

# The Effect of Legal Culture Shift on Land Tenure in Leuwidamar District, Lebak-Banten

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***Abstract—* Population Growth, technology and interaction with the society has been grown up hedonism for example like using handphone, wearing jewelry, driving vehicle, until land tenure in Kanekes / Baduy colony that previously had ascetic culture. There is a tendency between the legal culture and applicable legal system. The moral principles that were adopted began to be ruled out aside like Baduy Tangtu, rather open than Baduy Penamping and vividly by Baduy Dangka who became a mualaf or married with the local. In the beginning of 2004, Baduy society yet had around 850 Ha area that had been brought from the local with the average of ownership of each person around 1-2 Ha. Meanwhile, Urang Tangtu & the Jakarta begin to overwhelm the land in absentee method which is violated by national agrarian law and Kanekes village regulation. In Lembah Brokah & Landeuh village which is fostered by YASMUI and At-Taubah 60 Foundation, Baduy mualaf obtained waqf from them whom persuade other parties to purchase the land around Kanekes Village to cultivated with profit sharing system.**

***Keywords:* land tenure, cultural shift, absentee, Kanekes village**

## I. INTRODUCTION

Social changes that occur in the community are a common thing in a community group. This is due to the physical natural environment, the influence of other people's culture, warfare, and other external reasons. [1]

Globalization is an inevitable process in

civilization. This process has impact human culture in certain ways, this include the degradation of indigenous culture, reduced sense of nationalism and patriotism, loss of kinship and mutual assistance. [2]

Other serious consequences that arises are affecting local dynamics and causing collective global awareness. [3]

Local and national culture will be affected by the homogenization effect caused by globalization. Indonesia is one of the potential market for homogenization because as a developing country, Indonesia do not have high competitiveness. The bargaining position also in an accordance with developed countries. In Indonesia, the process of homogenization has taken place since the beginning era of liberalization under President Soeharto's administration. This process can be seen by the ease of information that can be gain and causing Indonesia's culture values to fade away. [3]

The faded culture can be easily witnessed in the change of language, clothing, diet, and information technology. As a result, many people are engaging in this process, they easily absorb foreign cultural identities and values without seeing their impact on national identity.[3]The changes that occurred was not only triggered by technological developments and advances but also caused by the continued effects this development has caused.

Based on the 2016 cultural statistics released by the Ministry of Education and Culture, the total number of arts that expected to be extinct will reach up to 167 arts. These arts include 30 performing arts, 1 fine art, 33

music arts, 58 dances, 6 theater performances, 1 craft, 1 oral traditions, 5 oral literature, 4 folk games, 20 expression arts, 4 traditional martial arts, and 2 other traditions [4] These art must be preserved by maintaining the noble values in it. [5]

Culture is not a negative thing but in culture there is an important element that being used as a regulator of the norms in human life. Culture has a great function in human life, and it is said that it protects the relation between human beings and nature, the relation between human beings and other human being. The systems and the viewpoints of live are the highest and the most abstract level in the culture. Culture serves as a guide in human life, it gave guidance on what consider valuable, precious, and important so that it gives direction and orientation to the lives of one civilization.[5]

There are still some communities who consciously and intentionally preserving their ancestors' values and teachings by limiting the interactions with the other humans outside their communities. Urang Kanekes or the Baduy is one example of community that still doing this. In the everyday life, Urang Kanekes live modestly in the middle of the forest and build their villages by utilizing the materials provided by the surrounding nature.

In this modernization era, Urang Kanekes is one of the tribes in Indonesia that still maintaining the basic cultural values they have and belief. They live at the foot of the Kendeng mountains, Kanekes Village, Leuwidamar District, Lebak-Rangkasbitung Regency, Banten, approximately 40km from the city of Rangkasbitung. They own customary land of around 5,108 hectares and live in peace and with obedience towards the customary law. [6]

They do not like the term Urang Baduy (The Baduy) as referred by outside society or researchers. They prefer to call themselves as Urang Kanekes, Urang Rawayan, or by mentioning their villages such as Urang Cibeo, Urang Cikartawana, Urang Tangtu, and Urang Penamping.

