

THE AGENCY AND STRUCTURE IN CASES OF LAND OWNERSHIP

Abstrak

Terdapat gejala dualisme hukum pertanahan dalam masyarakat Indonesia, khususnya masyarakat Aceh. Kesenjangan atau ketegangan tersebut terjadi dalam hubungan antara semangat kepemilikan pribadi sebagai representasi kebutuhan aktor-aktor perseorangan dengan struktur legitimasi hukum adat dan hukum non-adat sebagai representasi semangat komunal (struktur). Data empiris menunjukkan semakin tingginya dukungan terhadap tekanan dalam pengaturan kepemilikan pribadi dalam masyarakat lokal. Sistem struktur hukum adat yang mengakui kepemilikan pribadi tanpa bukti formal cenderung berbenturan dengan sistem struktur hukum nasional yang berbasis pada sistem administrasi pertanahan melalui Badan Pertanahan Nasional (BPN). Hal ini menunjukkan gejala ketidakadilan, di mana para pelaku individu mengalami ketidakpastian dalam konteks kepemilikan pribadi komunal di satu pihak, dan mekanisme peradilan adat yang tidak efisien bagi mereka di pihak lain.

Kata Kunci: Kepemilikan Tanah, Aceh, Hukum Adat, Badan Pertanahan Nasional, Ketidakadilan

Abstract

There are symptoms of dualism in land law in Indonesian society, especially in Acehnese society. The gap or tension occurs in the relationship between the spirit of private ownership as a representation of the needs of individual actors with the structure of customary law legitimacy and non-customary law as a representation of the communal spirit (structure). Empirical data shows increasing support for pressure in regulating private ownership in local communities. The customary legal structure system that recognizes private ownership without formal evidence tends to clash with the national legal structure system based on the land administration system through the National Land Agency (BPN). This shows symptoms of injustice, where individual actors experience uncertainty in the context of communal private ownership on the one hand and the customary justice mechanism that is inefficient for them on the other.

Keywords: Land Ownership, Aceh, Customary Law, National Land Agency, Injustice

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INTRODUCTION

Research on the relationship between actors and structures or individuals and society in the context of land ownership in Aceh can hardly be found. Some of the following research results are more related to land tenure discrepancies from a legal-normative perspective. (1) research by Ilyas (1999)^[1] regarding the status of land controlled by the people based on customary law about the granting of Business Use Rights (HGU) to national private entrepreneurs around West Aceh Regency. This study shows that land control by community members according to local customs based on “magical religious communalism” principles is not recognized by local BPN officials. Therefore, the granting of HGU is seen by researchers as a juridical flaw because land controlled by the people based on customary law does not receive proper national (non-customary) legal recognition.^[2] (2) Saifuddin's (1996)^[3] study on Land Disputes as a Social and Legal Symptom in the Development of Industrial Plantation Forests (HTI) in Aceh Besar. The results of this research show that the legal awareness of community members is increasing in dealing with the tension between ownership of customary law and non-customary law about HTI companies in the area concerned.^[4] The HTI company does not consider customary communal responsibility (corporate social responsibility), instead, it adheres to non-customary (legal) aspects.^[5] This shows a tendency for non-customary law legitimacy structures to clash with customary law legitimacy structures. (3) Supardi's (1975)^[6] research on "The Problem of Land and Labor Needs for the Cot Girek Sugar Factory, North Aceh". This study shows how the impact of land expansion by sugar companies has had the implication that community appreciation for the economic value of land has increased, and this has encouraged actors to strengthen the legitimacy of their non-customary land ownership with formal certificates.^[7] In this regard, the rational spirit of individual community members has emerged to calculate the pros and cons of renting land into two categories, namely (1) a quantitative category that focuses on economic reasons, (2) a category that bases qualitative (*non-economic*) calculations on a cultural-value system (*communalistic-religious*) that causes actors to defend their land.

People tend to understand land as a natural resource with unique meaning and history,^[8] namely on the one hand as a matter of sovereignty and on the other hand as the basis for the founding of the Indonesian nation-state.^[9] *First*, in terms of sovereignty, there is a meaning of local and national power. There is a tug-of-war between (a) private ownership of land which is supported by the customary (local) legal system, and (b) private ownership of land which is based on the national legal system. This fact shows that there is land that refers to the legal system (sovereignty) of indigenous communities, and there is land that refers to the legal system (sovereignty) of the state.^[10] In other words, there is land ownership with local structural schemata (which tends to be communal) and there is land ownership with national structural schemata (which tends to be non-communal).^[11] *Second*, regarding the existence of land as the foundation of the Indonesian nation-state, it contains the meaning of the existence of individual agencies as citizens who are related to various sources of science and technology, information, and value systems that enable them to negotiate through legal institutions to give a certain style to the spirit of private ownership of existing land.^[12]

