community.

As Muslims constitutes a majority population in Aceh and the application of shari`a has been ratified in this province since 2001, it is taken for granted that Islamic shari`a would have a role in many kinds of social and legal issues, including in resolving disputes on land. A study that sought to explore the extent to which a norm or a mechanism derived from Islam has played a role in the settlement process of land disputes in Aceh is therefore important; not only to verify the claim of an-all encompassing religion in practical level, but also to ascertain the strength of religious influence on the every day life of Acehnese.

Although theoretically there is a link between Islam and land issues, especially in the ethics and morality, this paper would like to argue that at practical level Islam has a limited role in settling disputes on land issues. To substantiate this argument, I am going to discuss a number of land disputes settlements in the post-tsunami Aceh. By discussing this case, this paper sought to demonstrate that Islam plays only a persuasive role to lead disputants to make a compromise rather than a decisive one in resolving land conflicts.

Keyword: land dispute, Musyawarah, Muslim Community,

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I. Introduction

A number of studies have been carried out on legal disputes between different norms, actors and institutions. Some scholars have explained the way the disputants make their own choice of forum, interpretation of facts, line of reasoning and argument by what they called as 'forum shopping' (K. Benda-Beckmann 1984), 'idiom shopping' (Spiertz 1986), and 'discourse shopping' (Biezeveld 2004). The recent work of Bowen (2003) on Indonesia in general and in Aceh in particular also approached the issue in a tantamount way. He looked at how actors select from their 'repertoires of justification' to rationalize for what they propose or claim in specific social contexts. This paper would like to continue this path of scholarship, but in a slightly different track, by discussing the extent to which religion in its various forms is employed, or dismissed, by the disputants in given conflicts, land issues in particular.

As some continue to assert that Islamic shari’a should govern and dictate every single aspect of Muslim life, many wonder whether it has something to do with land issues. According to Sait and Lim (2006: 9-11), the relationship between Islam and land rights and tenure systems in Muslim societies lies at the concepts of sanctity of land, divine ownership and righteousness of use. Islam considers land a sacred trust rather than just a property, commodity or wealth. Islam allows land to be put to continuous productive use, but not to be used wastefully, exploitatively or in a way that will deprive others of their justly acquired property. In other words, land is God's bounty and human beings are accountable for its use. Additionally, despite land rights in Islam is acknowledged, there is no such a discipline called 'Islamic land law'. The term Islamic land law, if it once exists, is therefore best understood with reference to other parts of Islamic rules, especially in marriage, gifts, inheritance, and waqf (Sait and Lim 2006: 33,43).

One central issue concerning various guidelines for land dispute settlement is whether religion plays a role. As pointed out by Sait and Lim (2006: 33), while there is sufficient material on how family legal disputes is resolved by the court, the knowledge of Islamic dispute resolution mechanism with relation to land is limited. Nevertheless, Sait and Lim (2006: 8) consider that Islam provides a conceptual framework, such as shura or mushawara (consultation) and ‘adl (justice), which can be used as important devices to resolve conflicts of land rights. Specifically, there is no doubt about the influential quality of both concepts, which are embedded in Islamic consciousness and administrative practice (Rosen 2000). Yet, the way both Islamic concepts put in practice is diverse and might be different from time to time and from one place to another. After all, the extent to which the utilization of both Islamic concepts of consultation and justice is effectively functioning in managing land disputes in Muslim societies remains in question.

The main question of this paper is when and how does religion matter in land dispute settlements. This paper seeks to investigate whether several features of religion, including the shura (or musyawarah in Indonesian language), which can be used to settle land disputes in Muslim societies, are necessarily religious mechanism. Although theoretically there is a palpable relationship between Islam and land issues, especially the moral foundation that Islam provides, this paper will argue that Islamic approaches are practically less evident in land disputes settlements. In order to argue this case, I will look at land disputes in Aceh. As Muslims constitute the majority population in Aceh
and because the formal implementation of Islamic shari'a has taken place there, it has been taken for granted that religion in one way or another should play a role including in land disputes settlement. A study that attempts to explore the extent to which religious norm or mechanism being observed in land dispute settlement processes in Aceh is therefore necessary, not only to clarify such hypothesis but also to confirm the strong position of religion in everyday life of Acehnese society. By focusing on contested land claims in the post-tsunami Aceh, this paper intends to demonstrate that religion appears to have a merely persuasive role in land dispute settlements however.

In the following section I will briefly present the legal context of the land system in Indonesia since the colonial times. This background will enable us to comprehend clearly how and why each of contending parties in land dispute felt justified to claim their rights. The third section will introduce the location of lands in question in light of post-disaster land disputes context. The fourth section will be the main content of this paper, where I am going to investigate the extent to which religion in its various manifestation plays a role in two land cases in Lhoknga, the sub district of Aceh Besar. Finally, a section before the conclusion will examine the role of religion in bringing the dispute to an end.

II. The Indonesian Land Law System

Before the introduction of the Basic Agrarian Law (BAL) of 1960, Indonesian lands were governed by two separate and distinct bodies of law. The first was adat land law. Although the nature of adat land law vary from one region to another, it traditionally considers that individual property rights flow from the community's recognition that an individual as expended labor on a piece of land. As described by Fitzpatrick (1997), these community controls over individual rights are said to be embodied in the overarching community right of disposal known as hak ulayat. In Aceh, this kind of land was known as tanah mukim or tanah kullah (Abdurrahman 2006b) It has two prominent aspects. The first aspect is the way in which the relationship between an individual community member's right to land and the community's right of disposal turns on an ebb and flow of commitment and obligation. So, the more work and capital that an individual puts into a piece of land, the greater the community's recognition of the individual’s particular right to it; the less work put into a piece of land by an individual, the more likely that the community will exercise its overarching right to reallocate the land for another member's use (Fitzpatrick 1997; Saptomo 2004). The second aspect is that the transfer of rights, whether to outsiders or between individual community members, is subject to strict community control. At most, outsiders can obtain limited rights of use to land only with the consent of the community and on the payment of 'recognition money' or known as hak tamong in Aceh (Sufi 2002: 31). Similarly, community members generally can only acquire rights to land from other community members with the consent of the community or its heads (Fitzpatrick 1997).

