



## Land Ownership Rights According to Indigenous Peoples in Kwadeware Village, Waibu District Jayapura Regency

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### **Abstract**

The ownership rights of indigenous peoples' land in Kwadeware village are very important where the land has been used for generations to meet their needs and survive from day to day and from time to time, therefore this research aims to determine the land tenure rights of indigenous peoples in the village. Kwadeware, Waibu District, Jayapura Regency and know how to resolve customary land disputes in customary law communities in Kwadeware Village, Waibu District, Jayapura Regency. The research method used is normative and empirical, namely an approach that refers to laws, literature, written regulations or other secondary legal materials and considers their application through field research. The results of this study indicate that there are customary land ownership rights in Kwadeware Village, Waibu District, Jayapura Regency with a system of joint ownership and management of one or more clans, the ownership rights to the land here are transferred to a person or family who permanently owns the land and uses it for gardening and building houses, which are passed on to the next generation. Whereas in the Customary Law Community in Kwadeware village, Waibu District, Jayapura Regency, where land tenure disputes were resolved through deliberations conducted by traditional leaders or traditional leaders with witnesses from village/kelurahan leaders and the local community. This consideration was chosen because it is in accordance with the character and way of life of the indigenous people of Kampung Kwadeware which is family in nature compared to dispute resolution by legal institutions which tends to be contested and prioritizes profit and loss and ignores the social elements of society.

**Keywords:** *Property Rights; Land; Indigenous Peoples; Kampung Kwadeware*

### **Introduction**

The meaning of the earth is actually the surface of the earth, which in proper use also includes the lower body of the earth and the upper confined space. Land is owned by the people who have the rights stipulated in Law Number 5 of 1960 (UUPA). Land rights are rights to use certain parts of the earth's surface, called land, as well as the land under and beneath it. water and space above it, insofar as it is permissible to use it or not to have it.<sup>1</sup>

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<sup>1</sup> Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok agraria , Isi dan Pelaksanaannya*, Djambatan, Jakarta, 2008, hlm. 18.

The State of Indonesia is a legal state that has administered land, especially land rights, since 1960. Land has a social and capitalist function and is an important part of development towards realizing a just and prosperous society based on Pancasila and the 1945 Constitution.

Article 3 of the BAL recognizes the existence of shared rights in the national land law. Ulayat rights are superior property rights in certain customary law communities over land that are commonly owned by citizens. However, the legal provisions of the agreement also limit the existence of common customary rights. Restrictions, as long as they exist, are in the national and state interests and must not conflict with higher laws and regulations.

Customary law is law formed by the psychological model and mindset of indigenous peoples, which is traditionally passed down from generation to generation. The structure of thought behind the formation of customary norms differs from one region to another. The structure of thought in making legal norms is generally referred to as "local wisdom" (indigenous knowledge), which is a wealth of laws that apply to indigenous and tribal peoples in certain areas.

Customary law is the original law of the Indonesian nation because the spirit and model of its formation are adapted to the culture of the Indonesian nation. According to Soepomo,<sup>2</sup> its uniqueness lies in the diversity of its population, unity cannot be based on the western legal system. With the recognition of common law in the constitution, general law is placed parallel to other sources of law that must be respected and followed. Common law is binding, although common law is not written law, it has the same sanctions as written law.

Therefore, the usual sanctions, both criminal and civil, are binding on every Indonesian citizen. Ulayat rights are still recognized as long as they do not conflict with existing positive legal rights, including customary property rights. Recognition and respect for customary law community units and their traditional rights, as long as these rights still exist, must be in accordance with the development of society and the principles of a unitary state.<sup>3</sup>

Many problems arise in customary law communities whose customary ownership rights have been recognized constitutionally, but in practice these customary ownership rights are often neglected by the interests of those who seek natural resources or seek development on customary lands that they wish to ignore. common law force.

## **Method**

The method used is normative and empirical law, normative law is an approach that refers to law, literature, written regulations or other secondary legal materials. While the empirical, namely the identification and conceptualization of law as a social facility that is real and functioning in real life systems in the field.

## **Result and Discussions**

Kwadeware Village is a village located in the Waibu District area of Jayapura Regency, located between 140° 45' 15" East and 02° 46' 14.67" South. Administratively, the Kwadeware village area has the following boundaries:

- a. To the north: the village of Doyo Lama.
- b. To the south: Dondai village.

<sup>2</sup> Soepomo, *Bab-bab tentang Hukum Adat*. PT. Pradnya Paramitha, Jakarta, 1993, hlm. 10.

<sup>3</sup> *Ibid*, hlm 32.

- c. To the east: Kehiran/Babrongko village.
- d. To the west: Sosiri/Yakonde village.

