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Ownership Patterns of Land Rights from the Perspective of Customary Law Communities in Waropen Regency Papua Province

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Abstract: Ownership of land rights in the Waropen customary law community is very important because the land is a legacy of their ancestors which is used to meet their daily needs. The aim of this research is to find out more about land ownership rights from the perspective of the Waropen customary law community. The approach used is empirical, which looks directly at the reality that occurs among the Waropen traditional law community regarding ownership of land rights which are considered a legacy from their ancestors and are used to meet their daily needs. Data obtained from field observations, both primary and secondary, are then analyzed systematically so that the data can be accounted for. The results of this research reveal that the Waropen Indigenous people recognize 2 (two) types of land rights, namely ownership rights and use rights. Residents of the Waropen indigenous community can have property rights in the form of individual rights, family property rights which are the same as household property rights, and clan property rights or customary rights. Property rights in the Waropen language are called Mipena (Sanggei Village) or Risanau. Mipena or risanau in the traditional concept is originally a former garden. Former garden land refers to ownership of land or an area that is owned. Meanwhile, the right to use is the right to use or collect proceeds from land controlled by the state or land owned by another person, based on a mutual agreement between the land owner and the person who will use the land. In the Waropen indigenous community, this right of use can be differentiated into several groups of users of land rights, including the right to use for fellow Waropen people, this transfer is facilitated by the Government, the right to use for pastors, evangelists, teachers, health workers who come to dedicate themselves in the Waropen area and use rights are also given to traders from Bugis, Makassar, Java and Toraja as a place to carry out business activities.

Keyword: Ownership, Land Rights, Perspectives, Waropen Traditional Law Community.

INTRODUCTION

Special autonomy for the Papua Province is basically a special authority that is recognized and given to the Province and the people of Papua to regulate and manage themselves within the framework of the Unitary State of the Republic of Indonesia. Special

authority means providing greater responsibility for the Province and the people of Papua, to regulate the government and regulate the maximum utilization of natural resources in the Papua Province for the prosperity of the Papuan people as part of the Indonesian people in accordance with statutory regulations. This authority also means the authority to empower the socio-cultural and economic potential of the Papuan people, including providing an adequate role for indigenous Papuans.

Waropen Regency as part of Papua Province which was formed based on Law Number 26 of 2002 is an expansion area of Yapen Waropen as the main district. In the preamble to Law Number 26 of 2006, it is explained that for the progress of Papua Province in general and for the inspiration to develop in society, it is deemed necessary to improve government administration, services to the community and the implementation of development to realize community welfare. In addition, it was also emphasized that the formation of districts can encourage improved services in the fields of government, development and society as well as provide the ability to utilize regional potential.

Developments in the group will determine the group's future life which can be seen in changes in the group, members being happy to remain in the group, group disintegration (Slamet Santoso, 1983). According to Supomo, humans are not isolated individuals at all, free from all ties and only thinking about their own benefits (Soepomo, 1963). The individual is considered a member of society, a living being who first achieves the goals of society. In other words, individual life is a life that is primarily intended to serve society.

Society is not seen as a separate body with its own interests, meaning that society is not a power that stands apart from individual humans and confronts them. The individual primarily feels himself as one, recognizing himself as part of the whole of life. Ter Haar calls the relationship between society and individuals a budding-expanding relationship. This means that when individual relationships weaken, group relationships become stronger. When individual relationships strengthen, group relationships weaken (Ter Haar, 1960).

In society, humans are always in contact, in contact with each other. In this relationship or contact, humans realize that they are not alone but together with other humans. In this relationship they must get to know each other, help each other, acknowledge each other, act with each other in fulfilling their calling in life, fulfilling their needs or interests. Humans who live in groups are bound by the existence of a particular area/place of residence and a feeling of shared ownership. Thus, every individual in life must establish social interactions between other individuals, who both live in the same group.

According to H. Bonner social interaction is a relationship between two or more human individuals where the behavior of one individual influences, changes or improves the behavior of another individual or vice versa. From this definition, aspects of social interaction can be seen, namely:

- 1. Social interaction occurs because of relationships between individuals and individuals or between individuals in group relationships;
- 2. every social interaction requires the appearance of individuals who carry out the relationship;
- 3. every social interaction has a specific purpose;
- 4. Social interaction is related to the structure and function of the group and each individual has a function in the group.

The factors that influence and determine the success/failure of social interactions are: (1) social situations shape individual behavior; (2) the power of group norms greatly influences the occurrence of social interactions between individuals; (3) personality goals influence behavior; (4) each individual interacts according to their position and conditions; (5) every situation contains meaning, influencing individuals to see and interpret the situation.