The second was the Western land law, which included a system of hierarchical rights from ownership (eigendom) to lease (erfpacht) and use (gebruik). As far as the purpose of this paper is concerned, only the rights to lease (erfpacht) will be explained here. According to Article 720 of the Civil Code, which is now transformed to be Kitab Undang-Undang Hukum Perdata Indonesia, the rights of erfpacht is "the rights to fully enjoy the property belongs to others with the obligation to pay annual tribute in the form
of money, results or outcome to the landowners as a recognition for their ownership...."

The Dutch Agrarian Act stated that the rights of erfpacht could be held for up to 75 years. In the colonial period, the leased lands could be the belongings of individuals, the adat community (hak ulayat) or the government land (Biezeveld 2004),

The introduction of the BAL of 1960 has an objective to unify various applicable land law in Indonesia. While the BAL has quite easily adopted almost Dutch legal legacy, this state law has difficulties in converting a number of aspects of the adat land law. As argued by Fitzpatrick (1997), the BAL is not a syncretic amalgam of adat and Western land principles but instead operates contrary to adat. This is due to the fact that although the BAL stated that adat becomes its basis, and that adat land law is the agrarian law of Indonesia, the adat land law has a weakening position. It will only remain valid only to the extent that it is consistent with the provisions of the BAL itself, the interests of national unity and the state. The condition became worse as subsequent government land policies regarded all uncultivated hak ulayat land as "the state hak ulayat on the grounds of Indonesian constitution (Article 33:3) and the provision of BAL itself (Article 3), which declare that all land in Indonesia to be under the 'control' of the state (see also Wignyosoebroto 1996).

According to Fitzpatrick (1997), this notion of state hak ulayat has enabled the state to grant rights to uncultivated hak ulayat land without obtaining the consent of the relevant local community and without triggering the legal obligation to pay adequate compensation to holders of expropriated titles. Under the BAL, for example, individuals who have the erfpacht rights to hak ulayat land could register and receive from the state a full statutory rights over such particular land. The conversion of various rights to hak ulayat land into the ownership rights, as regulated by the BAL and its further implementing regulations, has given rise to a number of disputes. The two cases being questioned in this paper clearly demonstrate that customary rules of rights to hak ulayat land have been in tension with the provisions of state law.

As far as religion in Indonesian land law system is concerned, it emerges solely in the issue of waqf land (Islamic endowment). According to Jahar (2006), the waqf regulations issued by the New Order regime have much to do with the attempt to ensure that the use of waqf lands is not intended for political purposes. Therefore, the government mostly focused on the registration of waqf lands rather than on enhancing the benefit they could provide to the public. In the post-New Order era, this has changed to include more of religious and social objectives. However, the relationship between religion and Indonesian land law system remains isolated largely in these waqf land issues.

### III. The Post-Disaster Land Disputes Context

The earthquake and tsunami of December 26, 2004, that hit most coastal areas of the province of Aceh, Indonesia, resulted in massive damages. Fitzpatrick (2005) summarized the impact of devastating tsunami over land matters in Aceh as follows; over 250,000 homes totally or partially destroyed; about 23,330 ha of rice fields and 126,806 ha of other agricultural or garden areas damaged by mud, sand or erosion; approximately 300,000 land parcels (170,000 urban and 130,000 rural) out of an estimated 1,498,200 affected by tsunami related damage. This condition led to significant obscuring or obliteration of boundary lines and markers. It became worst as the National Land Agency (BPN) office in Banda Aceh that keeps land records was
substantially destructed. Thus, personal identity documents in tsunami affected areas were badly damaged or lost.

The post tsunami situation has provided an opportunity for many to establish claim, or reclaim, to land rights and even to grab land parcels whose original owner or heirs are not known. No wonder that these situations often result in disputes. The disputes took place in a number of ways such as inheritance to a land parcel, land boundaries between neighborhoods, land relocation and exchanges and compensation payment due to land acquisition by the government. As various forms of contested land rights situation arose, restoring and confirming land rights have never been an easy task in the post tsunami Aceh.

In the post-tsunami land related dispute settlements, religion largely appears by means of fatwa (religious opinion) issued by the council of ulama (religious scholars), By engaging local religious institutions such as the shari’a court and the baitul mal (Islamic treasury), the fatwa dealt with land issues at least in five ways. Firstly, the fatwa supported the increasing jurisdiction of the shari’a court of Aceh to examine land rights confirmation, particularly those involving inheritance matters. The caseload for these matters increased enormously following the tsunami as many landowners had died or gone missing. Secondly, religion was articulated through fatwa stating that land and property belonging to tsunami victims who have no more legitimate heirs will be transferred to the Muslim community through the Baitul Mal (Islamic Treasury) with an order made by the shari’a court of Aceh. Thirdly, the ulama issued a fatwa declaring that the waqf lands which abandoned or left uncultivated due to disaster can be sold and replaced by others in accordance with the Islamic teachings and for the benefit of Muslim community. Fourthly, the ulama advised the government to prevent the public notary from legalizing land transactions in the tsunami affected areas until land boundaries and evidence have been lawfully resettled. And the last, the fatwa stated that claims for inheritance rights to land parcels in the tsunami affected areas are no longer valid after the end of 2009 with the exception of surviving orphaned children who can file their rights until they reach 19 years old.

However, as the nature of fatwa is not legally binding, its influence on land law system remained little if any. Many cases of land disputes, even if they involve Muslim parties, are still registered at the civil court. Above all, the manual of land acquisition requires each of parties involved to bring a case to the civil court, rather than to the shari’a court, should dispute arises and cannot be settled informally. As a part of its jurisdiction, the shari’a court of Aceh continues to deal only with inheritance issue in which land is a part of inherited property.

