Functions and Roles of Customary Heads in Settlement of Land Disputes in Customary Law Community Territories

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Abstract
This study aims to determine the function and role of the customary head in resolving land disputes in the territory of the Customary Law Community. The role of customary heads in various regions is still very strong, even though there has been a village administration, where there is institutional uniformity. The purpose of this writing is to find out how the authority of the customary head in resolving land disputes between customary law communities, is it replaced by the village head. The results of the study show that the role of the customary head as a leader in the Customary Law Community functions as a dispute resolution judge and as a reconciliation judge in maintaining the balance of customary law. The enforcement of customary law by customary heads in dispute resolution is marked by customary rituals, deliberations, and customary fines that are adjusted to the status of the parties to the dispute, in the form of returning rights to landowners, animal slaughter, a sum of money, or in the form of gold.

1. Introduction

Indonesia is an archipelagic country, marked by a diversity of tribes, one of which is the existence of indigenous peoples, which reflects the diversity of Indonesia. This pluralistic picture can be seen from the many tribes (1340 ethnic groups), (719 national languages), 200 products of customary law. [1] The presence of the Indigenous Law Community long before Indonesia was united and sovereign as the unitary state of the Republic of Indonesia.

Recognition by the state based on the constitution of the 1945 Constitution, stated in Article 18 B paragraph 2, namely:

> (2) The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

Furthermore, in the regulation concerning Villages in Law Number 6 of 2014 Concerning Villages (abbreviated as the Village Law), it is emphasized in Article 4 section c, that Village Arrangements aim to: "preserve and promote the customs, traditions and culture of the Village community". The types of villages are mentioned in article 6 paragraph (1) Villages consist of Villages and Traditional Villages. Furthermore, in Article 67 (1) Villages have the right:

> " a. regulate and manage community interests based on origin rights, customs, and socio-cultural values of the Village community".

Villages consisting of legal community units that have territorial boundaries, places where people live, have children, are full of culture, customs, and the application of their customary law, of course, have different styles of law enforcement. The existence of the role of the traditional head as a leader who has authority in applying customary law for the survival of the community within the scope of customary territory also gives a different style. One of them is the role of customary heads in resolving land disputes. Article 103 letter d of the Village Law states that the authority of Traditional Villages is based on the rights of origin as referred to in Article 19 letter a, namely customary dispute resolution

[1] https://indonesia.go.id/profil/suku-bangsa/kebudayaan/suku-bangsa

based on customary law in force in traditional villages in areas that are in line with human rights principles by prioritizing settlement by deliberation.

The life of the customary law community which is formed due to genealogical and territorial elements with the concept of ownership of land that is communal, hereditary, the rotational use of ancestral heritage is an important part of the function of the customary head. So that the day-to-day activities of customary heads in customary territories are to maintain the law so that it can run in an orderly manner, covering all aspects of the life of members of the customary law community in interactions between communities related to maintaining peace, balance to uphold customary law. The activities of the Traditional Head can be divided into three parts, namely:

1. Actions regarding land affairs relate to the existence of a close affinity between the land and the alliance that controls the land.
2. Completion of law as an effort to prevent violations of the law; so that the law can work as it should (preventive guidance).
3. Carrying out the law as a legal rectification after the law has been violated (repressive coaching). [2]

The customary head under his leadership and supervision, if there is a dispute or actions that are contrary to customary law, can act as a peace judge who acts to restore balance in the village atmosphere and legal restoration.[3]

Customary law is a manifestation of the customary law community which collectively constructs law through language, symbols and norms born of social interaction. Law is an embodiment of society's legal awareness (*volksgeist*), as Savigni thought that law grows naturally in society and is not made intentionally by certain (political) forces. Savigny's thinking is important in placing law holistically in society and building laws that have past, present and future continuity.[4] More by Leopold Pospisil in Hasan:

> "That there is no law when there is no society, conversely there is no society without law. Law exists even in the most humble society, because the law is felt to be able to organize people's lives so that people agree to make a set of norms, habits or values, even rules that can be used as a guideline or the basis for their

[2] Jenny Lah. *Peranan Kepala Adat Dalam Penyelesaian Sengketa Tanah Ulayat di Kecamatan Sungai BOH Kabupaten Malinau***.** E-Journal Ilmu Pemerintahan ,(2014) 2(4), 3275

[3] *Ibid*. 3275

[4] M. Zulfa AuliaF. *Hiedrich Carl von Savigny tentang Hukum***:** *Hukum sebagai Manifestasi Jiwa Bangsa***.** Jurnal Hukum, (2020), 3(1) , 202

behavior and actions.[5]