Customary rights and social norms that have been in effect since the past have been so embedded and integrated into the worldview of the community concerned that they have formed a more distinctive process of land control and ownership.^[13] In other words, each region has relatively different customary (communal) arrangements and mechanisms,^[14] especially regarding land control and ownership methods.^[15] However, there are many facts so far that there have been various attempts to castrate and

denigrate 'customary law' and traditional wisdom on the grounds of 'legal certainty'.^[16] Both land ownership systems based on customary and non-customary law have strengths and are not without weaknesses. Therefore, various conflicts between individual agents in society also stem from the tension of customary and non-customary land law so this can be used as an indication of the determination of the object towards the subject.^[17]

It can be said that in addition to private ownership in Indonesian Land Law, private ownership is also recognized based on the Customary Law of the local community concerned.^[18] As stated by Ismail, before the enactment of the Basic Agrarian Law (UUPA, 1960), there were two types of land ownership categories, namely (1) private ownership which refers to Western law (Eigendom rights, now no longer valid); and (2) private ownership based on Customary law. With the enactment of the UUPA, the two categories of ownership were integrated into a national land law system. However, the legal system cannot be solely nationally oriented because there is diversity (culture) in society which encourages them to depend on their respective communalism.^[19] This is to show that there is dualism in Indonesian land law, thereby bringing about a clash between the customary law system and the non-customary law system with the existence of individual agencies.

This research aims to understand the mutuality relationship between individual actors as agencies and land law as a structure. What is the ontological basis of individual actors in the context of the discrepancy between land law and customary (local) structural schemata and land law with non-customary (national) structural schemata? Specifically, this study aims to understand (1) the existence of individual agencies as dependent variables that want to be explained by the discrepancies in the two traditional and non-customary structural schemata; and (2) to gain an understanding of the determination of the nature of individual actor reality in the mismatch between customary and non-customary schemata as an independent variable that allows changes in the two structural schemata.

METHODOLOGY

This case study is intended to explore the process of social practice in court which shows the relationship between landowner agency and dualism of land law (structure).^[20] This exploration is carried out through hermeneutical research,^[21] namely by carrying out an interpretative analysis of texts (the contents of the trial minutes),^[22] where the results of the excavation can have implications for explaining the existence of individual agencies in their relationships with society.^[23] This activity is by Martin's view that understanding something - a person, a subject, a community, and so on- enables the researcher to know certain facts about the person, theory, or community. In cases involving persons, expressions such as one person understanding another person can often be reduced to expressions of forms which one knows refer to certain facts about the persons in the event.^[24]

The following is an overview of the researcher's preparations for collecting data in the field. Strategy that used is case study, location is in North Aceh Regency and Lhokseumawe City (two locations as representation of the Aceh Provincial Courts). Subjects were Eight judges at the Lhokseumawe District Court, and the Lhokseumawe and Lhoksukon Syariah Courts, 1 Lhokseumawe District Court judge, 2 lawyers, 2 clerks, and 1 plaintiff. The research objects are the spirit of individualism and communalism in the conception and practice of land ownership. Data Collection Methods that were used secondary analysis or documentation study, participant observation, and in-depth interviews.

The unit of analysis in this research is individuals (resourcepersons) who have knowledge and experience through texts about the practice of private ownership of land in society and the courts. In carrying out the analysis various categories were developed which were found from the results of field interviews with informants and supported by observations. So, the data that has been obtained is analyzed by categorization, and classification, and referred to the theoretical framework of this study.

Data analysis was carried out simultaneously through collecting data and finding information based on a process of reduction and interpretation. Researchers take a certain amount of information and data, then there were reduced it into categories and classifications, then interpret it all with a contextual scheme. To ensure the validity of the data obtained, triangulation was carried out, namely collecting similar data from various data sources available. In this way, the weakness of one information can be tested by data obtained from other data sources.^[25] In understanding various information, dialogical interpretation is also carried out with the informants to capture the objective and subjective meanings of the subject matter being studied.

FINDING AND DISCUSSION

This study aims to understand the reciprocal relationship between individual actors and the land laws that apply in society. This relationship is explained by Giddens' structuration theory ("The Constitution of Society: Outline of the Theory of Structuration" published in 1984).^[26] The main aim of this theory is to explain the dialectical and intertwining relationship between *agency* and *structure*.^[27] This theory focuses more on social practices that connect individual actors with structural schemata (customary and non-customary).^[28] The duality of structure between individual actors and land law can have implications for the typology of individuals and the structure of land law in society.^[29] This structuration approach allows researchers to understand the process of 'structural duality', as the practice of private ownership of land in case of Giddens understands that sociology is not as a general scientific discipline that deals with the study of human society as a whole, but sociology as a branch of social science that focuses on modern or advanced society. This is a consequence of the intellectual division of labor in modern rational society. which links chord actions to rational recognition and legal (structural) certainty.^[30]

Structuration Theory is used to find a solution to the influence of modernity (social object imperialism) on the nature and existence of individuals (actors as subjects) about the doctrines of individualism and communalism (each of which is seen more as an object).^[31] The structuration approach places more emphasis on processes that link individual actions (social action) to social structures (social structure) thereby reducing dualism which tends to be "conflictual" in the relationship between actors (agents)^[32] and land law (structure).