IV. The Site of Land Disputes

The land in question was located in one of badly affected tsunami areas in Aceh, namely Lhoknga. Lhoknga is a sub district of Aceh Besar. It is around twenty kilometers in the southwest of Banda Aceh, the capital of the province. Slightly different from other parts of Indonesia where the territorial structure is divided hierarchically from the province down to the village, a quite distinct hierarchical division is found in Aceh. With the province at the upper level, the district (kabupaten or kota) comes next to the sub-district (kecamatan) and further broken down to mukim (a community that consists of several villages) and then to village (gampong or desa) and the sub-village (lorong) at the lowest level. According to Abdurrahman (2006a),
mukim and gampong in Aceh have a dual function. They are not only parts of government structures, but they both also serve as entities of indigenous community respectively.

The sub district of Lhoknga has four mukim: Lhoknga, Keuh, Lamlhom and Lampuuk. The case took place in the mukim of Lhoknga, which has four gampong (villages) as well: Mon Ikeun, Weuraya, Lamkruet and Lampaya. In the mukim of Lhoknga, precisely in Mon Ikeun, there were a number of public buildings and places that were totally or badly destroyed by tsunami. They include a couple of military base camps, a police station, a hospital, several schools, government offices, a complex of sea tourism, a field of no longer used airport, a golf race, the cement company of Semen Andalas Indonesia and its housing compound for the company workers. Above all, there is national road (highway) that crosses along over the sub district of Lhoknga. This highway connects the capital city, Banda Aceh, to Meulaboh in the west coast of the province.

As it lies along the coastline and in flat areas, the highway was largely affected by tsunami. This road has suffered extensive damage. In Lhoknga, precisely in the area of Mon Ikeun, tsunami not only deteriorated many sections of the road, but also flooded several spots by the water sea. The reconstruction process of this important highway required its relocation to the other areas, which belong to some landowners. The land acquisition by the government for the road reconstruction purpose therefore was inevitable. The budget for the road reconstruction came from the USAID, but the land acquisition was undertaken by Indonesian government and should be completed before the construction work commenced.

The land acquisition has been a main cause of land disputes especially when it comes to who are legitimate recipients of the compensation. According to Fitzpatrick (2008), disputes over the payment of compensation for the acquisition of land by the government in Aceh involve allegations that certain landholders were not eligible parties to the compensation; or that payments have either been delayed by disputes or not forthcoming at all.

V. Religion in Land Acquisition Disputes

In what ways religion is involved in land acquisition dispute? The description of two land disputes below will demonstrate how in one way or another each of respective disputing parties invoke, or dismiss, religion, albeit symbolically, in several aspects. Firstly, it appears to be a part of motivation to make claim to the compensation resulted from land acquisition project. Secondly, it may constitute as a line of reasoning that underpins their argument to land rights. And thirdly, it could be a means to bring the dispute to an end.

These two major related land disputes took place between individuals versus the local community. The first case was between Imran Miga and the Lhoknga community. What at stake was 6,102 meters of land parcels located in the right side of previous road. They valued more than one billion rupiah (i.e. Rp. 1.220.400.000,-). Miga was supposed to receive this payment for he kept a land document, which originated from the colonial time. The second case was between Teuku Tjipta and the Lhoknga community. Tjipta possessed around 7,204 meters land parcels, which subjected to land acquisition. Tjipta's land was located rightly near to the coast line. Tjipta was holding a
land certificate issued by BPN in 1991 and therefore he entitled to the compensation that amounts to 1,440,800,000,- aipiah. Both disputes concurrently lasted for almost a year. They both emerged by Fall 2006 and ended by Fall in the following year (September 2007). These two cases reached the civil court but withdrawn because of peaceful settlement was achieved during the initial stage of court adjudication.

VI. Behind the Claims

As both Imran Miga and Teuku Tjipta were able to present sufficient document to the district committee of land acquisition, they were declared as landowners, and, hence, became legitimate to be recipients of compensation. The Lhoknga community had filed to the committee some petitions on different dates (7 September 2006, 24 January 2007, 26 April 2007 and 16 June 2007) protesting this declaration. However, the committee on a meeting in May 2007 conclusively stated that land documents possessed by Miga and Tjipta were valid and they both lawfully deserved to the compensation. The minutes of the meeting also stated that Miga wished to provide a financial support to the construction of the mosque of Lhoknga. It was unclear, however, how much Miga would like to contribute. One may see that this Miga's willingness was a religiously symbolic token that might be useful to persuade the community to relent. As appeared later, Miga's approach did not work well. Indeed, the Lhoknga community remained firmly unrelenting.

Despite three petitions of the Lhoknga community, the committee of land acquisition went on with the next agenda, that is to pay the compensation to Miga and Tjipta as the landowners. The date for transferring money to their respective bank accounts was scheduled on 20 June 2007. The only way available for the Lhoknga community to defer or to cancel at all this payment was to bring this case before the court. According to the manual of compensation of land acquisition for public infrastructure in the tsunami affected areas, as also practiced elsewhere in other regions of Indonesia, the compensation payment must be held off should doubtful ownership rights to the property remains. For this reason, one day before the payment date, the Lhoknga community, as represented by two lawyers, filed the counterclaim to the civil court of Jantho. Given this lawsuit, the payment to Miga and Tjipta was delayed pending the court decision.

It might seem plausible if one contends that non-religious reasons largely underlie the claim of the Lhoknga community as the plaintiff. It appears on the surface that what has led the plaintiff to make a claim over the land was a financial drive. Nevertheless, one would contend that another motivation was likely driving this claim. By presenting the argument of ulayat land, the plaintiff is looking forward to seeing the revival of adat sovereignty, in the sense of the authority of mukim over land matters in a particular area. As pointed by Bowen (2003), adat revivalism includes struggles for more local authority to control of territory and its resources, more emphasis of local norms for dispute settlements and natural resources management, and more attention to the triumph of past sovereignty. This is particularly true in Aceh given the formal acknowledgement of adat to play a greater role in the public sphere.

