

PATTERNS OF RESOLUTION OF CUSTOMARY RIGHTS DISPUTES FOR TRADITIONAL LAW COMMUNITIES IN WAROPEN DISTRICT PAPUA PROVINCE

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Abstract

Customary rights disputes often occur among residents between one village and another, and the same thing happens in Waropen. It is not uncommon for customary rights disputes to occur among customary law communities. The aim of this research is to determine the resolution of customary law community land rights disputes in Waropen Regency. The approach method used is normative and empirical, namely research by examining applicable laws and regulations by looking at the reality that occurs in the field. The results of this research reveal that the resolution of disputes over the customary law rights of the Waropen community among village residents is usually resolved through customary law which in the Waropen language is called "Woidama". Woidama means deliberation. The house where the gathering is held is the sera house (tribal chief's house) because the one who will lead the traditional assembly is Sera. Problem solving starts from Sera Titibi (Deputy). If Sera Titibi cannot solve it, then the problem is handed over to Sera Bawa. In terms of solving the land problem, if there are still problems, it is recommended to just eat land as a way to solve the problem. They believe this will prove who owns the land. However, with the formation of the Waropen Traditional Council, unresolved problems can be escalated to the Traditional Council. The Waropen Traditional Council has its own management structure with a cabinet composition elected within Waropen Regency. The Traditional Council in this area functions as a protector for indigenous Papuans, and as a channel for messages among Papuans for the government, especially in the Waropen district government area. At the district level there is a District Traditional Council and at the district level there is a District Traditional Council. Meanwhile, in each village, village-level traditional council management has also been formed. The structure and management of the Traditional Council in Waropen district consists of: General Chair, Deputy Chair I, Deputy Chair II, Deputy Chair III, Deputy Chair IV, Secretary I, Secretary II, Treasurer I, Treasurer II, Commissions (consisting of 4 commissions who is in charge of programs as a program driver for the local Traditional Council).

Keywords: Settlement, Disputes, Customary Rights, Customary Law Communities, Waropen Regency.

INTRODUCTION

Papua is geographically located at the eastern tip of Indonesia. The name Papua comes from the Malay word, namely 'pua-pua', which means "curly hair" (Rainer Scheunemann, 2004). The island of Papua was nicknamed by Portuguese sailors with the nickname "Isla de Ora" meaning "golden island", and Spanish sailors gave it the name Nova Guinea (Alua. Agus A, 2002) which in Spanish Nova means new and Guinea means land or place. The Dutch gave the name Papua New Guinea (Land of Papua). This island is inhabited by ± 263 ethnic Papuans who come from the Melanesian race (Warami. Hugo, 2006). The legal community of Waropen Regency is part of ± 263 ethnicities that inhabit the Land of Papua. Waropen Regency as part of Papua Province which was formed based on Law Number 26 of 2002 is an expansion area of Yapen Waropen Regency as the parent district. Waropen consists of 9 (nine) districts, 61 (sixty one) villages, not including villages in Kirihi district.

The Waropen indigenous people's view of land is called Anani Popono, which means sacred land. In folk stories, it is explained that events beyond the reach of human thought occurred in ancient



times. These stories are like the relationship between humans and the full moon, where someone can meet the moon in one place. This incident gave rise to religio-magical values which were adhered to by the community association as a form of local traditional belief.

This land environment is protected through partnership power, where the partnership's right to control is very strong. Members of the association who will be in contact with these places must first be known by the head of the association. For this reason, the members of this association announce their intentions related to this sacred place. If the intentions of a member of the partnership with the environment of the place contain things that will harm other members of the community, then the head of the partnership has absolute authority to prevent and cancel it. If the relationship contains good intentions for the benefit of the association, then the head of the association can give permission to the members of the association to have relations with the sacred place (Joseph HR. Kaiway, 1993).

The Waropen traditional law community is aware that land has been very important in their lives for generations. Land is a guarantor of life or continuity of life for children and grandchildren in the future. Land is very important for people's lives. Like the indigenous people in Wapoga village who state that land is people and land is life. Therefore, in the view of the Waropen indigenous people, land cannot be bought and sold. Because land is a symbol of life for the humans who live on it.

