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Settlement of Customary Law Community Land Disputes in Byosi Village Keerom Regency Perspective of Regulation of the Minister of State for Agrarian Affairs/KBPN Number 5 of 1999

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Abstract: Customary land disputes occur in customary law communities in Byosi village, Keerom Regency, where customary land ownership often overlaps in the same location or place and can be owned by two or more people. This is what causes problems and there are disputes over customary land between customary law communities. The aim of this research is to determine the resolution of disputes over overlapping customary land ownership among customary law communities in Byosi Village, Keerom Regency. This research method is normative juridical and empirical, a research method that refers to legal norms contained in statutory regulations, library materials, written regulations or other legal materials that are secondary in nature and also realities that occur in the midst of Byosi traditional law community, Keerom Regency. The results of this research reveal that the resolution of disputes over overlapping customary land ownership in Byosi Village was carried out using deliberation which was chosen because it suited the character and way of life of the traditional law community in Byosi Village which was familial in nature, compared to resolving disputes through court institutions which tended to be confrontational in nature. , takes more into account winning and losing, takes into account more realistic aspects and ignores the social elements in traditional communities which are familial in nature.

Keyword: Settlement, Disputes, Traditional Law Community, Byosi Village, Keerom Regency, PMNA/KBPN Perspective No. 5/1999.

INTRODUCTION

Land is a gift from God Almighty and is also a natural resource that is very important for the survival of mankind. Humans live and reproduce, and carry out activities on the land so that at all times humans are in contact with the land. Every human being needs a place to live as a basic need that must be fulfilled, therefore land as a place to stand for humans is a necessity for life that cannot be denied.

Soil in the Big Indonesian Dictionary is defined as the surface of the earth, or the topmost layer of the earth. The definition of land regulated in Article 4 of the UUPA is stated as follows: "On the basis of the State's right to control as intended in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be

given to and owned by people, whether alone or jointly with other people and legal entities". Thus, what is meant by land in Article 4 of the UUPA is the surface of the earth (Supriadi, 2007).

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

Likewise, Article 33 paragraph (3) of the 1945 Constitution mandates the government as state administrator to manage the earth, water and the wealth contained therein as well as possible for the greatest prosperity of the people. What is meant by people is the entire population of Indonesia, including indigenous peoples. For this reason, the study of indigenous communities or customary law communities cannot be separated from the existence of customary rights. Customary rights as a juridical technical term are rights that are inherent as a unique competency in customary law communities, in the form of authority or power to manage and regulate the land in it with inward and outward power.

Law (UU) Number 21 of 2001 concerning Special Autonomy for Papua (Otsus Papua) provides recognition of the existence of customary rights in Papua. Article 1 letter s explains that Ulayat Rights are community rights held by certain customary law communities over a certain area, which is the living environment of its citizens, which includes the right to utilize land, forests, water and their contents in accordance with statutory regulations. Recognition of customary rights in Papua is also emphasized in Article 38 paragraph (2) of the Papua Special Autonomy Law which states that economic efforts in Papua Province that utilize natural resources must be carried out while respecting the rights of indigenous peoples, providing guarantees of legal certainty for entrepreneurs, and sustainable development, the regulations of which are determined by the Regional Regulation.

Based on these provisions, the government must synchronize the interests of providing protection for customary rights and providing legal certainty to entrepreneurs. Article 43 of the Special Autonomy Law also legitimizes the recognition by the Papua Provincial Government of the customary rights of customary law communities in Papua where the article discusses the protection of the rights of indigenous communities.

For the Customary Law community, land has a very important position, because it is the only object of wealth that is permanent in an even more profitable condition. Apart from that, land is a place to live, a place to search, a place to bury (Soerojo Wingjodipoero, 1984). Land disputes are differences in values, interests, opinions and perceptions between individuals and between legal entities (private and public) regarding control status and/or ownership status (Nasrun Hipan, et.al., 2018).