The area of Kwadeware Village is 800 hectares, Kwadeware Village is 4 Km from the sub-district, it takes 15 minutes and from the Regency it is 7 Km and can be reached in 30 minutes. Kwadeware village is about 3 meters above sea level. The topography of this area is flat.

The village administration of Kwadeware, Waibu District, Jayapura Regency has entered several stages of change, namely:

- a) The reign of the Dutch East Indies, led by a Korano (Head of Government concurrently Ondoporo/Head of the Tribe).
- b) Entering the West Irian Period (New Gunia Period) Villages were led by the Village Head.
- c) In 1976 the Government of Kampung Kwadeware, Standing alone on the basis of a Decree of the Minister of Home Affairs by Mr. Rudini, symbolically in the Village of Nendali, East Sentani District.
- d) From 1976 to 2019, the names of those who became village heads since the Kwadeware village government began.
- e) In 1985-1990 led by a temporary official. Head of Village, Yusak Marweri 1976-1985.
- f) Titus F. Tungkoye and through the election process in 1997 government power fell into the hands of the Head of Kampung Makus Tungkoye.
- g) In the 1997 election process, the government process was led by the village head, Hendrik W. Marweri, crown prince of Isak Ondoporo Besar Sentani Barat (now called Waibu District).
- h) In 1999, the Head of Kwadeware Village, Hendrik Marweri, passed away. for 2 years the leadership was led by an interim official Mr. Titus F. Tungkoye as Head of Government Affairs.
- i) In the 2010 Village Head election in the election process for the Brother Village Head, Robert Marweri was elected Village Head for the 2010-2015 period.
- j) In 2016 the village head election was won by Maklon Tungkoye.

The term indigenous peoples comes from the translation of the word pribumi, which is separate from the term indigenous peoples, which is a translation of the Dutch term rechtgenienschap. Meanwhile, the rights of customary law communities are individual rights and community rights. One of the community's rights contained in the UUPA is the customary right to designate the country which is the territory of this special legal community. According to Van Vollenhoven,<sup>4</sup> the word ulayat comes from the Minangkabau language, "ulayat" means area or territory.

The definition of the term Ulayat Rights is given by G. Kertasapoetra and friends,<sup>5</sup> in his book Land Law, UUPA Guaranteeing Success of Land Utilization, states as follows: "Ulayat rights are higher rights over land owned by a legal association (village, tribe) to ensure regular use/cultivation of land. Ulayat rights are rights belonging to legal associations (village, tribe) in which community members (legal associations) have the right to work on the land, the implementation of which is regulated by the heads of the associations (heads of tribes) respectively.

Ulayat rights as applicable according to customary law are also recognized in the UUPA but are subject to 2 (two) conditions relating to "existence" and "obligations" mentioned in Article 3 of the UUPA. Which basically says: "Ulayat rights are recognized as long as they really still exist in places where they believe, therefore ulayat rights are not enforced or reconstructed in places where ulayat rights are deemed no longer exist."

<sup>4</sup> Van Vollenhoven, *Ichtisar lengkap dc Indonesier en zijrt grand jilid 1 (terjemaban Soewargono)*. Yayasan Badan penerbit Gajah Mada, Jogjakarta, 1956.

<sup>5</sup> G.Kertasapoetra et.all, *Hukum Tanah, Jaminan Undang- Undang Pokok Agraria Bagi Keberhasilan Pendayagunaan Tanah*, Bina aksara, Jakarta, 1985, hlm 88

In principle, customary ownership rights already exist, related to indigenous peoples who are spread throughout Indonesia and are enforced from generation to generation. Scientific common law property rights were then explained and illustrated by Dutch legal experts who researched dates and common law. Snouck Hurgoniye was the first scholar to encounter the term *Adatrecht* in his book *De Atjehers and het gayola*, which pays more attention to common law as jurisprudence.

Increased attention to common law is also related to the study of state customary law and customary property rights. In his book *De Ontdekking Van Het Adatrecht*, Van Vollenhoven, explains common law as a right that grows among communities and is experienced by the local residents themselves.<sup>6</sup>

According to Markus Tungkoje,<sup>7</sup> the customary law community of Kwadeware village follows a system of joint ownership and control of one or more clans, family groups originating from the eyes of the house and can provide ownership and use rights as well as individual rights. The right to own land referred to here is given to a person or family who continuously farms and uses the land for gardening and building houses, or in other words manages a village to distribute its land to its inhabitants for agricultural and settlement purposes. for generations, for the future.

