

# THE ANALYSIS OF COMMUNAL LAND MANAGEMENT FOR THE INVESTMENT ACTIVITY AT LOCAL GOVERNMENT LEVEL

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## THE ANALYSIS OF COMMUNAL LAND MANAGEMENT FOR THE INVESTMENT ACTIVITY AT LOCAL GOVERNMENT LEVEL

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### ABSTRACT

Local government has the authority to handle the affairs of investment with do the planning, servicing and controlling in order to increase investors' interest to invest in South Solok Regency. The existence of communal land is often considered as an inhibiting factor of investment activity. This paper aims to identify and analyze policies that are owned by local government in the management of communal land and to analyze the linkages between local wisdom owned by indigenous community and government policy that the next phase is expected to formulate a policy that is pro-community welfare and pro-investment growth, so that many problems in the management of communal land can be overcome, including conflicts of interest at various levels. Research conducted by qualitative method begins by identifying policies that are owned by local governments and the local wisdom of the communities. Solok Selatan Regency still has not have a policy that specifically regulates the management of communal land. Rules on capital investment process are still stuck on the requirement of normative standards of an investment without adopting the local wisdom in the investment activity. Best practice in management of communal land and other issues in use of communal land for investment activity have not been touch by the intervention of local government policy. the local government needs to improve the function and its role in facilitating the investment activity by drafting regulatory of investment in communal land. When local government can improve its role, it can minimize the conflicts and also bridge the interests of indigenous community as the owner of communal land and the investor as the actor of investment activity on communal land.

*Keywords:* policy analysis; management; communal land; role of local government

## INTRODUCTION

Investment activity primarily plantation and mining sector generally require a large area. To acquire large tracts of land are difficult to obtain in Sumatra Barat Province because almost all of the land in Sumatra Barat Province has status as communal land, both sub clan (kaum), clan, and *nagari* communal land. The use of communal land for investment not only involves local government and investor but also involves indigenous community or *nagari* as communal land owner. *Nagari* communal land tends to be more extensive and generally not maintained and it has potency to be handed over to investor to make the land can provide added value.

Investment is one of the obligation submitted by the central government to local government. Sumatera Barat Province and Solok Selatan Regency, as the local government, are given target of achievement of investment realization every year. Achievement of investment realization in Sumatera Barat Province both Domestic Direct Investment Realization (PMDN) and Foreign Direct Investment Realization (PMA) shows an indication that this province has not become a major investment destination. Sumatera Barat Province is one of province with a low investment realization rate in Sumatera Region as seen in Table 1 and Table 2.

Table 1. Domestic Direct Investment Realization (PMDN) for the past 5 years in Sumatera Region

Province	Year (realization in billion IDR)				
	2011	2012	2013*	2014	2015*
Nanggroe Aceh Darussalam	259.4	60.2	1 031.6	5 110.3	3 792.52
Sumatera Utara	1 673.0	2 550.3	329.5	4 223.8	3 097.93
Sumatera Barat	<b>1 026.2</b>	<b>885.3</b>	<b>10.0</b>	<b>421,1</b>	<b>1 509.01</b>
Riau	7 462.6	5 450.4	2 024.4	7 707.5	7 163.03
Jambi	2 134.9	1 445.7	288.5	907.9	3 202.55
Sumatera Selatan	1 068.9	2 930.6	880.5	7 042.8	8 894.58
Bengkulu	-	52.6	-	7.8	338.79
Lampung	824.4	304.2	803.7	3 495.7	1 068.63
Bangka Belitung	514.4	533.5	418.3	615.4	889.78
Kepulauan Riau	1 370.4	43.5	27.5	28.5	598.12

Note \* Data of 2013 and 2015 only the data of the investment realization during January – September.

Source: Investment Coordinating Board (BKPM) Republic of Indonesia, 2011-2015

There are several factors that affect the investment climate in West Sumatra. In the document of Medium Term Local development Planning (RPJMD) Sumatera Barat Province 2006-2010 shows a variety of factors influences the growth and

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development of the investment climate in Sumatra Barat Province. These factors, among others: a) the licensing procedure convoluted; b) lack of legal certainty; c) the lack of investment incentives; d) the limited availability of qualified human resources; e) lack of support for public infrastructure; f) the issue of the use of communal land; f) security issues; g) lack of effective cooperation among the regencies and municipalities (RPJMD Sumatera Barat Province 2010-2015).

