

CONTROVERSIES ON THE EXISTENCES OF INDIGENOUS LANDS IN INDONESIA

(A Study of Kampung Tua Tanjung Uma in Batam Island)

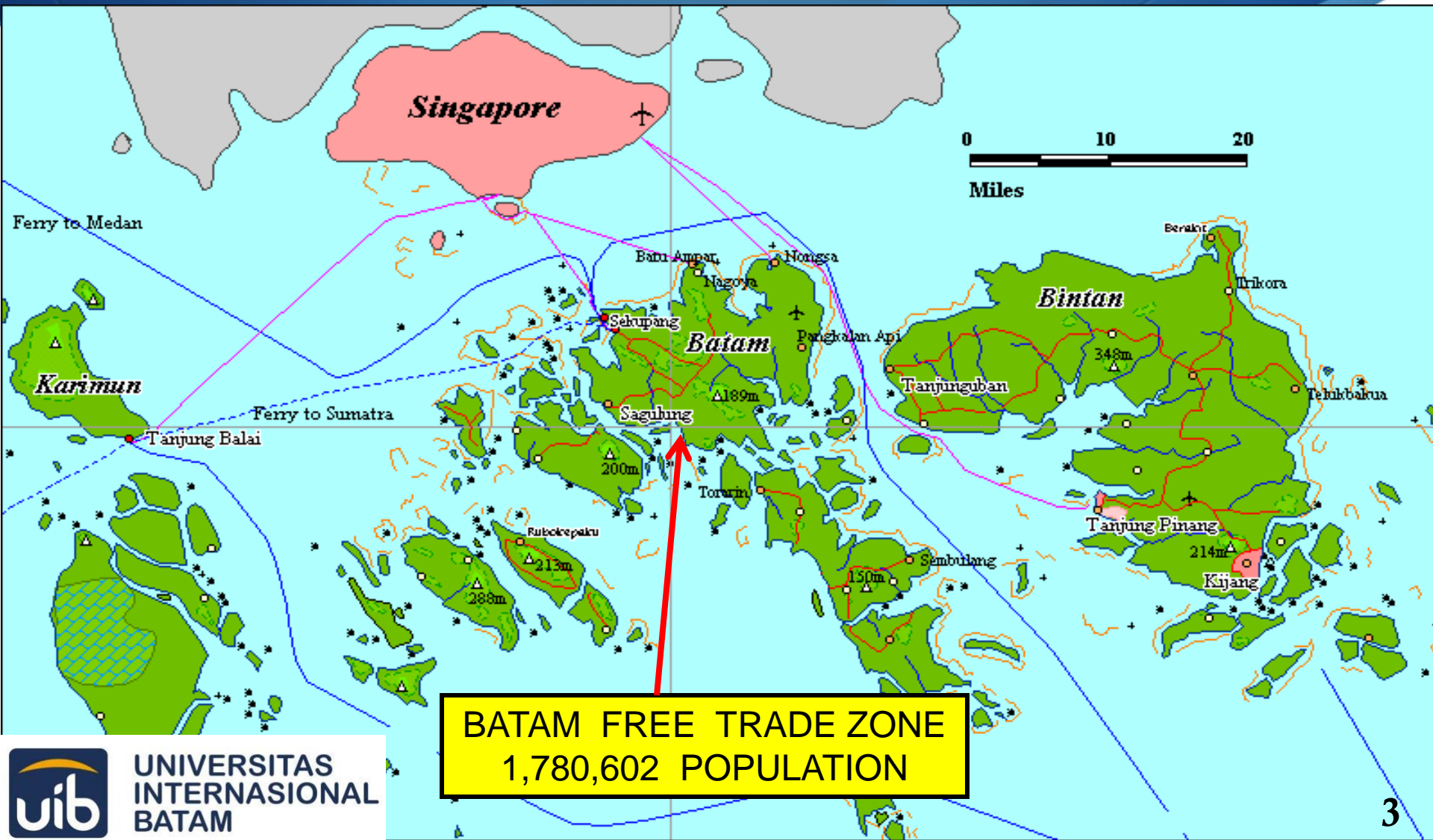
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INDONESIA



