

# Resolution of Traditional Land Disputes Between PT. Nabire Baru and The Customary Community of The Waoha Tribe in Sima Village Yaur District Nabire Regency

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## Abstract

*This study aims to determine the factors that cause customary land disputes between PT. Nabire Baru and the customary law community of the Waoha Tribe, Sima Village, Yaur District, Nabire Regency and to determine how to resolve customary land disputes between PT. Nabire Baru and the customary law community of the Waoha Tribe, Sima Village, Yaur District, Nabire Regency. The approach method used in this study is the normative and empirical legal approach method, namely an approach that refers to laws, literature, written regulations or other secondary legal materials, to see how it is applied through field research or the reality that occurs at the research location so that the author obtains clarity about the matter being studied. The results of this study reveal that the factors that cause customary land disputes between PT. Nabire Baru and the customary law community of the Waoha Tribe, Sima Village, Yaur District, Nabire Regency are caused by three things, namely: first, the oddity in the process of changing the designation of the Yaur District forest area; second, irregularities in the acquisition of oil palm plantation land by PT. Nabire Baru and the third result of the land dispute lawsuit and the method of resolving the customary land dispute between PT. Nabire Baru and the Waoha Tribe indigenous community, Sima Village, Yaur District, Nabire Regency has entered the National Human Rights Commission's Inquiry on the Rights of Indigenous Peoples over their territory in the Forest Area, as can be seen from the recommendation issued on December 10, 2015, signed by a member of the National Human Rights Commission, M. Imdadun Rahmat, containing 4 points to be responded to positively by the Regent of West Sumbawa, as a form of effort to protect and fulfill the Human Rights of the indigenous people of Sima Village.*

## 1. Introduction

Land is a gift from God Almighty and land has a very important meaning and role for human life, because everyone needs land during their life until they die and considering the structure of life and economic patterns, most of which are still agrarian. As a country with an agrarian system, land is a very suitable and complex livelihood for each person to achieve prosperity in various fields, where the land itself is also the basic capital in the development of a nation and its benefits must be utilized as well as possible.

Land for human life has a multidimensional meaning. First, from an economic perspective, land is a means of production that can bring prosperity. Second, politically, land can determine a person's position in community decision-making. Third, as cultural capital, it can determine the high and low social status of its owner. Fourth, land has a sacred meaning, because in the end everyone will return to the land. Because of this multidimensional meaning, there is a tendency that people who own land will defend their land by any means if their rights are violated.

The importance of land for humans as individuals and the state as the highest social organization, is constitutionally regulated in Article 33 paragraph (3) of the 1945 Constitution which states that: "The earth, water and natural resources contained therein, are controlled by the State and used for the greatest prosperity of the people".

As a follow-up to Article 33 paragraph (3) of the 1945 Constitution relating to the earth or land, Law Number 5 of 1960 concerning Basic Agrarian Principles was issued, which is hereinafter better known as UUPA. In the Basic Agrarian Law we see a difference in the meaning of "earth" and "land". To find out this, we can see from the two articles below: Article 1 paragraph (4) of the Basic Agrarian Law states:

In the sense of earth, in addition to the surface of the earth, including the body of the earth beneath it and that which is under water. The article above provides an explanation of what is meant by the term "earth". In the Basic Agrarian Law, the definition of earth includes the surface of the earth (called land) and what is beneath it that is under water.

Furthermore, Article 4 paragraph (3) states: "on the basis of the state's right to control, it is determined that there are various rights to the surface of the earth, called land, which can be given and owned by people either individually or together with other people or legal entities". From the two definitions above, it is clear that there is a difference in the definition of earth on the one hand and the definition of land on the other, where what is meant by land is part of the earth's surface.

The earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the state, as an organization of power for all the people. The state's right to control gives the state the authority to:

- a. Regulate and organize, designation, use, supply, and maintenance of the earth, water, and space;
- b. Determine and regulate legal relationships between people and the earth, water and space; and

- c. Determine and regulate legal relations between people and legal acts concerning the earth, water and space.

Based on the state's right to control, the various rights to the surface of the earth (land) are then determined, including as referred to in Article 16 of the UUPA as follows: ownership rights, business use rights, building use rights, use rights, lease rights, land clearing rights, and rights to collect forest products.