However, Giddens in some respects agrees with Marx's thesis,^[33] to reduce the degree of causality (determinism) in social science in favor of objective imperialism, as is true in scientific approaches in general.^[34] So, the structuration approach tries to find a "middle way" in the subject-object (actor-structure) relationship, where the two main issues (subject: actor, and object: structure) each have their own structural characteristics. However, the relationship between the two (subject-object) can be developed into a relational 'structural duality'.^[35] The flow of structuration allows individual actors to understand and modify modern life in a way that does not destroy the values in the domain in which

they live. The actors concerned can use their abilities (capacity) and knowledge (knowledgeability) to control the negative side of modernity.^[36] This approach is more directed towards the development of a pluralist society, where various groups and schools of thought come together to live together for a national interest that frees actor-structures (agency-structures) from each other in a mutualistic relationship.

There are several weaknesses of Giddens' structuration theory used in this research. (1) In general, Giddens' theory is more conducive to being used to understand advanced society because it is part of the experience of modern-industrial Western society;^[37] (2) there is no concrete and measurable understanding of agency stratification,^[38] whether it is an individual human actor, a social institution, or a particular ideology.^[39] Therefore, a unique descriptive picture of individuals (agencies) is needed based on dimensional social forces: large (macro), medium (mezo) and small (micro) actors.^[40] Furthermore, (3) even though it is intertwined in the social world, Giddens' agency-structure duality is seen as valid only at the analytical (philosophical) level, and therefore the concept of structure duality is considered untested from an empirical point of view.^[41] Studies on the existence of individual actors through private ownership of land can show the agency-structure mutuality relationship. This relationship is based on mutual interests that are reciprocal and integrated in a series of structural principles that are empowering.

Even though "big" actors can theoretically be stronger than "medium" and "small" ones, in practice the relationship can be inversely proportional.^[42] The power of large agents, among other things, is often supported by their attributes and access to private ownership which is supported by more adequate (political) and economic (material) power compared to the ownership available to "medium" or "small" sized actors, so it is only supported by socio-cultural status.^[43] With the support of positive law, "small" actors can be stronger.^[44] Powerful actors make it possible to "change the structure" including the socio-cultural symbols (rules) that is applying in society.

According to Craib, the weaknesses of Giddens' theory include, for example: (1) that the theory is not successful enough in explaining the social structure that underlies social life. Giddens focuses on social action, but his work lacks "ontological depth." (2) Giddens's attempt to create a theoretical synthesis does not match the complexity of social life. To explain overly complex social life "requires a series of theories that may conflict with each other rather than the structure of a synthetic theory." Craib says that because he rejected positivism and theories such as structural functionalism, Giddens was then unable to derive useful ideas from meta-theory and those theories.^[45] Margaret Archer also criticized Giddens, namely that (1) in certain cases a dualistic perspective may be useful, and in other cases a pragmatic-relational (duality) perspective may be more useful. How far the dualism and/or duality approach applies in the social world is an empirical issue that cannot be determined beforehand. (2) There is no result of structuration theory, there is only an "endless circle" of directionless agency-structure relationships. Meanwhile, Archer's morphogenesis system is considered to fulfill the direction of structural expansion.^[46]

Based on the previous discussion, it can be understood that the 'duality' approach views the two main problems, both action (subject) and structure (object), as following each other.^[47] The societal structure (the system of private ownership of land) is produced and re-produced through social practices (including the process of private ownership of land before a court hearing) which individuals

dynamically carry out in their daily lives.^[48] In Giddens's frame of reference, structures are resources (perhaps customs and customary legal orders) that can both empower and limit actors' actions.^[49]

Structuration, thus, implies that society will always change through the dynamics of agency-structure relationships. This means that individual actors with abilities and knowledge supported by discursive awareness will carry out maneuvers that are different from practical awareness, they can provide new features to structural systems with their concrete activities that continuously traverse space and time. Thus, individual actors do not actually directly change or carry out structural transformations, but in their actions, they contain new structural properties so that in the subsequent process they bind the actions of subsequent actors to the continuation of similar actions. These structural properties are incorporated and combined into continuous action by transcending the existence of individual actors.

It can be concluded that this study attempts to use Anthony Giddens' structuration explanation that between individual actors (agency: subjectivity) and "communal actors" (structure: objectivity) are assumed to be in a mutualistic relationship, not in a deterministic relationship. If dualism is a causal perspective that places the individual or society (agency structure) in one of the two as the point of departure for the analysis of social relations, then the dual perspective places social practices as the object of analysis in the agency-structure, not in a cause and effect relationship. , but rather a reciprocal relationship. Thus, it can be said that the structuration framework is a social science perspective (epistemology) that positions individual actors who have the power to realize their capabilities and stock of knowledge in negotiating or even changing structural characteristics, at most not for himself, through a social practice so that the agency-structure context becomes more relational. Giddens wants to show a picture that structures (social structures) are not objects, but systems (social systems) that only appear in social practice.

Customary law (local communal norms and cultural-value systems) and non-customary law (national positive law and Islam) in social practice each have structural principles of marking, domination and justification (legitimacy). Structural signification concerns the symbolic system: namely the principles of meaning, mention and discourse. The structural principle of domination relates to a system of control over people (politics) and goods (economics). Meanwhile, the structural principles of legitimacy mostly involve normative regulatory systems expressed through law.