Was religion missing at all in motivating the Lhoknga community for claiming such land rights? As found in a statement of claim sent out to the court and also as revealed in my interview with an elder of Lhoknga community, Teungku Baderin (60 years old), an aspect of religion was invoked. I learned from him, whose role for both
cases was a chairman of the committee for land acquisition dispute, that the mosque at this mukim was put at stake. In almost every mukim in Aceh there is an official mosque where Muslims perform Friday prayers. This explains why the mukim mosque has a central position to religious life of the Acehnese. Since this mosque was affected by the destructive earthquake and tsunami of December 26, 2004, it certainly needed reconstruction. Given this, the idea that the compensation would defray the restoration of the mosque seemed to be emotionally religious. Yet, how much had this motivation been driving the Lhoknga community to make a claim remained uncertain as will be shown in the next sections.

VII. Intricate Evidence

One way to identify how religion employed in disputing processes is through the extent it is applied in legal reasoning. According to Bowen (2003:9-10), Islamic legal reasoning is human efforts, which is imbricated with social and cultural life, to resolve disputes by drawing on Qur'anic and hadith texts, logic (qiyas) the consensus of the community (ijma) the public interest (maslaha) and local customary practice (al-'urf).

From a formal perspective, these sources are arranged hierarchically. But in the practice of reasoning about cases and justifying decisions reached, Muslim authorities and ordinary Muslims always have found themselves having to tack among competing values, norms and commands.

As far as two land disputes in this paper are concerned, the competing norms by which each of disputants sought to claim land rights are those derived from local customary principle; colonial legal legacy; national land law; and Islamic institution and rules.

**Imran Miga vs the Lhoknga community**

The ancestor of Miga family is not Acehnese in origin. This family is considered Malay of North Sumatra, It is not clearly known when the ancestor of Miga came to Aceh for the first time. This family has lived in Banda Aceh for many years. Even Imran Miga (67 years old) himself was born in Aceh. Because their homes at gampong Pelanggahan, Banda Aceh, were destroyed by tsunami, they moved to Ketapang, Aceh Besar. They have never lived in Lhoknga; the site of land dispute. The available information about the background of this family is that they are politicians and several members of the family had occupied positions as the legistatures at national and provincial levels during the Soekarao and Soeharto presidencies. Until now, Imran Miga is still actively involved in a political party.

The land rights of this family were originally under the name of Ibrahim Miga, Imran Miga's oldest brother, who died in 1990s. Imran Miga then represented the whole surviving heirs of his brother. The entitlement of Imran Miga to the compensation payment was based on a rather complicated land document stating his rights of erfpacht. The rights of erfpacht arose out of a purchase transfer between Miga with a Dutch company, N.V. Cultuur Maatschappij Lho'Nga, that cultivated the land for plantation since the colonial times. In June 1908, or four years after the formal conquer of the Aceh kingdom, this company obtained a piece of land (33.829 bouw) that located in Lhoknga from the Dutch government. It was not clear how this piece of land initially became the government property.
The transfer of rights from F.F. Rell, director of the Dutch company, to Miga took place in Kutaradja (now Banda Aceh) in August 1953 or four years after the Dutch officially acknowledged the independence of Indonesia. Miga's rights of erfpacht was finally authorized by Minister of Justice in 1955. Additionally, the name of rights holder was changed to N.V. Perkebunan dan Perdagangan Meutia (the Limited Company of Meutia Plantation and Trade). Miga considered that his registered erfpacht land was not being expropriated to be the state land when Indonesian government launched the nationalization of colonial assets through Law no. 86 of 1958 and Law no. 3 of 1960. The status of erfpacht land continued to persist until the introduction of the BAL in 1960.

The BAL changes the nature of the rights of erfpacht to *hak guna usaha* (HGU) or rights to cultivate. Article 3 of Conversion Rules of the BAL stipulates that:

"The rights of erfpacht for a large-scale plantation company, which already exists at the time of this Act comes into effect, shall become a *hak guna usaha* as meant in Article 28 (1) [of the BAL] for the remaining term of the rights of erfpacht in question, which shall not exceed 20 years."

The BAL does not state explicitly what happen to the erfpacht land after 20 years; whether it should be returned to the state or to the initial holders (e.g. *hak ulayat* land would be given back to the adat community). However, as the other provision in the BAL (Article 28:1) arranges that HGU, or previously known as erfpacht, has to do with land directly controlled by the state, only few would deny that the ex erfpacht lands turned to be the state land since 1980. If this interpretation is correct, it is obvious that the conversion of the rights of erfpacht into the HGU is fully intricate, especially when the leased lands were *hak ulayat* land. While during the colonial time the rights of erfpacht practically did not change the ownership status of the leased land, the practice of HGU has transformed the status of many *hak ulayat* land into the state land (Fitzpatrick 1997).

How do all these rules apply to the rights of erfpacht that Miga once had held? Legally speaking, such rights should be expired in 1980 and the land must be returned to the state unless it was extended under the scheme of HGU for another new term, which is at most for 25 years or till 2005. However, Miga was unable to make any confirmation for land rights in 1980. Instead, he justified his inability that since late 1950s almost whole area of the land was occupied for the military base camps and facilities, while he had no power at all to make claim over the lands as it would put him in difficult position, especially because Aceh was under tight security at that time. The only evidence that Miga held was a letter issued in 1980 by the army commander of Aceh, Syamaun Gaharu, who was in office from 1956 to 1960, confirming the truth of Miga's statement that the military occupied most areas of his lands in Lhoknga.

Judging from legal perspective, the inability of Miga to renew his land rights in due time, whatever the reason he presented, implies the loss of his entitlement and should prevent him from being eligible recipient of the compensation. For this reason, the government, which in this case represented by the Board of Rehabilitation and Reconstruction (BRR) of Aceh, issued a statement in June 2007 that the land in question is the state land. Yet, Miga did not give up. Based on Syamaun Gaharu's letter above, he approached the army provincial office of Aceh to provide him with a letter declaring his land, which was used by the military, was now formally returned to Miga's hand. This
letter worked effectively making the BRR to relent. The BRR then asked the land acquisition committee to compensate Miga. One may wonder if money or financial means had played a significant role behind this particular drama. But some are sure of that in Indonesia money has a powerful influence in almost every social political situation.