BATAM ISLAND



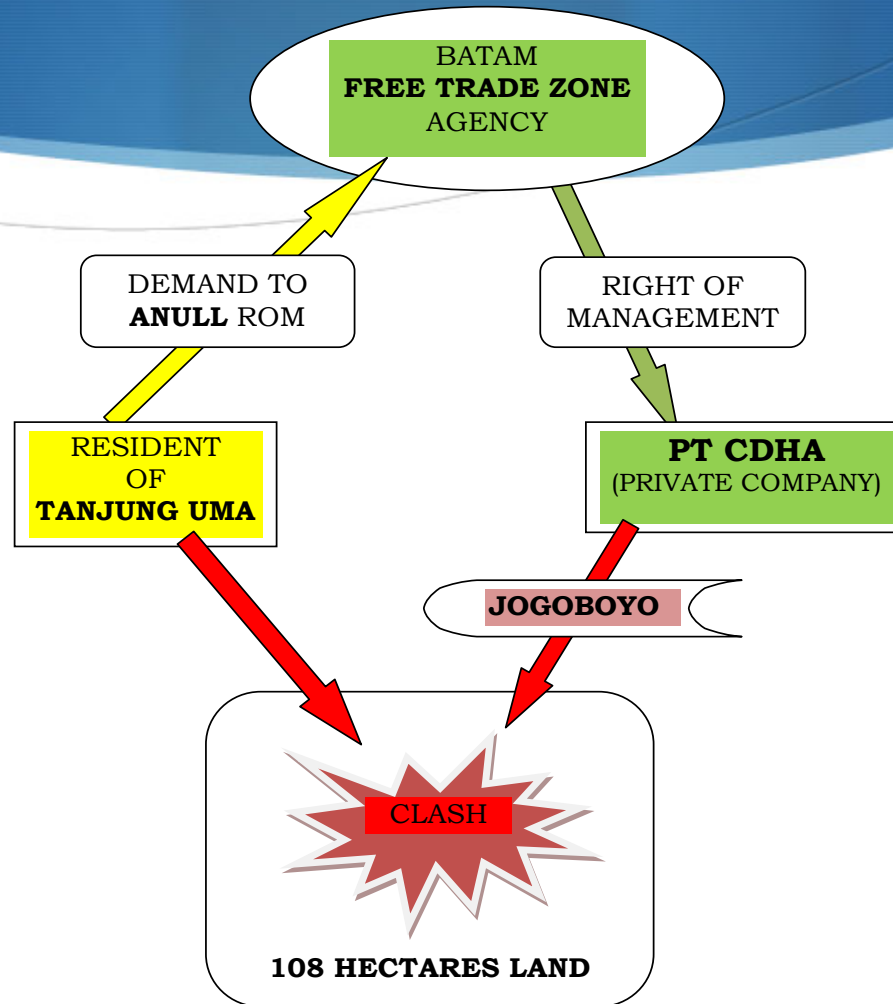
Status of Lands in Batam (Land Management Rights)

- ◆ **HPL (Land Management Rights)** is based on the General Elucidation II Point 2 of BAL.
- ◆ The Rights to Manage the Land (*Hak Pengelolaan Lahan/HPL*) based on the Decision of Ministry of Internal Affairs No.43/1977 (Kep.Mendagri 43/1977) are given to Regional Government, State Owned Enterprises, Regional Owned Enterprises, Companies, **Authoritative Board**, government agencies.
- ◆ Based on the Decision of Ministry of Internal Affairs No.43/1977, **all lands in Batam were given to the Batam Authoritative Board.**
- ◆ The name of Batam Authoritative Board became the Batam Free Trade Zone Management Agency (BP FTZ) based on Presidential Decree No.41/1973 and No.28/1992.

History of Old Villages (*Kampung Tua*)

- ◆ Batam Island since 231 BC has been inhabited by old Malay which is also referred to as Sea Tribe.
- ◆ Customary/Indigenous Land (*Adat Land*) was issued by Sultan of Lingga in 1912 before he fled to Malaysia. The land was then occupied by the Dutch Colonial. Yet, there was no agreement signed by the Sultan of Lingga with the Dutch Colonial.
- ◆ The Dutch Colonial issued a Land Regulation (Staatsblad 1926 nomor 392) for Riau Islands. The lands owned by the old Malays are regarded as “Old-Historic Villages” (*Kampung Tua*).
- ◆ Previously, there were 36 locations of old villages. Today, the Batam Island Government only acknowledges 32 locations of old villages based on the Decree of Batam City Mayor No. KPTS.105/HK/IV/2004 .

RIOT IN BATAM CITY



Tanjung Uma as Old-Historic Village

- ◆ Tanjung Uma is inhabited by around 25,000 people and is made up of eight community units. It is located near a number of business districts.
- ◆ Tribes in Tanjung Uma: Malay, Java, Chinese, Batak, etc.
- ◆ Criteria of Old-Historic Village (based on the Tanjung Uma's Community Leader's views):
 - Established before 1971
 - Having historical sites (ancient graves)
 - Old trees

Laws on Customary/Indigenous Land (*Adat Law*)

- ◆ *Adat* has become the generic term for describing local customary practice and institutions throughout the Indonesian archipelago.
- ◆ Customary law may be distinguished from statutory law by being more closely attached to a people's culture.
- ◆ The 1945 Constitution of the Republic of Indonesia (4th Amendment of 2002), Article 18B2 recognizes and respects traditional communities along with their traditional customary rights under the following conditions: They still remain in existence as long as in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia and they shall be regulated by law.

