



## Settlement of Land Disputes Through Traditional Law in the Sentani Traditional Community of Jayapura Regency

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### **Abstract**

This research is entitled "Land Dispute Resolution Through Customary Law in Indigenous Peoples of the Sentani Tribe, Jayapura Regency", in the background of the many cases of land disputes that must be resolved by spending a lot of time and even spending a lot of money until they have to be resolved in court. The purpose of this research is to find a way to settle land disputes according to customary law. The approach used in this research is normative and empirical. That is, a survey that refers to laws, library materials, procedures, or other secondary legal materials and confirms their application through field research. The results of this study reveal that the settlement of land disputes through customary law in the Sentani Tribe community is pursued by peaceful means or through non-litigation channels by means of mediation or customary deliberations in order to avoid protracted problems in their settlement and can even cost a lot of money if taken through this route. Litigation or trial. In addition to customary land dispute resolution, this can also be resolved through mediation and negotiation is often possible. In this negotiation process, voluntary dispute resolution between the disputing parties takes place face-to-face to reach an agreement that is acceptable to both parties.

**Keywords:** *Land Disputes; Indigenous Peoples; Sentani Tribe*

### **Introduction**

The 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (1) emphasizes that everyone has the right to live in prosperity, physically and mentally, to live, and to have a good and healthy environment.

A common law community is a community that occurs spontaneously in a particular area, its formation is not determined or ordered by a higher authority or other ruler, and is very much among the members of the community as outsiders. of the complete area can be used by members.<sup>1</sup>

Community land conflicts are increasing every year, occurring in almost all parts of Indonesia,

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<sup>1</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya*, Djambatan, Jakarta, (2003), 8.

both urban and rural. Land disputes that commonly occur due to conflicts of interest between the parties to land disputes are those related to the bureaucracy, those related to state-owned enterprises, those related to private companies, and those between individuals. Land conflicts that occurred in Jayapura Regency were passed down from ancestors to indigenous peoples because of the traditional rituals felt by those who inhabit and control the place.

The issue of land rights, especially those related to customary land, is one of the most important because it involves legal certainty. The guarantee of certainty of customary land rights is expected to prevent the emergence of social unrest and create a conducive atmosphere for the continuation of the implementation of development in all fields, especially in the sector.

From a legal point of view, property and property need protection, meaning that the civil rights of property must be protected by law and property must be treated fairly. Prolonged land disputes and inadequate settlements can cause the aggrieved party to proceed to court. There are many ways to go to court, but the general public avoids them. In society, there is a perception that going to court is relatively expensive, time-consuming, and even complicated. Therefore, the community tries to resolve disputes outside the courtroom. Because settlement through the courts is intended for justice and legal certainty, in practice out-of-court settlement is to resolve disputes between the disputing parties rather than finding the right or wrong party.

### **Method**

The approach method used in this research is normative and empirical, namely the 1945 Constitution, Law no. 5 of 1960 concerning Basic Agrarian Regulations, Law no. 1999 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Regulation of the Minister of Land no. 5 Concerning Guidelines Regulating the Indigenous Rights of Indigenous Peoples. Likewise, to see its application through a field research by conducting direct interviews with members of the indigenous peoples of the Sentani Tribe in which there are several clans such as the Ohee, Ongge, Sele, and Puhiri clans.

### **Result and Discussions**

Customary law communities are hereditary in the customary territory of the management of customary law institutions that manage land and natural wealth, socio-cultural life regulated by customary law, and preservation for their ancestors.

In the context of placing customary law under state law, Achmad Sodiki argues that there are two types of customary law, namely:<sup>2</sup>

- a. Customary law which is identical to the agrarian law that applies to earth, water and space with the requirements as referred to in Article 5 of the Basic Agrarian Law, and
- b. Customary law that applies to customary law communities includes customary rights and similar rights as long as in reality there are still some that do not apply to other customary law communities. Politically, the first customary law is in the form of all written legal provisions which are spelled out in the sense of state law, because even though it is declared as customary law, it is clearly a legislative product, which is more visible as the commands of the sovereign. The second is the type of customary law which is a product of the community concerned based on their legal awareness. Such customary law is a provision that accommodates the legal needs and

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<sup>2</sup> Husen Alting, *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*, LaksBang PRESSindo, Yogyakarta, (2011), 49.

interests of community members.