One factor that is suspected as the cause not pull of Sumatera Barat Province for investment is a problem of communal land. Nearly every investment potency offered by the local government always faced with the problem of communal land ownership that could lead to additional costs for investors when they invest. And not infrequently, several problems appears after the communal land handed over to investors. The main problem is conflict both internal conflict in the community as well as the conflict between investor and the indigenous community or *nagari*. Conflicts between *nagari* and investor is precisely what is often perceived by investors who make a lot of them to cancel their interest to invest in Sumatera Barat Province.

Table 2. Foreign Direct Investment Realization (PMA) for the past 5 years in Sumatera Region

Province	Year (realization in million US\$)				
	2011	2012	2013*	2014	2015*
Nanggroe Aceh Darussalam	22.5	172.3	4.0	31.1	18.16
Sumatera Utara	753.7	645.3	291.2	550.8	939.97
Sumatera Barat	<b>22.9</b>	<b>75.0</b>	<b>38.9</b>	<b>112.1</b>	<b>37.74</b>
Riau	212.3	1 152.9	365.4	1 369.6	388.12
Jambi	19.5	156.3	11.2	51.4	104.57
Sumatera Selatan	557.3	786.4	149.1	1 056.5	484.81
Bengkulu	43.1	30.4	5.4	19.3	19.37
Lampung	79.5	114.3	7.6	156.5	236.17
Bangka Belitung	146.0	59.2	23.0	105.0	80.98
Kepulauan Riau	219.7	537.1	110.0	392.1	515.07

Note \* Data of 2013 and 2015 only the data of the investment realization during January – September.

Source: Investment Coordinating Board (BKPM) Republic of Indonesia, 2011-2015

Solok Selatan is a regency that is located in the southern part of West Sumatra Province with an area of 3 590 km<sup>2</sup> with a population of 148 436 inhabitants (2013). Large land with a relatively small population and the potency of mineral that promises make Solok Selatan Regency became the target of investors to carry out investment activities in this area. Generally, investment activities in Solok Selatan Regency by

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large investor are on the plantation and mining sector and all of these investment activities are entirely carried out on the ground with the status of *nagari* communal land.

This paper examines how the role of government in managing the communal land for investment activities that give profit to all parties both *nagari* as communal land owners and investor as the perpetrators of investment over communal land.

### **LOCAL WISDOM IN USE OF COMMUNAL LAND**

*Nagari* as a form of Minangkabau government that existed long before the arrival of the Hindu and Buddhist influence has territory with clear boundaries both natural and artificial boundary limits. *Nagari* consists of the area which has been cultivated such as residential and agricultural area, and the area which has not been and is not cultivated. The area that is not cultivated is what is known as *nagari* communal land. This communal land could be a forest, meadow, mountain and hill, lake, swamps beach, sea, valley, and river. *Nagari* communal land, especially forest area which can be used as agricultural land, may be used by *nagari* society as rice paddies and fields with the permission from the clan leader of *nagari*.

Based on its utilization, communal land can be classified into three types, namely: a) *Nagari* Communal Land, this type is under control of institution of Kerapatan Adat *Nagari* (KAN) and utilization setting is at *Nagari* Government. KAN is an institutions that is established by all clan leaders in a *nagari*.; b) Clan communal land, is the collective property of all members of the clan that decided mastery and utilization by the powers of the clan leader; c) Kaum or sub-clan communal land, the land belongs to all members of the sub-clan or kaum, the mastery and utilization decided by sub-clan leader. (Regulation of West Sumatera Province Government 6/2008 on Communal Land).

Manage communal land is one of the livelihood for *nagari*. Someone or company that manage communal land must pay fee that is called *bungo* (M. Rasjid, 1985, p. 202). The amount of fee or *bungo* to be paid by user of communal land depending on the applicable law in each *nagari* or forms agreement between *nagari* and user of communal land. The mention of this fee or *bungo* adapted to the form of profit or result or the processing of the communal land. At the same time, government must do everything possible to support and encourage development of responsible citizenship, by establishing what some have called a New Public Administration (Denhardt and Denhardt, 2000).

Communal land is the potency that is belonged to indigenous community in Sumatera Barat Province. Normatively it certainly is not inhibiting investment activities. Communal land can be used in accordance with the agreement between the



owner and people or company who move to take profit over the communal land. Both *Nagari* as the owner of communal land and user of communal land will receive and pay fee or *bungo* in accordance with the agreement, as shown in Figure 1.