Customary law is law that is formed by the psychological patterns and thinking structures of indigenous peoples which are traditionally passed down from generation to generation. The structure of thinking that underlies the formation of customary legal norms differs from one region to another. The structure of thinking in the formation of customary legal norms is called "indigenous knowledge" which is a characteristic of a law that is applied to indigenous peoples in a particular region. Customary law is the original law of the Indonesian nation because its spirit and patterns of formation are adapted to the culture of Indonesian society. According to Soepomo, uniqueness is caused by the diversity of the population and uniformity does not need to be based on the western legal system (Soepomo, 1993).

In Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations which stipulates that: "Taking into account the provisions in Articles 1 and 2, the implementation of customary law rights and similar things from customary law communities, as long as in fact they still exist, must be such so that it is in accordance with national and state interests, which is based on national unity and must not conflict with laws and other higher regulations." Based on Article 3 above, recognition of customary rights is limited to two things, namely regarding their existence and implementation. Likewise, in Article 3 of UUPA Number 5 of 1960, the existence of customary rights is recognized as long as in reality they still exist. If there is still implementation of customary rights, they must be implemented in accordance with national and state interests, which are based on national unity and must not conflict with the law. other higher laws or regulations. If the implementation of customary rights hampers and impedes national and state interests, national and state interests will take priority over the interests of the customary law community concerned (Suhaily Syam, 2014).

Disputes arising from the social interactions of customary law communities will be resolved quickly without allowing the problems they experience to linger for a long time which will cause the problem to crystallize into a more complex problem (Riska Fitriani, 2012). Land cases that often occur when viewed from the conflict of interest of the parties in land disputes include: people facing bureaucracy, people facing state companies, people facing private companies and conflicts between people. Rights to land by indigenous peoples are known as ulayat rights, namely a right that is owned or attached to indigenous peoples because of their law and culture, which gives them the authority to control all land or so-called ulayat land that is under their control to be utilized according to its function for survival. culture (Maria S.W.Sumardjono, 2005).

The word Ulayat comes from the Minangkabau language, "Ulayat" means Territory or Region. The understanding of the term Ulayat Rights is emphasized by G. Kertasapoetra (G.Kertasapoetra, et, al., 1985) in his book Land Law, UUPA Guarantee for the Success of Land Utilization, stating that: Ulayat rights are the highest rights to land owned by a legal association (village, tribe) to ensure orderly utilization/utilization land. Customary rights are rights owned by a legal association (village, tribe), where members of the community (legal association) have the right to control land, the implementation of which is regulated by the head of the association (tribal head/head of the village concerned).

The highest sovereignty over customary land ownership is in the legal association, what is meant by partnership rights to land are the rights of the association (legal community rights) in customary law to the land, for example the right to control the land, utilize the land, harvest the produce from living plants. on it, or hunt the animals that live on the land. The rights of customary law communities to land are also called "lordship rights". According to C. Van Vollenhoven, it is called "beschikking", while the land as a territory is called "beschikkingkring". Regarding customary rights areas or customary environments in each region of Indonesia there are different terms, for example in Ambon (patuan), Kalimantan (panyampeto), Java (wawengkon), Bali (prabumian pajar), Angkola (torluk), South Sulawesi (limpo), Lombok (paer), Batak (golat) and Minangkabau (ulayat), (Merry Kalalo, 2012).

According to Boedi Harsono (Boedi Harsono, 2000) Customary law is living law, because it embodies the real legal feelings of the people. Meanwhile, the definition of customary law is a group of people who are bound by their customary legal system as citizens of a legal association because of the same place of residence or on the basis of descent.

Ulayat rights of a customary law community are a series of authorities and obligations of a customary law community, relating to land located within its territorial environment, for the benefit of the legal association itself and its members, or for the benefit

of people outside the customary law community (foreigners). immigrants), with the permission of the legal association by paying recognition (recognition), (Bambang Eko Supriyadi, 2013)

In almost every area where there are land disputes, the parties involved and authorized to handle these problems resolve them in various ways, namely the dispute resolution methods that have been adopted so far are through court (Litigation) and dispute resolution outside of court (Non Litigation). Non-Litigation or alternative dispute resolution, better known as Alternative Dispute Resolution (ADR), is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

In particular, the author looks at customary land disputes that occur in customary law communities in Byosi village, Keerom Regency, where customary land ownership often overlaps in the same location or place and can be owned by two or more people. This is what causes problems and there are disputes over customary land between customary law communities.

