



The Role of Customary Institutions in Settlement of Customary Land Disputes between Wonatorey and Watopa Clans in Waropen Regency

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Abstract

The role of customary institutions is very important in resolving customary land disputes that occur within their customary communities so that these disputes do not need to go to court. The purpose of this study was to determine the role of customary institutions in resolving customary land disputes between the Wonatorey and Watopa clans of Waropen Regency and to find out the factors that impede customary institutions in resolving customary land disputes between the Wonatorey and Watopa clans of Waropen Regency. The method used is empirical juridical, an approach that refers to written regulations or other legal materials that are secondary to see how it is implemented through a field research conducted with sociology and interviews, so that clarity is obtained about what is being studied. The results of the study show that the Customary Institution in resolving customary land disputes between the Wanatorey clan and the Watopa clan is a peace judge in customary trials and also as a customary decision maker in which the parties are bound by the disputed decision and create harmony in the family, where every action as well as the actions of customary institutions must be based on 3 (three) characteristics, namely maintaining the security of people of the same tribe, maintaining peace among people of the same tribe and maintaining the degree of religion and belief. Obstacles that often arise in resolving customary land disputes through customary institutions are internal factors arising from the reluctance of witnesses who do not want to speak, unclear land boundaries, and unclear landowners. In addition, other inhibiting factors are external factors originating from third parties, and from the families of other parties to the dispute and from outside the parties to the dispute.

Keywords: *Role; Customary Institutions; Disputes; Customary Land*

Introduction

Land as a natural resource can be used by humans to fulfill their basic needs, such as clothing, food and shelter (primary needs). Likewise for customary law communities, the biggest source of income for their subsistence comes from land use. The importance of land for human life requires regulations governing the use, allocation, control and ownership of land.

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.

Land disputes or disputes over land rights, namely the emergence of legal disputes arising from complaints by a party (person or entity) who filed objections and demands regarding land rights and status, privileges and land ownership in the hope of obtaining a lawsuit regarding administrative law. The complexity of the order of people's lives, the role of traditional institutions is very useful for the wheels of village government which basically have the same goal, namely to maintain order in the behavior of indigenous peoples, to create security and peace in society.

The role of traditional institutions, namely media of valuable information for decision makers, community participation will reduce the possibility of community willingness to accept decisions. The use of customary law can be seen from the perspective of local people in managing natural resources traditionally, they see nature as something that is very closely related to their survival, and they really appreciate nature as something sacred and needs to be maintained and looked after properly so that there is a balance. between nature and the people who inhabit the area. An alternative that can be used in overcoming the problem of conflict over customary forests is to use local rules and customs known as customary law. Where customary law is a reflection of the lifestyle of indigenous peoples, which is born directly as an embodiment of feelings of law and justice within these indigenous peoples.

Ulayat land attached to customary law communities is managed in a variety of ways, depending on local customary community deliberations, because it is not uncommon for the existence and management of customary land to become a conflict within the community. The provisions of customary law state that customary rights cannot be relinquished, transferred or alienated permanently (forever). In particular, the object of the state's right to control, which in reality often experiences problems, is the implementation of the state's right to control over customary lands. The unclear position and existence of customary law communities is the starting point of the problem so that the existence of communal land often triggers conflict in the community.

Disputes that arise in customary law communities have long been resolved through deliberations and consensus through customary institutions commonly known as customary courts. In general, those who serve as judges in these institutions are traditional leaders (traditional leaders) and religious leaders. The jurisdiction of customary court judges is not limited to conciliation, but also to the power to mediate disputes in all areas of law which are not divided into criminal, civil and public cases.

In various regions in Indonesia, the reality shows that customary courts still exist in resolving disputes outside the court, even though this pattern has long been firmly institutionalized. From various research results that have been carried out by other authors, it can be identified that some customary law communities still use customary courts in resolving disputes. Indigenous peoples believe that this institution can simply and quickly resolve disputes in society fairly.

Waropen Regency, Papua Province, still has ulayat lands which often give rise to disputes and tend to increase from year to year. In almost every area where there are land disputes in this area, all parties deal with this problem in various ways. The way of settlement that can be reached so far is through litigation efforts, namely through courts and alternative dispute resolution efforts, namely mediation outside the court. The customary land dispute that occurred in Waropen Regency was between the indigenous people of Marga Wonatorey and the community of Marga Watopa which had to be resolved by local customary institutions.