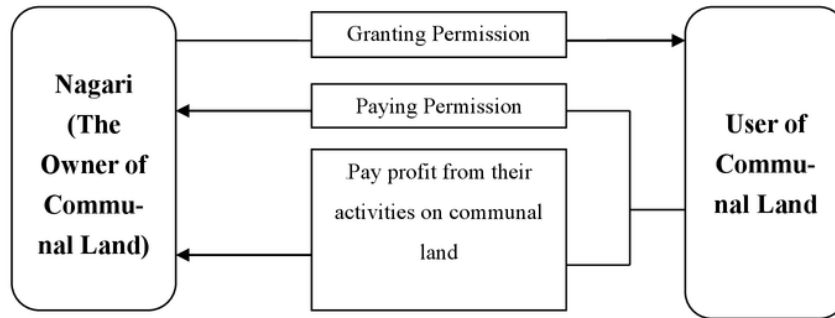


Figure 1. The form of the relationship between user of communal land and *nagari* as the owner of communal land

**ROLE OF GOVERNMENT IN THE CASE OF BEST PRACTICES AND BAD PRACTICE IN USE OF COMMUNAL LAND FOR INVESTMENT**

In the process of use of communal land for investment activity to investors, there are 4 stages of process that involves many different elements, namely elements of *nagari*, investor, and government. Stages of use of communal land for investment can be described as follows.

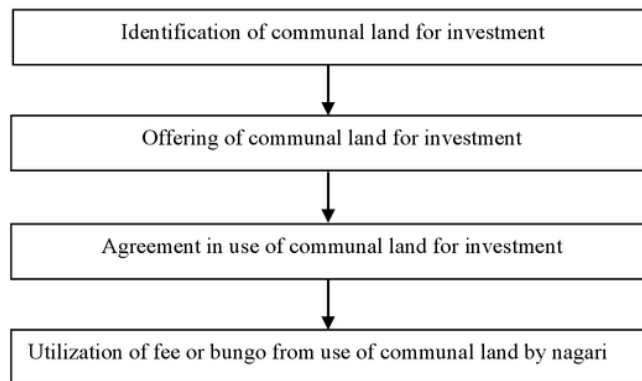


Figure 2. Process of use of communal land for investment activity

In Solok Selatan Regency, utilization of communal land for investment activities generally is done in *nagari* which has a large area but with a small population. The distribution of the plantation investment activity location is in the eastern part of Solok Selatan Regency where the population density is low and land is still widely so that people are not able to manage such a vast land. Distribution of location of mining

investment tends to be uneven, and many in the west. There is no relationship of population and the areas of cultivation with a number of mining license in the west, because in general permits mining is in a protected area. Mining license still allows legally granted in protected areas with the requirements of the new operation can be performed when the leasing area of the Ministry of Forestry, and if deep mine is done it will not disturb the surface of protected areas.

Table 3. Size and Population of Solok Selatan Regency

Distric	Land area (km <sup>2</sup> )		Population (2013)	Density (inh. / km <sup>2</sup> )		The number of permits companies	
	Terri-tory	Cultivation area		Terri-tory	Cultivation area	Planta-tion	Mining
KPGD	672.66	89	23 106	34	260	0	10
Sungai Pagu	358.41	45	28 856	81	641	0	8
Pauh Duo	265.31	79	15 295	58	194	0	3
Sangir	632.13	191	39 181	62	205	2	3
Sangir Jujuan	278.63	114	11 780	42	103	2	0
Sangir Balai Janggo	631.35	478	16 779	27	35	5	2
Sangir Batang Hari	751.66	123	13 439	18	109	5	12

Source: Document of Spatial Planning of Solok Selatan Regency 2011-2031.

There are only two cases of best practice of utilization of communal land for investment activities in Solok Selatan Regency. Best practices can be seen in Nagari Lubuk Malako and Sungai Kunyit.