METHOD

This research method is normative juridical and empirical, a research method that refers to legal norms contained in statutory regulations, library materials, written regulations or other legal materials of a secondary nature, as well as realities that occur in the midst of among the Byosi customary law community, Keerom Regency regarding customary land where there is often overlapping ownership and where there are laws that regulate the resolution of customary land disputes (Soerjono Soekanto and Sri Mamudji, 2009).

RESULTS AND DISCUSSION

Keerom Regency is a district in Papua Province, Indonesia. The capital is in Arso City. Before standing alone as an autonomous district, Keerom was part of Jayapura Regency. In 2018, the population was 55,799 people, of which there were 29,996 men and 25,803 women, and in 2020 there were 64,136 people. There are 5 (five) districts in this district which directly border the neighboring country, Papua New Guinea, namely Web, Towe, Yaffi, Waris and East Arso districts.

Keerom Regency geographically borders directly on and is near the Indonesian border with Papua New Guinea. Having an area of 9,365 km², astronomically Keerom Regency is located between 1400 15' 0 - 1410 0'0 South Latitude and 20 37' 0 - 40 0' 0 East Longitude. Keerom Regency has the following administrative boundaries: The North side borders Jayapura Regency and Jayapura City, The East side borders Papua New Guinea, The South side borders the Bintang Mountains Regency and the West side borders Jayapura Regency. The topography of the Keerom Regency area is land with a slope of around 52.2%. For flat land areas it is around 44.05% while 2.75% is hilly and swampy areas.

Flat areas are generally spread across several areas in the Arso, Skanto, Waris, Senggi and Web districts. The height of Keerom Regency ranges from 0-2000 M above sea level, where Arso District, East Arso and Skanto District are the lowest areas with an altitude of 0-1000 M above sea level. Meanwhile, Waris, Senggi, Web and Towe Districts are at an altitude of 500-2000 M above sea level. Soil texture in the Keerom Regency area is 99.36% fine-textured soil. Soil with a peat texture is found in Senggi District which covers 0.42% of the Keerom Regency area.

The Keerom Regency area is classified as a wet tropical climate area because the rainfall is quite high per year with an average air temperature reaching 30.5-35.1 °C with air humidity between 80-89% within 0 °C. Based on records from the Meteorology and Geophysics Agency, in 2007 the amount of rainfall in Keerom Regency was 1,096 mm. Meanwhile, the amount of rainfall in 2006 was 980 mm. Rainy days in 2007 were 105 days. Meanwhile, the number of rainy days that occurred in 2006 was 106 rainy days.

In 2006, the Regional Government of Keerom Regency had 5 (five) districts, 48 (forty eight) villages. In 2007 there was an expansion of the districts so that currently it has 7 (seven) districts, 61 (sixty one) villages. Judging from the composition of the number of villages, Arso District has the largest number of villages, namely 17 (seventeen) villages. Meanwhile, Waris District, Senggi District and Web District have the smallest number of villages, namely 6 (six) villages each.

The concept of customary land is not directly defined, but several legal experts have interpreted customary rights and property rights as customary land. Ulayat rights and similar things (citizen's land) from customary law communities, are the authority that according to customary law certain customary law communities have over certain areas which constitute the living environment of their citizens to take advantage of natural resources, including land in that area. for the continuity of life and life, which arises from the physical and spiritual relationships that have been passed down from generation to generation and are unbroken between the customary law community and the area concerned.

Ulayat rights according to customary law can be formulated as a magical religious communalistic concept. What is meant by communalistic is the collective rights of the members of a customary law association, called ulayat rights. The magical religious nature is customary land which is common property or joint ownership which is believed to be a gift of supernatural powers or ancestral relics to the customary legal community groups who carry on life. Customary rights have power that applies both internally and externally. Inward relates to its citizens, while the force that applies outward relates to non-members of its customary law community, who are called foreigners or outsiders (Harijanto Andri & Merryono, 2013).