The Basic Agrarian Law (UUPA) is a basic regulation that regulates the control, ownership, allocation and control of land use which aims to organize the management and use of land for the greatest prosperity of the people. One aspect needed for this purpose is regarding the legal certainty of Land Rights, which is the main basis for the legal certainty of land ownership.<sup>1</sup>

Based on Article 20 of the UUPA, the acquisition of ownership rights is a hereditary, strongest and most complete right that a person can have over land, taking into account the provisions regarding the social function of land rights as referred to in Article 6 of the UUPA. Based on Article 21 paragraph (1) and (2) of the UUPA, "in principle only Indonesian citizens can have land ownership rights", in addition "the government determines legal entities that can have land ownership rights and the conditions for this" The attachment between people and the land they own becomes very complex with its various dimensions, so that the process of taking people's land without the element of "willingness" from the rights holder will cause many problems.

According to the Indonesian Dictionary, disputes mean disagreements or conflicts, conflicts can occur because of disagreements between people, groups and organizations. Winardi argues that disagreements or conflicts that occur between individuals or groups who have the same relationship or interest in an object of ownership, which give rise to legal consequences between one and the other. The purpose of a person in suing a dispute is to resolve a concrete and satisfactory problem.

Land disputes often occur because of a conflict of interest between who and whom. Aware of the importance of land for housing or other interests, land whose ownership is unclear is contested, even some whose ownership is clear are still contested, this happens because people are aware of their interests and rights, in addition to the increasing price of land. According to Rusmadi Murad, the emergence of legal disputes that begin with a complaint from a party (person or agency) containing objections and demands for land rights, both regarding land status, priority, and ownership with the hope of obtaining administrative resolution in accordance with the provisions.

A dispute is a situation where one party feels aggrieved by another party, which then conveys this dissatisfaction to the second party. If the situation shows a difference of opinion, then what is called a dispute occurs. In the context of law, especially contract law, what is meant by a dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. In other words, there has been a breach of contract by the parties or one of the parties.

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<sup>1</sup> Muchtar Wahid. (2008). *Memaknai Kepastian Hukum Hak Milik Atas Tanah*, Republika, Jakarta, h.67.

The importance of human relations with their land, apart from legal relations, in customary law has a cosmic-magical-religious relationship. This relationship is not between individuals and land, but also between a group of community members of a customary law association (*rechtsgemeenschap*) in relation to customary rights. The customary land dispute in Sima Village, Yaur District, namely regarding the release of land by way of a principle permit, the attitude above the agreement on customary land rights of the Waoha Tribe to PT. Nabire Baru with an area of 17,000 ha.

Based on the Joint Decree from the Head of Sima Village together with the entire Sima community dated December 3, 2007 concerning the transfer of customary land rights to PT. Nabire Baru with full permission without demanding compensation, it is stated that: For the benefit of oil palm to improve the welfare of the community, it is transferred with full permission without demanding compensation to PT. Nabire Baru with an area of 1,700 ha. However, in its development, the heirs of the parties who agreed to and signed the Joint Decree above made a unilateral claim on the letter, so that they asked for compensation for the land that had been transferred to PT. Nabire Baru, one of which was the existence of the Sima village which was on land that was the object of the Sima community's customary rights dispute.

This claim then raised a big question, because on the lands that the Waoha Tribe had transferred based on the Joint Decree to PT. Nabire Baru, it had become an oil palm plantation, which means that various land rights had emerged on the district land such as Ownership Rights, Building Use Rights, Cultivation Use Rights and Use Rights on state land, which can be proven by a land certificate as strong evidence issued by the Land Office, so that the emergence of this unilateral claim creates legal uncertainty.<sup>2</sup>

## 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

The procedure for resolving legal disputes over land has not been regulated concretely, such as the mechanism for applying for land rights. Therefore, case resolution is not carried out in a uniform manner, but from experience, the existing handling methods have appeared to be institutionalized, although still vague. Likewise, if there are members of the community involved in a dispute, efforts are made to resolve it through deliberation or assisted in resolving it by parents or elders, community leaders, traditional leaders to find a way out by emphasizing the noble values mentioned above. Although such methods are gradually eroding, such methods still exist today. The form of dispute resolution is a series of activities required by the disputing parties using strategies to resolve it. Dispute resolution mechanisms can appear in various forms. In general, the available dispute resolution media can be

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<sup>2</sup> Nurnaningsih. (2012). *Mediasi: Aternatif Penyelesaian Sengketa di Pengadilan*, PT. Raja Grafindo Persada, Jakarta, h.

classified into two forms, namely through the courts and dispute resolution outside the courts or often referred to as Alternative Dispute Resolution (ADR). ADR is a concept of cooperative conflict or dispute resolution that is directed at an agreement or solution to a conflict or dispute that is win-win solution (winning).