Property rights in the Waropen language are called Mipena (Sanggei Village) or Risanau. Mipena or risanau in the traditional concept is originally a former garden. Former garden land refers to ownership of land or an area that is owned. According to the Waropen people, ex-garden land refers to the first person to clear land/land in an area, therefore ex-garden land left by previous managers cannot be opened or cultivated by other people. Other people can cultivate or manage the land after obtaining permission from the previous manager. However, the land remains the property of the first manager, while the following managers/cultivators only have use rights.

The view of former plantations as described above shows similarities to the concept of ulayat rights according to customary law. According to customary law, customary rights do not close the door for people outside the legal association who wish to exercise the rights above as long as they first ask for and obtain permission from the head of the legal association (G Kartasapoetra, 1991). Relationships like the above also spread to relationships between individuals, if someone clears land and can maintain it for more than 1 or 2 seasons, then the relationship between the individual and the land is seen as a closer relationship and because such practices are increasingly being carried out by individuals over time, and in the end there is recognition that the land has been approved as their own. The next consequence is the development of customary rights into property rights according to customary law.

The Waropen Indigenous People recognize 2 (two) types of land rights, namely ownership rights and use rights. Residents of the Waropen indigenous community can have property rights in the form of individual rights, family property rights which are the same as household property rights, and clan property rights or customary rights.

The pattern of transfer of customary rights found in the life of the Waropen indigenous community is the granting of rights/authority to someone who is adopted as an adopted child from another clan, usually given full rights to open land/gardens and control and manage all the plants they plant themselves. This pattern was carried out by our ancient ancestors. Now the children who were adopted by this clan, after knowing their original clan, are starting to return to using their original surname or family.

Regarding the ownership status of a child in a particular family and clan who migrates to another city/region, they are still recognized as the owner of the customary rights of their clan. The difference is that girls have lost their rights to own their family's customary rights because they are considered to be their husband's dependents. Ownership rights of women who marry out are only found in certain clan lineages. Example: "A person in a certain clan who has 7 (seven) children is still bound by custom to the customary rights of his family because he is considered to be the heir of his parents or ancestors and his clan."

One part of customary rights is land. Land as in Article 1 point 2 of PMA/Head of BPN Number 5 of



1999 concerning Guidelines for Resolving Ulayat Rights Problems, states that: "ulayat land is a plot of land on which there are customary rights of a particular customary law community". Likewise, in the Waropen indigenous community, the land in the area is customary land which has been owned, used and managed from the past until now for daily living needs.

METHOD

The method used in this research is empirical, by looking at events and realities that occur in the Waropen traditional law community directly. Where customary disputes must be resolved in the customary areas by traditional leaders or the chairman of the traditional court while still paying attention to the values and norms that apply to the Waropen customary law community. Deliberation is the main step taken by traditional leaders in resolving disputes within customary law communities to create safe, prosperous and harmonious customary law communities.

RESULTS AND DISCUSSION

Waropen Regency, as a new district (because it is an expanding district), in the implementation of development is certainly inseparable from the phenomenon of the importance of the system of values and the system of norms. This assumption cannot be separated from the influence of the system of values and the system of norms on the results of development itself. Even though development is given a more positive connotation, development also has the potential to be a cause of decline, and even has the potential to give rise to conflict if the development does not pay attention to aspects of social and cultural values, as objective conditions that exist in Waropen district.

In the 1945 Constitution, Article 18B paragraph (2), it is explained that the state recognizes and respects customary law community units and their traditional rights, Article 28I paragraph (3) further emphasizes the state's recognition of cultural identity and traditional community rights (Bushar Muhammad, 2006). Based on this, customary law and the rights related to customary law have received a primary place in the legal system in Indonesia. In principle, recognition of customary law is of course related to recognition of the entire existence of existing customary rights.

Customary law is law that is formed by the psychological patterns and thinking structures of indigenous peoples which are passed down from generation to generation traditionally. The structure of thinking that underlies the formation of customary legal norms differs from one region to another.

Humans and customary law communities in their lives are very dependent on land, because land is a place to stand, a place to live and also as a final resting place for humans after they die. The dependence of humans and legal communities on land is like a child (baby) and its mother. Such is the importance of land for human life and legal society that land regulations have a very important meaning.

