

Settlement of Disputes on Ulayat Land Management in the Wesei Wehali Indigenous Community

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Abstract

Land has an important role in society, so it is not strange that when it comes to land it will cause a problem that is quite vulnerable, both regarding land ownership, land management, as well as problems in the legal traffic of land rights. The life of indigenous peoples is entirely based on the land, therefore land is an inseparable part of indigenous peoples with all the natural resources (SDA) in it. This refers to the dispute between ordinary people and indigenous peoples in maintaining customary rights according to their respective perceptions, which in this case triggers between the two parties. The purpose of this article is to examine and analyze the causes of the occurrence between indigenous peoples and ordinary people in ulayat lands in Wesei Wehali. The research method used is empirical legal research because this research uses interviews and direct data collection by the parties whose location is the place of the indigenous people of the Wesei Wehali indigenous people. The results of this study indicate the causes of communal land disputes in the Wesei Wehali area, namely: (1) The boundaries of communal land are not clear. Boundaries are always based on natural boundaries such as rivers, forests, hills, etc., (2) ulayat land which is not managed by customary law communities so that the ulayat land is managed by other people who are not part of this community.

Keywords: Disputes; Indigenous peoples; Ulayat rights

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1. Introduction

Land is one of the most basic assets of the State, because the State, Nation and all communities in the living group can enjoy and develop on land. The term land will not be separated from all actions or affairs of human life in living their lives. Land also includes various aspects of life and livelihood. Indonesian people position land in a very important position, because it is the most important main factor in increasing agrarian productivity. Therefore, land becomes something that is needed by every community, thus causing frequent conflicts between each other. If we talk about land, we will also discuss the laws used to regulate it as stated in UUPA No. 5 of 1960 concerning "Basic Regulations on Agrarian Principles" which contains the absorption of customary law, on customary rights as stated in Article 5 of the LoGA which states that the agrarian law that applies to earth, water and space is part of customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism as well as with the regulations contained in the current law and with other laws and regulations, in connection with this it is necessary to heed the elements that rely on the law. Religion (Laika, 2019).

Human relations with customary lands have a cosmic-magical-religious relationship, which in the sense of this relationship is not only between individuals and the land, but also between a groups of community members in a customary law relationship. If you look at the perceptions that contain his views on customary law, Maria S.W. Sumardjono provides several criteria for determining the existence of customary rights based on 3 (three) elements, namely: (1) The subject of customary rights is customary

law community with certain characteristics; (2) The object of customary rights itself is land located in an area and is the main supporter of the livelihood; (3) Life of the community throughout its lifetime (Lebensraum);

There is a certain authority within the customary law community to manage their territory's land, including determining a good relationship with the management of natural resources (SDA), the designation and utilization as well as the preservation of the territory's land. Sometimes problems regarding land disputes often arise in people's lives, among others, due to the struggle for land rights which results in the destruction of harmonious social relations. In customary law communities there are often disputes regarding customary lands, including ulayat lands, which causes the ulayat land disputes to arise, among others: (1) unclear boundaries commensurate with customary land; (2) there is no public awareness of Customary Law; (3) the role of the Customary Head in the customary law community has not yet been played (Kristiani, 2020).

As time goes by, land disputes in the community often occur until now, this increase in land dispute cases has occurred in almost all regions in Indonesia, both in rural and urban areas. So that the issue of land rights so far is very relevant to be studied together in order to get in-depth and thorough consideration in relation to current land policies. According to the identification of the National Land Agency of the Republic of Indonesia, there have been 8,307 cases of land and conflicts that triggered inter-community conflicts that were recorded throughout Indonesia in 2012, the case is a search for cases that occurred throughout Indonesia, including the Province of East Nusa Tenggara.