Customary Law Community is a group of people who are bound by their customary law system as citizens together with a legal community because of the same place of residence or on the basis of descent. R. Supomo and Hazairin are of the opinion that customary law is a law that regulates the behavior of Indonesian people in relation to each other, both those that are the whole of the customs, habits and morals that truly live in customary communities because they are adhered to and maintained by the members of that community, as well as those that are the whole of the regulations that recognize sanctions for violations and that are stipulated in the decisions of customary rulers.<sup>3</sup>

The recognition of the existence of customary rights by the UUPA is a natural thing because Customary Rights and Customary Law Communities have existed before the formation of the Republic of Indonesia. Article 3 of the UUPA emphasizes that by considering in articles 1 and 2 customary rights and similar rights from customary law communities, as long as they still exist in reality, 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. Here it is clear that customary rights are recognized with certain limitations, namely regarding their existence and implementation.

The dispute over the settlement of customary land between PT Nabire Baru and the Waoha Tribe Indigenous Community with several chronologies/cases surrounding oil palm plantations in Nabire Regency are as follows:

- a) Oddities in the Process of Changing the Designation of the Yaur District Forest Area. In early 1990-1991, for the initial operation of the logging company (HPH), PT. Sesco entered to manage merbau logs in the Wanggar and Yaro Districts. The company operated until 2000 and left many promises. Among them, the payment of compensation for wood of Rp. 40 million, from a total of 40,000 m3 of logs with a compensation value of Rp. 1,000 per cubic meter, which has not been paid. Around 2003, three companies entered this area, namely: PT. Pakartioga, PT. Junindo and PT. Kalimanis. The company PT. Pakartigo is suspected of being another name or the owner of the company PT. Sesco who changed its name. Meanwhile, PT. Junindo and PT. Kalimanis belongs to the logging company PT. Jati Darma Indah (JDI). has a HPH Permit based on the Decree of the Minister of Forestry SK 5427/Menhut-VI/2005 and the Letter of the Head of the Papua Provincial Forestry Service Number 522.1/1548, dated September 22, whose permit is to operate until 2017, its operational location is in the West and East of Nabire City, Cendrawasih Bay area. The presence of these companies has left various problems including, tensions between local communities and workers brought in from outside, internal community conflicts, violence both psychologically and physically experienced by the community, the company's grandiose promises that were not kept by the company.

<sup>3</sup> Bushar Muhammad. (1975). *Asas-asas hukum Adat Suatu Pengantar*, Pradnya Paramita, Jakarta, h. 21-22.

- b) Irregularities in the Acquisition of Oil Palm Plantation Land by PT. Nabire Baru. A document was found of the Statement Letter of the Chief of the Yerisiam Tribe (SP. Hanebora, April 16, 2007) to support PT. JDI's plan to manage oil palm on the condition that it can cooperate with the indigenous community. However, at another time (October 1, 2007), the Chief of the Yerisiam Tribe issued a statement letter canceling the plan for a palm oil plantation by PT. JDI on the customary land of the Yerisiam extended family based on the results of a meeting with the Akaba, Koroba (Lukas Rumirawi), Sarakwati (Dominggus Akubar), Waoha (Imanuel Money) Tribes and sub-tribes and clans in the area. (See the Letter of Rejection, September 29, 2007, this letter was acknowledged by the Head of Yaur District and the Head of Sima Village).

The Regent of Nabire issued a Regent's Letter Number 525/1108/SET, dated June 28, 2007 concerning the Approval of Plantation Business Permits. In another section, a document was found in the form of a Statement Letter (December 2007) from the Head of Yaur District (Amon Rumatrai) and the Head of Sima Village (D. Maniburi) concerning the handover of the area by the owner of the Waoha Tribe's customary land to CV. Nabire Baru for oil palm plantation, based on a letter from the Waoha Tribe indigenous community (August 20, 2007):