The term "Baduy" was first used by Baduy people who had embraced the religion of Islam and expelled themselves from Baduy. This term then seen a mockery for them based on reasons such as

primitive, nomadic and dependence on nature. Their lives were equated with Badawi, Badawah or Bedouin people that originated in the Arab region. [7] The equated term of Baduy and Badawi were related based on their similarity of nomadic living pattern.

Urang Kanekes is known to have local genius which in some ways needs to be emulated by other communities especially regarding the environmental conservation and their commitment to live modestly. However, they also cannot escape outside influence fully due to the interaction of the general public who come to visit Kanekes Village or when they do Saba/Seba. Saba is the activity of leaving Kanekes Village to visit other cities or other areas by walking barefoot to sell handicrafts and forest products such as honey.

The interaction between Baduy and other civilization has become more intense caused by the tourism industry that makes Baduy as a tourist destination. This interaction slowly changes the mindset, attitude and the social life of the Baduy. Marriage between the Baduy and non- Baduy and convert religion are some examples of how the tourism industry has affected the Baduy. Social changes that happen also come with serious consequences on their fellowship as the Baduy and the right for natural resources. As a customary law community, Urang Kanekes has collective rights to land which in literature are known as communal rights. However, this right does not provide an opportunity for the process of individualization of land ownership to become a proprietary property of individuals such as other customary law communities along with increasingly intense interactions with outsiders. From the preliminary study at the beginning of March 2019, it was discovered that several people from the outlying / outside Baduy had huma and saung outside the village where they lived and had built a village of Baduy converts.

The Baduy Dalam tribe still rejects the construction of infrastructure and education. With this reason, the government, business community and the public only build educational facilities and infrastructure on the border of communal land. With these perceptions, the Baduy are still prohibited from education like the people in the city. [8]

The Baduy tribe has undergone major changes that can be seen both physically and non-physically. [8]

One major change happened in the religion they believe. They transformed from the religion called Sunda Wiwitan to Muslim. The original Baduy / Baduy Dangka (*tangtu*) has split and create a new tribe called Baduy Luar that can be seen in Baduy Penamping and Dangka. Sunda Wiwitan as the Baduy's religion is the core of their ethnical identity. The Baduy that believes in *Sunda Wiwitan* even though their villages are surrounded with other villages that most residences are moslem. For decades they live side by side in peace without any conflict.

Among these three tribes, the Baduy Dangka is a society that carried out intensive Islamization and traditions by people who embraced Islam. Although the Baduy Dangka has accepted and embraced Islam, it does not make changes towards the relationship between Baduy Dalam and Baduy Luar. On the contrary, it led to religious tolerance because it is supported by kinship forces and pikukuh teaching which is the life guidelines for all Baduy. [7]

The existence of the Baduy Pemukiman is still a part of the Baduy but they are considered unable to maintain the sanctity of the Baduy Dalam region. As people who still use the Baduy identity, they still have to obey the Puun fatwa, but the restrictions they live on are lighter than the Baduy Dalam. They refer to Sundanese outside the Kanekes as Sunda Eslam (Sundanese people who are Muslim) and are considered as urang are or dulur. The expression clarifies the recognition of the ethnic position of the Kanekes as a Sundanese tribe and the difference is only the religious system because it does not adhere to Islam. Baduy's Muslim religion are still considered imperfect because they still belief in Sunda Wiwitan.

