

RESOLUTION OF ULAYAT LAND DISPUTES BETWEEN THE TRADITIONAL LEGAL COMMUNITIES OF THE UPPER TOR DISTRICT AND THE REGIONAL GOVERNMENT SARMI DISTRICT, PAPUA PROVINCE

JAMES YOSEPH PALENEWEN

University of Cenderawasih Jayapura-Papua-Indonesia

Abstract

Customary land disputes often occur in villages and cities, with many problems occurring regarding customary land between customary law communities and local regional governments. The aim of this research is to determine the resolution of customary land disputes and the factors that cause disputes over customary land over the construction of the Upper Tor bridge between the traditional law community of Upper Tor District and the Regional Government of Sarmi Regency. The approach method used is empirical, namely field research. The results of this research reveal that the resolution of the customary land dispute between the traditional law community of Tor Atas District and the Regional Government of Sarmi Regency which had led to clashes and resulted in residents being injured by sharp weapons was resolved through mediation where the authorities (police) as mediators or parties the third whose job is only to help the parties to the dispute. Meanwhile, the factors that gave rise to the customary land dispute between the traditional law community of Tor Atas District and the Regional Government of Sarmi Regency were first, the traditional community of Tor Atas Village, especially the Mafentor and Apawer of Tor Atas District, stated that the Regional Government had not compensated for the loss of the customary land on which the bridge was built. Upper Tor and the river that flows along the Muara Tor Bridge, secondly, the Regional Government's approach to taking customary land is not implemented through deliberation and consensus.

Keywords: *Dispute Resolution, Ulayat Land, Upper Tor District, Sarmi Regency.*

INTRODUCTION

Land is a gift from the Almighty and is also a natural resource that is very useful for everyone's survival. Humans live and reproduce and carry out daily activities in such a way that they are always in contact with the Earth. Land is a need that cannot be denied in life, because everyone needs a place to live as a basic need that must be met.

For common law/customary law communities, land occupies number one place because it is permanent property and can provide benefits for the owner. Apart from that, land also functions as a shelter, a place to find daily food and also as a place to bury people who have died (Wingjodipoero Soerojo, 1973).

Customary law/common law communities are often also referred to as traditional indigenous communities (Djamanat Samosir, 2013). Meanwhile, common law community rights are individual rights and community rights. One of the general rights that can be seen in the UUPA is customary rights or customary territories which are the place or environment of the customary law community itself (Van Vollenhoven, 1956).

Article 3 of the UUPA also states that communities that arise naturally in a certain area are customary law communities and their existence cannot be contested by anyone, be it authorities or other bodies with authority because the law recognizes the existence of customary law communities. ulayat land as long as it has existed for a long time and cannot be created anew.

With the rights of community members to utilize customary land, individual rights are linked to customary rights, namely the rights given to community members over customary land. In land law, the term land is used in a legal sense as an understanding whose official boundaries are determined in the UUPA.



The provisions of Article 1 paragraph (4) state: "in the sense of land, it also includes the body of land beneath it and what is under the water." So it is very clear that land in the legal sense is the surface of the earth/earth's crust that is above land or sea, while land rights are only limited to the surface of the earth, having two dimensions, namely length and width (AP. Parlindungan, 1973).

Conflict/Dispute is a situation where one party feels very disadvantaged by another party. When a dispute occurs in a situation, what is called a quarrel or commotion occurs. In contract law, conflict or dispute is a dispute that arises between parties due to a breach of contract, either in whole or in part, regarding an agreement contained in a contract. In other words, there was a failure committed by the parties (Nurnaningsih, 2012).

Land disputes are differences in values, interests, opinions and perceptions between individuals and between legal entities (private and public) regarding control status and/or ownership status (Nasrun Hipan, Nirwan Moh Nur and Hardianto Djanggih, 2018). Disputes/disputes which come from social relations, either directly or indirectly, in customary law communities can be quickly resolved without the problems being experienced being drawn out, causing the problems to crystallize into more complex problems (Riska Fitriani, 2012).