- a. The Director of CV. Nabire Baru issued Letter No. 01/SP/NB-IX/2007, dated September 12, 2007, regarding an application for a permit to allocate land for an oil palm plantation in the name of CV. Nabire Baru in Kampung Sima, Yaur District.
- b. The Director of CV. Nabire Baru issued Letter No. 02/SP/NB-IX/2007, dated September 12, 2007, regarding an application for approval in principle for the reservation of forest areas for a timber utilization permit (IPK) in the name of CV. Nabire Baru in Kampung Sima, Yaur District.
- c. The Director of CV. Nabire Baru issued Letter No. 08/SP/NB-IX/2007, dated 19 November 2007, regarding the application for a location permit for a 17,000 hectare oil palm plantation in the name of CV. Nabire Baru in Kampung Sima, Yaur District.
- d. The Director of CV. Nabire Baru issued Letter No. 09/SP/NB-IX/2007, dated 19 November 2007, regarding the application for a location permit for a 17,000 hectare oil palm plantation in the name of CV. Nabire Baru in Kampung Sima, Yaur District.

There are also community efforts and actions against oil palm, namely as follows:

- a) On December 22, 2011, the Chief of the Yerisiam Tribe sent a letter to the Nabire Police to mediate a meeting between the land rights owner and the director of PT. NB (Imam Basrowi).
- b) On October 24, 2011, the Chief of the Yerisiam Tribe sent a letter to the National Human Rights Commission to mediate a meeting between the Chief's group and the Nabire DPRD PANSUS, the Minister/Director General of Forestry and PT. Nabire Baru's working partners.
- c) On July 31, 2013, the Chief of the Yerisiam Tribe sent a letter to: the Nabire Regency Environmental Agency regarding the postponement of the planned implementation of the Amdal which was to be held. They also asked the Head of the local Forestry Service for cubic data in the plantation area. Also asked the Nabire Environmental Agency to postpone the determination of the Amdal. On August 26, 2013, the Chief of the Yerisiam Tribe sent a letter to the Chairman of the Nabire DPRD to mediate a

meeting between the land rights owners and the NB company regarding compensation for land clearing wood.

- d) On June 3, 2013, the Chief of the Yerisiam Tribe complained to the Papua Police regarding compensation for wood and rattan and at the same time requested an investigation from the police in the field.
- e) According to information gathered by Yerisiam News from residents of the wami/sima/yerisiam tribe village, the arrival of the military commander was to see the progress of palm oil investment in Nabire in progress and the fundamental problems experienced by the plantation and the community. According to information, the arrival of the military commander took place in the palm oil plantation area at km16 Wami, Yaur District/West Nabire. The arrival of the military commander was carried out with several activities, namely; Lecture on the Importance of Supporting Palm Oil Investment in Nabire and the planting of the first palm oil trees. The military commander also promised that; will ask the Papua Province BAPEDALDA to issue an AMDAL permit to PT. Nabire Baru and Sariwana Unggul Mandiri.
- f) On September 21, 2013, the Chief of the Yerisiam Tribe issued a press release in protest of the military approach behind the presence of PT. Nabire Baru.
- g) On November 6, 2013, the Chief of the Yerisiam Tribe issued 10 statements of position to the Papua BAPEDALDA rejecting the AMDAL of PT. Nabire Baru.

Based on the Legal Basis, namely as follows:

- a. Constitutional Court Decision Number 35 of 2012 concerning "Customary Forests are Not State Forests";
- b. Mandate of the Special Autonomy Law for Papua Province, Law No. 21 of 2001 and its Amendments to the Special Autonomy Law for Papua and West Papua Provinces, Law No. 35 of 2008;
- c. Law Number 26 of 2007 concerning Spatial Planning;
- d. Government Regulation Number 38 of 2007 concerning Norms, Standards, Procedures, and Criteria for Determining and Resolving Customary Land Problems;
- e. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Customary Rights Problems of Customary Law Communities;
- f. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Residing in Certain Areas.

Based on the Results of the Lawsuit, the object of the dispute in this State Administrative Lawsuit is the Decree of the Governor of Papua Province NO.142, Year 2008 Dated December 30, 2008, Concerning the Granting of Plantation Business Permits to PT. Nabire Baru. That the basis for this State Administrative Lawsuit is as follows:

- a) That the Plaintiffs are the Collective Leadership of Community Organizations (Yerisiam Gua Tribe), and also as individuals/clans who have been harmed;
- b) That with the issuance of the a quo Decree as the object of the dispute in the a quo case, the Plaintiffs were clearly and firmly notified, which resulted in the loss of the plaintiff's right to deliberate by holding the a quo Decree. Thus, the lawsuit has fulfilled the provisions of Article 53 paragraph (1) and (2) of Law No. 9 of 2004

concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts.

