

The Role of Customary Councils in Resolving Customary Land Disputes in Waropen Regency

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Abstract

Disputes over customary land still occur in every region, both in the interior and in urban areas, as well as in the customary law community in Waropen Regency, customary land is still disputed to this day, both among customary law communities or between customary law communities and the Regional Government. The approach method used is empirical, namely research conducted by observing the reality that occurs in the field. The purpose of this study was to determine the role of the Customary Council in resolving customary land disputes. The results of this study revealed that the resolution of customary land disputes of the Waropen customary law community was resolved through customary law which in the Waropen language is called "Woidama". Woidama means deliberation. The house where the deliberation is held is the sera house (the house of the tribal chief) because the one who will lead the customary deliberation is Sera. Therefore, the role of the Customary Council is very much needed in resolving disputes, the Customary Council functions as a protector of the indigenous Papuans, and as a channel for messages between Papuans and the government, especially in the Waropen Regency government area.

1. Introduction

Papua, 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 the name Nova Guinea (Alua. Agus A, 2002) which in Spanish Nova means new and Guinea means land or place. The Dutch gave Papua the name New Guinea (Tanah 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 the ± 263 ethnic groups that inhabit Tanah Papua. Waropen Regency as part of Papua Province

which was formed based on Law Number 26 of 2002 is a region that was split from Yapen Waropen Regency as the parent regency. Waropen consists of 9 (nine) districts, 61 (sixty-one) villages, not including villages in the Kirihi district.

The views of the Waropen indigenous people on Land are referred to as Anani Popono which means Sacred Land. In folk tales, 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 a place. This incident gave rise to religio-magical values that were embraced by the community as a form of local customary belief.

The environment of this land is protected through the authority of the community, where the right to control the community is very strong. For example, members of the community who will relate to these places must first be known by the head of the community. For this reason, members of this community inform the intentions of those who intend to relate to the sacred place. If the intention of a member of the community with the environment of the place contains things that will harm other members of the community, then the head of the community has absolute authority to prevent and cancel it. If the relationship has good intentions for the benefit of the community, then the head of the community can give permission to the community members to have a relationship with the sacred place (Joseph HR. Kaiway, 1993).

The Waropen customary law community is aware that land is very important in their lives from generation to generation. Land as a guarantor of life or the continuity of life for children and grandchildren in the future. Land is very important for the life of the community. Like the customary community in Wapoga village who state that land is human and land is life. Therefore, in the view of the Waropen customary community, land cannot be bought and sold. Because land is a symbol of life for humans who live on it.

Ownership rights in Waropen language are called Mipena (Sanggei Village) or Risanau. Mipena or risanau in the original traditional concept is a former garden. The former garden land refers to the ownership of land or an area that belongs to it. According to the Waropen people, former garden land refers to the first person who opened the land/plot in an area, therefore former garden land left by the previous manager cannot be opened or cultivated by others. Others 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 the right to use it.

The view of former gardens as described above shows similarities to the concept of customary rights according to customary law. According to customary law, customary rights do not close the door for people outside the legal community who also wish to exercise rights as above as long as they first ask for and obtain permission from the head of the legal community (G Kartasapoetra, 1991). The relationship as above also spreads to the relationship between individuals, if someone opens a plot of land/soil and it can be maintained 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 carried out by individuals so that over time, and finally there is recognition that the land has been approved as their property. The next

consequence is the development of customary rights into property rights according to Customary Law.

The Waropen Indigenous Community recognizes 2 (two) types of land rights, namely ownership rights and use rights. Ownership rights can be owned by members of the Waropen indigenous community in the form of individual rights, family ownership rights which are the same as house ownership rights, and clan ownership 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 made an adopted child of 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 ancestors in the past. Now the children who were adopted by this clan after knowing their original clan, began to use their original clan or family again.