East Nusa Tenggara Province also has many disputes related to land and one of them is the dispute over ulayat land. The settlement of customary land disputes in the province of East Nusa Tenggara is not much different from the settlement of customary land disputes in Indonesia in general. In addition to settlements through courts (litigation) and out of court (non-litigation), efforts are being made to take a family approach through tribal chiefs or traditional leaders from the local indigenous community. Because looking at the amount of land in this case, the customary land exposed in the Province of East Nusa Tenggara, one of which is in the district of Malacca, which still has customary land that is rarely used as agricultural land, so that the case triggers a Communal Land Dispute between the Wesei Wehali Tribe and ordinary people in Bakiruk Village explained that the Wesei Wehali area with an area of ± 40 Ha which became the settlement of the Wesei Wehali Indigenous people which was claimed by the bakiruk village which stated that the land was the ulayat land of the bakiruk community. With a land area of ± 40 hectares, initially it was customary land from the ancestors of the bakiruk community, over time the city's development based on wisdom, in 1967 the ulayat land was released by the leader of the bakiruk community to the government to be distributed to the cultivators who worked on the land.

From 1967 until now there has been a conversion from agricultural land to a residential area for the Wesei Wehali indigenous people. The occurrence of the transfer of land use is because the Bakiruk sub-district area is currently the city center. So that in 2012, the wesei wehali indigenous people submitted a collective application for the land certification process. However, prior to the measurement, there were objections from the Bakiruk community to the certification process prior to the settlement of disputes between the Bakiruk community and the Wesei Wehali indigenous people. Judging from the ulayat land disputes above, the Malacca District Land Office must play an active role as its Main Duties and Functions in resolving land cases and conflicts. The Malacca District Land Office has investigated and recorded the land dispute. Broadly speaking, disputes, conflicts or land cases at the Malacca District Land Office have opened a complaint counter for existing cases to find out all land cases including cases regarding customary land in the Malacca Regency area, so that the source of the problem and the typology of each case can be identified land issues that occur, so that they can find solutions such as solutions or appropriate settlement efforts in these land cases.

2. Literature Review

Overview of Land and Indigenous Peoples

Definition of land

Land in a juridical sense is the surface of the earth, in proportion to the right to land is a certain part of the earth's surface, which is limited, has two dimensions with length and width. The basis of legal certainty in written legal regulations as implementing the Basic Agrarian Law Number 5 of 1960, allows interested parties to easily find out the applicable law and the existing authorities and obligations on the land they own.

In Land Law, the term land is used in a juridical sense, as an understanding that has been officially demarcated by the LoGA. In Article 4 it is stated that on the basis of the right of control from the State as

referred to in Article 2, it is determined that there are various types of rights to the earth's surface, which are called land, which can be given to and owned by people, either alone or jointly the same as other people and legal entities.

Understanding Agrarian Law

The definition of agrarian law in the UUPA is that in a broad sense it is not only a collection of legal fields, but is a collection of various legal fields, each of which regulates the right to control certain natural resources which are included in the agrarian definition. The group consists of: and law, which regulates tenure rights over land in terms of the earth's surface, water law, which regulates tenure rights over water, mining law, which regulates the rights of control over the excavated materials as meant in the law in the mining sector, fisheries law, which regulates control rights over natural resources contained in water, the law of control over energy and elements in outer space (not the Space Law), which regulates the rights to control over energy and elements in outer space as referred to in Article 48 of the UUPA (Hasan, 2020).

Understanding Customary Law

Many experts argue that the notion of indigenous peoples must be distinguished from customary law communities. The concept of indigenous peoples is a general sense to refer to certain communities with certain characteristics. Meanwhile, customary law community is a technical juridical definition that refers to a group of people who live in a certain area (ulayat) of residence and environment, have wealth and a leader who protects the interests of the group, and rules (system) of law and government. Customary law communities are also referred to as "traditional communities" or the indigenous people, in everyday life they are more often and popularly referred to as "customary communities". Customary law communities are human communities that obey the rules or laws that regulate human behavior in relation to one another, both in the form of a whole of habits and decency that really live because they are believed and adhered to, if violated the perpetrators will receive sanctions from customary authorities (Redi, 2018).

The definition of customary law community is a community that arises spontaneously in a certain area, whose establishment is not determined or regulated by a higher authority or other rulers, with a very large sense of solidarity among community members as outsiders and using their territory as a source of wealth can only be fully utilized by its members (Shebubakar & Raniah).

Definition of ulayat rights

The understanding of the term ulayat was reaffirmed by G. Kertasapoetra and friends in their book Land Law, Guarantees, UUPA, for the success of land utilization, stating that: "Ulayat rights are the highest rights to land owned by a legal alliance (village, tribe) to ensure orderly utilization/utilization of land. Ulayat rights are rights owned by a legal alliance (village, tribe) where the community members (legal alliance) have the right to control the land, the implementation of which is regulated by the head of the alliance (the head of the tribe / village head concerned) (Andora & Fatimah, 2014).