- c) That the object of the dispute in the a quo case was known to the plaintiffs on September 2, 2015 while this lawsuit was registered at the Jayapura State Administrative Court on September 14, 2015, so the grace period is 90 (ninety days) as regulated in the provisions of Article 55, Law Number 5 of 1986 juncto Law Number 51 of 2009, concerning the State Administrative Court juncto SEMA RI No. 2 of 1991 concerning instructions for implementing several provisions in Law No. 5 of 1986;
- d) That the object of the dispute in the a quo case was known to the Plaintiffs on September 2, 2015, when the boarding house belonging to the late SP Hanebora (Former Chief of the Yerisiam Gua Tribe) was demolished or cleaned up which was a personal archive, and then studied and filed this lawsuit;
- e) That the Plaintiffs stated that the Decree of the Governor of Papua Province No. 142, Year 2008, dated December 30, 2008 concerning the Granting of Plantation Business Permits to PT. Nabire Baru. Stipulated in Jayapura on December 30, 2008, has violated according to, Law No. 39 of 2014 concerning Plantations as referred to in Article 42 must meet the following requirements: Environmental Permit; Conformity with the Regional Spatial Plan; and Conformity with the Plantation Plan. Article 48. Plantation Business Permit as referred to in Article for areas within a district/city; and the regent/mayor for areas within a district/city. That the plaintiffs stated that the Granting of IUP should have been given after the AMDAL document was issued, but in reality the AMDAL document was only discussed in 2013, meaning 5 years after the IUP was issued and this company worked In Law of the Republic of Indonesia Number 32 of 2009. Concerning Environmental Protection and Management, Article 36 Every business and/or activity that is required to have an AMDAL or obtain a business and/or activity permit. In the event that the environmental permit is revoked, the business and/or activity permit is canceled.
- f) In the event that the business and/or activities undergo changes, the person in charge of the business and/or activities must renew the environmental permit. Therefore, we affirm that the Plantation Business Permit owned by PT. Nabire Baru can be declared to be in Conflict with Laws and Regulations; That the Plaintiffs state that the Decree of the Governor of Papua Province No. 142, Year 2008, Dated December 30, 2008 Concerning the Granting of Plantation Business Permits to PT. Nabire Baru, granted by the Defendant is not in accordance with Law 39 of 2014 concerning plantations Article 17;
  - 1. Authorized officials are prohibited from issuing Plantation Business Permits on the Land Rights of the Customary Law Community.
  - 2. The prohibition provisions as referred to in paragraph (1) are excluded in the event that an agreement has been reached between the Customary Law Community and the Plantation Business Actor regarding the transfer of Land and its compensation as referred to in Article 12 paragraph (1). Law No. 18 of 2014 concerning Plantations (the Plantation Law that existed when this IUP was issued) as well as Law No. 21 of 2001 concerning Special Autonomy for Papua Province and Law No. 32 of 2004 concerning Regional Government; The language issued is the Decree of the Governor of Papua Province NO. 142, of 2008, dated December 30, 2008 concerning the Granting of Plantation Business Permits to PT. Nabire Baru, by the Defendant, has legal consequences for the

Plaintiff by no longer receiving the Plaintiff's rights as an Indigenous Community Owner of Customary Rights cannot be paid in accordance with applicable provisions and is mutually beneficial between investors and owners of customary rights in accordance with the mandate of Law No. 21 of 2001, Article 43;

3. The Papua Provincial Government is obliged to recognize, respect, protect, empower and develop the rights of indigenous communities by referring to the provisions of applicable laws and regulations;
4. The rights of indigenous peoples referred to in paragraph (1) include the customary rights of indigenous peoples and the individual rights of the members of the indigenous peoples concerned;
5. The implementation of customary rights, as long as they actually still exist, is carried out by the customary rulers of the indigenous peoples concerned according to the provisions of local customary law, with respect to the control of former customary land rights that were legally obtained by other parties according to procedures and based on laws and regulations. The provision of customary land and individual land of indigenous peoples for any purpose is carried out through deliberation with the indigenous peoples and the members concerned to obtain an agreement regarding the transfer of the required land and the compensation;
6. The Provincial, Regency/City Governments provide active mediation in efforts to resolve disputes over customary land and former individual rights fairly and wisely, so that an agreement can be reached that satisfies the parties concerned.