There are a number of customary provisions which have to be negotiated when they decide to embrace Islam, which is said to have to pay a sum of money to Puun as 'fine money' or better known as ngebokor. [7]

The Baduy environment is bound by the prohibition and closing the transformation of the learning culture by isolating itself from modern life whereas learning transformation can enter the Baduy Luar so that it is able to directly transform the organizational environment to encourage human

resource transformation. The Baduy is essentially a group of people who diligently study with each day going to the field. The way they learn with work practices so that learning is interpreted. In the view of adat leaders, people who study at the Educational Institution will leave work time and besides those who have graduated from school generally do not want to work in the field. With this perception, the Baduy are still prohibited from learning like urban people in general today. [8]

The Baduy has different characters between each group, this distinguished by the customary law for Baduy Luar and special law for Baduy Dalam. Baduy Dalam still doing the buyut adam tunggal that include the prohibition on the use of shampoo, toothpaste, perfume, electronic devices, telephones, and motorized vehicles. Whereas the Baduy Luar only runs Buyut Nahun that include the obligatory to cultivate. The Baduy believes that they are the people who were first created as fillers of the world and reside in the center of the earth.

Baduy believe that if the use of nature and forests still adhere to the customary rules and pikukuh karuhun that they adhere to, there will be no natural disasters such as droughts, floods and extreme weather changes. The obligation to obey pikukuh to form a society's wisdom include the prohibition to: [9] Changing waterways, for example making fish ponds, regulating drainage, and making irrigation Changing the shape of the land, such as digging land to make wells, leveling land to make settlements, and hoeing farmland. Entering prohibited forests (*leuweung kolot*) to cut down trees, open trees or take other forest products Carelessly cutting down plants, for example the fruit trees Using chemical technology, for example using fertilizers, eradicating pests, using kerosene, bathing using soap, brushing teeth using toothpaste, and substituting fish. Keeping four-legged animals, such as goats and buffaloes Farming without traditional provisions.

Baduy also adheres to theirs spiritual guidelines known as *dasa sila*, namely: [9]

- Prohibition to kill the other person
- Prohibition to steal
- Prohibition to lie
- Prohibition to get drunk
- Prohibition to cheat and polygamy
- Prohibition to eat dinner

Prohibition to wear perfume  
 Prohibition to sleep tightly  
 Prohibition to do dance, music and song  
 Prohibition to wear jewelry

The land has an important meaning towards human life as most human lives depend on land. There is a close correlation between humans and land which is indicated by not one human being who does not need land in his life. Article 33 Paragraph 3 of UUD 1945 states that land is controlled by the state and used for the greatest prosperity of the people fairly and evenly. In the Article 18B Paragraph 2 UUD 1945, it is states that the state recognizes and respects the unity of indigenous peoples and their traditional rights which have the meaning that recognition and respect are given without neglecting the measures of feasibility for humanity according to the evolving level of civilization.

Juridical recognition of the customary law community and its local vulnerability and the rights attached to it can be seen in Article 1 Paragraph 30 of Law No. 32 of 2009 the Environmental Protection and Management Law which states that local genius is the values that apply in the life order of the community.

Customary land is seen as a geographical and social unit that is inherited from generation to generation, controlled and managed by customary communities as a source of livelihood as well as a social identity. The land inherited from their ancestors or obtained through an agreement & giving to other indigenous peoples as well found in the Baduy [10]

Among the rights in customary law, there are customary rights as in Article 3 of Law No. 5 of 1960, the Basic Agrarian Principles Law that states the recognition of customary rights as long as in reality still exists, in accordance with national and state interests, based on unity of the nation and not contrary to other higher legislation. Recognition of the existence of customary law communities in de jure is also affirmed in the Article 28I Paragraph 3 UUD 1945 which states that cultural identity and the rights of traditional communities are respected in line with the times and civilizations.[10]

From the preliminary study at the beginning

of March 2019, it was discovered that several people from the Baduy Luar / Baduy Penamping had huma and saung outside the village where they lived and had built a Baduy Mualaf village.