Administratively, Nagari Lubuk Malako located in District Sangir Jujuan. In 1998 Nagari Lubuk Malako handed of 2,000 hectares of communal land to PT. Sumatera Jaya Agro Lestari (PT. SJAL). And as payment of fee or *bungo*, PT. SJAL handed oil palm plantation that is called smallholdings with area of 170 hectares to nagari. Because the wisdom of leaders and traditional leaders, they agreed to make fee or *bungo* from use of their communal land as an asset of nagari. Community decision to establish the smallholdings as a nagari asset was an alternative choice that was chosen after they analysed that if smallholding was divided per household, each household only received 16 palm trees. Finally nagari community decided oil palm smallholdings were used only as nagari asset. This decision ultimately in the future provide a large income for the Government Nagari Lubuk Malako. Because the smallholding was been as nagari asset, the Nagari Government of Lubuk Malako during the last 2 years can collect revenue from nagari communal land over Rp. 2

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billion per year. With revenue of it, Lubuk Malako become *nagari* with the highest revenue not only in Solok Selatan Regency but also in Sumatra Barat Province (Rozidateno at all, 2015).

In 1997, *Nagari* Sungai Kunyit located in District Sangir Balai Janggo handed 8,000 hectares of land to PT. Incasi Raya and 10,000 hectares to PT. Kencana Sawit Indonesia (PT. KSI). *Nagari* Sungai Kunyit obtained oil palm smallholdings area of 800 hectares from PT. Incasi Raya and 300 hectares from PT. KSI. Unlike *Nagari* Lubuk Malako, community leaders, especially traditional leaders of *Nagari* Sungai Kunyit chose to divide smallholdings on clan divisions and household divisions. Each clan get a 12 hectares oil palm smallholdings as source of finance for the 13 clans in *Nagari* Sungai Kunyit. Each household gained 2 hectares as a source of livelihood for them (Rozidateno at all, 2015).

Process of handed of communal land from *nagari* (Lubuk Malako and Sungai Kunyit) to investor and involvement of *nagari* and local government in this process can be seen in Table 4.

Table 4. Role of Local Government and *Nagari* in Process of Utilization of Communal Land For Investment in *Nagari* Lubuk Malako and Sungai Kunyit

No	Stage	Role	
		Local Government	<i>Nagari</i>
1	Identification of communal land for investment	Local government recorded <i>nagari</i> that will be handed over communal land for investment	<i>Nagari</i> conveyed the communal land that can be used by investors for investment
2	Offering of communal land for investment	Local Government invited investor	-
3	Agreement in use of communal land for investment	The Government only facilitated and did not offer any form of cooperation agreement on their communal land	<i>Nagari</i> agreed on handover of communal land to investors
4	Utilization of fee or <i>bungo</i> from use of communal land by <i>nagari</i>	The government only facilitated and submitted to the community chosen form of utilization fee or <i>bungo</i>	<ul style="list-style-type: none"> <li>- <i>Nagari</i> initiated to make smallholdings as <i>nagari</i> assets (Nagari Lubuk Malako).</li> <li>- <i>Nagari</i> divided smallholdings into clan divisions and household divisions (Nagari Sungai Kunyit)</li> </ul>



In the case of best practices, local government role can be found in facilitating and following every handover process flow of communal land for investment activities. *Nagari* ability in choosing the form of utilization *bungo* or fee on use their communal land was born of the awareness and wisdom of community-owned, not at the instigation of the local government. It should happen as written by David Osborne and Ted Gablier (2000, 59) that people would act more responsibly when they control their own environment rather than under the control of others. We know that the owner will take care of the house better than renters, we know that workers who co-owns the company will be more committed than those who only collect salaries. It is also a healthy thinking that if people are empowered to solve their own, they will function better than those who depend on the services provided by other parties. At the same time, local government could not give the regulation how the ideal form of utilization of the fee or *bungo*. It can be said the success of *Nagari* Lubuk Malako and Sungai Kunyit in managing fee or *bungo* came from the community itself. The ability of *nagari* community in management of communal land fee in fact gives comfortable for investors, at the same time it is be able to eliminate the conflict both community interen conflict and conflict between *nagari* and investors.

Unlike the other cases of the bad practices of the utilization of communal land for investment. The first case occurred in *Nagari* Abai located in Sangir Batang Hari District. *Nagari* Abai handed an area of 6,400 hectares to PT. Incasi Raya in 1997 and obtained oil palm smallholdings area of 800 hectares as fee or *bungo* over use of their communal land for plantation activity conducted by PT. Incasi Raya. Because utilization patterns of fee or *bungo* is not clear, conflicts occurred both internal conflicts in *nagari* community and conflict between *nagari* and investor, each of the parties does not succeed filed satisfying aspirations of both parties were referred to as integrative solution (Dean G. Fruit: 1986). *Nagari* community did demonstration to PT. Incasi Raya and damaging the assets of PT. Incasi Raya. Conflicts between *nagari* community and investors is actually very undesirable by investors because they interfere with the production process.