The Lhoknga community could not accept Miga's claim, and, hence, contended the decision of the BRR. In the view of Teungku Baderin, a community elder, the land in question originally belonged to the people or hak ulayat land. According to him, the land could not be purchased by outsiders. So, when the Dutch completely defeated Aceh in 1904, there were only several scenarios available for the Dutch to hold the land by either borrowing it; leasing it; or capturing it from the people. It was unclear for Baderin how the Dutch obtained the control over the land and then provided a Dutch company with the rights of erfpacht to that land. As the Dutch left Aceh in 1942, the lease of land should expire and the erfpacht rights holders should return the land to the original owner, Baderin emphasized that "because [now] the [real] owner is unknown, [the land] must go to the government, which is the mukim [structure]." For Baderin, the past powerful position of mukim, which controlled lands and natural resources of the area, must be taken into account in the current situation. This historical argument of hak ulayat land was then reasserted in the statement of claim sent out to the court. Despite legal basis for the Lhoknga community's claim seems to be weak in light of the perspective of Indonesian land law, what is obvious from this case is the adat land and the state land cannot be easily identified in a precise way.

**Teuku Tjipta vs the Lhoknga community**

Teuku Tjipta (61 years old) is an Acehnese who lives in Lhoknga since childhood. His mother was Lhoknga in origin while his father came from Sibreh, another sub-district in the district of Aceh Besar. Tjipta acknowledges himself as the fourth descent of Teuku Umar, a renowned hero of Aceh who smartly but firmly fought the Dutch. That is why Tjipta has 'Teuku' as part of his name indicating that he has a linkage with the Acehnese aristocratic family in the past. It is no wonder that he then maintains that some areas of land in the site belonged to his ancestors. Tjipta had served a number of leadership position in Lhoknga for almost a decade. The last position he had was a chief of mukim Lhoknga. In fact, this position remained formally at his hand when the land dispute started and concluded. He was then replaced through an election in mid 2008 when I was still at fieldwork in Lhoknga. Four candidates were in contest to occupy Tjipta's position. Among them was Teungku Baderin. But he failed to win the election because the Lhoknga people have doubts over his integrity in managing the compensation money obtained from land acquisition disputes.

The location of Tjipta's land was so closed, about less than one hundred meters, to the coastline and not very far from the cement company's site. Different from Miga who had kept land document prior to the introduction of the BAL of 1960, Tjipta held his land rights only in early 1990s or about thirty years after the BAL being enacted. Legally speaking, Tjipta's land right was much stronger than Miga's, because Tjipta had his land being titled by a formal procedure in accordance with the current Indonesian land system. His land rights is well known as a statutory title (hak milik), which is the strongest and fullest right to land under the BAL.
The origin of Tjipta's land right has something to do with the opening of the cement company in 1980. When the company commenced its operation by constructing buildings and facilities in its surrounding areas, Tjipta opened a stall selling foods and drinks in the area. He was not alone. Other people either from within or outside Lhoknga came to the place and did similar business there. As all these stalls had no valid license, they were considered illegal, and, hence, the government removed them to the ground in 1981. Although almost frustrated, Tjipta remained resilient and sought a way out to have his business reestablished there. He went to meet several leading figures of Lhoknga, including head of sub-district (camat) head of sub-district police station, head of mukim and other elder people, to have advice and assistance on how he would be able to legitimately use the land. All these consulted figures told Tjipta that they could do nothing since the land belonged to the state (tanah negara).

However, there was a suggestion that made Tjipta become optimistic to restore his business. The suggestion came from people who knew the complicated procedure of getting a land title and how to turn the status of a piece of the state land to be a private one. It was informed that the occupants of abandoned or vacant land could have a license to cultivate land from the land authorities (BPN), and, after long-term occupation, this license may be transformed into statutory rights by providing some payment to the government. Tjipta then carried out this suggestion by cultivating the land for almost ten years and made such required payment with the money he got from selling his parent's lands in Sibreh. Finally, in 1991, Tjipta received a statutory title certifying his rights to land parcels which consist of almost two hectares including the piece of land in question.

Why and how the Lhoknga community came to challenge the evidence presented by Tjipta? No much difference with the argument they put forward against Miga, the Lhoknga community made land claim based on hak ulayat land. They objected Tjipta's entitlement to compensation and contended the decision of the committee of land acquisition by sending a protest note to various concerned institutions. They argued that the land in question belongs to the adat community. Indeed, they quoted the Acehnese customary rules which asserts that land located near to the coastline cannot be privately owned since they are hak ulayat land.

Tjipta made a counterclaim to the Lhoknga community's argument saying among other things that before formally taking up his position as head of mukim in 2002, none of his predecessors and other elders in Lhoknga confirmed his query if the mukim of Lhoknga owns hak ulayat land. Additionally, he argued that hak ulayat land is only available in the village or desa and not in kelurahan. As the land in question is located in Mon Ikeun, which since 1990s has been transformed from village to 'kelurahan', Tjipta contended that there is no longer hak ulayat land available in the kelurahan of Mon Ikeun at all. Implicit in this Tjipta's counterargument that once a village becomes a kelurahan, all hak ulayat land in the area turns to be the state land. Nevertheless, this logic seems to be confusing, especially in Aceh context, given that the government of Aceh has recently attempted to transform all kelurahan in the province back to village or gampong which is similar to desa in other provinces. Will

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1 Though desa and kelurahan are part of sub-district, kelurahan has limited power than desa, Kelurahan is part of regency/city government bureaucracy and led by a 'lurah'. Lurah therefore is a civil servant, and directly responsible to Camat. Mon Ikeun was transformed from desa into kelurahan in 1990s since it is where all administrative offices of sub-district of Lhoknga is concentrated.
then that particular state land, which stemmed from the hak ulayat land, be backtracked to its previous status as the hak ulayat land?