Regarding the ownership status of a child in a certain family and clan who migrates to another city/region is still recognized as the owner of customary rights from his clan. The difference is, for girls, the right to own their family's customary rights has been lost because they are considered to be the responsibility of their husband. The ownership rights of women who marry out are only found in certain clan lines. For example: "A person in a certain clan who has 7 (seven) children, remains bound by custom to the customary rights in his family because he is considered to be the heir of his parents or ancestors and 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 Customary Rights Problems, it is stated that: "Customary land is a plot of land on which there are customary rights from a certain customary law community". Likewise, in the Waropen indigenous community, the land in the area is customary land that has been owned, utilized, and managed since the past until now for daily living needs.

2. Research Method

The approach method used is empirical, namely research conducted by observing the reality that occurs in the field. By conducting direct observations and interviews, researchers can find out the problems that occur and how to solve them.

3. Results and Discussion

Waropen Regency, as a new regency (because it is a new regency), 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 is inseparable from the influence of the system of values and the system of norms on the results of the development itself. Although 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 Regency. In the 1945 Constitution, Article 18B paragraph (2), it is explained that the state recognizes and respects the units of customary law communities along with the

traditional rights contained therein, Article 28I paragraph (3) further emphasizes the state's recognition of the cultural identity and rights of traditional communities (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 certainly related to recognition of all existing customary rights. Customary law is a law formed by the psychological patterns and thought structures of indigenous communities that are traditionally passed down from generation to generation. The thought structures underlying the formation of customary legal norms differ 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) with its mother. Land is so important for human life and legal communities that land regulations have a very important meaning.

Because of the close relationship between land and humans, both individually and as a partnership, the partnership has rights to land in its territory. Land related to legal partnerships is called customary land rights. The emergence of the term customary land is due to the dualism of law that regulates land in the era before the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles, 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 are also called the "dualism" of applicable law (Customary Law and Western Law) which regulate land, then land before the UUPA came into effect can be divided into two types, namely "customary land" which is also called "Indonesian land" and "western land" or what is commonly called "European land" (Wantjik Saleh, 1982). Customary land or Indonesian land is fully subject to customary law (agrarian customary law). European land is fully subject to Western law or European law.

If based on the previous UUPA that customary land is land subject to customary law as opposed to European land, it is impossible for lands subject to European law to be subject to land, because with the enactment of UUPA there is a national land law and there is no longer a distinction between customary land and European land. In addition, the principles adopted in UUPA are different from those before UUPA came into effect. Before UUPA came into effect, the principle of state ownership (Domeinverklaring) was in effect, this is not the case in UUPA.

According to R. Soeprapto, UUPA is based on the position that in order to achieve what is stipulated in Article 33 paragraph (3) of the 1945 Constitution, it is not necessary and not appropriate for the Indonesian nation or state to act as land owner. It would be more appropriate if the state, as an organization of power for all Indonesian people, acted as the Governing Body (R. Soeprapto, 1986).

Customary land or Indonesian land before the UUPA came into effect, as a whole was not registered as land registration as intended in modern land registration as stipulated in the UUPA and its implementing regulations, which aims to provide legal certainty of land rights and to obtain proof of land rights. Before the UUPA came into effect, customary land was also registered but only for the purpose of collecting

land tax, so it was called a "fiscal cadaster". The existence of customary rights in the UUPA is still recognized to this day. The regulation of customary rights in the UUPA can be found in Article 3 of the UUPA which states that "taking into account the provisions in Articles 1 and 2, the implementation of customary rights and similar rights from customary law communities, as long as they actually still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other higher laws and regulations.

The customary rights of customary law communities are declared to still exist if they meet 3 (three) elements (Supriadi, 2007), namely:

- a. There is still a group of people as citizens of a certain customary law association, which is a customary law community.
- b. There is still an area that is the customary land of the customary law community, which is recognized as land owned jointly by its citizens as a "living space".
- c. There is still customary control which in reality and is recognized by the members of the customary law community concerned, carrying out daily activities as implementers of customary rights.