The forms of social interaction are: (1) cooperation (co-operation), where in this social interaction there are certain activities aimed at achieving common goals by helping each other and understanding each other's activities; (2) competition where between parties there is a person's feeling or assumption that he will be luckier if he does not collaborate with other people, other people are considered to be able to reduce the results of a work; (3) dispute or conflict where one party intends to harm or at least tries to get rid of the other party; (4) accommodation, a situation where there is a dispute or conflict. get a solution so that good cooperation can be established again (Abdulsyani, 1994).

Humans as individuals are basically free to interact, but individual interactions are limited by society. Society does not allow individual humans to interact as they please, so that interaction is detrimental to society, especially interactions that can cause conflict or conflict. In their interactions, humans must see and consider things that should be done or what should not be done. This is a guideline or outlook on life. This view of life is a system of guidelines adopted by groups or by special individuals in society (Koentjaraningrat, 1979).

This view of life has a role in people's lives, namely: (1) as a regulator of attitudes and behavior; (2) as a form of identity; (3) as a builder of human quality. Views on life that have been agreed upon and believed in must be adhered to and used as a basis for interacting with others, especially in meeting their life needs. In social interactions, citizens are free to choose social and legal norms in accordance with their interests and values, and make modifications in accordance with the conceptions that live in the minds of the majority of society's citizens (Geriya, I Wayan, 1985).

In everyday life, community members who live/live in district villages are bound by socio-cultural rules and values, such as the rules in the area where they live, administrative village rules. According to Bales, the phases of social interaction are:

- 1. In interaction there are aspects, such as good relationships between individuals and individuals, individuals in group relationships; the individuals carrying out the relationship; have a specific goal; a relationship with group structure and function;
- 2. In social interaction there is a time dimension to be used to interact;
- 3. In social interaction there are problems that arise, which are individual and collective;
- 4. In social interactions tension arises in resolving problems;
- 5. In social interaction, integration and existing problems arise.

Land as a natural resource can be used by humans to meet life needs, such as clothing, food and shelter (primary needs). Likewise, for customary law communities, the largest source of income for living needs comes from land use. So important is land for human life, regulations are needed that regulate the use, allocation, control and ownership of land (Arie, Rohman, 2012).

Customary law is a legal system known in social life in Indonesia and other countries such as Japan, China and India. The sources of customary law are unwritten regulations that grow and develop in the community because the regulations contained in customary law are unwritten and develop. This customary law is adaptable and elastic. A customary law community is a group of people who are related to the customary law order as citizens of a legal association because of the same place of residence or the basis of ancestry.

According to R. Soepomo Customary Law is unwritten law which includes rules of life that are not stipulated by the authorities, but are obeyed by the community based on the belief that these regulations have the force of law (R. Soepomo, 1996). Meanwhile, according to Boedi Harsono customary law is living law, because it embodies the real legal feelings of the people. Therefore, 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 (Boedi Harsono, 2000). According to Van Vallenhoven Customary Law is a total of positive rules of behavior where on the one hand

there are sanctions while on the other hand they are not codified. From the opinion above, it can be concluded that customary law is unwritten law and is a custom with its own characteristics and is a guide to people's lives in administering justice and community welfare in a familial manner.

Land ownership rights according to Article 20 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, hereinafter referred to as the Basic Agrarian Law (UUPA), are hereditary, strongest and fullest land rights. that people can own land. Hereditary is defined as a right that can be passed down to heirs, is strongest in relation to other land rights, and is complete in terms of the authority possessed by the right holder. According to Article 16 paragraph (1) letter a UUPA, one of the rights to land that is recognized is property rights.

The purpose of land rights is to provide legal certainty regarding the legal relationship, so that the right holder can exercise the authority/content of their land rights safely. Land rights give the rights holder the authority to use the surface of the earth, along with the body of the earth, and the water and air space above it as necessary for purposes directly related to the use of the land in question within the limits according to the Basic Agrarian Law and legal regulations. others higher. Boedi Harsono stated that based on the explanation in article 8 of the Basic Agrarian Law, it is stated that because land rights only give rights to the surface of the earth, the authorities that originate from it do not concern the natural riches contained in the body of the earth, water. and space. Therefore, taking the intended wealth requires separate arrangements. This provision is the basis for mining and other legislation (Rusmadi Murad, 2007).

The Basic Agrarian Law does not mention an explanation of Ulayat Rights which in customary law literature is called beschikkingsrecht. Ulayat Rights as a juridical technical term are rights that are inherent as a unique competency in customary law communities, in the form of authority/power to manage and regulate the land in it with inward and outward power. Meanwhile, ulayat means territory, so that ulayat land is the land of a particular customary law community (Maria S. W. Soemarjono, 2010).