Furthermore, as an effort to argue against the Lhoknga community's claim, Tjipta asked his son, Teuku Ayatullah Bani Baeit, to represent him registering a counter statement to the court of Jantho. Filed on 19 July 2007, or while during the similar case was being examined by the judges, the counterstatement contended that the land in question belonged to Tjipta and indicted that the Lhoknga community, as represented by four gampong leaders and a secretary of mukim, sought to impede the payment of compensation to the legitimate beneficiary. This counterstatement further stated that the claim of the community leaders was lawfully groundless and much to do with their grudge to Tjipta himself. To convince this allegation, the counterstatement mentioned three things. Firstly, it wondered why those leaders claimed the land in question as hak ulayat land only right now whereas they knew that Tjipta has occupied it for 16 years (i.e. from 1980 to 2006) and there were five permanent buildings belonged to Tjipta existed on that land before the tsunami. Secondly, it inquired why those leaders only claimed Tjipta's land rights as belonged to hak ulayat land and not inclusive to the other neighboring lands which had been certificated as well and, hence, were compensated by the BRR. And thirdly, it questioned why the Lhoknga leaders put the claim of hak ulayat land only on those expropriated lands (7,204 M2), and not on the whole area (19,680 M2) of Tjipta's land rights. As the plaintiff, Tjipta asked the court to punish the Lhoknga leaders who sought to thwart the compensation payment, by paying a quite large amount of money, which is two billion rupiah, to the plaintiff. This money was requested not only because the community leaders were accused as having committed activities against the law (onrechtmatigedaaad), but also to recompense the loss of credibility on the part of Tjipta, because of this emerging dispute, who was previously a respected figure in Lhoknga.

VIII. Consultation and Negotiation

As each of parties was adamant and remained in their claims, the Lhoknga community then brought forward the case to the civil court of Jantho. The first hearing took place on Thursday, 28 June 2007, or nine days after the case was officially registered at the Jantho civil court. The judge council who was assigned to examine the case consisted of three judges; two males and one female. As the two male judges were already posted to another court in different cities, Sigli and Langsa respectively, only the female judge remains working at the Jantho civil court. Her name is Christina Simanullang. Although she is Christian, she is wearing a headscarf during office hours to show her respect to the formal implementation of shari'a in Aceh. The judge Christina explained that there were only three brief hearings before the case then was peacefully resolved by the both parties themselves. The judge council did almost nothing, except to persuade parties for making the compromise. The advice to solve disputes by way of compromise is in fact a part of required legal proceeding where the judge council should advise parties into peaceful settlement. Should this part be neglected, the final decision of the court would not be lawfully acknowledged.

It was Fatchullah, a legal representative of the Lhoknga community, who had an initiative to bring the disputing parties into settlement during the recess time. Fatchullah (41 years old) had a legal training from the University of Syiah Kuala, Banda Aceh. He is Acehnese and lives in the village of Darussalam, another sub-district of Aceh Besar.
He acknowledged that he has no kind relationship at all with the Lhoknga community. He even did not know why the community decided to approach his legal firm to represent their case before the court. As a legal representative, Fatchullah received mandate from four heads of villages (Mon Ikeun, Weuraya, Lamkruet and Lampaya) plus a secretary of the mukim of Lhoknga. This mandate included a task to conduct peaceful settlement with the consent of mandate givers. The Lhoknga community contacted Fatchullah only two days before the compensation being paid to Miga and Tjipta. Therefore, he had no much time to learn both cases carefully when preparing a statement of claim on behalf of the Lhoknga community. What was crucial for Fatchullah during those days was to hand in the statement of claim to the court in due time, thus would prevent the money from being transferred to Miga and Tjipta.

As Fatchullah learned more about the two cases, he found that each of parties had no strong evidence to claim land rights, and, hence, they were most likely not in beneficial position. In his legal view, Miga's right of erfpacht expired as it was not renewed. Miga indeed has lost his entitlement. The only basis he held for his land rights was a letter provided by the army commander of Aceh, which could have no legal standing before the law. While for the statutory title that Tjipta obtained from the government, in Fatchullah's opinion, remained liable from legal point of view. This was so given the occupation term that Tjipta had spent over those land parcels was less than 20 years as required by Indonesian land regulations. In the meantime, Fatchullah also saw that the Lhoknga community's argument of hak ulayat land was a weak grounds to claim land rights. He explained that the rights to ulayat land of the Lhoknga community had gone when they were unable to convert the 'waste' lands into their rights in early 1980s as the rights of erfpacht elapsed. The failure of transferring the waste lands to the ownership rights of individuals or community, according to Fatchullah, would lead such land parcels to be considered the state land. As the state land, it is most likely that, if the adjudication went through, the court would issue a decision allowing the government, for the sake of public utilities goal, to confiscate the land in question without making compensation to any of parties.

The community responded that they would be happy to accept such decision if that implied all parties would not receive the compensation. This response is very typical and has been well widespread among many Acehnese since long time ago. It is expressed in local language as "sihet bek roubah abeh" [daripada mencong lebih baik patah sekalian] meaning that instead of having something curved, it is better to have it broken. Despite Fatchullah is Acehnese and knows this aphorism very well, he did not want to see this becomes a reality. Not only because the adjudication process would take ages to be finalized, but the road construction would not commence if the case remained unresolved. After all, as a lawyer, Fatchullah was thinking about where the community will get money from to pay his service as a lawyer. Certainly, he would not provide a legal service free of charge.

Given the possibly unexpected scenario above, Fatchullah therefore took the judge's advice of compromise into full account and inclined to actively direct the negotiation process. At first, each of disputing parties was reluctant and was prone to be threatening one to another. While the Lhoknga community mobilized a massive people to attend the hearings at the Jantho court, Miga's son, who has been a chief of the Aceh Transition Committee (KPA or the body established to accomodate former GAM combatants) of the sub-district Aceh Besar, invited his members to support his father's
case. Meanwhile, behind Tjipta there was already an army element that backed up his stance. As the fierce situation escalated, Fatchullah made every endeavor to bring both parties into the negotiation table to look for a win-win solution.

Between June to early September 2007, Fatchullah attended a number of internal community meetings in Lhoknga to discuss the case and to find a formula of agreed compromise. At these meetings, Fatchullah informed the community what are situations on the land in question from legal point of view. He advised the meetings that it was no point to keep going with the court adjudication and the peace settlement would be the best resolution. On the other side, Fatchullah approached Miga and Tjipta persuading them to be open for negotiation.