Settlement of Customary Land Dispute in Yaur District, Sima Village by presenting PT Nabire Baru so that it found a document of Statement Letter to the Head of Yaur District named Daniel Herawobi (Number 138/113/DY/XII/2007, dated December 3, 2007) and the Head of Sima Village, Maniburi (Number 400/250/DY/XII/2007, dated December 3, 2007), regarding the Owner of Customary Land of the Waoha Tribe has handed over the plantation area for the palm oil processing factory.

In the location of PT Nabire Baru, customary customary land and the wealth of the indigenous people of the Yerisiam tribe in the land and above the land and in the air (carbon) are communal wealth that cannot be accepted as individual rights on the grounds of being in the name. In the Yerisiam Tribe there are four tribes, namely; Waoha Tribe, Akaba Tribe, Koroba Tribe and Sarakwari Tribe. The Waoha tribe is under the clan (Hanebora, Money, Inggeruhi, refasi), the Akaba tribe is under the clan (Yarawobi, Waropen, henawi, yoweni), the Sarakwari tribe is under the clan (Akubar, nanaur, kowoi), the Koroba tribe is under the clan (rumirawi, maniburi marariampi, waremuna,) but also the four tribes above are pioneers for sub-clans that have become an inseparable part of the Yerisiam tribe community.

In the duties and functions of the four tribes, they are to guard and supervise the boundaries of customary law according to the paternal hierarchy of power for the welfare of the clans. These four tribes essentially do not have the power over the transfer/release, let alone the sale of property rights that are attached to communal rights in the name of the tribe without the knowledge of the chief of the Yerisiam/gua tribe. The authority and responsibility for power lie with the Yerisiam tribe after a deliberation for consensus. In the handover of 17,000 hectares of land carried out in

the name of the Waoha Tribe, it was not through a joint deliberation, what happened was that individuals received it. Worse still, the release letter which was then used as the basis for the inclusion of the oil palm plantation did not match the contents of the release letter.

Based on the handover transaction of the first party, as the heir to the customary land rights, he has handed over an area of 17,000 Ha, along with the natural potential above the area to the second party and the second party has full rights to take and manage the results, in the form of merbau wood located on the customary land belonging to the first party.

From the points above, it is clear that the handover of customary land was only for the management of merbau wood and was not intended for oil palm plantations. The use of the release letter (attached) was then used by the second party by selling/or pledging the land to the oil palm plantation party. This can be proven that previously the second party was Imam Basrowi who was known by the Yerisiam Tribe as the leader of the oil palm plantation company PT. Nabire Baru, now becomes someone else's name, and this is a fraud that is not only done to Yunus Money and the indigenous Yerisiam Tribe but also to the government and is very insulting to the dignity of the indigenous Yerisiam Tribe.

From PT. Nabire Baru, towards the indigenous Waoha tribe, they did something that was not wanted by the large Yerisiam tribe in terms of the Customary Land Dispute for the oil palm location in Yaur District, Sima Village. Meanwhile, there are 3 problems that will arise and become obstacles, namely as follows:

- a. From PT Nabire Baru to build a Cooperative for the Waoha Tribe;
- b. Secretly;
- c. Requested for an additional 5,000 hectares of location from PT. Nabire Baru;
- d. Not in accordance with the results of the deliberations of the large Yerisiam tribe.

The land problem in the Sima village has been going on for a very long time, since it was designated as a transmigration area and the entry of PT. Nabire Baru with an oil palm project in the area. This gave rise to a land dispute between the local community who claimed ownership of the customary land with the Waoha Sub-Tribe against PT. Nabire Baru. Until now, there is clarity regarding the status of the land in the Sima village. According to the Sima village community, it is not clear, because they want their customary land back, but on the other hand, the government considers the land to be state land managed by the Transmigration Service. That is according to the first agreement between the local government and the customary land of the Waoha Sub-Tribe.

