

Saturday, 12 April, 2008

Aceh Traditional Forest (*Hutan Adat Aceh*)

Author: Taqwaddin

(Translated by Aceh-eye.org)

To establish Aceh green, a workshop was conducted as an effort to develop Aceh Forest Policy. I was invited to be one of the spaker of the workshop facilitated by BRR. And to begin with the topic, I started with a question, is there any of Aceh Traditional Forest exists?

If traditional forest is still exist, so where is the location and what is the border area, who is the authority and how is its management? What about the regulation? As before Law Number 5 Year 1967 regarding Basic Provision of Forestry applied in Aceh, *uteun mukim* (mukim forest) is still exists in our society.

The kemukiman (the compound) has the right to have control over (*beschikkingsrecht*) the traditional forest.for its member's interest, which is *hak ulayat* (*hak kullah*) of the local community of the compound.

In fact, traditional forest is not only exists in Aceh. In some part of Indonesia, before independence day, have their traditional forest with their own name and wisdom in each area. But after Centralistic-Law 5/1967 applied, then the acknowledgment on traditional forest, including the custom began to fade since the the authority of VOC (1850), long before the validation of Boschordonantie (Law of Forestry) 1927.

What about now? After UU 5/1967 and UU Number 41 Year 1999 regarding forestry were revoked and declared void, then the existency of traditional forest again get legal status. But it is with a note, that the traditional forest is in an area has to be in line with the Provision of the Government . In my opinion, UU 41/1999, the product of the early of reform era, is better than UU 5/1967. At least, by having UU 41/1999, traditional forest which has disappeared for tens years and almost forgetful, again get the legal status.

The term of traditional forest is mentioned in detail in UU 41/1999 that included in two articles; article 5 and 37. Even though the provisions in this regulation of forestry are not aspirative yet and can accommodate the spirit of the community of traditional law (*masyarakat hukum adat*), but this law can be regarded as a mean to open the democracy spigot/tap, by re- legislating what already have been controlled by the community.

The statement of traditional forest; a state forest that managed by the community of traditional law will create a quuestion, for example, which one first exists, this country or the community of traditional law? This question often creates a polemic between the leader of traditional law community against the government. For the community of traditional law, as conveyed by the late Keuchik Jailani, *Koordinator Jaringan Masyarakat Adat* (JKMA) Aceh to me. He said that traditional forest has been existed prior to the existance of this country. Therefore it is not the country that give the right to the community of traditional law to manage the forest, but actually the state has "expropriated" the right of community of traditional on the forest which they have managed and controlled since a long time ago.

On the contrary, the government confirmed that the traditional forest is *hak ulayat*, which in the general term is state forest, that governed and controlled by the government.

According to formal juridical, the contradiction of the idea is also can be found between Law of Agraria and Law of Forestry. According to *Hukum Adat Aceh* (Aceh common law), all lands – including forest — located in a compound area (*kemukiman*), as long as it is not under someone's

control, called *tanoh hak kullah* (*tanoh poteu Allah*), *tanah hak ulayat* or traditional forest. Traditional forest is controlled and used together by the community of the compound. Every person in the community, according to Snouck Hurgronje (1893), can cut the tree freely for bulding material, takes the production of forest, hunts animals and look for fish. If it can be done as livelihood, then there is an obligation to give half of income (*wasee*) to mukim or gampong which is paid through *panglima uteun*.

Based on the research of Ar Rijal Institute Banda Aceh in 2007, it is known that in Aceh Barat District, traditional forest is still get legal status and managed under the supervision of *Panglima Uteun*. This Panglima Uteun is *kemukiman* apparatus responsible to *Imum Mukim* (head of the compound).

Traditional forest, or is more populer called as *uteun mukim*, has it's own names and according to some of Panglima Uteun had been interviewed, they stated that the community of *mukim* has dominated, controlled and managed *uteun mukim* (mukim forest) since long time ago, prior to independence day. It is just that after independence day, and after the authority of *orde baru* regime, many businessmen of HPH with the consent of the authority have "plundered" their traditional forest.

Prof Amiruddin and friends (FH-USK, 1999) wrote in his research; nowadays, in reality, the community of traditional law cannot freely take the forest yield/product in the forest and its surrounding, especially timber. However, if the area of the community of traditional law is granted HPH (The right to manage the forest) then the community of traditional law has to give way to the interest of the party which officially get the right on the forest area.

Whether based on the research of Prof Amiruddin and friends in Aceh Besar or Rijal Institute in Aceh Barat or Prof Dahlan (FH-USK) in Aceh Selatan and some of other researches in other districts, it can be concluded that the traditional forest is still exists in Aceh. The other issue occurs; is there any map and border of traditional forest? "The map of traditional forest is not available. But we know the border of traditional forest," said some of Panglima Uteun whom I interviewed in Aceh Barat and Aceh Besar.

The border of traditional forest is different between one *kemukiman* with other *kemukiman*. It is not formal like in *norm legal positivism*. *Imum Mukim* Blang Mee, Lhong, Aceh Besar for example, stated that the border of their traditional forest is as far as two ways journey. It means as far as half day of walking by feet. Meanwhile *Imum Mukim* in Woyla admitted that the border of traditional forest is based on *tereubeeng* in the mountain. Some said that it is as far as the sound of cock's crowing, or bordered by the other hill or around two kilometer.

I found various answers to my questions regarding the border of traditional forest. There is no special border arranged together to be a border guidance, either for the interest of the community of traditional law or the government. In the past, in a resesarch conducted in 1993, I received information from *Mukim* Lamteuba, that the Dutch had made the border of the forest in Seulawah between state forest and traditional forest managed by the community of *kemukiman*, which called as *boschwessen*. Is it still exists now? It is hoped that the forestry officer in Aceh Besar can re-investigated on that matter.

If the information is true, it means that the Dutch government in Aceh had been more systematically and had more concern on *hak ulayat* of the community of *kemukiman* as it admitted and set the border of the area of traditional forest which was *hak ulayat* (*hak kullah*) of the community of traditional law. Meanwhile the rest of the forest based on the principal of new *verklaring* was regarded as state forest.

Meanwhile, the Government of Aceh, even though it is instructed firmly both by the Law of Forestry 1999, the Law of Forest Protection 2004, or Qanun of Forestry 14/2002 to determine

Aceh Traditional Forest, until now there is no realization yet. However, there is a need to assign Aceh Traditional Forest. By having map and the clear border, the function of *lembaga adat uteun* (society of traditional law) can be re-activated in order to govern, manage, protect and control over the efforts of forest destruction, especially illegal logging.

*) The author is the lecturer of Fakultas Hukum Universitas Syiah Kuala.