The consultation and negotiation process between contending parties mostly took place in an adjudication room of the Jantho court. It was Miga who firstly gave the way to compromise. He offered that he would be ready to contribute a part of his obtained compensation for rebuilding the mosque. The Lhoknga community wanted that two third ($\frac{2}{3}$) of the whole payment of 1,2 billion rupiah should go to the mosque. Miga refused this demand and sought to have a larger portion, but the community was adamant. Fatchullah then took initiative bargaining from 500 million down to 300 million rupiah of the whole payment. After continuously persuasive communication, Miga and Tjipta finally approved to offer 300 millions rupiah each. This means that the Lhoknga community would receive in total 600 million rupiah for their mosque.

However, there was still a discontent among the Lhoknga community over the final result of this negotiation. Among others was Teungku Baderin. He did not like the way the lawyer undertook his task, the negotiation of money for the mosque in particular. In fact, Baderin was unhappy with the amount of money that the community would receive. In his eyes, Fatchullah took an initiative beyond expectation. Despite Baderin was the chairman of the Lhoknga committee for land acquisition dispute, he had no enough power to argue against the agreement, because all authorities of mukim Lhoknga who gave Fatchullah the mandate supported the result and signed the peace agreement.

Although the peace agreement at the surface was seen to have a win-win solution result, it has empowered the land rights of Miga and Tjipta. The agreement stated that, as the plaintiff, the Lhoknga community should withdraw their registered statement of claim from the court. Moreover, as the peace was finally reached, the Lhoknga community should not make any more claims in the future over those land parcels belong to Miga and Tjipta respectively.

IX. Rotes of Religion: Persuasive or Decisive?

Arguably, religion in these two disputes took a shape in the form of persuasive rather than decisive roles. Religion becomes a contributing factor to the settlement of land disputes above in the way that it was employed as an invisibly persuasive means to bring parties to a compromise. The plan for reconstructing the mosque was relatively successful to persuade both Miga and Tjipta to allocate a part of the compensation they received. But this could only work because of religious vision that shared by other parties. Miga, for instance, acknowledged that in doing so he not only sought to end the conflict but he also made a donation for religious purposes even if by the end the money he gave would be spent for different expenses:
They asked me to provide a help to the mosque. I [then] offer support as much, or as less, as I want to..., and it does not take me a long time to think to help because the mosque is located in Lhoknga... My intention was to help [the reconstruction of] mosque. So, if there is kind [of manipulation], that's [not my business, but] their own affairs with God, It's up to them if they wanted to tell me untruths... All I give is for the mosque reconstruction and not even a single cent is dedicated to the people. This is a donation, not a project fund...And if I don't see any result of the reconstructed work on the mosque in the next three or five years, I will not make a correction at all! (interview)

In the view of Miga, the mosque that the Lhoknga community put at the stake was a religious masquerade to appropriate land rights of others. He suspected that the mosque was not the real motive behind their claim to land rights. Miga believed that in the hereafter they will be asked to be responsible for whether they have 'sold' the mosque. As more than a half year after the peaceful agreement, when I was in field in mid 2008, the mosque was partially renovated. Yet, the budget for this renovation stemmed from the BRR. In my interview with Teungku Baderin, he told me that the money from Miga and Tjipta would be spent for extending the space of mosque to its rear area and for building the parking lot. However, until I came for a short visit to Aceh in the late 2008, the figure of this mosque remained the same.

In the sense of legal reasoning, religion only appears vaguely if not missing at all. Both Miga and Tjipta undergird their claims largely on documents which derived from the applicable land laws. The argument of *hak ulayat* land put forward by the Lhoknga community is customary in nature rather than religious. The Lhoknga community neither cited the scripture nor stated that the land is God's wealth left to human beings for their use. As a matter of fact, the Acehnese customary ideas on land issues have close relationship with religion, which considers that the earth and what it has on it are God's creatures. According to Sufi (2002:28-29), there were two kinds of land in Aceh before the twentieth century. The first was the uncultivated land or well known as *tanoh kullah* (land belongs to Allah). This was under the control of *mukim* and it hence was also often called as *tanah mukim* (Abdurrahman 2006b). And the second was the cultivated land which was called as *tanoh milek gob*, which means land belongs to somebody who has used it. Despite land in question was claimed to be *tanoh mukim* or *tanoh kullah*, the argument presented by the Lhoknga community hardly made any reference to this concept of divine ownership. In addition, *al’urf* that might reflect the presence of Islamic legal theory in the Lhoknga community's reasoning failed to materialize in these land disputes. The argument of *hak ulayat* land as part of *al’urf* in Aceh is no longer systematically tenable as it has been interrupted by the colonial land regulations and the Indonesian national land laws. Despite these both legal systems acknowledge the position of *hak ulayat* land, in reality they sought to subordinate and even to capture the uncultivated one in particular (Fitzpatrick 1997).

One often found religion in the practice of *musyawarah* as a way through which land disputes are resolved. From an emic point of view, the Acehnese consider that the practice of *musyawarah* is both religious and customary in nature. The practice of *musyawarah* is intended to achieve amicable settlement (*damai* or *suloh*). The term *suloh* is derived from Arabic: *sulh*, which means peace. Also known locally in the term
Duek pakat, the *musyawarah* is mostly conducted in a mosque or a *meunasah*\(^2\). (Aswar 2007) illustrated that *musyawarah* is:

like a banyan tree for justice seekers. Its leaves can protect from sunlight and rain, its rod can be a place to lean on, its branches can be a place to be dependent on, and its roots can be a place to sit on.