Method

The method used is empirical juridical, an approach that refers to written regulations or other legal materials that are secondary in nature to see how it is implemented through a field research

conducted with sociology and interviews, so that clarity is obtained about what is being studied.

Result and Discussions

Waropen Regency in Papua Province was formed as a result of division from Yapen Waropen Regency around 2003. The district capital is located in Botawa City. In the term "Waropen" there is a close relationship with the word "Oropong" which was first used by Jacob Weyland (1705), while the word "Waropen" according to the natives of Waropen means "a person who comes from the interior", namely from Mount Tonater, Wamusopedai. Thus, it may be justified, because if it is connected with the myths that live in the Waropen customary law community that waropen people are people who migrate to the beach due to the presence of potent water, where the Waropen people are washed away to Waropen Ambumi and Roon in Nabire and Manokwari Regencies in the west, and Waropen Ronari in the east, while those who remain live on the coast of Waropen Kai. The Waropen people officially in government administration live in the Waropen Atas District, Masirei District and Waropen Bawah District.

Examined from the perspective of socio-cultural history, Held (1974) has divided the Waropen Atas area into 3 (three) customary law areas which are reflected in differences in the use of everyday language. These areas are the Waropen Ambumi Region, the Waropen Kai Region and the Waropen Ronari Region. The Waropen Ambumi Customary Law Community, which is divided into 2 (two) groups, namely the group that enters the Nabire Regency Region which inhabits the villages of Napan, Wenami, Masipawa, Makimi, Moor, Mambor and Ambumi. As well as groups that enter the Manukwari Regency Region and live in the villages of Yendeman, Saybes, War, Kayob and Menarbu.

The Waropen Customary Institution is an institution established to accommodate and function to foster, develop and implement and oversee the customary values of the Waropen Culture. The long-running number of land cases in Waropen District has attracted attention in Waropen District, including the Waropen Customary Institution.

Based on the results of interviews regarding the role of the Waropen Customary Institution in resolving ulayat land conflicts in Waropen District, it is known that the Waropen Customary Institution has a role in dealing with ulayat land issues involving indigenous peoples, government agencies, and companies. The Waropen Customary Institution also supports legal settlements of ulayat land cases in Waropen Regency, both those which have caused disputes or conflicts.

In resolving ulayat land conflicts in Waropen Regency, the Waropen Customary Institution also plays a role in actively processing this conflict by accompanying and going directly to the location of the ulayat land conflicts. However, the Waropen Customary Institution in resolving this case is not easy and not fast because not all customary landowners are aware of legal issues, such as they do not know and do not have a certificate of authenticity of land ownership, so the Waropen Customary Institution must follow the rules set by country. The Waropen Customary Institution cannot resolve conflicts if the status of land ownership is still unclear.

Based on the results of an interview with Mr. Thomas Thoy as the customary leader/Sera Bawa from the Waropen Customary Institution, the stages in resolving ulayat land disputes between the indigenous peoples of the Marga Wonatorey and Marga Watopa are:

- a. The summons of the disputing parties here, namely the parties to the dispute. The Wonatorey and Watopa clans were asked to tell each other what issues were in dispute and were asked to show evidence of the dispute. In this trial the Waropen Customary Institution always provides an opportunity for the parties to mutually defend the truth, for this reason the decision was postponed because testimony from witnesses was needed in the adat trial.
- b. Summoning of witnesses is to hear testimony from witnesses which strengthens the evidence

against the statements of the parties. The witnesses here are other people who have experienced, seen and heard to the best of their knowledge about the case of the customary rights land dispute.

- c. The process of deliberation where before starting the meeting the Customary Institution which acts as a mediator begins to prepare deliberations at the chosen place and at a predetermined time based on the invitation that has been given to the parties involved in the settlement of communal land disputes. Before starting the meeting the mediator or mediator, in this case the Head of the Waropen/Sera Bawa Adat, will try to make sure that all parties present focus their attention on the deliberation so that it can run effectively and the deliberation runs as a family.