In customary law or any law, society has a very important meaning as a deposit of social reality which states that society is a form of collective life, whose citizens live together for quite a long period of time, thus producing culture.

The land tenure system can be seen from the fundamental philosophy that must be understood when we talk about land as a customary right for the Papuan people as a whole, namely talking about the relationship between the population (community) and their land, this is closely related to kinship relations, power, leadership, sources of livelihood. , rituals, and the spirit realm. This is what is called the Ulayat Rights relationship which is "religio magic".

This relationship makes the land considered sacred but the human's inner relationship with the land is sacred. When talking about the land tenure system, what is meant is the owner and heir of the land or in other words those who have rights to land in a certain area. In general, in the Papuan customary law environment, there are two systems of land control/ownership, namely communal ownership and individual ownership.

This communal ownership is further differentiated into small clan-based ownership, namely a particular clan or clan, and large clan-based ownership, namely ownership based on the village in the sense of which tribe is the original resident of the village. Meanwhile, individual ownership is not individual but hereditary.

Internally, there are rules that regulate within the family (clan) the distribution of rights in control and management of land and there the share of each member is recognized according to the clan. However, social and religious leadership power over land rests with certain people who come from the oldest lineage. So in general there are two control rights, namely partnership rights and individual rights. Individual rights are secondary, while partnership rights are primary.

Interview with Mr. Atanatius Bate, Head of Byo-Byosi Bate Village on Sunday, February 25 2024, at 10.30 WIT, for the indigenous people in Byosi village, the status of control and ownership of customary land is communal and also individual, where the use of customary rights is carried out by residents as members of customary legal community

groups (both territorial and genealogical). Each has the right to control and use jointly owned land to meet family needs. Ownership of rights can last temporarily, usually carried out indefinitely (property rights) individually. There is no obligation to carry out collective or group control and use, but this can be done as long as the person concerned wishes.

The position of the traditional head is very important in relation to his role and authority in the life of a traditional community in Byosi Village. A traditional head is required to be able to play a role in holding leadership so that he can manage the community members well, safely and orderly, so traditional deliberation is needed to determine the policy of a traditional head. The traditional leader or traditional leader is the person who is smartest at solving problems within his traditional community group, so he is the one who will be obeyed, without violence or coercion, so that the community group sincerely and directly recognizes the advantages of the traditional leader, in accordance with their beliefs and beliefs. beliefs based on traditions passed down to their descendants.

The authority to regulate customary rights in the aspect of public law rests with the rights of the Traditional Head and the Traditional Elders of the customary law community who have the authority to manage, regulate and lead the allocation, control, use and maintenance of the common land. In the customary law conception, this right is an embodiment of the "element of togetherness". Community members are given the possibility to open and control land not just to own it, but with the aim of cultivating it to fulfill their own needs.

Interview with Mr. Hendrik Bate, Chief of the Byo-Byosi Bate Tribe on Monday, February 26 2024 at 11.30 WIT, the factors that cause overlapping customary land ownership in the community in Byosi Village, Arso District, Keerom Regency are internal factors where fellow indigenous people claim that the land they occupy is a legacy of their ancestors which has been passed down from generation to generation. which is used as a place to live and meet their daily needs, apart from that, it is also due to economic factors where the price of land is increasing day by day, which makes fellow indigenous people in Byosi village want to control the land.

Therefore, the author is of the opinion that if the overlapping ownership of customary land in Byosi village is caused by internal factors, then the traditional leaders or traditional leaders whose role is to resolve problems that occur within their customary community, explain the boundaries of which land belongs to together with the traditional community, for example for livestock grazing, markets, and places for gardening or farming, as well as those which belong to individuals or individuals which are used as residence and shelter for the traditional community for the sake of their daily survival. If there are disputes between members of the traditional community or actions that are contrary to the customary law that applies in Byosi Village, then the Traditional Leader or Head will act to restore peace within the traditional community.