The common law system is based on the spiritual foundation of the Indonesian state, as opposed to the spirit that governs the western legal system. To know the common law system, we must investigate the thought process of Indonesian society. In customary law, the highest land ownership is the Ulayat right which has two elements which have aspects of civil law and public law. The subject of common law is the common law community, which is the general form of its citizens, territory, genealogy, or territorial lineage. The authority to regulate Ulayat rights in public law rests with the Customary Head and the Indigenous Elder as chairman of the Customary Law Community who are authorized to regulate the transfer, control, use and maintenance, as well as manage joint assets. The characteristics of customary rights in customary law are:

- a) Only the Law Federation and its citizens have the right to freely use wild land at their own risk.
- b) Foreigners may only use the property with the permission of the federal legal authorities.
- c) Citizens of the Law Association may use Union Territory with restrictions. Limited to the needs of the wife / family / family. If it is used by someone else, it is considered a foreigner and must apply for permission first.
- d) The Law Association is responsible for all problems that arise in the area, especially in the form of violations of the law.
- e) The right to housing includes urban areas that have been protected by individual rights.

According to Boedi Harsono,<sup>3</sup> if the ownership of the land is related to the land of a certain person (legal entity), then the ownership of the land is the authority to act as a legal entity as the right person who actually has that right. In the Land Law there are several types of land ownership, namely:

1. The rights of Indonesian citizens are regulated in Article 1 of the LoGA Article 5 of 1960 as the highest land ownership with civil and public aspects.
2. BAL The domination of the state in the sense of Article 2 functions exclusively on the public side.
3. The rights of indigenous peoples as stated in Article 3 of the LoGA have both civil and public aspects.
4. Land rights as individual rights. All of these arise directly or indirectly from the rights of the state as stated in Article 16 of the LoGA and Article 53 of the LoGA.

Land ownership begins with the occupation of territory by indigenous peoples. This community is called common land. In rural areas other than Java, land is recognized by unwritten customary law, either based on ancestry or territory. Along with changes in the socio-economic pattern of each parish, this common land is gradually managed by parishioners through rotary cultivation. Since then, the private ownership system has been recognized by the common ownership system. This situation has existed in the territory of the Kingdom and the Sultan since the 5th century and developed with the arrival of the Dutch colonial rulers in the 17th century. They are land law dualism, namely land under common law and western law. According to the Dutch Constitution, joint customary lands and individual customary lands are under state control.

It is said that the disputed land can be seen from the aspect of ownership and the aspect of land boundaries. From the aspect of ownership, it can be interpreted that the owner is more than one person, all of whom hold proof of ownership and all claim to be the most correct. However, one thing is true, the other must be false or untrue.

Alternative Dispute Resolution (ADR), also known as Alternative Dispute Resolution, is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Therefore, the dispute resolution mechanism is classified as a non-dispute medium. It is a collaborative or

<sup>3</sup> Boedi Harsono, *Op.Cit.*, 12.

dispute resolution concept which aims to reach a consensus on a single solution of a dispute which is a mutually beneficial solution. ADR was developed by lawyers and scholars to improve access to justice and resolve disputes.<sup>4</sup>

In dispute resolution, Laura Nader and Harry Todd,<sup>5</sup> proposed several alternative dispute resolution procedures in the community, namely:

- a. Mediation, a third party who helps both parties in a dispute reach an agreement. These third parties cannot be identified by the two disputing parties or appointed by the competent authority.
- b. Arbitration, the disputing parties agree to appoint a third mediator, the arbitrator, and agree in advance to accept the arbitrator's decision.
- c. Negotiation or Negotiation, two opposing parties are decision makers. The solutions to the problems they face are implemented by both parties and agreed upon without the intervention of a third party. Both parties are trying to persuade each other, so make up their own rules based on existing rules without breaking them.
- d. Coercion, one party forcibly divides the other. It's one-sided. Threats of coercion or violence generally reduce the likelihood of a peaceful solution.
- e. Leave it alone, those who feel they have been wronged will fail to curb their demands. He chooses to ignore the issues that led to his claim and continue his relationship with those who believe he will hurt him.
- f. Avoidance, the offending party decides to reduce the relationship with the offending party and decides to end the relationship altogether. For example, this can happen in a business relationship. By avoiding them, you can avoid problems that cause discomfort. In contrast to the first solution where the relationship continues, only the problem is considered resolved, and in this second form, the aggrieved party avoids it. In Form 1, the relationship persists. Form 2 allows you to end all or part of the relationship.
- g. Judiciary, here a third party has the authority to intervene in the resolution of the problem, regardless of the will of the disputing parties. Third parties also have the right to make decisions and enforce them.