For example, the legal relationship between the indigenous people in Kwadeware village and their land is generally institutional in nature and not a concrete legal relationship, meaning that the average community in Kwadeware village has a direct legal relationship with the land. , as joint property rights, individual ownership rights and usufructuary rights, not as cultivators of other people's land with production sharing agreements, or as agricultural laborers on other people's land or land as in other places which usually only control land through an agreement for one or two harvests, after which the land is returned to its original owner.

It is different with usufructuary rights which contain two elements at once, namely elements of public law and civil law. This public element includes land used for public purposes such as public squares, battlefields, cemeteries or public cemeteries and land used for religious or belief in God Almighty and other social interests. Unlike civil use rights, it is granted to someone from one's own tribe who actually has to use the land. It can also be given to outsiders or newcomers who wish to settle or settle temporarily on someone else's land, if there is a time limit, it can be done through an oral agreement that contains the rights and obligations of the parties.

In addition, the distribution of land rights takes place in routine meetings and the handover of village officials and traditional elders as well as *keret/marga*, and all members of the community attend in the form of traditional ceremonies and then eat together, traditional events and elders who show the way and mark boundaries boundaries between one tribe and another, as well as lands used for other public interests. Land boundaries are marked with natural boundaries such as mountains, hills, large rocks, large rivers/rivers, and first names.

In general law, the superior land ownership rights are customary rights, namely land shared by members of each customary law community, which includes two aspects, namely private law and public law. The subject of Ulayat Rights is the customary law community, and regional genealogy and regional genealogy as a shared form of its citizens. The power to regulate customary law under customary law rests with the rights of general heads and general elders, who are customary law community officials with the authority to manage, regulate and direct the distribution, control, use and maintenance of land.

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<sup>6</sup> Merry Kalalo, Jemmy Sondakh, *Bahan Ajar Hukum Adat*, Fakultas Hukum Universitas Sam Ratulangi, Manado, 2012, hlm 10.

<sup>7</sup> Wawancara dengan Bapak Markus Tungkoje, selaku pesuruh khusus dari Ondoporo Iwa-Iwa Yonokong di Kampung Kwadeware, pada hari sabtu, tanggal 11 juni 2022, pukul 15.30 WIT.

Based on the results of an interview with Mr. Markus Tungkoye, as the Special Messenger from Ondoporo iwa-iwa Yonokong in Kwadeware Village, he took the example of the dispute over the construction of Gor Toware in Kwadeware Village, Waibu that the settlement of customary disputes in Kwadeware Village, village communities were resolved only internally by way of deliberation, because in this case only certain tribes are dissatisfied with the distribution of profits when payments are made by other parties, in this case the Jayapura Regency government for the construction of Gor Toware. Because in the development of Gor Toware as a means of public interest, Jayapura Regency went through 4 (four) stages of the implementation process, namely planning, preparation, implementation and delivery of results. The procedure is in accordance with the agreement of both parties. So in this case the traditional leader (Ondoafi) Mr. Timotius Marweri plays a very important role in solving problems in his area because he unites tribes who are dissatisfied with the distribution of profits to Gor Toware, so that the problem is not sustainable in their traditional society.

From the results of negotiations with dissatisfied tribes to share income from the construction of Ondoaf and Gor Toware, it went smoothly, as did the gradual payment of land for the construction of Gor Toware from the Jayapura Regency Government to Toware, each tribe in Kwadeware village received their share according to the agreement with their indigenous peoples. .

Settlement of customary disputes in the Kwadeware village community mainly through negotiations of a kinship nature, carried out by traditional leaders or traditional leaders in the presence of witnesses from the village/kelurahan head and local indigenous people. This debate was chosen because it is in accordance with the nature of the community and the way of life in the Kwadeware Traditional Village, compared to dispute resolution through the judiciary, tends to be contested, is more concerned with gains and losses, is more concerned with materialistic aspects and ignores social factors.

### **Conclusion**

The existence of land owned by the Indigenous people in Kwadeware village, Waibu District, Jayapura Regency, follows a system of joint ownership and control over one or more clans, a family group originating from one household, and can also give residents a form and use rights of ownership individual. The right to own land referred to here is given to a person or family who continuously farms and uses the land for gardening and building houses, or in other words manages a village to distribute its land to its inhabitants for agricultural and settlement purposes. for generations, for the future. In the customary law community of Kwadeware village, Waibu District, Jayapura Regency, customary land disputes were resolved through deliberations conducted by traditional leaders or traditional leaders with witnesses from village/kelurahan leaders and the local community. This was chosen because it is in accordance with the nature and lifestyle of the indigenous people of Kwadeware village which is family in nature compared to dispute resolution through court institutions which tend to be controversial and are more concerned with profit and loss, pay more attention to materialistic aspects and ignore the social elements of family society.

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