The two thoughts mentioned above are the introduction in this paper, that the life of indigenous peoples until now in several areas that are the research locations still exists, because they factually fulfill several requirements stipulated in various regulations. As for the requirements for recognition of indigenous peoples through the mechanism as regulated in Article 5 of the Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples, namely:

(1) The Regent/Mayor through the Camat or other designations shall carry out the identification as referred to in Article 3 letter a by involving the customary law community or community groups.
(2) Identification as referred to in paragraph (1) is carried out by observing:
a. history of Indigenous Peoples;
b. Indigenous territories;
c. customary law;
d. customary assets and/or objects; And
e. customary governance institutions/systems.
(3) The identification results as referred to in paragraph (2) shall be verified and validated by the district/city Customary Law Community Committee.
(4) The results of the verification and validation as referred to in paragraph (3) shall be announced to the local Customary Law Community within 1 (one) month.

Furthermore, according to Rosnidar Sembiring, to determine whether or not ulayat rights still exist as customary land rights, the criteria used are as follows:

1. Elements of the Customary Law Community, that is, there is a group of people who still feel bound by their customary legal order as joint members of a certain legal alliance, who recognize and apply the provisions of the association in their daily lives.
2. The element of territory, that is, there is certain communal land which is the living environment for the members of the legal alliance and where they take their daily needs.

[5] Sabian Utsman, *Restorative Justive Hukum Masyarakat Nelayan Saka dalam Sistem Hukum Nasional*. (Yogyakarta, Pustaka Pelajar, September 2013), 34

3. Elements of the relationship between customary law communities and their land, there is a customary law order regarding management, control, and use of communal land that applies and is obeyed by the members of the legal alliance.[6]

Indigenous peoples in their existence require recognition related to their customary rights which include their customary territories, where there are ulayat lands, communal lands, customary forests, settlements, cemeteries, livestock grazing and other natural resources as a place to live their lives. Disputes over land within customary territories can occur between community members, as well as with other customary law communities. Disputes in customary law communities occur when there are differences of opinion, disputes and disputes about something of value, such as land. By Ali Achmad Komzah that a dispute is a conflict, between two or more parties that originates from different perceptions of an interest or property rights that can lead to legal consequences for both.[7]

As for land disputes, it can be caused because they are related to inheritance, buying and selling, land rent, land area, and land boundaries. In an effort to resolve disputes according to custom, in customary law communities it is resolved by the customary head, and is carried out by deliberation. At the beginning, before resolving the dispute, both parties perform a ritual, the aim of which is for efforts to resolve the dispute to obtain supernatural recognition through the role of the traditional head as an intermediary to the Almighty. The role of the customary head in resolving ulayat land disputes is as a peace judge in customary trials and as a customary decision maker in which the parties to the dispute are bound by the decision stipulated. By Hart in Jasmaniar that in resolving disputes based on community structure with the category of primary rules obligation in small communities based on ties of relationship that have the same beliefs and feelings, and are in a stable environment, then at this stage the community resolves disputes very firmly, because people are not yet familiar with detailed rules, only know standards of behavior and there are no differentials and specializations of law enforcement agencies.[8]

[6] Rosnidar Sembiring. *Hukum Pertanahan Adat*, (Depok, PT Raja Grafindo Persada, Juni 2017), 28
[7] Ali Achmad Khimzah, *Penyelesaian Sengketa Hak Atas Tanah, dan Pengadaan Tanah*, (Jakarta Prestasi Pustaka, 2003), 14
[8] Jasmaniar, *Mediasi Untuk Keadilan Substantif Melalui Kearifan Lokal*,(Makassar, Disertasi Fakultas Hukum Universitas Hasanuddin, 2022), 77-78

2. Research Method

The method used is empirical law to describe legal problems that occur in society. Data collection techniques were in the form of: 1) Primary data was conducted by interviewing informants, namely customary heads in several villages in the study locations, and respondents were indigenous and tribal peoples randomly by distributing questionnaires; 2) collecting secondary data by conducting literature studies sourced from books and scientific writings in journals. The research locations are: 1) Koto Dian Village, Hamparan Rawang District, City of Sungai penuh, Jambi Province; 2) Kete Kesu Traditional Village, North Toraja Regency, South Sulawesi Province; 3) Lanko Village, Lindu District, Sigi Regency, Middle Sulawesi Province. Data analysis was carried out qualitatively, namely the process of systematically searching for and compiling data obtained from interviews, field notes, and other materials so that they can be easily understood and presented descriptively.