Oil palm smallholdings are actually a fee or *bungo* that should be enjoyed by *nagari* community as owners of communal land, but what happens now is as much as 50% of the area of smallholdings has switched ownership to the outside community of *Nagari* Abai. This happens because of the absence of the government's role in providing management regulations related to utilization of *bungo* or fee of use of communal land. The performance of government institution is not seen with strong, even though it should be appropriate as said by Putnam in David Halpern (2005.174 to 175) that institutional performance was measured by a range of elements, including the timeliness of budgets, legislative innovation, and bureaucratic responsiveness.

Government with its regulations should have been able to prevent the sale of smallholdings to other parties. With the transfer of ownership of smallholdings, the main purpose of hand over of communal land in an effort to improve the welfare of the community is more and more not reached. Besides ownership of communal land switch to other party, the profit of oil palm smallholdings actually is also enjoyed by others.

The second case occurred in *Nagari* Talao. *Nagari* Talao is located in Sangir Balai Janggo Distric of land handed to PT. KSI and PT. Tidar Kerinci Agung (PT. TKA) in 1997 and obtained oil palm smallholdings area of 350 hectares from PT. KSI and 150 hectares from PT. TKA as *bungo* or fee from use of their communal land for plantation activity. Talao agreed oil palm smallholdings are divided per households in *Nagari* Talao. In Talao, no conflict either internal community conflict or a conflict between *nagari* and investor. The problem is the transfer of ownership of oil palm smallholdings to other parties. 10% smallholdings switch ownership to another party because of the absence of utilization pattern of fee or *bungo*.

The third case in Lubuk Batuang, in *Nagari* Lubuk Malako. Lubuk Batuang is part of Lubuk Malako territory, but based the structure of clan leader, it is part of the traditional structure of *Nagari* Sungai Kunyit. As part of the traditional structure of *Nagari* Sungai Kunyit, when *Nagari* Sungai Kunyit handed over communal land to PT. Incasi Raya and PT. TKA, *Nagari* Sungai Kunyit gave oil palm smallholdings area of 80 hectares to the community of Lubuk Batuang. Because of the lack of regulation on the use of the fee or *bungo*, smallholdings were supposed to be able to be a source of livelihoods, community of Lubuk Batuang instead chose to sell their smallholdings to investor. Lubuk Batuang community just thought for a moment with the money but did not expect a sustainable advantage if the smallholding was managed by community. As a result, people Lubuk Batuang only earned money form selling their smallholdings, but did not obtain a source of income that actually had a long period of time if palm oil smallholding was managed by community properly.

The fourth case is a case between PT. Ranah Andalas Plantation (PT. RAP) with 6 *nagari* communal land owners. PT. RAP is a plantation company which is in six *nagari* namely *Nagari* Abai, Bidar Alam, Lubuk Malako, Dusun Tengah, Ranah Pantai Cermin, and Sitapuih with a communal land total area of 8 237 hectares handed. Land handover of 6 *nagari* was done in 2007. In the case of PT RAP whose *nagari* territory includes several *nagari*, the issue that occurred was that all *nagari* rejected if their communal land has been handed over to investors for Cultivation Rights or Hak Guna Usaha (HGU). *Nagari* community was worry because if they agreed with HGU, after the concession period their communal land would be state land and would not return to belong to *nagari* community as communal land owners. Other problem

occured when plantation produce, *nagari* community asked the company to devide the profit and local government could not give a solution about division of benefit that must be received by *nagari* community.

The fifth case is an investment in the mining sector in *Nagari* Pakan Rabaa Tengah in District of Koto Parik Gadang Diatch. *Nagari* Pakan Rabaa Tengah gave the land to PT. Wirapatriot Sakti for investment activity in the mining sector with commodity of iron ore in an area of 1,273 hectares or 12.73 km<sup>2</sup>. In the case of Pakan Rabaa Tengah, fee or *bungo* was given by investor to *nagari* was in the form of cash. Cash as *bungo* given to a few people sitting in *Kerapatan Adat Nagari* (KAN). Cash as fee or *bungo* was not submitted by unscrupulous clan leader to the institution of KAN or to *nagari* government. This action made several conflicts, innternal conflict in institution of KAN, conflict between KAN institution and *nagari* community, and also conflicts between *nagari* community and investor. This is due to the absence of regulations governing how the shape or pattern of utilization of fee or *bungo* from use of their communal land. As said by Bovaird, Tony. and Elke Löffler (ed). (2003) that Government priorities must reflect where that country is in terms of its economic and social investments and the popular perception of priorities.