The following is a brief overview of the findings in the form of case texts resulting from court trials, the practice of private ownership of land, which allows for analysis (hermeneutics) based on a relational explanatory framework of the activities of individual actors (agencies) which are intertwined with the structural system of land law (structure). This relational mutuality can be found at the level of individual actor and/or institutional behavior, where court decisions granting actors private property rights are slowly and convincingly accepted by the structural system of land law that applies in the society concerned, which the actor initially experiences as a system that limits him and then transformed into a system that empowers itself to fulfill its individual and collective interests.

Individual actor, Hasbi TWH. bin Tgk Syech Puteh (male, 63 years old, retired Indonesian Armed Forces, ABRI) sued actor Hajjah Asiah (Tanjung) binti Haria Insya (female, 55 years old, Housewife) and 26 other heirs, for the inheritance of Haria Insya bin Tgk Husein who died in 1994. Plaintiff actor Hasbi Twh bin Tgk Syech Puteh is the biological son of the man of the second wife of the late Haria Insya bin Tgk Husein whose name was Maryam binti Tgk. Salam. Meanwhile Hajjah Asiah (Tanjung) binti Haria Insya is the deceased's biological daughter from his second wife as well. So, between the

plaintiff and the defendant there is a blood relationship as siblings with one biological father and one biological mother.

In the Minutes of the 21st trial, the Chairperson of the Panel of Judges at the Lhoksukon Syar'iyah Court read the verdict resulting from the trial of the inheritance dispute case, which stated, among other things, 'granting the plaintiff's claim in part'. This decision is part of the results of the plaintiff actor's (agency) struggle through land ownership practices in court. In the judicial process over time, as the number of texts of trial minutes, the plaintiff has demonstrated his ability and knowledge in negotiating with customary structural systems and non-customary structural systems (as the basis or guideline of the defendant). Finally, individual actor Hasbi Twih bin Tgk Syech Puteh received confirmation and recognition of his inheritance as his personal ownership.^[50]

Judging from Giddens' structuration approach, the achievements of individual actors have placed their relationships in the position of agency and structure as a network of mutual relations. This relationship may at one time enable individual actors (agencies) to give a certain color or style to customary and non-customary structural systems, and at other times it is the opposite. This is because in a society that tends to be traditional, the court is not a reference point for many people. The court is part of the legal instruments in modern-industrial society which is different from Acehese society which is currently experiencing a transitional process.

(2) Joint property case filed by the plaintiff, an individual actor, with the identity: Name Ti Hawa bint M. Asyek, female, 72 years old, stay-at-home spouse, elementary school education (SR) of Berlawanan to actor named Hajjah Aman Husna bint M. Saleh as Defendant, 48 years old, stay-at-home spouse, junior high school education (SLTP). The problem is that Hajji M. Nur bin Abdul Latif died in February 2003, leaving behind a number of heirs.^[51] The plaintiff, as the biological mother of the deceased, felt that she was not considered part of the deceased's heirs, and the local 'customary justice' mechanism turned out to be unsuccessful because the legitimacy (structural principle) of Gampong customary law did not have effective sanctions for implementing its decisions. Therefore, the individual actor or plaintiff brought the matter before the Syar'iyah Court.

The actor took up to 18 meetings in front of the court. In the end, the Chief Judge who heard the case decided to 'grant the plaintiff actor's lawsuit in part'.^[52] The individual actor obtains a share of ownership rights over land assets as deemed fair by him. The actor's action of submitting his problem to the court is to provide another nuance to the reality of ineffective customary court decisions to enable a mutual relationship of his own ownership rights with the reality of customary justice.

(3) A joint property case filed by an individual actor named Abubakar bin Suud, 80 years old, farmer, with a primary school education (Plaintiff) against actor Hamidah bint Ibrahim, 56 years old, farmer, with a primary school education (Defendant). The problem is that the two actors (plaintiff and defendant) are former husband and wife who were divorced at the Lhoksukon Syar'iyah Court on March 24, 2004. That during the marriage the plaintiff and defendant had owned a few joint assets.^[53]

This case did not take long, at the seventh trial, the Chief Judge of the Panel of Judges who heard the joint property case filed by actor Abubakar bin Suud and decided as the decision stated that the opposition to the Verstek decision dated 7 September 2004 M/22 Rajab 1425 H, Number 31/Pdt.G/2004/M.Sy-Lsk mentioned above is incorrect and unreasonable. The Chairperson of the Panel stated that he maintained the Verstek decision that had been decided.^[54] In this case, the defendant often

did not appear at the trial without an obvious reason, even though the person concerned had been properly summoned by the court. In the end, the court's decision accepted the claim of individual actor Abubakar bin Suud for ownership of joint property which he sued to become his individual property.