The local community's action in the conflict has put up banners rejecting the oil palm planting project in the disputed area and held talks with the government. The indigenous community has held meetings with the Nabire Regency People's Representative Council (DPRD), the Forestry Service and the Forestry Service. As a result, the answer they got was that the land where the oil palm was located was state land, but they still did not accept it and continued to defend the land. The Nabire Regency Civil Service Police Unit (SatpoPP) has also come down to take action in the area by removing the Banners/Billboards installed by the Talonang community. To

avoid possible violence, the Nabire Regency Government prohibits any activities in the conflict area, especially the oil palm planting project, by creating conducive conditions during the settlement process, there have been no stages until now. After this policy, the oil palm plants that had been planted were abandoned.

The problem in Sima Village has entered the National Human Rights Commission's inquiry on the Rights of Indigenous Peoples over their territory in the Forest area, the National Inquiry is an effort by the National Human Rights Commission to resolve cases of human rights violations, especially on the Rights of Indigenous Peoples. In the inquiry, there are several indigenous peoples who have problems in Papua Province, namely the Pakasa Indigenous People, the Cek Bocek Indigenous People, and the indigenous people themselves. In the results of the inquiry, there are several recommendations issued regarding the problems of the Human Rights of Indigenous Peoples.

In the recommendation issued dated December 10, 2015, signed by a member of the National Human Rights Commission, M.Imdadun Rahmat, contains 4 points to be responded to positively by the Regent of West Sumbawa, as a form of effort to protect and fulfill the human rights of the indigenous people of Sima Village. The recommendations are:

- a) In order to recognize and respect the units of indigenous legal communities along with their traditional rights as mandated by Article 18 B paragraph (2) of the 1945 Constitution, and Article 6 of Law No. 39 of 1999 concerning Human Rights, the Nabire Regency Government immediately appointed an independent party to conduct a study on the existence of the Sima customary law community.
- b) To create conditions that are conducive to dispute resolution by providing a sense of security and peace to the Sima customary community, as mandated by Article 30 of Law No. 39 of 1999 concerning Human Rights, the Nabire Regency Government is asked not to use repressive methods against the Sima community, including withdrawing the Police report. Because, before there is certainty regarding the validity or otherwise of the customary rights claim to the land that is the object of the dispute attached to the Sima community. Komnas HAM views the Sima community as an indigenous community that is fighting for its customary rights.
- c) Currently, the Sima customary community consists of approximately 200 families led by the customary leader Jamaluddin M. Amin, 70 years old, with a claim of the Yerisia customary area of approximately 17,000 Ha with the eastern boundary of the Sepang River, the boundary from Berang Mone to Berang Sima.
- d) According to the Nabire District Government, after the 2004 earthquake, the location of Sima Hamlet was completely empty, there was no life at all, and it became a wilderness. Based on the Governor's Decree number 759 of 1982, the location is a production forest (HP) that can be converted.

#### 4. Conclusion

The factors that caused the customary land dispute between PT. Nabire Baru and the Waoha Tribe customary law community, Sima Village, Yaur District, Nabire Regency were caused by three things, namely: first, the oddity in the process of changing the designation of the Yaur District forest area, second, irregularities in the

acquisition of oil palm plantation land by PT. Nabire Baru and third, the results of the land dispute lawsuit. The method of resolving the customary land dispute between PT. Nabire Baru and the Waoha Tribe customary law community, Sima Village, Yaur District, Nabire Regency has entered the National Human Rights Commission Inquiry on the Rights of Indigenous Peoples over their territory in the Forest Area, as can be seen from the recommendations issued dated December 10, 2015, signed by a member of the National Human Rights Commission, M. Imdadun Rahmat, containing 4 points to be responded to positively by the Regent of West Sumbawa, as a form of effort to protect and fulfill the Human Rights of the Sima Village Indigenous Community.

The author's suggestion is that the Nabire Regency Government needs to make a map of the location, area and boundaries of the customary land rights of the Yaur District in Nabire Regency, so that in the future there will be no problems related to customary land rights disputes. Likewise, the local government needs to be firm so that every demand from the community related to land that has been released by the indigenous community must be pursued through the Court, to provide legal certainty for land rights holders who already have certificates as valid, strongest and most complete evidence according to the Basic Agrarian Law (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration. Meanwhile, for the local community of the Yaur District, Nabire Regency, the socialization of the results of the deliberations and agreements that have been reached by the parties to the community, especially the customary law community of the Waoha Tribe and the Yeresiam Tribe is very necessary, so that there are no more unilateral claims against the object of the customary rights dispute, because until now there are still similar demands in the name of the Waoha Tribe and the Yeresiam Tribe.

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