Overview of Land Disputes

Definition of land dispute

Regulation of the Head of the Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases distinguishes land cases into land disputes, land conflicts, and land cases. Land disputes are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact. Land conflicts are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad socio-political impact. Meanwhile, land cases are land disputes whose settlement is carried out by judicial institutions or decisions of judicial institutions for which dispute resolution is still being requested at the National Land Agency of the Republic of Indonesia. The definition of land disputes can also be seen in the Regulation of the State Minister of Agrarian Affairs/KBPN Number 1 of 1999 concerning Procedures for Handling Land Disputes (Sopian, 2015).

Causes of the Dispute

In rural areas, disputes occur mainly related to disputes whose object is agricultural land. Farmers who because of poverty do not have land to work on, cultivate vacant lands or are not used by their owners, farmers ask for compensation. Disputes can also occur due to the absence of formal juridical evidence in proving land tenure rights. The poverty factor causes farmers not to register their land rights so that the land is taken over by the government and henceforth new rights are given to entrepreneurs or capital owners. In urban areas, land disputes also often occur, mainly triggered by the problem of increasing uncontrolled urbanization, where cities with various development activities, especially industry and

infrastructure, become a strong attraction in providing employment compared to rural areas. This raises problems related to the availability of land for housing and settlements which is very limited in urban areas (Arif, 2022).

3. Methods

The type of research used is Juridical-Sociological. That is emphasizing research that aims to obtain legal knowledge empirically by going directly to the object. Types and sources of data are primary data and secondary data. Primary data is data obtained directly at the research location/field. Sources of data taken through respondents / informants. Secondary data is data obtained from libraries and documentation. The data sources are taken through references, in the form of literatures, research reports, scientific articles, laws, textbooks, and other library materials.

Data collection techniques are the most strategic step in research, because the main goal is to get data. The data collection techniques in this study were in the form of interviews, observations, and literature studies. Used as a data collection technique if you want to conduct a preliminary study to find problems that must be investigated, and also if researchers want to know things from respondents who are more in-depth and the number of respondents is small. Interviews were conducted by interviewing: Wesei Wehali Indigenous Peoples Apparatus. Observation is a systematic observation and recording of the symptoms that appear on the object of research. Observations made by researchers at the Wesei Wehali Indigenous Community Settlement, Malaka Regency, East Nusa Tenggara to determine the impact of problems caused by land disputes between communities. The last metode is literature study, is the activity of searching, collecting, and reviewing library materials that have relevance to research problems, in the form of literature, research reports, scientific articles, laws, textbooks, and other library materials.

4. Results and Discussion

Land disputes arise because of claims/complaints/objections from the community. In essence, defense cases can be categorized into law and conflict of interest. A dispute is a conflict between two or more parties that originates from a different perception of an interest or property right which can have legal consequences for both. While land disputes are conflicts between two or more people who have the same interest in the rights status of one or several land objects which can cause certain legal consequences for the parties who have the same interests over land parcels. It often happens in Indonesia, especially in dealing with land, there are several cases concerning land, including; regarding the issue of land status, ownership issues and the problem of proof of acquisition which is the basis for granting rights and so on.

Causes of land disputes In the resolution of land disputes usually using 2 steps, namely by means of the legislature or through the judiciary which is usually assisted by the BPN and the second uses non-legislature, namely by using deliberation, usually involving village officials or using traditional leaders in the area where the dispute occurs soil. As is currently happening in Malacca Regency, East Nusa Tenggara, a dispute was found between the Wesei Wehali Indigenous Community and the Ordinary Community of Bakiruk Village, this dispute occurred due to a lack of communication with the Baim related to ulayat land between the Wesei Wehali customary community and the ordinary Bakiruk village community.

From 1967 until now there has been a conversion from agricultural land to a residential area for the Wesei Wehali indigenous people. The occurrence of the transfer of land use is because the Bakiruk sub-district area is currently the city center. So that in 2012, the wesei wehali indigenous people submitted a collective application for the land certification process. However, prior to the measurement, there were objections from the Bakiruk community to the certification process prior to the settlement of disputes between the Bakiruk community and the Wesei Wehali indigenous people.