Land problems that we often encounter every day can be seen from the conflicts of interest of the parties in land disputes, namely communities facing bureaucracy, communities facing state-owned companies, communities facing private companies and conflicts between other communities (Maria S.W. Sumardjono, 2005).

The rights of customary law communities to land are known as "ulayat rights", namely a right that is owned or associated with customary law communities because of their laws and customs, thus giving them the power to control all the land or what is called ulayat land under them. mastery. used according to its function for the survival of the original population.

Conflicts or problems that often occur result in differences in attitudes or opinions between the government and society. Conflicts over customary land rights that occur on the part of the government are often considered an obstacle to development, on the part of customary law communities these conflicts or problems give rise to attitudes or views as a form of confiscation or control of land rights that have been held by the government. them for generations.

In the customary law community of Sarmi Regency, land control (ownership) rights have existed for a long time, and these rights have been modified so that every customary law community consisting of tribal groups and clans grants use rights to its citizens. he. These property rights are then known as ulayat rights or collective rights (hak ulayat) which are held by tribes, clans/clans, where these rights give freedom to every member of a customary law community to continuously use their land to fulfill their daily obligations. daily living needs.

The aim of this research is to determine the resolution of customary land disputes and the factors causing customary land disputes as a result of the construction of the Tor Atas Bridge between the traditional law community of Tor Atas District and the Regional Government of Sarmi Regency.

METHOD

The approach method used is normative and empirical, namely an approach that refers to laws, literary materials and applicable laws and regulations, as well as looking at the reality that occurs at the research site, so that researchers get a clear picture and ideas about the problem being investigated. . Likewise, this research uses descriptive characteristics to describe and analyze the laws and regulations in this research accurately in accordance with the research objectives (Peter Mahmud Marzuki, 2010).

RESULTS AND DISCUSSION

Sarmi Regency has an area of 35,587 km² which borders the Pacific Ocean to the north, Tolikara Regency to the south, Puncak Jaya Regency and Waropen Regency to the west, and Jayapura Regency to the east. The majority of Sarmi residents depend on nature's gifts for their living needs. The forest provides their needs. Sago is the staple food of the local population which grows



abundantly in almost all areas of this district.

The development of agricultural commodities such as rice, secondary crops and vegetables is still on a small scale for personal consumption. The land that has been cultivated and produces food crops is located in Bonggo District. Only in this area can rice be harvested, and the majority of secondary crop production in Sarmi Regency is produced in Bonggo.

Apart from that, the economic culture of the Sarmi traditional community is also very important because it functions to fulfill daily living needs. Science and technology are used to realize the economic culture of the Sarmi traditional law community which is reflected in the subsistence system, namely horticulture (agriculture), animal husbandry, hunting, gathering, sago planting and fishing.

The livelihood system of traditional law communities in Sarmi focuses more on ecology. Above the ecological area, they utilize natural resources that are above or below ground (land) which has the status of jointly owned land (ulayat or customary land) which is under the supervision of a clan or clans that have known the land for generations. which it controls. However, if someone operates the land outside the known boundaries, internal and external disputes will occur.

In resolving customary land disputes between the Traditional Law Community of Tor Atas Village, Tor Atas District and the Regional Government of Sarmi Regency which resulted in clashes and resulted in residents being injured, the authorities (police) acted as mediators/third parties whose job was only to assist the disputing parties in solve the problem and do not have the authority to make decisions. A tribal chief from the Upper Tor village was present to help resolve problems that arose with the local government regarding customary land disputes related to the construction of the Upper Tor Bridge.

Therefore, the mediator only acts as an intermediary. In mediation, the parties are expected to be able to find common ground to resolve the problems and disputes they face and establish them as a mutual agreement. Decision making is not in the hands of the mediator, but in the hands of the conflicting parties. The mediator's role is to help the parties understand each other's views and identify the issues that are important to them. Mediators facilitate the exchange of information, encourage discussion of interests, perceptions, and interpretations of situations and issues, and regulate the expression of emotions.