Meanwhile, customary law community rights are both individual rights and communal rights. One of the communal rights contained in the UUPA is Ulayat Rights (territory) to designate the land which is the environmental territory of the legal community concerned. According to Van Vollenhoven, the word Ulayat comes from the Minangkabau language, "Ulayat" means Region or Region. The understanding of the term Ulayat Rights is emphasized by G. Kertasapoetra and friends in their book Land Law, UUPA Guarantees for the Success of Land Utilization, stating that: Ulayat rights are the highest rights to land owned by a legal association (village, tribe) for ensure orderly use/utilization of 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), (G.Kertasapoetra, et,al., 1985).

Indigenous communities are communities that live based on their ancestral origins from generation to generation in a customary territory, which have sovereignty over land and natural resources, socio-cultural life regulated by customary law and traditional institutions that manage the continuity of life of their communities. Indigenous communities are communities that live based on their ancestral origins from generation to generation in a customary territory, which have sovereignty over land and natural resources, socio-cultural life regulated by customary law and traditional institutions that manage the continuity of life of their communities (Laksanto Utomo, 2016).

In the customary law literature, it is known that there are two patterns, namely the pattern of control and the pattern of ownership of land rights. The rights of control and ownership of land are control by community groups which are referred to as customary land

and individual land or customary land. Ownership of customary rights is grouped into formal juridical control, while individual customary land is always actively controlled by the owner by doing something concrete on the land by building buildings, planting and so on.

METHOD

The approach used is empirical, which looks directly at the reality that occurs among the Waropen customary law community regarding ownership of land rights which are considered a legacy from their ancestors and are used to meet their daily needs. Data obtained from field observations, both primary and secondary, are then analyzed systematically so that the data can be accounted for.

RESULTS AND DISCUSSION

Waropen Regency in Papua Province was formed as a result of the expansion of Yapen Waropen Regency around 2003. The capital of this Regency is located in Botawa City. In the term "Waropen" there is a close relationship with the word "Oropong" which was first used by Jacob Weyland in 1705, while the word "Waropen" according to the native Waropen people means "people who come from the interior" namely from Mount Tonater, Wamusopedai. In this way, it may be justified, because if it is connected with the myths that live in the Waropen customary law community, that the Waropen people are people who migrate to the coast due to the presence of the Power Water, where the Waropen people were swept away to Waropen Ambumi and Roon in Nabire and Manokwari Regencies. to the west, and Waropen Ronari to the east, while the remaining ones live on the coast of Waropen Kai. Waropen people officially in the Government administration live in the Upper Waropen District, Masirei District and Lower Waropen District.

Examined from a socio-cultural historical perspective, the Upper Waropen region is divided into 3 (three) customary law areas which are reflected in differences in everyday language use. These areas are Waropen Ambumi Region, Waropen Kai Region and Waropen Ronari Region. The Waropen Ambumi Traditional Law Community is divided into 2 (two) groups, namely the group belonging to the Nabire Regency area who live in the villages of Napan, Wenami, Masipawa, Makimi, Moor, Mambor and Ambumi. As well as groups that enter the Manukwari Regency area and live in the villages of Yendeman, Saybes, War, Kayob and Menarbu.

The Waropen Kai Customary Law Community, namely the people who live in the villages of Semanui, Wapoga, Desawa, Waren, while the villages of Paradoi, Sanggei, Mambui and Nubuai which are now combined in one settlement called Urei Faisei, Risei Sayati, Wonti, Bokaro, and Koweda. These Waropen people are said to be the original Waropen people.

The Waropen Ronari Customary Law Community, namely the people who live in the villages of Barapasi, Sosora, Sorabi, Kerema, Tamakuri, Teba, Janke and Baitanisa, namely those who live in the interior of Waropen to the East to the Van Ress Mountains. Villages in the Waropen coastal area are generally built on rivers in mangrove forests and some are built on sand tongues and river estuaries.

There are also several villages that have been built or landed on dry land. The villages landed were mostly in the Upper Waropen area. The effort to land this village started in 1969, the realization of this effort was realized in 1970 by the Regent of Yapen Waropen officially authorizing the landing of several settlements into 1 (one), namely Urei Faisey Village which is a large village consisting of 50-75 houses and Generally it is a settled settlement.

Land in the Waropen language is called "Anna or anah or Andi anna" which means We Have Land. The Wapoga people call land "Baete, or Ema baete" which means I Have Land. Meanwhile, the people of Awaso Village call land "Kakopa, or Anemek kakopa" which means We Have Land.