## II. THE SHIFT IN URANG KANEKES' LOCAL GENIUS TOWARDS LAND OWNING IN LEWIDAMAR DISTRICT, LEBAK REGENCY, BANTEN

Baduy is one of the tourist objects owned by Lebak Regency and is often visited by foreign tourists because it has its own uniqueness. [ 1 1 ] . The social structure in society is formed by the social norms that have been adopted in the community. [12] The rules and norms that form form the routines and behavior of the Baduy, seen as the legacy of the past that is believed to be able to provide good if carried out properly.[13] It is sa. id that in Baduy Dalam, the King enthroned by 40 loyal followers to death in Cikeusik, Inner Baduy, Kanekes Village[14] Thanks to their local genius, they can live in a sustainable development. [15]

The local culture element is considered as local genius potential because of the ability to survive until now which is characterized as follows:[16].

1. Having the ability to survive with external culture
2. Having the ability to accommodate outside cultural elements
3. Having the ability to integrate outside cultural elements into indigenous culture
4. Having the ability to control
5. Having the ability to give direction to cultural development

Data from the World Bank in 2017 states that only 31.5% or 570,000 square kilometers of land in Indonesia are used for agriculture. [17]. The strategic steps in solving various problems related to land is by paying attention towards the principles of law and welfare (prosperity) and humanity so that the problem does not stability of society. [ 1 8 ] . The head of the BPS said the decline in land area was triggered by the incessant experts on land functions. The effort to control agricultural land is needed. [19] There is another version which states the Baduy were originated from the name Cibaduy River which is located in the northern part of Kanekes Village [20]

Social changes include the internal and external factors is an a necessity or unavoidable process because in reality there is no community or tribe that remain the same without changes. No matter how they try to maintain the teachings of their ancestors which are considered sacred, good and right, there will always be factors that changes them. One of the inevitable factor is the population that kept growing even though the land area does not increase. The population growth of Kanekes, both the Baduy Dalam and the Baduy Luar is increasing every year. Kanekes Head Village, Jaro Daenah confirmed that the area of the Baduy ulayat land to this date has not experienced an increase or a reduction in the total area. Currently the Baduy community already has around 850 hectares of land purchased from outside communities. The land is cultivated by people outside the Baduy customary land but has become the property of the Baduy community who bought it [21]

Land is a specific unit area from the surface of the earth. In customary law, land is a soulless object that cannot be separated from fellowship with humans. Land has a variety of meanings from philosophical, sociological, and economic meanings. It has a broad understanding of all elements of the earth, water, air, natural resources, and the relationship between humans as a center, as well as spirits in the supernatural. Land becomes a strategic resource as national wealth, unifying the region, the gift of God Almighty, and for the prosperity of the people. Prosperity itself requires efforts by providing added value or useful results to improve the welfare of the people who are just. [22]

Population density does not always correlate with overpopulation. Population density refers more to quantitative aspect, while overpopulation is more of a qualitative aspect. If an area that is unable to support and meet the needs of the population there will be pressure which causes the population to move to another area and find new jobs outside the agricultural sector. The phenomenon or occurrence of conditions as described above, termed as population pressure. [22] For farmers, population pressure is a force that encourages the expansion of arable land or out of agricultural jobs to fight for

their lives due to overpopulation while the carrying capacity of the environment tends to remain unchanged, and may even experience a decline.

In 2017 and 2018 the Baduy refuse 2.1 and 2.5 billion rupiah for villages funding as they believe, this money will bring modernization in their communities. But in fact this funding can be use to prevent the population pressure buy buying the land around their areas. Some land surrounding their areas were bought by people from another cities such as Jakarta and Tangerang. When population continues to increase, while the land area and productivity remain, it is certain that there will be a shock to the existence of the lives of the population, especially the population whose rely on land for their living [22] This condition will be further aggravated when agricultural land narrows due to land conversion, under the pretext of building industries in rural areas to absorb productive labor.