Extrajudicial Dispute Resolution (ADR) is actually a model of dispute resolution that is much more in line with the nature and way of life of traditional, family-based societies compared to judicial dispute resolution which is more individualistic in nature, only considering profits and losses, paying more attention to material aspects, and ignoring elements of social community, namely kinship and mutual cooperation (Palenewen. JY, & Solossa. M, 2023).

This is based on the large number of cases that have piled up in court and have not been resolved. In situations like this, choosing mediation is a good choice in resolving disputes because it is considered more efficient. The reasons why people tend to use mediation to resolve disputes include:

- a. A settlement can be achieved quickly, where the process of achieving it sometimes only requires two or three negotiations between the disputing parties.
- b. The costs are cheaper and generally the mediator is not paid.
- c. It is confidential, that is, everything that has been disclosed by the parties in the process of conveying their opinions is conveyed to the mediator, everything is closed, not open to the public as in a court hearing.
- d. The results achieved are win-win in nature where the settlement is carried out in the form of a compromise or mutual agreement and neither party suffers a loss or in other words both parties win. In contrast to a dispute in court, there are parties who win and there are losers.
- e. It is not emotional if the cooperation is for mutual benefit to achieve agreement or peace. Mediation is used as a resolution forum, but traditional leaders or tribal leaders play an important role. Thus, the traditional head always pays attention to changes in all his actions and in maintaining customs. There is a growth in law, so working in the field or as a village judge under the guidance and supervision of the Traditional Head is very important (Tanati. D, 2023).



When a conflict occurs or an action violates customary law, the traditional head acts to restore customary peace, maintain the balance of the village atmosphere, and restore the law. The function of traditional leaders/traditional leaders in society is not much different from traditional heads of other traditional communities, namely:

- a) Guidelines are given to all members of the community as to when to behave in social life and what underlies this behavior are customs in customary law.
- b) Maintaining the integrity of the community, so that the association is maintained from the past until now and cannot be damaged by various actions of association members that are not in accordance with customs in customary law.
- c) Direction is given to all members of the existing community to implement a social control system so that community life is maintained as well as possible without divisions or disputes occurring within members of the traditional community.
- d) Pay attention to every decision made based on customary law.
- e) It is a place on which members of society depend to settle, protect and ensure peace. Therefore, when a dispute occurs, the Traditional Head is the only place that community members can rely on to resolve the problem or dispute. If we examine the role of traditional heads in traditional communities in general, many parties ask for the involvement of traditional heads/leaders in solving problems, both life and death. However, what is more important is that the role of the Traditional Head is to maintain environmental balance with each other so that harmony and peace are maintained in his traditional community.

Based on the objectives of the research carried out by the researcher, the land dispute that the researcher focused on was the dispute/dispute between the Tor Atas Village Traditional Law Community and the Regional Government of Sarmi Regency regarding the construction of the Upper Tor Bridge. Where there was a blockade at the location of the incident carried out by the Mafentor community who demanded payment of customary rights to the local regional government for the construction of the Upper Tor Bridge and the river flowing along the Muara Tor Bridge. "The blockade occurred on Friday, May 27 2022 at 13.15 WIT, involving approximately 100 residents, a combination of residents of Tor Atas, Mafentor and Apawer villages who burned used tires on the bridge," said Police Commissioner Kamal. After that, Fien District Director Izak Yawir, S.Sos, met with the crowd and provided understanding to the residents, but they were ignored. Knowing that there was an obstacle, Sarmi Police personnel went to the location and tried to coordinate with the crowd to intervene, but the crowd still ignored him, continued the Head of Public Relations.

Mr. Elias Bakai, Regional Secretary of Salmi Regency, arrived at the scene with the operations leader and his members to negotiate with the masses, but the masses were dissatisfied and did not accept the results of the dialogue, causing the masses to become angry and go on a rampage by taking anarchist action. "Because the crowd did not accept the results of the dialogue, the mob then attacked the Regional Secretary of Sarmi Province and the members who carried out the action, and damaged two police vehicles," said the Head of Public Relations. Seeing that the mass action was getting out of control, the members blocked the road to stop the mass action, but the violent crowd instead attacked the police officers with jubi and arrows. Due to the crowd's disorderly behavior, the police fired warning shots into the air to disperse the crowd. The crowd then withdrew towards the village of Maffentor. Apart from that, the Regional Secretary of Sarmi Regency also took his members to the Community Health Center to receive medical assistance. As a result of this incident, the Sarmi District Secretary, three police officers and six residents were injured and were treated at the Sarmi Community Health Center.