3. Results and Discussion

The function and role of the Customery Head

The function of the Customery Head in society is not too much different from the function of customary law because the function of the Customery Head in society is as follows:

1. Provide guidelines to community members, how they should behave in social life. And the basis of this behavior is normative habits, namely Custom and Customary Law.
2. Maintain the integrity of the association in society, so that the association is maintained and can be felt by various actions of community members that are not in accordance with Customs and Customary Law.
3. Provide guidelines for community members to establish a system of social control. This social control is more in the nature of monitoring the behavior of the community so that community life can be maintained as well as possible.
4. Pay attention to every decision that has been determined by customary law, so that the decision has authority and can provide legal certainty that binds all members of the community.
5. It is a place for community members to rely on to resolve, protect and guarantee peace, so the Customary Head is the only place for community members to rely on to solve their problems.
6. As a place for community members to ask anything related to customary knowledge and customary law. This is very important because not all community members know, understand and understand the ins and outs of Custom and Customary Law. With such

a function, the Customary Head can be said to be a media of information on Customs and Customary Law in society.

7. As a place for community members to solve all problems, both concerning matters of life and matters related to death. This function is very important because not all community members can solve their own problems unless they ask for the involvement of the customary head to solve them.
8. As the father of the community who heads the association, where this function shows more leadership that can be an example in social life in the community.[9]

Soleman Biasane Taneko, expressed an opinion about the role of the Customery Head, namely:

1. Imposing sanctions on community members who have violation of customary law. The imposition of sanctions does not only concern one area of violation, but involves all violations of the balance of customary law.
2. As executor and implementation of customary law in daily life. This has the intention that the customary law that has been in force is maintained in its integrity by resolving all forms of violations of customary law. By resolving all disputes that arise in the community, it means that there is an effort to uphold customary law, to notify customary law that applies in society, because not all members of the community know and understand customary law. Because of that, the customary head here acts as an information medium that is quite effective in informing customary law to the customary law community. [10]

The Role of Customery Heads in Settlement of Land Disputes

1) Kete Kesu Village, North Toraja Regency, South Sulawesi Province

The North Toraja Regency Government has established customary institutions in every village administration in North Toraja Regency through North Toraja Regency Regulation No. 3 of 2014 Article 32 and further stipulates its implementation in North Toraja Regent Regulation Number 70 of 2014 concerning Village Traditional Institutions. The customary institution known as Lembang. In the traditional Toraja people there is already a traditional institution called *Tongkonan*. The concept of *Tongkonan* as a traditional institution that is formed and grows based on the customs of the Toraja tribe is described by Bert Tallulembang in several of his roles as follows:

a. Maintain and preserve the rules of custom.
b. Sources of power and customary rules.

[9] Jenny Lah. *Op.Cit,* hal 3282

[10] Soleman Biasane Taneko, *Dasar-Dasar Hukum Adat dan Ilmu Hukum Adat*, (Bandung, Alumni, 1981), hal. 32

c. Managing and fostering family inheritance both inheritance in the form of inheritance as well as rights and powers over land used for the welfare of indigenous peoples.
d. Solving problems that occur in the community
e. Regulate the use of land for use in the implementation of traditional ceremonies.
f. Playing a role in the implementation of land transactions carried out by indigenous peoples within the scope of their customary territories.
g. Planning the activities of the Rambu Solo' and Rambu tuka' traditional ceremonies within the scope of the family and community within their customary territory.[11]

A traditional figure is chosen based on the *Tongkonan* as a traditional leader in the concept of Toraja adat and culture, they are chosen by the Tongkonan. *To' Parenge* as a leader is an institution formed by tongkonan-owning families through a "*kombongan*" (deliberation) process, based on customary rules governing the criteria for traditional leaders or figures. In terms of settlement of land disputes, deliberations, customary rituals, and customary fines are the forms of settlement. The Customery head/*To'Parenge* plays a role from beginning to end with various preparations for the implementation of rituals and deliberations. To resolve conflicts, *To Parenge'* as a leader acts as a conciliating judge in the event of a dispute as said by RK (57 years) is:

> "*To'Parenge*' functions as a conciliating judge if there are problems in society. In the case of land disputes, customary institutions and *To Parenge'* act as conciliating judges. So the conflicting parties are tried by *To Parenge'* and the customary institution then decides who is right and wrong then holds a thanksgiving as a form of gratitude so that the two parties reconcile. If the conflicting parties do not want to reconcile, then both are given the opportunity to take legal action" .[12]