If this condition is ignored, it is possible that many farmers do not have agricultural land, but they will be farm laborers. The land will be own by other residents who may not live in the area concerned. Conversion of farmer population outside agriculture is not simple, it will create new problems, considering that factual readiness to enter non-agricultural life requires special knowledge and skills. [22]

The land in the traditional territory of Baduy cannot be traded. There is a claim term in customary law which in its implementation uses a letter and witness from the local community in order to know that the land has been transferred to another party.

The habit of farming is an absolute skill needed by the Baduy. They have been accustomed to getting to know agriculture since they were young as young as 1 year old. This has been done for generations from their ancestors.[22] The livelihoods of the Baduy people generally are cultivating and farming. Fertile and abundant nature makes it easy for them to produce their daily needs by relying on nature. The results in the form of coffee, rice, and tubers are the main commodities mostly planted by the Baduy. In the practice of farming and cultivating, the Baduy does not use buffalo or cattle in processing their land. Four-legged animals other than dogs are strictly prohibited from entering Kanekes Village in order to preserve nature. The majority of the local people are more

engaged in fruit plantations such as bananas. But today many people plant timber because it is considered more economically productive.

Ulayat Rights is the authority which according to customary law belongs to certain customary law communities over certain areas which constitute the living space of its citizens to take advantage of their natural resources for the continuity of the region which is born out of hereditary and unbroken natural relations between the customary law community and relevant region. [22]

Based on field findings through interviews and observations, it was found that even the Kanekes including the Baduy Dalam were unable to avoid external factors that caused a change in perception of the meaning of life. So that *dasa sila* as a guide for the lives of Kanekes villagers was no longer obeyed and changed. While the original Baduy can no longer be called the Baduy because they have subjected themselves to other belief systems (the teachings of the Islam religion / the teachings of other religions) and have lived the lives of non-Baduy masses.

### III. INFLUENTIAL FACTORS TOWARD LANDOWNING IN LEWIDAMAR DISTRICT, LEBAK REGENCY, BANTEN

In addition to the relatively high population growth driven by the decreasing area of the Baduy community rights before being designated as a customary law community that has customary rights in Lebak District Regulation No. 32 of 2001 concerning the Protection of Ulayat Rights of the Baduy Society. External factors in the form of cultural influences of other people visiting the Baduy Dalam and Luar Regions have changed the perspective of the Baduy who were originally known as ascetics. They began to have the desire to live like the general public, for example having a radio, TV, even cellphones

When they do *seba* while selling their forest products such as honey and handicrafts such as weaving, they see the outside world that is so different than the Baduy Dalam and Luar's. Recurring experiences make them have their desire to own various items as well as non-Baduy villagers and

even urban people.

If in the Baduy there is a prohibition on taking photos, the ban applies only in that area. When the Baduy are not in their area, they do not mind being photographed together with non-Baduy residents who visit or when they stay in the city. So that in reality and in fact the interaction with other people who have different cultures has changed the Baduy people's perspective on life and life in a way.

Article 33 paragraph (3) UUD 1945 refer that the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In this article it means giving power to the state to regulate the natural resources contained in the territory of the Indonesia in order to prosper the entire Indonesian people.

Prohibition of agricultural land ownership is absentee towards agricultural land that is located outside the area where the owner lives. If someone is found to have excess land (absentee) then the land must be released or sanctions that will be imposed if the above obligations are not carried out or there is a violation of according to the above explained, the land concerned will be taken by the government for distribution in the framework of land reform. The former owners will be given compensation in accordance with the regulations that apply to the former owners of the land. [23]

In practice, the ownership of agricultural land owned by indigenous people in the area where the agricultural land has been transferred to another party, outside of the place of domicile of the land. This is due to a shift in thinking about the use of land. Ownership of agricultural land by people who are outside the subdistrict where the farm is located can occur due to the forgery of population documents. The Baduy are required to always live a modest life through limiting the fulfillment of various necessities of daily living, with which there is no effort to improve the quality of life by creating or seeking medium and high level technology in the form of mechanization and digitalization of work equipment and household equipment.