Based on information from Mr. Fakhiri, there were six people from the crowd who received gunshot wounds, namely Rio Weiraso, Tandius Saroni, Izak Anabe, Leo Weraso, Dedeus Sarone, and Esra Mamawiso. From a number of reports received and received by the Regional Police Chief, the crowd acted anarchically and attacked the Regional Secretary of Sarmi Regency, Elias Bakay, causing him to suffer injuries to his head. Initially, the protesters were demanding compensation for payment of customary rights to the Upper Tor Bridge.



Therefore, the factors that cause frequent land disputes for the construction of the Upper Tor Bridge between the traditional law community of the Upper Tor District and the Regional Government are:

- a. The indigenous people of Upper Tor Village, especially the Mafentor and Apawer of the Upper Tor District, stated that the local government had not provided compensation for the loss of traditional land where the Upper Tor bridge was built and the river that flows along the Tor Estuary.
- b. The Regional Government's approach to taking customary land is not based on deliberation with local customary communities. The way the government takes land is by appealing to local communities and stating that the land the government wants to use is their land.
- c. The Regional Government does not provide compensation money to parties who are targeted, but rather to parties who are not traditional land owners.

Therefore, researchers can analyze and conclude that the resolution of customary land disputes between the traditional law community of Tor Atas District and the Regional Government of Sarmi Regency, Papua Province must be based on the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Community Customary Rights Issues. Customary law is generally based on customary rights where customary rights are the highest rights in customary law communities. Customary rights are recognized by the Basic Agrarian Law with only two conditions, namely their existence and implementation. The existence of customary rights still exists today, and their implementation must not conflict with applicable laws and other regulations. Customary rights cannot be created new because the Basic Agrarian Law also regulates this matter where customary rights are only recognized for 3 (three) things, namely the existence of land belonging to customary law communities, the existence of a group of customary law communities, and the existence of traditional leaders. traditional leaders recognized by the customary law community. If one of these elements is not present then customary rights cannot automatically be recognized and are declared to have never existed.

CONCLUSIONS AND SUGGESTIONS

Based on the research results above, researchers can conclude as follows:

1. Settlement of customary land disputes between the traditional law community of Tor Atas district and the local government of Sarmi Regency which resulted in clashes and resulted in injuries to residents with sharp weapons were resolved through mediation, where the authorized party (police) acted as a mediator or third party whose job was to only helps disputing parties to resolve problems and does not have the authority to make decisions, witnessed by the tribal chief from Tor Atas Village to help resolve problems that arise between indigenous communities and the Regional Government of Sarmi Regency.
2. The factors that caused the customary land dispute for the construction of the Tor Atas Bridge between the Traditional Law Community of Tor Atas District and the Regional Government of Sarmi Regency, namely first, the Indigenous People of Tor Atas Village, especially Mafentor and Apawer of Tor Atas District, stated that the Regional Government did not provide compensation for loss of customary land where the Upper Tor Bridge was built and the river that flows along the Muara Tor Bridge, secondly, the Regional Government's approach in taking customary land was not carried out through deliberation. The government's way of confiscating or taking the land is by appealing to local communities who claim that the land the government wants to use is their land, and thirdly, the Regional Government deviated by giving compensation money to parties who are not traditional land owners.

Based on the conclusions above, the author can suggest the following:

- 1) That the Sarmi Regency Regional Government, if it wants to use customary land for development, needs to sit together with local traditional leaders so that it is clear what community, what tribe and what village this customary land belongs to so that there are no misunderstandings and disputes in the future.

2) For the customary law community, especially the traditional law community in the Upper Tor District, if they demand compensation for customary land used by the Regional Government, it is necessary to discuss it carefully, there is no need for anarchic action because it is very unfortunate that this incident resulted in several residents being injured. due to sharp weapons.

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