Process and stages of hand over of communal land for investment activities in case of bad practice is not different from the case of best practice. Generally, many problems arise at this stage of the process of seeking a form of cooperation agreements and the how to manage the fee or *bungo* from use of communal land as shown in Table 5.

Table 5. The problems that arise in the case of bad practice of use of communal land for investment activities

Stage	Cases				
	Abai	Talao	Lubuk Batuang	PT. RAP	Pk. Rabaa Tengah
Identification of communal land for investment activity	-	-	-	-	-
Offering of communal land for investment	-	-	-	-	-
Agreement in	-	-	-	<i>Nagari</i>	-

use of communal land for investment				community rejected the concession process on communal land handed over to PT. RAP	
Utilization of fee or <i>bungo</i> from use of communal land by <i>nagari</i>	<ul style="list-style-type: none"> <li>- Management of oil plan smallholdings has not been good</li> <li>- Internal conflict in <i>nagari</i> community.</li> <li>- Conflict between <i>nagari</i> and investor.</li> <li>- As many as 50% of smallholdings switch ownership to the other community.</li> </ul>	<ul style="list-style-type: none"> <li>- As many as 10% of smallholdings switch ownership to the other community.</li> <li>- Management of oil palam smallholdings has not been good</li> </ul>	Internal conflicts in <i>nagari</i> community because money from selling oil palm to investor was not clear.	Pattern of utilization of fee or <i>bungo</i> that was received by the <i>nagari</i> community was nor clear	<ul style="list-style-type: none"> <li>- Internal conflict in <i>nagari</i> society.</li> <li>- Conflict between KAN institution and <i>nagari</i></li> <li>- Conflict between KAN institution and investor</li> <li>- Conflict with the investor community.</li> </ul>

### OPPORTUNITY OF ENHANCING OF LOCAL GOVERNMENT ROLE IN USE OF COMMUNAL LAND FOR INVESTMENT ACTIVITY

Local wisdom possessed Minangkabau society should become the foundation for local government to strengthen the implementation of investment activities. In a study conducted by Erwin (2011) describes the factors that make the horizontal internal conflicts between the members of society increase caused by several things. The first, clan leader who are usually called *ninik mamak* utilize communal land for the benefit of his own family (including their families due to economic pressure). The second, clan leader or *ninik mamak* manage the clan or sub-clan communal land less wisely. The third, communal land boundaries are not clear. Fourth, the fragility of the Minangkabau culture system so that the management of communal land are



influenced by behavior clan leader who is not good. The fifth, limited land to be used as economic resources is also be one of the causes of land conflicts. Limitations of land to be used as a source of livelihood is also one of the causes of land conflicts in West Sumatra. Therefore, the government needs to increase the role of facilitation and regulation of the utilization of communal land. Facilitation and regulations issued by local governments should be able to collaborate interests of those involved in the utilization of communal land for investment activities. Facilitation and regulation must be able to give sense of security for all parties, when *nagari* get profit on use of their communal land and investor can use the communal land for production activities without conflict with *nagari*.

Refers to the case of best practice and bad practice in Solok Selatan Regency, local government must increase its role. The ideal processes and stages in the management of communal land for investment activity can be described as follows:

1. Identification of communal land for investment activity.

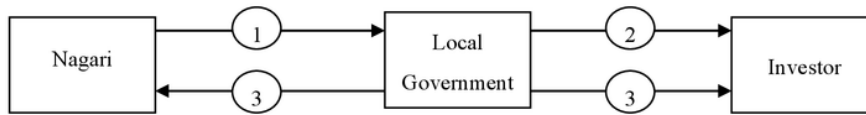
Communal land that are not able to be managed by the *nagari* community can be offered to investors. Before it is offered to investor, it is necessary to identify which communal land that can be used for investment activity. Identification of communal land for investment activity can be done by:

- a. *Nagari*, as owner of communal land. *Nagari* usually knows which communal land cannot be managed by *nagari* community and can be offered to investor.
- b. Investor, as the user of communal land and they usually have an advantage in choosing of a favorable communal land location for investment activity.
- c. The local government, with its resources and tasks in the sector of investment, local government can facilitate activity to determine the communal land can be managed for investment activity.