Field facts show that the technology they use, such as looms, is still manual, if traced back to its origins it is probable that the weaving equipment originated from Yunan as one of the forerunners of the Southeast Asian community as well as the Baduy

people. Even though some of the Baduy Dalam have demonstrated the nature of insubordination against the provisions in principle, such as having a cellphone, they are still doing it clandestinely.

While the Baduy Luar are more open as found in a variety of modern household appliances, modern transportation, such as kitchen utensils, two-wheeled and four-wheeled motorized vehicles and the use of jewelry and clothing that are no longer black and the land ownership begins by outside Baduy outside the village Kanekes like Bojongmneteng village, Cisimeut village, Nayagati village.

Interaction with outside communities who come to visit Kanekes Village or when they do activities outside Kanekes Village has slowly changed the Baduy perception about the standard of fulfilling life necessities so that it automatically makes them take attitudes and actions that are no longer fully obedient to the principle of *silu*.

According to Rukke Mini Kosasih, trading activities have become a major factor that has triggered changes in the Baduy tribe to fulfill their daily needs so they must improve their relations with the surrounding community. According to Don Hasman, land shortages are slowly starting to increase along with the increase in the number of the Baduy so that they are lured into the offer of relocation from the government. Unfortunately this failed because it was required to embrace the religion of Islam and send their children to school.

With regard to various cases in indigenous communities in Indonesia, Nababan explained the need to revitalize the legal culture. This view is very realistic considering that none of the human conspirators can insist on not changing due to external pressure from various factors that are increasingly intense. [24]

#### IV. CONCLUSION

Urang Kanekes is known to have local genius which in some ways needs to be emulated by other communities regarding environmental conservation and their commitment to live modestly. The Baduy Dalam tribe still rejects the construction of infrastructure and education. With this reason, the government, business community and the public

only build educational facilities and infrastructure on the border of communal land. The Baduy are still prohibited from education like the people in the city.

As a customary law community, Urang Kanekes has collective rights to that is known as *Hak Ulayat*. This rights do not provide an opportunity for the process of individualization of landowner to become a proprietary right of individuals such as other customary law communities along with increasingly intense interactions with outsiders. This is the right which constitute the living space of its citizens to take advantage of their natural resources for the continuity of the region which is born out of hereditary and unbroken natural relations between the customary law community and relevant region.

One of the inevitable factor is the population that kept growing even though the land area does not increase. The population growth of Kanekes, both the Baduy

Dalam and the Baduy Luar is increasing every year. Currently the Baduy community already has around 850 hectares of land purchased from outside communities. The land is cultivated by people outside the Baduy customary land but has become the property of the Baduy community who bought it. The Baduy are required to always live a modest life through limiting the fulfillment of various necessities of daily living, with which there is no effort to improve the quality of life by creating or seeking medium and high level technology in the form of mechanization and digitalization of work equipment and household equipment. The refusal of fund from government with total 4.6 billion rupiah in 2017 and 2018 can be seen as their refusal towards modernization. In other viewpoint, this funding can be use to buy the land surrounding their areas and preventing the population pressure. But their choice is also part of their cultural identity in living modestly.

The local genius of the community in landowner in Leuwidamar Subdistrict has gradually undergone a significant shift, especially the Baduy Luar who have taken possession of private land outside Kanekes Village. While in the Kanekes Village landowner has remained communal in the form of Customary Rights and on the other hand Baduy Migrants generally experience a process of marginalization because their financial material provisions are very minimal when

they convert and lose access to Kanekes Village's natural resources. The most influential factor in the occurrence of social change towards the local genius of the community over land tenure in Leuwidamar Subdistrict was dominated by efforts to fulfill daily needs which required them to interact with the outside community due to population pressure triggered by the temporary population increase. Kanekes village has not changed since 1986 which in its development encouraged Baduy Luar to buy land around 80 Ha where each household controls around 1-2 ha of land.

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