This ulayat land was initially handed over by the customary leader Wesei Wehali to one of the bakiruk village heads who already have more experience in managing ulayat land, generally the handover of ulayat land is done verbally by the community with the aim of maintaining the management. The agreement was made in writing after a meeting was held between the traditional head of Wesei Wehali and the village head of bakiruk. The meeting between the parties was to discuss the location of the land, the area of the land to be handed over, the amount of the genealogy and the designation of the land to be handed over for management, among others, for the benefit of the community itself in maintaining natural resources.

From the case above, we can conclude that in the settlement of the settlement using a settlement in the litigation process through the judiciary, according to Usman, dispute resolution through litigation is the result of the trian politica doctrine where judicial bodies are authorized and have the authority to adjudicate a dispute. We can see that indigenous peoples have appealed to the rights over ulayat land. In this case

several times, the two parties filed lawsuits after going through several stages, finally the case was won by the Wesei Wehali indigenous people. In the settlement of cases using litigation, where the process used is deliberation with various parties with parties related to the land dispute. As long as you can use deliberation, then deliberation is carried out. However, in the news it can no longer be done by deliberation because both parties still think that each party is right for that in the matter using legal means. And several times the trial has been carried out on the case and the Wesei Wehali indigenous people have won because they have relevant evidence and rational reasons.

5. Conclusion

Seeing from the statement above, the writer hereby concludes that the cause of the Communal Land Dispute in Malacca Regency is due to the unclear boundaries of ulayat land. These boundaries are always based on natural boundaries such as rivers, forests, hills, and others. Settlement of ulayat land disputes through Court Decisions has not been carried out due to the absence of costs in carrying out executions according to court decisions. Settlement of customary land disputes through Mediation has been carried out but there are still differences of opinion. so there is no agreement between the two parties.

In this case, there are some suggestions that the author needs to pour, namely: Any transfer of ulayat land to the customary leader of the community must be witnessed by every party in the customary community, so that it does not cause a dispute like this again, just because of differences in perception. If a dispute like this happens again, the effort that needs to be used in its resolution is to use mediation on a regular basis in order to quickly resolve the issue.

References

- Andora, H., & Fatimah, T. (2014). Pola Penyelesaian Sengketa Tanah Ulayat di Sumatera Barat (Sengketa antara Masyarakat dengan Investor). *Jurnal Ilmu Hukum Riau*, 4(1), 9086.
- Hasan, U., Suhermi, S., & Sasmiar, S. (2020). Eksistensi Hak Ulayat dalam Masyarakat Hukum Adat. *Jurnal Sains Sosio Humaniora*, 4(2), 649–660. <https://doi.org/10.22437/jssh.v4i2.11523>
- Kristiani, V. (2020). Hukum yang Berkeadilan bagi Hak Ulayat Masyarakat Hukum Adat (Kajian dan Implementasi). *ADIL: Jurnal Hukum*, 11(1). <https://doi.org/10.33476/ajl.v11i1.1449>
- Laike, R. J. (2019). Problematika Pengakuan Hukum terhadap Hak Ulayat Masyarakat Hukum Adat. *Hibualamo: Seri Ilmu-Ilmu Sosial Dan Kependidikan*, 3(1), 23-30.
- Rahmadi, A. (2022). Urgensi Penetapan Hak Ulayat Masyarakat Hukum Adat Terkait Kebijakan Pelayanan Pertanahan di Papua. *Tunas Agraria*, 5(1), 17-32.
- Redi, A., Prianto, Y., Sitabuana, T. H., & Adhari, A. (2018). Konstitusionalitas Hak Masyarakat Hukum Adat atas Hak Ulayat Rumpon di Provinsi Lampung. *Jurnal Konstitusi*, 14(3), 463. <https://doi.org/10.31078/jk1431>
- Shebubakar, A. N., & Raniyah, M. R. (2021). Hukum Tanah Adat/Ulayat. *Jurnal Magister Ilmu Hukum*, 4(1), 14-22.
- Sopian, N. L. (2015). Informal dispute resolution based on Adat law: a case study of land dispute in Flores, East Nusa Tenggara, Indonesia. *Indon. L. Rev.*, 5, 106.