If the Customary Institution feels that the conditions where the deliberation is held are conducive and the participants in the deliberation have focused their attention on starting the meeting, then the Customary Institution will start the deliberation by holding a joint prayer led by the Traditional Head/Sera Bawa according to their respective religions and beliefs.

After praying with the Customary Institutions, they began to give remarks which essentially contained thanks to all who were present at the deliberation. The important thing that was conveyed by the customary head/Sera Bawa in particular to the witnesses was that when giving testimony it was hoped that witnesses would give their testimony honestly and in accordance with what they knew. Because the existence of a witness is intended to seek the real truth so that it will benefit all parties and an agreement will be produced so that the condition of the community and all its aspects will return to normal conditions as before the land dispute occurred.

Usually in resolving land disputes that occur, the parties to the dispute will act alone and do not authorize other parties to represent them so that the problem will not widen because the interests and problems of the parties will be easily known by the Customary Institution and other interested parties. In addition, parties can easily convey what they want directly to other parties and also to Customary Institutions.

If all stages have been passed, the next opportunity will be given to the arbitrator to express his opinion based on his expertise. The intermediary, in this case the customary leader who is entrusted by the community, will give his opinion based on the condition of the existing community, in which there are various aspects to be considered, so that the settlement of land disputes cannot be decided based on certain aspects only.

In resolving ulayat land disputes that occurred in Waropen Regency related to ownership of land that is still communal with ulayat rights, where the customary communities of Marga Wonatorey and Marga Watopa in their settlement often cause obstacles which are resolved through Customary Institutions caused by some internal factors originating from the parties to the dispute (the subject) and the object in dispute and external factors originating from other parties.

Factors hindering the process of resolving disputes between the Wonatorey and Watopa indigenous peoples include:

1. The witness does not want to be a witness, based on information obtained from the Head of the Adat Institute as the Head of the Waropen Customary Institute, it is determined that witnesses cannot be arbitrary because those who already know that in cases of problems sometimes do not want to be witnesses. In addition, the consequences of their testimony usually lead to divisions between the disputing parties. Because according to the tribe and the beliefs of the indigenous people of Marga Wonatorey, if a witness is found to have lied in giving testimony, he will receive a very severe punishment because the tribe views someone who is lying with contempt.
2. Unclear land boundaries, this also causes obstacles in resolving land issues by the Customary Institutions. For example, in the determination of land boundaries, because originally the benchmarks that became land boundaries were not clear because the benchmarks no longer

existed. This is because in the past, at the beginning of land ownership, some of the determination of land boundaries was based on only annual trees as stakes and at this time these trees no longer exist, so that at this time it is difficult for the parties to indicate the boundaries.

3. The lack of clarity over landowners is also one of the obstacles to deliberations. It often happens that one parcel of land has more than one certificate of ownership. The proof of ownership can be in the form of a certificate and it is not uncommon for land ownership to be based solely on recognition without the support of other documents. So in this case it must be proven which of them is the real owner.

External factors that hinder customary land disputes for the indigenous people of Marga Wonatorey do not originate from the subject or object of the dispute which can be caused by a third party. Third parties in land disputes are parties other than the parties to the dispute. These third parties are usually the family of one of the intervening parties which sometimes affects one of the disputing parties.

Other third parties may be present, if in the land dispute negotiations, a solution is found and the parties also reach an agreement, then the other party will face and state that they also have the same rights over the disputed land, and raise objections, creating new problems that arise. must be completed. complete It concluded negotiations early, but due to other objections, the agreement reached could not be carried out.

Conclusion

Alternative dispute resolution by the indigenous peoples of the Marga Wonatorey and Marga Watopa through Customary Institutions, wherein the Customary Institution in resolving communal land disputes acts as a peace judge in customary trials and also as customary decision makers in which the parties are binding on the decisions in dispute and creating harmony in the family, where every action or action of the Customary Institution must be based on 3 characteristics, namely maintaining the security of the same ethnic community, maintaining peace among the people of the same tribe and maintaining the degree of religion and belief.

Obstacles that often arise in resolving customary land disputes through customary institutions are internal factors arising from the reluctance of witnesses who do not want to speak, unclear land boundaries, and unclear landowners. In addition, other inhibiting factors are external factors originating from third parties, and from the families of other parties to the dispute and from outside the parties to the dispute.

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