Development itself will bring changes in the community in the area where the development is carried out, therefore it is necessary to know that the boundaries of land/customary rights to land in Waropen Regency are inherited land of the clan or keret in certain tribes in each district/village spread across Waropen Regency. The kinship system in the lives of the Waropen people greatly influences the management patterns of customary rights of each tribe/clan within the Waropen family environment. The most important kinship group in the life activities of the population in Waropen villages is the nuclear family. In a nuclear family, it consists of a father (daida), mother (naina) and children (waitea) and often the parents and the father and mother always live in the nuclear family. In meeting daily living needs, it is always done together by the family in gathering sago or catching fish. In the past, some nuclear families had kinship relationships with each other based on descent through the male line (patrilineal). Patrilineal groups and one extended family consisting of 20-30 people occupy one large house (rumah bawa).

Similar to individual property rights, the Waropen indigenous people also recognize land rights owned by the family, this right is the same as the right to own a house eye. This right is a portion obtained from the results of the division of the tribal chief or traditional chief or inheritance from their ancestors. Land ownership rights that belong to the family are usually used for locations to build villages, gardening, hunting grounds or fishing in swamp areas (mangrove forests), for those who get a share of the mangrove forest.

In this family ownership right, part of the land can be transferred or inherited to family members in one household or in one house eye, from where they come from. Those who are entitled to inherit this family land are all family members without distinguishing between the rights of male children and the rights of female children. In some cases, family ownership rights or house eye ownership rights have recently caused disputes among families. This happens because there are family members who lose their rights to the part of the land that should be theirs. Usually the division of land rights is clear, among the family, but because there are family members who

migrate to get an education or look for work outside the area. Therefore, because they have been migrating for a long time, their rights are used by family members who live and settle in the village.

The ownership rights of the clan or clan/keret are called Di Anna. Di Anna or customary land. This customary land belongs to the clan/custom which can be enjoyed and utilized by all members of society in one clan. This customary land is used to build houses, garden, hunt, search for marine products, take wood to build houses, make boats and also for other needs. This clan ownership right has occurred since generations which were inherited by their ancestors. The land owned by the clan is managed or managed by each member of the clan or each clan head who owns the land. In addition, the management of this clan right can also be transferred to people with permission from the customary head or clan head.

Meanwhile, the right to use is the right to use or collect the results of land controlled by the state or land owned by other people, by mutual agreement between the land owner and the person who will use the land. In the Waropen traditional community, these usage rights can be divided into several groups of land rights users, including:

- a) Usage Rights for fellow Waropen people; such as the usage rights granted by the Sanggei people to the Nubuai, Paradoi, and Mambui people who moved from their original areas to the coastal areas of the river located to the east or approximately 18 km from the Sanggei village, and close to the Risey Sayati village. The Nubuai, Paradoi and Mambui people moved from their original areas, due to natural disasters (flash floods) and cholera outbreaks in late 1968, so they were moved in 1970 by the Government to the Sanggei area where they now live.
- b) This relocation was facilitated by the government, and received full support from the Wonatorey and Imbiri people or leaders as the owners of land rights. The agreement to occupy the land was made in writing on sealed paper. The usage rights for this land were used by the Nubuai, Paradoi and Mambui people to build villages and garden, while they did not have the right to transfer the usage rights for the land to others.
- c) In addition to the right of use for fellow Waropen people, there are also rights of use for pastors, evangelists, teachers, health workers, and others who come to devote themselves to the Waropen area. Land with this right of use is usually planted with short-term crops, such as bananas, cassava, taro, and others. There are also those who plant long-term crops, all of which function to support household needs. This right of use is temporary and can be withdrawn or taken back by the owner, if the officer or user of the property rights moves to another place.
- d) The right of use is also given to traders from Bugis, Makassar, Java and Toraja as a place to conduct business activities; opening kiosks, food stalls, kerosene kiosks and furniture businesses. The right of use given to these traders is usually subject to rent by the grantor of the rights, with the amount of the rent varying greatly from one family to another.