Because of the close relationship between land and people, both individually and as a partnership, the partnership has rights to land within its territory. Land related to legal partnerships is called customary land. The emergence of the term customary land was due to the legal dualism that regulated land in the era before the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, better known as the Basic Agrarian Law (UUPA). The two types of law in question are customary law and European law (Western law).

With the existence of two types of law which is also called "dualism" of applicable law (Customary Law and Western Law) which regulate land, land before the enactment of the UUPA could be divided into two types, namely "customary land" which was also called "Indonesian land" and "western land" or what is also commonly called "European land" (Wantjik Saleh, 1982). This customary land or Indonesian land is fully subject to customary law (customary agrarian law). European lands are completely subject to Western law or European law.

If we were guided by before the enactment of the UUPA that customary land was land that was subject to customary law as opposed to European land, land that was subject to European law was



not possible, because with the enactment of the UUPA there was a land law that was national and not There is also a distinction between land into customary land and European land. Besides that, the principles adopted in the UUPA are different from before the UUPA came into force. Prior to the enactment of the UUPA, the principle of ownership by the state (Domeinverklaring) applied, this is not the case in the UUPA.

According to R. Soeprapto, the UUPA stems from the position that to achieve what is stipulated in Article 33 paragraph (3) of the 1945 Constitution, it is neither necessary nor appropriate for the Indonesian nation or state to act as land owner. It would be more appropriate if the state, as the authority organizer of all Indonesian people, acted as the Ruling Body (R. Soeprapto, 1986).

Customary land or Indonesian land in the period before the enactment of the UUPA, as a whole was not registered as in land registration as intended in modern land registration as stipulated in the UUPA and its implementing regulations, which aims to ensure legal certainty of land rights and to obtain proof of rights to land. land. In the period before the UUPA came into force, land registration also occurred on customary lands, but only for the purposes of collecting land tax, so it was called "fiscal cadaster".

The existence of customary rights in the UUPA is still recognized. The regulation of customary rights in the UUPA can be found in Article 3 of the UUPA which states that "bearing in mind the provisions in Articles 1 and 2, the implementation of customary rights and similar rights from customary law communities, as long as in reality they still exist, must be such that it is in accordance with national and state interests, based on national unity and must not conflict with laws and other higher regulations.

Customary law community customary rights are declared valid if they fulfill 3 (three) elements (Supriadi, 2007), namely:

- a. There is still a group of people as citizens of a particular customary law association, which is a customary law community.
- b. There are still areas which constitute the customary law community's customary land, which is recognized as land jointly owned by its citizens as a "living space".
- c. There is still customary control which, in reality and recognized by the members of the customary law community concerned, carries out daily activities as executors of customary rights.

Development will automatically bring about changes in the community in the area where the development is carried out, therefore it is important to know that land boundaries/customary rights to land in Waropen Regency are land inherited from clans or kerets within certain tribes in each district/village spread across the region. Waropen Regency.

The kinship system in the lives of the Waropen people greatly influences the pattern of managing the customary rights of each tribe/clan within the family environment of the Waropen people. The most important kinship group in the life activities of residents in Waropen villages is the extended family. An extended family consists of a father (daida), mother (naina) and children (waitea) and often the parents and father and mother always live in the extended family. The family always works together to meet their daily needs by gathering sago or catching fish. In the past, some of the batih families had kinship relationships with each other based on descent through the male lineage (patritineal). Patrilineal groups and one extended family consisting of 20-30 people occupy one large house (rumah take).

In a large group of relatives who live in one house there is always someone appointed as the leader who is called the sera bring. Sera Bawa is believed to be the leader of one house to manage and handle customary issues. Sera Bawa are often appointed to officiate marriage ceremonies, mediators in the event of disputes between clans and the management of customary rights over their land and hamlets. The big house (ruma Bawa) in the Waropen people's conception has two meanings; the house as a place or symbol of kinship, second; House is defined as a place to live or take shelter.

In resolving land issues between village residents, it is usually resolved through customary matters which in the Waropen language are called "Woidama". Woidama means deliberation. The house where the gathering is held is the sera house (tribal chief's house) because the one who will lead



the traditional assembly is Sera.