The Status of *Adat* Law based on Land Law (Agrarian Law)

- ◆ Law No.5 of 1960 on the Basic Agrarian Law (BAL) officially recognizes *adat* (indigenous) communities and their law.
- ◆ However, Article 5 BAL stipulates that “the agrarian (land) law is based on *adat* law *as long as* not in contrary to national interest and the State, socialism of Indonesia, provisions of the Act and every elements which based on religious law”.
- ◆ Legal protection is strongly given to *adat* communities based on *ulayat* rights (communal rights).

Criteria of *Adat* Village

- ◆ A communal Society
- ◆ *Adat* institutions still exist
- ◆ Clear *Adat* territorial and jurisdiction
- ◆ Respected *Adat* court
- ◆ Use of forest resources for daily needs

Tanjung Uma does not fall within the criteria of Adat Village, therefore Old-Historic Village is not identical with Adat Village.

Consequences of the status of Tanjung Uma Land

- ◆ Tanjung Uma land is not an adat land, therefore the land can be owned by individual.
- ◆ Up to present, no land certificate is issued for individual in Tanjung Uma because all lands in Batam Island based on Presidential Decree No.41/1973 and No.28/1992 are given to the BP FTZ (previously Batam Authoritative Board).
- ◆ BP FTZ has **the Rights to Manage the Land (HPL)** in Batam. BP FTZ may render the rights to the third party (individual or company) on the land which has the status of HPL.

Conclusion

- ◆ The status of *adat* lands in Batam have changed to Old-Historic Village in Batam because of the *adat* land criterias have no longer existed in Batam.
- ◆ All lands in Batam under the management of BP FTZ (based on HPL) , therefore BP FTZ has the authority to give the lands to the third party.
- ◆ Batam Authoritative Board (currently BP FTZ) gave the land of Tanjung Uma to a private company (PT. CDHA), consequently Tanjung Uma people in the absence of their land certificates cannot claim the land of Tanjung Uma.
- ◆ BP FTZ had allocated 24 hectares to the village, but Tanjung Uma people demanded the entire Tajung Uma land of 108 hectares.
- ◆ Today, Tanjung Uma community leaders still negotiate with the BP FTZ and Batam City Government regarding the status of Tanjung Uma land.

Proposed Solutions for Tanjung Uma

- ◆ Measuring the area of Tanjung Uma.
- ◆ Negotiating with the BP FTZ about the area of Tanjung Uma which can be given to individuals.
- ◆ Issuing certificates for individuals in Tanjung Uma based on the allocated land given by BP FTZ.
- ◆ If BP FTZ insists to allocate only 24 hectares to the village, then BP FTZ should provide vacant lands to accommodate people of Tanjung Uma who do not want to give their lands.
- ◆ Compensation should be given by BP FTZ to Tanjung Uma people if they have to move to new location.

Suggestions for Indonesia

- ◆ The needs to clarify all status of lands in Indonesia and to issue certificates based on the land title provided by Basic Agrarian Law.
- ◆ Establishing a Special Land (Agrarian) Court in Indonesia.
- ◆ Formulating Legal Procedures to settle land disputes before the Special Land (Agrarian) Court.

THANK YOU



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Riots in Tanjung Uma (October 23, 2013)

- ◆ **BP TFZ** gave and allocated land of Tanjung Uma to private company named **PT CDHA**.
- ◆ **Tanjung Uma residents** called on the BP FTZ to annul the allocation of land to PT. CDHA. and officially recognize the old village of Tanjung Uma, which spans 108 hectares.
- ◆ **PT CDHA** then hired the Jogoboyo group to safeguard the land.
- ◆ *A clash between Tanjung Uma residents and Jogoboyo members occurred on 23 October 2013.*
- ◆ **BP FTZ spokesman**, Dwi Djoko Wiwoho said the residents' demand was unrealistic because the BP FTZ had allocated 24 hectares to the village.

Locale of Study (Batam Island)

Batam City is located in the Riau Islands Province. Batam City is close to Singapore, less than one hour by ferry from Singapore and about 2 hours by ferry to Johor Bahru, Malaysia.

The size of Batam is almost identical in size to Singapore and it has a population of 1,780,602 based on the prediction in May 2015.

Batam is a Free Trade Zone and Free Port based Law No. 44/2007 and the Government Regulation No. 46/2007.

Administration of Batam is governed by **the Batam Free Trade Zone Management Agency (BP FTZ)** and **City Government** (due to Laws on Regional Autonomy and Regional Government).