(4) Inheritance rights dispute case filed by individual actor, Halimah bint Tgk Abu, 70 years old, stay-at-home spouse, elementary school education (representing the plaintiff) against Sulaiman bin Ali Basyah, 22 years old, farmer/motorbike taxi driver, elementary school education (representing defendant). The problem is that the death of Tgk Abu bin Tgk M. Daud (the plaintiff's father) in 1989 has left a few heirs to the inheritance. One of the other plaintiffs who is his heir is Ali Basyah bin Tgk Abu (the defendant's father) who died in 1998 and left behind a few heirs.

In the Minutes of the 10th Trial, the Chairperson of the Panel pronounced the verdict, the complete terms of which were 'rejecting the plaintiffs' lawsuit', and 'sentencing the plaintiffs to pay the court costs'. This case shows that not all individual actors are able to successfully negotiate with customary and non-customary legal systems. If the ability and knowledge of the actor concerned is limited or access to information regarding the case they will be facing is weak, then the achievements may be different from what was originally expected.^[55]

The following explains how the discussion of the results of this research was carried out through the classification of two types of methodology, namely (first) institutional analysis which shows the characteristics of the social system as part of reproduction; and (second) strategic behavior analysis, namely the methods used by individual actors to demonstrate structural characteristics in determining social relations to obtain their individual property rights.^[56] For this discussion the researcher does not use the entire methodology, but rather according to the needs of the analysis, or even utilizes analysis of the strategic behavior of individual actors in an effort in order to demonstrate their ability and knowledge to negotiate with customary or non-customary structural systems that tend to limit the interests or needs of private ownership of land.

REFERENCES

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- ^[2] This kind of thing also happens in Minangkabau society, where there is a change in the views of local practitioners or bureaucrats (Department of Forestry, Ministry of Forestry and National Land Agency, BPN) (not recognizing communal ownership) the emergence of individual ownership (nuclear family) replacing communal ownership (extended family). See Hermayulis, *Application of Land Law and its Influence on kinship relations in the Minangkabau Matrilineal Kinship System in West Sumatra*, Faculty of Law, University of Indonesia, Dissertation. 1999.
- ^[3] See Budiharga, Wiladi and Yara, Idawati H.M, Research Summary of the Research Assistance Fund Program for Young Researchers. Collaboration between the Social Sciences Foundation and The Toyota Foundation. 1999:108. Researcher Saifuddin. Independent Research, 1996.

[4] Often behind the rationale of modernity is hidden the desire for control of forest land by entrepreneurs on a large scale for Industrial Plantation Forests (HTI) and Forest Concession Rights (HPH) without having to be "disturbed" by the work patterns and procedures of the surrounding community. See Julianto, *Land for the People*, Pustaka Zaman, Jakarta, 2000:24.

[5] See Lubis, T. Mulya. "Corporate Responsibility". Kompas, 28 January 2004.

[6] Land law (with the terminology of structuration theory) can be understood as a structure consisting of customary schemata and non-customary schemata determining the existence of the "I" (landowner), and therefore the "I" with all the monitoring capabilities of his and other people's activities in the land. the regularity of daily behavior with discursive awareness can monitor its monitoring work, reflexively using its stock of knowledge in communicating (or negotiating with land law). See Giddens, 1984:29.

[7] Sjafei's research in Aceh Besar shows that landowners (actors) want land acquisition to be carried out based on economic considerations and applicable procedures to protect their rights according to formal law. Rational approaches to land acquisition based on formal law are the most important measures among other measures (for what purposes, and to what extent) in land acquisition practices. This shows that social actors tend to emphasize rational action, namely action that is calculative and planned, efficient and effective. See Sjafei, M. Saleh. *The Meaning of Land Owner Protests (Case Study in Aceh Besar)*. Master of Science Thesis in Sociology. University of Indonesia. 1997.

[8] According to one informant (Teuku Juned) land for the Acehnese people has a communalistic-religious-magical meaning. This is because "land is like a piece of diamond (gemstone) which has many sides, such as space, nature, production factors, consumer goods, property and capital. Land is also an object that is related to (God) the Creator and society --- which gives rise to the view of land as the cosmos, and it allows it to be used as savings. Barlove, Raleigh. *Land Resources Economics of Real Estate*. Prentice Hall Inc. New Jersey. 1978:10. Vide Hermayulis, dissertation, 1999.

[9] Soil is different from petroleum, which is both a rare resource. This is because oil economic calculations can be used to regulate and manage its optimal use. Land has historical, political-economic, and socio-cultural meanings so that it is different from the economic principles of other rare goods. See Julianto, *Land for the People*, Pustaka Zaman, Jakarta, 2000:13.

[10] Disputes over control of land and other natural resources involving local indigenous groups are a major problem in Indonesia. Structural agrarian disputes involve indigenous community groups facing the state both as perpetrators and guarantors of rights. See Dahlan and Bathlimus, "Customary Law Community Rights to Land in NAD Province", *KANUN Legal Science Journal*, Faculty of Law, Syiah Kuala University, Banda Aceh, April 2005.