Problem solving starts from Sera Titibi (Deputy). If Sera Titibi cannot solve it, then the problem is handed over to Sera Bawa. In terms of solving the land problem, if there are still problems, it is recommended to just eat land as one way of solving the problem. They believe this will prove who owns the land. However, with the formation of the Waropen Traditional Council, unresolved problems can be escalated to the Traditional Council.

The Waropen Traditional Council has its own management structure with a cabinet composition elected within Waropen Regency. The Traditional Council in this area functions as a protector for indigenous Papuans, and as a channel for messages among Papuans for the government, especially in the Waropen district government area. At the district level there is a District Traditional Council and at the district level there is a District Traditional Council. Meanwhile, in each village, village-level traditional council management has also been formed. The structure and management of the Traditional Council in Waropen district consists of: General Chair, Deputy Chair I, Deputy Chair II, Deputy Chair III, Deputy Chair IV, Secretary I, Secretary II, Treasurer I, Treasurer II, Commissions (consisting of 4 commissions who is in charge of programs as a program driver for the local Traditional Council).

The Traditional Council is a forum for associations of indigenous Papuans in various Regency cities which was born and formed and coordinated directly by every group of indigenous Papuans who inhabit the area. The function of the traditional council is as a guardian/protector for indigenous Papuans, and as a channel for messages among Papuans for the government. The Customary Council in Papua was generally born as a forum that only became known after the Grand Conference of Papuan Indigenous Peoples in 2000.

At the village level, each tribe also has a village-level traditional management structure, which is different from the organizational structure of traditional management in the past. The traditional customary management structure is no longer in effect after the entry of the Dutch government, religion and the Indonesian government. However, as a comparison, it is interesting to state as a result of the findings in this research the traditional management structure of the Kuriye tribe with their respective functions and duties as follows:

- a) Gio is a king, kura uka pewi, a big leader at tribal level who has expertise, ability, cleverness, skill, wisdom, as an impartial father. Ghio also holds the position of traditional high commander, the traditional high court, having the right to make absolute decisions.
- b) Gio Pewi and Uka Kurapewi were elected and appointed according to patrilineal order, in their duties acting as traditional high commanders. Gio or Uka kurapewi made the customary rules together with Duwesi, Taro Duwesi. Meanwhile, Taro Dua Yysi and Taro Dei lysi serve as executors (for Taro Dei lysi they also act as guardians of the traditional territory).

CONCLUSIONS AND SUGGESTIONS

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

Settlement of disputes over land rights of the Waropen customary law community among village residents is usually resolved through customary law which in the Waropen language is called "Woidama". Woidama means deliberation. The house where the gathering is held is the sera house (tribal chief's house) because the one who will lead the traditional assembly is Sera. Problem solving starts from Sera Titibi (Deputy). If Sera Titibi cannot solve it, then the problem is handed over to Sera Bawa. In terms of solving the land problem, if there are still problems, it is recommended to just eat land as a way to solve the problem. They believe this will prove who owns the land. However, with the formation of the Waropen Traditional Council, unresolved problems can be escalated to the Traditional Council. The Waropen Traditional Council has its own management structure with a cabinet composition elected within Waropen Regency. The Traditional Council in this area functions as a protector for indigenous Papuans, and as a channel for messages among Papuans for the government, especially in the Waropen district government area. At the district level there is a District Traditional Council and at the district level there is a District Traditional Council. Meanwhile, in each village, village-level traditional council



management has also been formed. The structure and management of the Traditional Council in Waropen district consists of: General Chair, Deputy Chair I, Deputy Chair II, Deputy Chair III, Deputy Chair IV, Secretary I, Secretary II, Treasurer I, Treasurer II, Commissions (consisting of 4 commissions who is in charge of programs as a program driver for the local Traditional Council).

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

That the Waropen customary law community in resolving customary law community customary rights disputes must remain based on the customary law rules that apply in Waropen, do not play judge alone and if you want to win alone, it must be resolved by deliberation through customary leaders led by traditional leaders. or chairman of the traditional assembly. This tradition must be maintained in the Waropen customary law community from generation to generation so that all kinds of disputes that occur among customary law communities can be resolved without having to go to court.

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