According to Mrs. Anthoneta Ohee,<sup>6</sup> that the factors that cause land disputes in the indigenous peoples of the Sentani Tribe are internal factors where there is overlapping customary land ownership in the indigenous peoples of the Sentani Tribe, each claiming that the land they occupy is a legacy of their ancestors who lived there. Inherited from generation to generation which is used as a place to live and meet the needs of their daily lives, but also because of economic factors where the price of land is increasing day by day which makes fellow Sentani indigenous people want to control the land.

In common law, especially for the Sentani indigenous people, there are three types of land law classifications:

1. Common law or common habits are referred to in the Sentani language. In other words, Weykhela Howangkela. The word Weykhela Howangkela means a place or land where the natives can work or mine wood.
2. Land called Sentani Onggikhela Yallikla in its language is land that can be cultivated by indigenous peoples.
3. Pukokan is land that can meet all the needs of family life.

<sup>4</sup> Rachamadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Citra Aditya Bakti, Bandung, (2003), 4.

<sup>5</sup> Nader dan Todd, *Antropologi Hukum Sebuah Bunga Rampai*, Yayasan Obor Indonesia, Jakarta, (1993), 210.

<sup>6</sup> Wawancara, Ibu Anthoneta Ohee Kepala Kampung Asei Besar Distrik Sentani Timur Kabupaten Jayapura, hari sabtu, tanggal 30 juli 2022, pukul 10.30 WIT.

Therefore, from the three points above, which land is used as the object of the dispute is of course resolved with the status of the land mentioned above, the overlapping ownership of customary land in the indigenous Sentani Tribe is resolved by deliberation by traditional leaders whose role is to resolve the problems that occur. within their customary communities, explaining the boundaries of which lands are the common property of their indigenous peoples, for example for livestock grazing, markets, and gardening or farming areas, as well as which ones are the property of individuals or individuals who are used as a place to live and shelter from their indigenous peoples for the sake of daily survival.

The settlement of land disputes between the Sentani indigenous peoples also has negotiation barriers that can be caused by several factors, including internal and external factors arising from the conflicting parties and also from other parties. Internal factors that hinder the process of resolving land disputes through the common law of the Sentani community can be caused, among others:

- 1) Temperament, the nature of the community is unstable and likes to be carried away by emotions which causes deliberation to not run properly.
- 2) Discipline, this is also one of the reasons why sometimes there are parties who do not want to sign even though it has been mutually agreed upon.
- 3) Education Level, education from the community is also one of the inhibiting factors where education is very low so they don't understand the problems they are facing
- 4) Unclear Land Boundaries, the boundaries of the land are not clearly marked to be able to ascertain who owns it, which is only marked by trees, mountains, rivers or streams.

External factors that interfere with negotiations or deliberation are other factors that are not due to the subject matter or disputed issues and can be caused by third parties. Third parties in land disputes are separate parties from competitors. These third parties are usually indigenous peoples who intervene in one of the competing parties, usually because there is no compensation for betel nut.

## **Conclusion**

The control and ownership of customary land in the Sentani tribal community is communal as well as individual, where the control and utilization of ulayat land is carried out jointly by the customary law community, where everyone has the right to control and use the land as joint and individual property for meet their daily needs. The things that lead to land disputes in the indigenous people of the Sentani Tribe, namely from internal factors where overlapping ownership of land rights in the indigenous peoples of the Sentani Tribe, each of whom claims that the land they occupy is a legacy of their ancestors which has been passed down from generation to generation. generation that is used to live and meet the needs of their daily lives, besides that also because of economic factors where the price of land is increasing day by day which makes fellow Sentani indigenous people want to control the land. Settlement of land disputes in the indigenous peoples of the Sentani Tribe through customary law is pursued by peaceful means or through the Non-Litigation route by means of negotiation, mediation or customary deliberation in order to avoid protracted problems in their settlement and can even cost a lot of money if taken through litigation or litigation. court.

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