[11] In the view of the people of Aceh, all land that has not been cultivated by people is called land owned by Poteu Allah, land of God, Tanoh Hak Kullah (meaning land that belongs to God), while land that has been cultivated is distinguished between "tanoh droú" (own land) and tanoh gob (other people's land).). One's land and other people's land indicate the land that is under one's control. See Dahlan and Bathlimus, "Customary Law Community Rights to Land in Aceh Province", *KANUN Legal Science Journal*, no 41 edition April 2005:8.

[12] The land (space) on which the modern Indonesian nation-state was founded, consists of various communities bound by their respective systems of communalism. In addition to living with and within

the structure of the Indonesian nation-state (with communal customary structural schemata and individual non-customary structural schemata), individual agents have access to various other sources of inspiration both internal and external which enable individual actors to negotiate social practices with the structure. land law.

[13] One interesting thing in the case of land ownership in Sumatra is its flexibility, namely how traditional ownership regulations over many generations have survived Hindu, Islamic, and European influences, and are always able to adapt to situations that are constantly changing. See Scholz, Ulrich, Planck. "Agricultural Geography in Sumatra", in *Agricultural Sociology*. Indonesian Obor Foundation. Jakarta. 1990:125.

[14] The land issue in Indonesia lies more in political rather than economic and socio-cultural issues. If political problems can be resolved, then economic and socio-cultural problems can easily be resolved or steps for solving them can be found. It is necessary to think about a form of national land law that respects customary law and various traditional wisdoms that regulate land tenure and communal community rights. See Julianto, *Land for the People*. Puzam. Jakarta. 2000:7, 22-23.

[15] In this case there are examples of three (3) basic land tenure patterns in Minangkabau society, namely (1) land controlled by individuals based on individual private ownership, (2) land controlled by groups with varying areas and levels of descent based on ownership rights. clan, and (3) land controlled by local (customary) groups, namely Nagari. See Evers and Korff, in *Urbanism in Southeast Asia*. Indonesian Obor Foundation. 2002:332-333.

[16] This fact is a form of being trapped in a deterministic perspective. Furthermore, for land conflicts, see Kompas Daily, "Land Conflict Intensity Increases in 2004". WALHI has predicted that the struggle for land rights will continue in 2004. According to WALHI, the increase in the intensity and frequency of conflict is due to the government still maintaining patterns of extracting natural resources and the environment without protecting the rights and existence of local communities. January 12, 2004:10.

[17] There are weaknesses in land law that give rise to contradictions so that Indigenous peoples' sense of justice is disturbed. For example, the problem of proof between land rights based on girik evidence (letter C) and land rights based on certificates (see the case of "Tamat's winding road", *Koran Tempo*, 1 May 2006: A14). This problem has not been resolved even though various regulations and jurisprudence have been issued. Therefore, steps to mutually accommodate (structuration?) between written law and customary law have become a serious burden for comprehensive land reform. See Julianto, 2000:23-24.

[18] The historical background shows that land ownership begins with occupying an area which Indigenous people call communal land (communal property). Especially outside Java, such land is recognized by Customary law based on both genealogical and territorial relations. Along with changes in socio-economic patterns in each community, land collectively owned by Indigenous communities is gradually controlled by community members through rotational cultivation. The individual ownership system then began to be known as the communal ownership system. According to colonial land law, communal land belonging to customary customs and land belonging to individual customs is land under state control. Individual rights to land (private land ownership) were recognized as limited to those subjects to Western law, and such rights were granted to land in urban areas and plantation land in rural areas. See <http://tanahkoe.tripod.com/bhumiku/id3.html>. Accessed September 23, 2003.

[19] This is to show that the state protects private ownership of land based on the principle of communalism on the one hand and recognizes the interests of individualism on the other hand. See Ismail, "Customary Land in the National Agrarian Law System". KANUN Legal Science Journal. Number 27, December 2000. Faculty of Law, Syiah Kuala University. Banda Aceh. 2000.

[20] Creswell, John W. *Research Design, Qualitative and Quantitative Approaches*. SAGE Publication. Thousand Oaks. 1994:71.

[21] Hermeneutics is understood as 'the process of changing something or a situation of ignorance into understanding'. This general limitation is always considered correct, both in hermeneutics in the classical view and in the modern view (Richard E. Palmer, 1969:3; see E. Sumaryono, Hermeneutics, A Philosophical Method, Revised Edition, Kanisius, Yogyakarta, 1999:24. Hermeneutics in Aristotle wrote of the classical view 'that the words we speak are symbols of our mental experience, and the words we write are symbols of those words we speak'. For Giddens social research has a very cultural, ethnographic, or 'anthropological' aspect important for the study itself, which is called double hermeneutics which gives the character of social science. See Giddens, 1984:284.

[22] Interpretative analysis here is part of the hermeneutic method that Giddens proposed as one of the main tasks in sociological analysis, namely the hermeneutic explication and mediation of different forms of life in the descriptive meta-language of social science. (meta-language is language or a set of symbols used in speech). See Giddens, *New Rules of Sociological Method, A Positive Critique of Interpretative Sociologies*. 2nd-Ed. Polity Press. 1993:170.