At the time of deliberation the parties to the dispute were summoned, as well as the witnesses. Before the implementation of the witness was sworn in, the essence of the oath was the obligation to speak the truth and not be allowed to tell a lie. The customary sanctions imposed are adjusted to social status, for example, the slaughter of buffaloes is adjusted for the nobility, slaughtering pigs for the lower class, or by giving compensation, or returning property rights to land for those who are entitled. "Toraja's customary punishment is in the form of slaughtering a sacrificial animal. The ritual of slaughtering animals is witnessed by the local customary authorities and

[11] Gasing Bulan Paledung, Nurliah Nurdin, *Dampak Pembentukan Lembaga Adat Desa Terhadap Lembaga Adat Tongkonan di Kabupaten Toraja Utara (* Jurnal Adat dan Budaya, 2021) 3, (2), 46
[12] Suparman Abdullah, Sultan, Rano Matando. *Makna kearifan lokal To Parenge dalam penyelesaian konflik lahan di Tana Toraja* (Makssar, jurnal Dialektika, 2018) 13 (2),124

witnessed by the extended family of Tongkonan Ke'te' Kesu', North Toraja Regency, [13] for those who violate the rules of customary law, the imposition of sanctions is measured by mistake and is subject to sanctions according to their abilities, then the sanctions imposed are not absolute, that must be paid with buffalo, can be paid with money, and if they are unable, then the remaining assets owned such as land and rice fields will be taken and handed over to indigenous peoples. for those who violate the rules of customary law, the imposition of sanctions is measured by mistake and is subject to sanctions according to their abilities, then the sanctions imposed are not absolute, that must be paid with buffalo, can be paid with money, and if they are unable, then the remaining assets owned such as land and rice fields will be taken and handed over to indigenous peoples.[14]

2) Lindu District, Sigi Regency, Palu, Middle Sulawesi Province

Lambara is the term for ulayat land, within the territory of the Ngata Lindu Indigenous People there is customary land, which includes the *ntodea*, suaka *lambara,* and *suaka maradika* (*wana ngkiki*). Decree of the Regent of Sigi No. 189-595 of 2017 Concerning Recognition and Protection of the Rights of Indigenous Peoples and To Lindu Customary Territories in Sigi Regency, confirmed the Indigenous Peoples and their Customary Territories. Customary territories are controlled and supervised by customary councils, in relation to their utilization, permission must be obtained from customary institutions. The "Totua *Nuada*" customary institution consists of *Jogugu* (Head of Ngata), *Kapita* (Decision Maker), *Pabisara* (Prosecutor), and *Galara* (Customary Judiciary Organizer).

Functions and roles, namely *Jogugu* as *Tutua Ngata* who decided the case, *Galara* as decision maker, *Pabisara* as spokesperson, *Kapita* was the arbiter for case decisions, and *Suro* as a liaison between the litigants. If there is a violation of custom, then based on the deliberation, customary fines are imposed in the form of: *Tolummpulu dula* (30 *dulang*), *tolungkou mbesa* (3 pieces of traditional cloth), *Tolongu Bengka* (3 buffaloes), and in the form of compensation/*sompo*.[15]

[13] Hasil wawancara dengan To'Parenge Kete Kesu Layuk Sarungallo, tanggal 01 Juli 2019.
[14] Ansyar, dkk. *Analisis Subtansi Hukum Adat Sebagai Penguat Karakter Bangsa Bagi Masyarakat Kecamatan Kesu Toraja Utara* (Jurnal Kewarganegaraan, oktober 2022), 6 (3), hal. 4953
[15] Interview with Mr. Sanoda Tolei, Customery Head, Thursday 22 September 2022,

3) City of Sungaipenuh, Kerinci Regency, Jambi Province

The role of the Depati and Ninik Mamak as customary stakeholders has the authority to oversee the use and utilization of the communal land above the four-cornered ditch that contains the second gate. In the daily activities of indigenous and tribal peoples, it has become a tradition to build houses, ask permission, such as building houses, asking permission to marry (*ngimbo tuo*), burying people who have died, butchering four-legged animals, strictly referring to the customary rules of the Depati and Ninik Mamak. Ninik Mamak is a person who is seen in the family as a regulator, director, guide giver, mediator, receiver of community aspirations, while a Depati is a person who makes the final decision on all problems in the community and within the country (traditional territories). Determination of spatial zoning in community settlements, namely related to the tribes that inhabit an array (alley or alley in a settlement) to the location, size and arrangement of turns to work on traditional rice fields (kampau) also strictly refers to the provisions of the Depati and Ninik Mamak.