From this research, the researcher obtained a novelty in this writing where the fact is that until now in the indigenous people in the Urei Faisey District and the Lower Waropen District there is no tribal land ownership. The land in this area has been divided into clans and house eyes. In accordance with the development of the land,

some have now become property rights, and most of them are still customary land and a small part has been used for public interests such as places of worship, dock villages, highways, school buildings, government offices, sports facilities and infrastructure, cemeteries, markets and so on. In determining the area they generally own, it is determined through natural boundaries, such as; rivers, capes, mountains; large rocks and large trees. These natural boundaries are generally understood by indigenous people from generation to generation. For example; determining the boundaries of the Sanggei people's land from the mouth of the Sanggei River to the Ranggaiwa River (Batu Begha).

In a group of extended relatives who live in one house there is always someone who is appointed as a leader who is called sera bawa. Sera bawa is believed to be the leader in a house to take care of and handle customary issues. Sera bawa is often appointed to lead marriage ceremonies, mediate if there is a dispute between clans and manage customary rights to their land and hamlet. The big house (ruma bawa) in the concept of the Waropen people has two meanings; house as a place or symbol of kinship, second; house is interpreted as a place to live or take shelter.

In resolving land issues among villagers, it is usually resolved through customary leaders who in the Waropen language are called "Woidama". Woidama means to deliberate. The house where the gathering takes place is the sera house (tribal chief's house) because the one who will lead the customary meeting is Sera.

Problem solving begins with Sera Titibi (Representative). If Sera Titibi cannot resolve it, then the problem is then handed over to Sera Bawa. In terms of resolving the land issue if there are still obstacles, it is recommended to just eat soil as one way to resolve the problem. They believe this will prove who the land owner is. However, with the formation of the Waropen Traditional Council, unresolved problems can be raised to the Traditional Council.

The Waropen Customary Council has its own management structure with a cabinet structure selected within Waropen Regency. The Customary Council in this area functions as a protector for indigenous Papuans, and as a channel for messages from Papuans to the government, especially in the Waropen Regency government area. At the regency level there is a Regency Customary Council and at the district level there is a District Customary Council. Meanwhile, in each village, a village-level Customary Council has also been formed.

The structure and management of the Customary Council in Waropen Regency consists of: General Chairperson, Deputy Chairperson I, Deputy Chairperson II, Deputy Chairperson III, Deputy Chairperson IV, Secretary I, Secretary II, Treasurer I, Treasurer II, Commissions (consisting of 4 commissions in charge of programs as drivers of the local Customary Council program). The Customary Council is a forum for gathering indigenous Papuans in various Regency cities that were born and formed as well as coordinated directly by each group of indigenous Papuans who inhabit the area. The function of the customary council is as a protector for indigenous Papuans, and as a channel for messages from Papuans to the government. The Customary Council in Papua was generally born as a new institution that was recognized after the Papuan Customary Community Grand Conference in 2000.

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

- a. Gio is the king, kura uka pewi, a great leader at the tribal level who has expertise, ability, is clever, capable, wise, as an impartial father. Ghio also holds the position of high customary commander, high customary court, has the right to make absolute decisions.
- b. Gio Pewi and Uka kurapewi are selected and appointed according to patrilineal order, who in their duties act as the high commander of the custom. Gio or Uka kurapewi make customary rules together with Duwesi, Taro Duwesi. While Taro Dua Yysi and Taro Dei Iysi serve as implementers (for Taro Dei Iysi also as the guardian of the customary territory).

4. Conclusion

The settlement of customary land disputes of the Waropen customary law community among village residents is usually resolved through customary law experts who in the Waropen language are called "Woidama". Woidama means to deliberate. The house where the gathering takes place is the sera house (the house of the tribal chief) because the one who will lead the customary meeting is the Sera. The resolution of the problem begins with the Sera Titibi (Deputy). If the Sera Titibi cannot resolve it, then the problem is then handed over to the Sera Bawa. In terms of resolving the land problem, if there are still obstacles, it is recommended to just eat the soil as one way to resolve the problem. They believe this will prove who the land owner is. However, with the formation of the Waropen Customary Council, unresolved problems can be raised to the Customary Council. The Waropen Customary Council has its own management structure with a cabinet composition that is selected within the Waropen Regency. The Customary Council in this area functions as a protector/guardian for native Papuans, and as a channel for messages from Papuans to the government, especially in the Waropen Regency government area.

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