He further explained that before starting a *musyawarah*, the participants usually first perform ablution (*berwudu*) as if they want to observe a prayer (Aswar 2007). In this *musyawarah*, elders of the village (*imum mukim*, *keuchik*, and *teungku meunasah*) direct the meeting to discuss the problem, to hear different opinions, to consult and negotiate with involved parties, who are present in non separate places, and to suggest a decision. At the end of *musyawarah*, the disputants ask forgiveness one to each other before then a *teungku* or religious leader lead a prayer (*istighfar*) to officially close the *musyawarah*. As a peaceful agreement or *damee* is reached through *musyawarah*, a number of social rituals are undertaken afterwards to signify such decision. These rituals may include either *peusijuk* (joint prayers), *kenduri* (having traditional meals together), *sayam* (fines in the form of slaughtering stocks) or *diet* (fines in the form of cash payment) depending on the case being settled (Hoesin 1970:170-171).

Given the above description that *musyawarah* is naturally religious as well as typically traditional custom in Acehnese community, one could argue that it is a key rule in achieving peaceful settlement for every dispute that takes place among villagers. This deliberate consultation through village meeting is believed to bring back a social equilibrium and harmony. And for making this ultimate goal, even a religious rule could be put aside provided that the final decision is achieved through the unanimous agreement among participants of the *musyawarah*. A very popular hadih maja (aphorism) justifies this: "meunyoe buet ka mupakat, lampôh jirat jeut ta peugala" meaning that, if a consensus has to be made, even the cemetery park could be pawned. This aphorism underlines that a graveyard which is considered sanctified element in Acehnese community can be downplayed for the sake of consensus. Interpreted in light of another widely shared maxim among Acehnese that "agama ngon adat han jeut cre, lagee zat ngon sifeut" (religion and *adat* cannot be separated, both are like the substance of a thing and its attribute), one may contend that the unity of *adat* norm and religious value within Acehnese society *Hes* in the deliberate consultation for peaceful settlement. In other words, the *musyawarah* is the way the Acehnese seek to make sense of their social world in which religion and *adat* are united. For this reason, it seems sufficient if one argues that, since the contending parties in two cases discussed above were finally avoiding the court adjudication and inclined to end the disputes by the *musyawarah*, religion has played a critical role in managing land disputes in Aceh.

However, seen in the light of etic account, the assertion that *musyawarah* reflects the indispensable role of religious practice in two land disputes being discussed in this paper deserves at least four criticisms. Firstly, the *musyawarah* that led to peaceful settlement of land disputes above was not merely religious one. *Musyawarah* is common to many ethnic groups in Indonesia and has been traditionally practiced as well among other religious communities whose religion is not Islam. Indeed, the institution of *musyawarah* in many societies in the archipelago is not necessarily religious in

\(^2\) Meunasah is a multipurpose building set up in almost every village in Aceh, which serves not only as a centre of worship, but also a meeting place for the local community.
nature. It existed in fact long before the introduction of Islam. Secondly, the *musyawarah* that finally led to the agreement in the two cases above was largely driven by the court procedure, which the nature of this kind of *musyawarah* is supposedly secular. Instead of being conducted in a mosque or in a *meunasah* as it is generally practiced, such *musyawarah* took place in a room at the civil court of Jantho. Thirdly, it was a lawyer who actively directed the *musyawarah* that brought all disputing parties into compromise, and not *imeum mukim*, *keuchik* or *teungku meunasah* who usually get closely involved in the village *musyawarah*. And fourthly, the peaceful agreement resulted from this *musyawarah* was not concluded by a social ritual such as *peusijuk* or *kenduri*. The upshot of this dispute settlement was instead marked by the withdrawal of claim statements from the court by respective parties. Above all, as far as Islamic legal reasoning is concerned, the consensus produced by such *musyawarah* was not completely equal to *ijma’* as there was a dissenting opinion. Teungku Baderin, chairman of the committee of land acquisition disputes, kept opposing the end result of settlement. Based on these reasons, I shall maintain that *musyawarah* (consultation and negotiation), which helps resolve land disputes above, cannot be seen solely as reflecting the crucial role of religion. Despite *musyawarah* is both religious in nature and customary in characteristic within the Acehnese community, the *musyawarah* that ended two land disputes above is not a necessarily religious mode of conflict management. This is because *musyawarah* is found in different settings and advocated by various institutions and agencies.

X. Conclusion

The description of the two land cases above demonstrates how different interpretation of facts, norms, rules, institutions, actors, motivation, interests have been interwoven in transforming claims into disputes and then converting disputes into a settlement. Religion, economic, financial, and socio-political factors were all devices that stirred these cases. Specifically, religion, in the sense of mosque as worship place for Muslims, has played a persuasive role to bring contending parties into compromise. Yet, religion – in terms of actor, institution, mechanism, and legal reasoning – has not been fully represented to play a decisive role in resolving those disputes.

As disputes discussed above involved not only legal arguments but also discourses on religion, history, politics and other interests, this fact demonstrates further the very existence of competing various norms and rules in a single community. Given that law becomes a means in a great variety of ways by people, groups or the state acting in their own interests, the two cases being presented in this paper in part have demonstrated a struggle for one form of law as against another. The customary norm (*hak ulayat* land) in particular appears to challenge the applicable Indonesian land law in light of the formal acknowledgement and the emergence of adat institutions in Aceh’s public sphere. But to what extent to the custom or *adat* has been able, through these cases of land disputes, to reestablish its claim of local authority remains to be seen.

The disputes not only provide a space for one particular norm to defend its position, but they also become an arena to choose justification for the claimed interests. The way the Acehnese people employ various forms of reasoning, including religion, in such 'irreligious' disputes reveals the fact of "justification shopping". Despite land issues are not directly parts of Islamic rules that being formally applied in Aceh, religion was mobilized, albeit symbolically, to justify the claim for land rights. This condition of
shopping allows each of disputants to choose a particular argument but attempt to decline to use as such in other situation in the hope that her/his claims could be accepted (Benda-Beckmann 1981).

Finally, with the growing number of works that tell the readers about the employment of religious device in effectively settling disputes within a Muslim community (Hassan 2006; Rashid 2004; Lukito 2006), an account of the musyawarah that brought land disputes in Aceh to an end, in which it was not necessarily traditionally religious mechanism, is well worth doing. It does not simply show the (un)reliability of a religious element in given dispute settlements, but importantly it exhibits an example of practices where religion, even it has been given an official status to play a greater role, has limitations to manage the conflicts, land issues in particular.

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