[23] There is a range of different investigative styles based on experiments, surveys, case studies (including ethnography), documentary and historical methods which include the use of written texts and non-textual materials. Researchers can use a combination of different approaches available to issues related to validity through methodological triangulation. This explanation is based on Denzin (1970), see Kuper and Kuper. *The Social Science Encyclopedia*, 2ed, Routledge. London. 1996:534.

[24] Truzzi, Marcello (1974). *Verstehen: Subjective Understanding in the Social Sciences*. Adison-Wesley Publishing Company. California. 1974:105-106.

[25] Patton, M.Q. (1980). *Qualitative Evaluation Methods*. Beverley Hills, CA. SAGE Publications. Miles, M.B. and Huberman, A.M. (1984). *Qualitative Data Analysis: A Source Book of New Methods*. Beverley Hills. California. SAGE Publications. 1984. Nasution, S. *Metode Penelitian Naturalistik Kualitatif*. Tarsito. Bandung. 1988.

[26] Giddens understands sociology not as a general scientific discipline that deals with the study of human society, but sociology as a branch of social science that focuses on modern or advanced society. This is a consequence of the intellectual division of labor in modern-rational society.

[27] Dialectics is a way of thinking and imaging about the world. As a dialectical thinking framework, it emphasizes the important meaning of a process, relationship, dynamics, conflict, and contradiction - a more dynamic way of thinking. On the other hand, dialectics is the view that the world is not composed of static structures, but consists of processes, relationships, dynamics, conflicts, and contradictions. Hegel applied it to the world of ideas, Marx to the world of economic life. See Ritzer and Goodman, 2003:26.

[28] While Giddens rejects the analysis of the social and socio-cultural system levels separately, Archer view's structure and culture as having to be treated as two autonomous concepts. Bordieu's theory (Habitus and Field) is also to return actors to real life which structuralists have eliminated with their objective structures. Habitus is defined by Bordieu as a mental or cognitive structure as a pattern that an actor internalizes. Habitus (historical product habits) can also be a collective phenomenon. See Ritzer and Goodman, 2003:522.

[29] 'Actors in society' are different from 'actors in culture' (Noerhadi) because in society I am more empirical and positive in expressing creativity and dynamics. Society is a collection of individuals who carry out meaningful social actions that can produce a transformation of cultural values that guide new ways of thinking, acting, and feeling for individuals until they institutionalize all these things into culture.

[30] The structure in the context of this study is a communalism (religious) cultural value system which is based on the assumption that private ownership (of land) both in the local and national community's view of life tends to be oriented primarily towards social functions (the 1945 Constitution and the 1960 UUPA refer to the principles of socialism, vide TAP-MPRS No II/MPRS/1960). The structure of private ownership should be based on the development of its orientation to the actions of agents in the practice of private ownership of land in court. This reality shows an indication that the state has an interest in preserving and protecting the cultural-value system of communalism as a private ownership structure that restrains individual agency.

[31] Individualism and communalism are concepts that can be treated as agency and structure, depending on the assumptions of the study being conducted. In this research, individualism and communalism are assumed to be agency and structure respectively because the former is a doctrine or form of idea (value system) that developed at least during the period of modernity supported by positivism. Communalism is seen as an understanding (cultural value system) that is lived out, at least, in developing Acehnese society. Communalism is an ideology that refers to a cultural value system that is different from individualism.

[32] Marx also often used agency to show subjectivity or individual consciousness in his main analysis of social structure and objective social reality. See Sibeon, Roger. *Rethinking Social Theory*. SAGE Publications. London. 2004:36.

[33] Primarily that "humans create their own history, but it is not produced according to their wishes; they do not produce it under circumstances of its choosing, but occur under circumstances directly encountered, as they are, and a continuation of the past". What individuals want and do can result in the consolidation of what they do not expect. See Kuper and Kuper. *The Social Science Encyclopedia*, 2ed, Routledge. London. 1996/1999:803-805.

[34] The concept of structuration is based on the idea that the constitution of agents and structures is not a series of phenomena that exist independently of each other, a dualism, but indicates a duality. Structuration involves a dialectical relationship between agency and structure, one cannot exist without the other. Giddens is deeply concerned with the shattering impact of modernity. See Ritzer. "Agency-Structure Integration" in *Sociological Theory*. 1996.

[35] The relational 'duality of structure' is a relationship that does not refer to determinism, emphasizing the phenomenon of 'cause-effect', between agency-structure. Symptoms like that are what Giddens tries to find a solution with a structuration approach.

[36] Industrial work in modern society, for example, can result in degradation, subjection of human actors to rigid discipline, and repetitive labor. Political power has the potential to become totalitarianism, the development of military power is a general phenomenon that has the potential to have negative implications for society. See Cassel, Phil. *The Giddens Reader*. Stanford University Press. Stanford. California. 1993:286.

[37] Giddens admits that, although his theory has attempted to reach a high scientific level (generalization), his theory can only be appropriately applied to modern society. The society studied by Giddens is an advanced (modern) society, therefore his theory does not absolutely apply to all societies.