The function of the Traditional Head in society is not much different from the function of customary law because the function of the Traditional Head in the traditional community is as follows:

1. Providing guidance to members of society, when they should behave in social life and the basis of this behavior are normative habits, namely custom and customary law.
2. Maintaining the integrity of the association in society, so that the association remains maintained and is not damaged by various actions of community members that are not in accordance with customs and customary law.
3. Providing guidance to community members to implement a social control system. Social control is more in the nature of monitoring people's behavior so that community life can be maintained as well as possible.

4. Pay attention to every decision that has been stipulated in customary law, so that the decision has authority and can provide legal certainty that is binding on all members of society.
5. It is a place where community members rely to resolve, protect, guarantee peace. Therefore, whenever there is a dispute, the Traditional Head is the only place that community members can rely on to resolve the problem. If we investigate the role of Traditional Heads in society, many people ask for the involvement of Traditional Heads to resolve problems, both those involving life and death. However, what is more important is that the role of the Traditional Head is to maintain a balance between the living environment and each other, so that harmony and peace remain in society.

Settlement of disputes over overlapping customary land ownership in Byosi Village is carried out by deliberation which is chosen because it suits the character and way of life of the traditional community in Byosi Village which is family in nature, compared to resolving disputes through court institutions which tend to be confrontational, taking into account winning and losing. , takes more into account aspects that are materialistic in nature and ignores social elements in traditional communities that are familial in nature. There are various reasons that encourage indigenous peoples to choose to resolve their land disputes through non-litigation methods, including the following :

1. Alternative dispute resolution is preferred by the community because resolution in this way is relatively cheap or even free. They realize that it is impossible for them to resolve their dispute through legal channels because the costs are expensive.
2. What encouraged them to choose to use alternative methods, because this event has become a habit in their environment where every dispute that occurs in the indigenous community will be resolved through deliberation, this method has been going on for years and has even been passed down from generation to generation.
3. The relatively short completion time is also a reason that encourages people to choose alternative solutions. Non-litigation dispute resolution or prioritizing harmony in the lives of indigenous communities in Byosi Village. Apart from that, the solution in this way also prioritizes the family aspect by considering the aspects of interests that exist in a heterogeneous society, which is identical to the Byosi village community which is described as a society that prioritizes the rational side, communalistic nature (togetherness), one-to-one relationships. others who tend to be selfless because they are a group of people whose social interactions are based on high levels of volunteerism in making sacrifices for other members of the indigenous community.

In the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Problems with Customary Law Communities' Land Rights, namely:

1. Article 1 point 1 states that: "Similar ulayat rights from customary law communities (hereinafter referred to as ulayat rights) are the authority which according to customary law is possessed by certain customary law communities over certain areas which constitute the environment of their citizens to take advantage of natural resources. natural resources, including land, in the area for survival and survival, which arises from the physical and internal relationships that have been passed down from generation to generation and are unbroken between the customary law community and the area concerned."
2. Article 1 number 2 states that: "Ulayat land is a plot of land over which there are customary rights of a particular customary law community."
3. Article 1 point 3 states that: "A customary law community is a group of people who are bound by their customary legal order as citizens of a legal association because of the same place of residence or on the basis of descent."