The pattern of land use for agriculture (customary paddy fields) and settlements is based on the provisions of the direction of starch for settlements and the direction of teak for agriculture, in the form of a rotational system where the regulation is carried out internally. By the depati and ninik mamak or tribal chief, all provisions are discussed and the results may not be disputed or being sued. [16] The customary fine by Ninik mamak was in the form of twenty *kambak sikauk broah* (twenty rice and one goat) and one gold. According to the customary custom in force in Minang, that all issues regarding disputes over inheritance within the Nagari, should be resolved by the Nagari functionaries. Like the ninik mamak in the tribe can solve problems within their own people and if the problem does not result in a peaceful way then it can be submitted to the next level, namely Kerapatan Adat Nagari (KAN), where at this level KAN has a role as an intermediary and makes decisions by deliberation and consensus. KAN provides a good and fair solution to the customary land dispute to get a fair outcome for both parties. In the Minangkabau Customary Law which is explained in Regional Regulation Number 16 of 2008, Concerning Ulayat Land and Its Utilization where in Article 12 paragraph (1), it reads "ulayat land disputes in the village are resolved by KAN according to the provisions as long as the prevailing custom, "*Bajanjang naiak Batanggo Turun*" and endeavored by way of peace through deliberation and

[16] Ria Herdayani, *Arah Ajun Depati Ninik Mamak Sebagai Landasan Tata Ruang Permukiman Masyarakat Adat Datuk Cahayo Depati Di Desa Maliki Air-Jambi*, (jurnal Reka Ruang 2020), 3 (1)

consensus in the form of a peace decision" [17] The customary sanctions in the form of customary fines are: 1) the highest violation in the form of 100 *gantang* of rice and a buffalo; 2) a moderate offence in the form of 20 *gantang* of rice with a goat; 3) a misdemeanor in the form of 10 gantang of rice and a chicken.

4) The Role of the Traditional Head in the Special Autonomy of Papua

The traditional head in the indigenous Papuan community is usually called *Ondoafi,* namely a community leader who is entrusted by the indigenous people, has the authority to determine any matters related to legal relations and legal actions related to land. *Ondoafi* is the highest customary authority holder and carries out customary leadership in accordance with the customary norms and rules that apply to each village in his territory, this is regulated in Article 15 of Jayapura Regional Regulation No. 8 of 2016 concerning Traditional Villages As for Ondoafi's authority, the power to decide whether the land can be sold or not by looking at the function of the use of customary land as long as it does not conflict with existing norms in society, and Ondoafi has the authority to issue a customary release letter, in which this customary release letter is a tool strong evidence. [18] By Hery M. Polontoh argues that in releasing customary land the role of ondoafi is very decisive, especially for the benefit of development carried out through investment. This is a solution for the release of customary land so that the legal substance of customary law must become a space for dialogue between the government and the community. That is, understanding indigenous culture will bring knowledge about indigenous identity that is inclusive, dynamic and transformative. The presence of special autonomy must be accepted as granting special status to the Papua Province to run regional administration in managing its own natural resource potential but still not forgetting the cultural issues which are the identity of the people.[19]

4. Conclusion

The function and role of the customary head as a mediating judge and conciliating judge in efforts to resolve land disputes within the territory of the customary law community is still strong

[17] Nurul Auliya, dkk. *Penyelesaian Sengketa Tanah Ulayat oleh ninik Mamak di Nagari Koto Tengah Kecamatan Tilatang Kamang Kabupaten Agam, (*SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum, 23 Juni 2005), 2 (3), hal.205

[18] Bastanta Kurnia Ginting. 2021. *Jual-beli Atas Tanah Milik Adat di Kampung Skow Mabo, Kota Jayapura*. Tesis Magister Kenotariatan Fakultas Hukum Universitas Hasanuddin, Makassar, 40

[19] Herry M. Polontoh. *The Nature Of Recognition Of Land Right In Papua: An Invesment Prespective* (Journal of Law, Policy and Globalization, 2015) 39, 102

because the decisions of the customary head are obeyed and adhered to by the customary law community. This is because the customary head in resolving disputes prioritizes deliberation, and decides disputes based on the principle of balance by setting customary fines in accordance with the status of the litigants. The authority of the customary head is legitimized by the Government in the form of regional regulations, and in implementing customary authority, the village government, community leaders and religious leaders also assist the customary head.

As a suggestion, the customary head also pays attention to changes in the Customary Law Community, and legal growth that develops in the social dynamics that occur in the interaction of the Customary Law Community with its surroundings. The customary head plays the role of or as a peace judge, decides disputes based on customary values, deliberates, and determines customary fines to restore the magical-religious balance in the relationship between the customary law community and ulayat land in their respective customary territories.

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