[38] Agency refers not to the intentions people have in doing things, but rather to their ability to do those things (which is why agency implies power). So, agency deals with events that are the perpetrator of a person, that is, that individual in any phase in a certain series of behavior, could act differently. Whatever happens will be uncertain if that individual does not intervene. Agency is thus an act. See Giddens, 1984:9-10.

[39] Giddens uses concepts that are full of ambiguity. Therefore, it is necessary to search for agencies from other writers. According to Emir and Mische, human agency is a relationship that is constructed temporally by actors over different structural environments --- the context of temporal relational action --- which occurs through a relationship of mutual influence on habits, imagination, and assessments of problems that exist in historical situations. which is changing. See Emir and Mische. *What is Agency?* New School for Social Research. *AJS* Vol 103 Number 4 January 1998.

[40] The agent stratification model presented by Giddens is more internal (psychological within the agent), namely a sequence of reflexive monitoring of actions, rationalization of actions, and motivation for actions. See Giddens, 1984:5. An agent cannot do anything without power. A person ceases to be an agent if he loses the capacity to make a difference.

[41] According to Margaret Archer, structure (and culture) and agency are analytically distinct, although they are intertwined in social life. See Ritzer. "Agency-Structure Integration" in *Sociological Theory*. 1996:534. Also, Layder, Ashton, and Sung (1991) have sought evidence of Giddens' structuration theory through a study of the transition from school to work. Although they support his theoretical approach, their most important conclusion is that structure and agency are not as intertwined as Giddens suggests: "we therefore conclude that empirically structure and action are interdependent (and therefore, deeply implicated in each other), but partly autonomous and separable domains" (Layder, Asthon, and Sung, 1991:461). Their conclusions are consistent with the position taken by Margaret Archer. Ritzer, 1996:532.

[42] Compare this with Hermayulis' findings that large actors (extended family: grandma mamak) have lost their prestige and power over land due to the role of medium and small agents through land certification based on positive law which tends to provide individual responsibility. See Hermayulis.

Application of Land Law and its Influence on kinship relations in the Minangkabau Matrilineal kinship system in West Sumatra, Faculty of Law, University of Indonesia, Dissertation.1999.

[43] Actors who have "social capital" tend to be more likely to build agencies that enable them to exercise hegemony over agents in social and cultural relations. For example, the status of a teacher or lecturer with the support of his idealism (traditionally) is more likely to control his pupils or students in socio-cultural fields or spread to economic and political fields. Additionally, in undeveloped societies, agents who have symbolic institutions (social culture) are more likely to exercise hegemony over individuals who have been cared for and provided by them in socio-cultural fields, as if they have the inherent right to oblige these individuals to provide some kind of strings attached. unconditionally based on the history of their relationship in the socio-cultural field (learning).

[44] Giddens' definition of actor contains the concept of agency, which is repetition that is worth repeating: that an actor is a locus of decisions and actions where the action is in some sense a consequence of the decision of the actor concerned. An actor is something that has the capacity to formulate and take decisions and act on them, the question of which decisions are taken, or can be carried out, becomes an empirical matter. See Sibeon, Roger. *Rethinking Social Theory*. SAGE Publications. London. 2004:119.

[45] See Ritzer and Goodman. *Modern Social Theory (Modern Social Theory)*. Sixth Edition. Kencana. Jakarta. 2003:513.

[46] Ibid. Page 515.

[47] These structures follow each other, tend to be flexible, contextual, and relational.

[48] Even though an actor experiences constraints, it does not mean that the actor concerned has no choice and cannot do anything differently. The actor's actions include the power to transform the situation.

[49] Abstractly, the structure can be conceptualized into two aspects of rules, namely (1) normative elements and (2) significance codes. Meanwhile, resources also have two types, namely (1) authoritative resources which originate from efforts to coordinate the activities of human agents, and (2) allocative resources which stem from control over material products or aspects of the material world.

[50] The case started on May 31, 2004, and ended on May 4, 2005.

[51] That one month after Haji M. Nur died, the local village elders and the heirs of the deceased had distributed the deceased's heritage peacefully. However, the result of the distribution by the Defendant's family was not fulfilled as it should have been so that the Plaintiff as the biological mother of the deceased did not get any share of the deceased's inheritance.

[52] This case was filed on December 27, 2004 and was decided on July 19, 2005.

[53] According to the clerk of the Syar'iyah Court, the plaintiff's actor has remarried to another woman, and this invites problems that further urge his ex-wife to support their children to ask for a share of the common property for each of them. The plaintiff's son had threatened to hit the plaintiff (his father) because it was considered that the joint property that he had worked on with his mother was used by the plaintiff to have fun with other women. Interview with the clerk, Bakhtiar, and with the Plaintiff Abubakar bin Suud, dated November 26, 2004.

^[54] Verstek's decision, as stated in the Minutes of the Fifth Trial, the Chairman of the Panel stated that it granted the plaintiff's lawsuit with Verstek. This case began on April 30, 2004 and the final verdict (verzet) was on January 18, 2005.

^[55] This case began on March 14, 2005, and ended on June 14, 2005.

^[56] See Giddens, *The Constitution of Society, Outline of The Theory of Structuration*. Polity Press. Cambridge. The UK. 1984:288-289.