4. Article 1 point 4 states that: "A region is an autonomous region which has the authority to carry out land affairs as intended in Law Number 22 of 1999 concerning Regional Government".
5. Article 2 paragraph (1) states that: "The implementation of customary rights as long as they in fact still exist is carried out by the customary law community concerned in accordance with the provisions of local customary law."
6. Article 2 paragraph (2) states that: The customary law community's customary rights are deemed to still exist if:
 - a. there is a group of people who still feel bound by their customary legal order as citizens of a certain legal association, who recognize and apply the provisions of that association in their daily lives,
 - b. there is certain customary land which is the living environment for the residents of the legal association and the place where they collect their daily living needs, and
 - c. there is a customary legal order regarding the management, control and use of customary land which applies and is obeyed by the residents of the legal association.
7. Article 3 states that: The implementation of customary law community customary rights as intended in Article 2 is no longer carried out on plots of land which at the time of the enactment of the Regional Regulation as intended in Article 6:
 - a. already owned by an individual or legal entity with a right to land according to the Basic Agrarian Law;
 - b. are plots of land that have been acquired or acquired by government agencies, legal entities or individuals in accordance with applicable provisions and procedures.
8. Article 4 paragraph (1) states that: Control of plots of land including communal land as intended in Article 2 by individuals and legal entities can be carried out:
 - a. by members of the customary law community concerned with tenure rights according to the provisions of their applicable customary law, which if desired by the right holder can be registered as appropriate land rights according to the provisions of the Basic Agrarian Law;
 - b. by Government Agencies, legal entities or individuals who are not members of the customary law community concerned with land rights according to the provisions of the Basic Agrarian Law based on the granting of rights from the State after the land is released by the customary law community or its citizens in accordance with the provisions and regulations applicable customary law.
9. Article 4 paragraph (2) states that: Disposal of customary land as intended in paragraph (1) letter b for agricultural purposes and other purposes that require Cultivation Rights or Use Rights, can be carried out by customary law communities by handing over the use of the land for a certain period of time. , so that after that period of time has expired, or after the land is no longer used or abandoned so that the Cultivation Rights or Use Rights concerned are extinguished, then further use must be carried out based on a new agreement from the customary law community concerned as long as the customary law community's customary rights are still exists in accordance with the provisions of Article 2.
10. Article 4 paragraph (3) states that: In the case as referred to in paragraph (2), the Cultivation Rights or Use Rights granted by the State and their extensions and renewals may not exceed the period of use of the land obtained from the customary law community concerned.
11. Article 5 paragraph (1) states that: Research and determination of the existence of customary rights as intended in Article 2 is carried out by the Regional Government by involving customary law experts, customary law communities in the area concerned, Non-Governmental Organizations and agencies who manage natural resources.

12. Article 5 paragraph (2) states that: The existence of customary law community customary land that still exists as intended in paragraph (1) is stated in the land registration base map by affixing a cartographic mark, and if possible, describing its boundaries and recording them in the land register .

Therefore, the author can analyze and conclude that the resolution of customary law community land disputes in Papua from the perspective of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Customary Law Community Land Rights Issues is generally based on customary rights where rights ulayat is the highest right in a customary law community. Customary rights are recognized by the Basic Agrarian Law with only two conditions, namely their existence and implementation. The existence of customary rights still exists today, and their implementation must not conflict with applicable laws and other regulations. Customary rights cannot be created new because the Basic Agrarian Law also regulates this matter where customary rights are only recognized for 3 (three) things, namely the existence of land belonging to customary law communities, the existence of a group of customary law communities, and the existence of traditional leaders. traditional leaders recognized by the customary law community. If one of these elements is not present then customary rights cannot automatically be recognized and are declared to have never existed.

CONCLUSION

Settlement of disputes over overlapping customary land ownership in Byosi Village, Keerom Regency is carried out by deliberation which is chosen because it suits the character and way of life of the traditional community in Byosi Village which is family in nature, compared to resolving disputes through court institutions which tend to be confrontational, taking more into account winning. and lose, taking more into account aspects that are materialistic in nature and ignoring social elements in traditional communities that are familial in nature. Settlement of customary law community land disputes in Papua from the perspective of Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Problems with Customary Law Community Customary Rights, which generally originates from customary rights where customary rights are the highest rights in customary law communities. . Customary rights are recognized by the Basic Agrarian Law with only two conditions, namely their existence and implementation. The existence of customary rights still exists today, and their implementation must not conflict with applicable laws and other regulations. Customary rights cannot be created new because the Basic Agrarian Law also regulates this matter where customary rights are only recognized for 3 (three) things, namely the existence of land belonging to customary law communities, the existence of a group of customary law communities, and the existence of traditional leaders. traditional leaders recognized by the customary law community. If one of these elements is not present then customary rights cannot automatically be recognized and are declared to have never existed.

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