2. Offering of communal land for investment activity.

Initiative of offer of communal land for investment may come from the village or from the investor. If the initiative comes from *nagari*, *nagari* must submit proposal of communal land which will be submitted to investors to local government through local government institution that handles the affairs of the investment, then local government facilitate a meeting between *nagari* with interested investor, as shown in Figure 3.





1. Nagari conveys to local government about the potency of communal land for investment.
2. Local government conveys to investor
3. Local government facilitates the handover of communal land from nagari to investor

Figure 3. Initiative of offer of communal land for investment from *nagari*

Offer of communal land also allows derived from investor. Investors who are interested in a land with status of communal land shall submit its proposal to the local government through local government institution who handles the affairs of investment. Furthermore, Local Government facilitate meeting between investor and *nagari* as communal land owners. This process can be seen in Figure 4.



1. Investors conveys requests on communal land that is of interesting for investment activity to local government
2. Local government conveys to nagari
3. Local government facilitates the handover of communal land from nagari to investor

Figure 4. Initiative of offer of communal land for investment from investor

3. The agreement on the rights and responsibility of both *nagari* and investor associated with the utilization of communal land.

This agreement should contain about how the cooperative form of use of communal land for investment activity between *nagari* and investor. This agreement shall contain the rights and responsibilities of each party during the ongoing capital investment activity over the communal land. This process can be described as Figure 5.

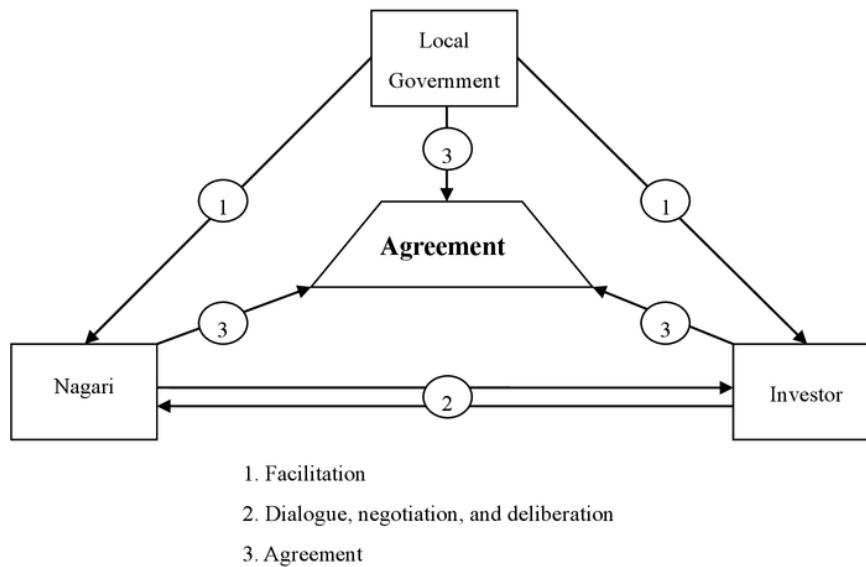


Figure 5. The process of establishment of a cooperation agreement on use of communal land

4. Determination of patterns and forms of utilization of fee or *bungo* by *nagari*

There are several patterns and forms of utilization of fee or *bungo* that occur in the field. There is a pattern where fee or *bungo* awarded to several prominent of KAN by investor in the case of mining in *Nagari* Pakan Rabaa Tengah. In *Nagari* Sungai Kunit, fee or *bungo* that was given by investor in form of smallholdings. Smallholdings is divided into clan and household divisions. In *Nagari* Lubuk Malako, fee or *bungo* is created as an *nagari* asset. This asset has been managed by *nagari* government of Lubuk Malako and can give revenue for *nagari* government. In *Nagari* Talao, fee or *bungo* is divided to households. In Lubuk Batuang, smallholdings that function as fee or *bungo* was sold to investors. The patterns of utilization fee or *bungo* that exist has both positive and negative impact. Positive impact of utilization of fee or *bungo* occurred in *Nagari* Lubuk Malako and Sungai Kunit. But many cases where pattern that is used it also raises a conflict either internal conflicts in society or conflicts between *nagari* and investor. Local government must provide regulation about the pattern of utilization of fee or *bungo* to eliminate conflict. This process can be described as shown in Figure 6.

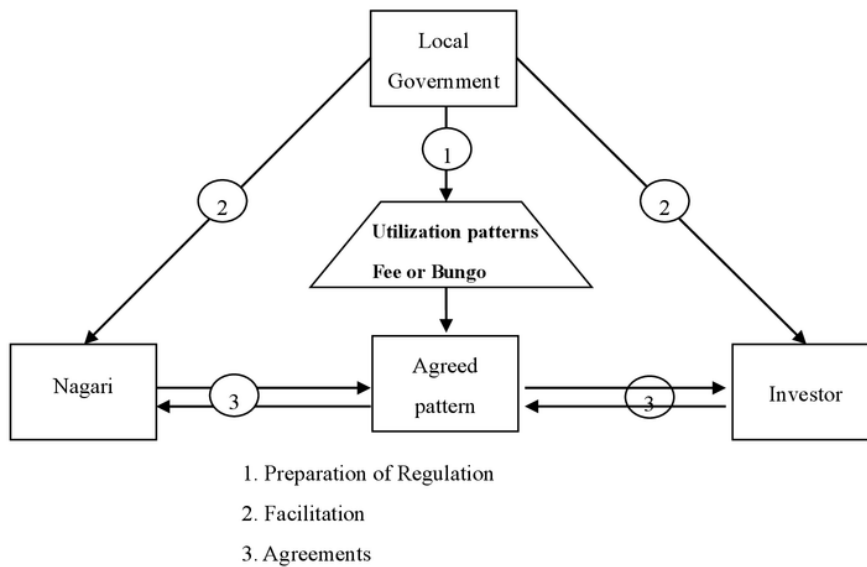


Figure 6. The process of determination the pattern of utilization of fee or *bungo*

Related to its function as regulators, there are at least three regulations that must be provided by local governments related to the use of communal land for investment activities, ie:

- At the stage of identification of communal land for investment activity, local authorities must issue a regulation which contains about criteria and indicators of communal land will be handed over to the investor. With the present regulation, *nagari* can identify how many and how large communal land can be handed over to the investor and the types of businesses allowed for was done on the communal land.
- At the stage of agreement in use of communal land for investment, local authorities should issue regulations on the forms of communal land utilization agreement between *nagari* and investor. For example in the case of plantations, investors allowed to make cultivation rights (HGU) on communal land, rental patterns, or stock patterns in which the communal land value is calculated and used as the company's shares for *nagari*. The patterns are offered to be in favor of the interests of both sides both *nagari* as communal land owners and investor as entrepreneurs.
- At this stage of utilization of fee or *bungo* from use of communal land by *nagari*, the local government issued a regulation on the forms or patterns are offered and must be chosen by *nagari* as the communal land owners to manage or utilize *bungo* or fee on the use of communal land. It is important for local government to make regulation to avoid misuse of fee or *bungo*, to make fee or *bungo* can be

usefull for *nagari* community, to eliminate conflicts.

The role of local governments in an effort to communal land management for investment activities seen from its function as a facilitator and regulator can be summarized in Table 6.

Table 6. The role of local government in communal land management for investment activity

No	Stage	Role of Government	
		Fasilitator	Regulator
1	Identification of communal land for investment	Facilitating villages to identify communal land will be handed over to the investor	Make regulations about the criteria and indicators of communal land that will be handed over to the investor
2	Offering of communal land for investment	Facilitating offers communal land will be handed over to the investor	-
3	Agreement in use of communal land for investment	Facilitating agreement between <i>nagari</i> and investor	Prepare regulations on forms of use of communal land such as lease their land use, distribution of shares, cultivation rights (HGU), and others
4	Utilization of fee or <i>bungo</i> from use of communal land by <i>nagari</i>	Facilitating <i>nagari</i> as communal land owners to find the right pattern in the utilization of fee or <i>bungo</i> over use of their communal land	Draw up the forms or patterns that should be chosen by <i>nagari</i> in management of fee or <i>bungo</i>

## CONCLUSION

A statement indicating that communal land is a factor of inhibiting of investment activity in Sumatra Barat Province is not true. Communal land is the inhibiting factor is mainly caused due to the absence of clear regulations issued by local government to accommodate local wisdom possessed by indigenous community or *nagari* for investment activity. The role of government as a provider of regulatorlah actually at the root of the problem when later many problems occur at communal land primarily when it is used for investment activity. The role of government as a regulator provider should be able to facilitate the investment process, so that clarity of rules is necessary for investment activity primarily investment on communal land, so that the

regulation provides benefit both for *nagari* as the communal land owners and for investors as the party who utilize communal land.

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