The Waropen Indigenous People recognize 2 (two) types of land rights, namely ownership rights and use rights. Residents of the Waropen indigenous community can have property rights in the form of individual rights, family property rights which are the same as household property rights, and clan property rights or customary rights.

Property rights in the Waropen language are called Mipena (Sanggei Village) or Risanau. Mipena or risanau in the traditional concept is originally a former garden. Former garden land refers to ownership of land or an area that is owned. According to the Waropen people, ex-garden land refers to the first person to clear land/land in an area, therefore exgarden land left by previous managers cannot be opened or cultivated by other people.

Other people can cultivate or manage the land after obtaining permission from the previous manager. However, the land remains the property of the first manager, while the following managers/cultivators only have use rights. The view of former plantations as described above shows similarities to the concept of ulayat rights according to customary law. According to customary law, customary rights do not close the door for people outside the legal association who wish to exercise the above rights as long as they first ask for and obtain permission from the head of the legal association (G Kartasapoetra, 1991).

Relationships like the above also spread to relationships between individuals, if someone clears land and can maintain it for more than 1 (one) or 2 (two) seasons, then the relationship between the individual and the land is seen as a closer relationship and because of the practices This practice is increasingly being carried out by individuals so that over time, and finally there is recognition that the land has been approved as their own. The next consequence is the development of customary rights into property rights according to customary law.

In the customary rights control system in the Waropen indigenous community, there are also individual property rights obtained from the division of tribal heads or keret heads. This individual property right is the property of an individual whose management rights are entirely the responsibility of the holder of that right. This individual property right cannot be transferred to another person in the form of sale and purchase. In recent developments, indigenous communities have begun to understand the land rental system. Land is rented to a second party for a certain period of time with rent paid in installments or in cash for one rental period.

In the Urei Faisey district and the Lower Waropen district since 1981, there has been a Prona Program which is an exception to measuring and mapping village by village, which is held in all districts/cities throughout Indonesia and is determined in groups, based on Decree of the Minister of Home Affairs No. 189 of 1981 concerning the National Agrarian Operation Project (Prona) dated 15 August 1981. Through this Prona program, some indigenous people in the Urei Faisei district and the Lower Waropen district have individual land rights marked with a certificate (SHM) as proof of individual ownership.

As with individual property rights, the Waropen indigenous community also recognizes rights to land owned by the family, these rights are the same as house ownership rights. This right is a part obtained from the division of tribal heads or traditional heads as well as inheritance from their ancestors.

Ownership rights to land that belongs to the family are usually used as locations for building villages, gardening, land for hunting or fishing in swamp areas (mangrove forests), for those who have a share of the mangrove forest. In this family property right, part of the land can be transferred or inherited to family members in the same household or in the same house, where they come from. Those who are entitled to inherit family land are all family members without distinguishing between the rights of sons and daughters.

In several cases, family property rights or house ownership rights have recently caused disputes between families. This happened because a family member lost the right to the part of the land that should have belonged to him. Usually the division of land rights is clear,

between families, but this is because there are family members who migrate to get education or look for work outside the area. Because they have been away for a long time, their rights are used by family members who live and reside in the village.

The property rights of the clan or clan/keret are called Di Anna. In Anna or traditional land. This customary land belongs to the clan/custom which can be enjoyed and utilized by all members of the community in one clan. This traditional land is used for building houses, gardening, hunting, looking for marine products, taking wood to build houses, making boats and also for other needs. This clan's property rights have been passed down from generation to generation, inherited by their ancestors. Clan-owned land is administered or managed by each clan member or each clan head who owns the land. Apart from that, the management of this clan's rights can also be transferred to someone with permission from the traditional head or clan head.

Meanwhile, the right to use is the right to use or collect proceeds from land controlled by the state or land owned by another person, based on a mutual agreement between the land owner and the person who will use the land. In the Waropen indigenous community, use rights can be divided into several groups of land rights users, including:

- 1. Use Rights for fellow Waropen people; such as the use rights given by the Sanggei people to the Nubuai, Paradoi and Mambui people who moved from their area of origin to the river coastal area which is located to the east or approximately 18 km from Sanggei village, and close to Risey Sayati village. The Nubuai, Paradoi and Mambui people moved from their area of origin, due to natural disasters (flash floods) and a cholera outbreak at the end of 1968, so they were moved in 1970 by the Government to the Sanggei area where they now live.
- 2. This move was facilitated by the government, and received full support from the people or leaders of the Wonatorey and Imbiri tribes as owners of land rights. The agreement to occupy the land was made in writing on sealed paper. The use rights to this land are used by the Nubaui, Paradoi and Mambui people to build villages and garden, while they do not have the right to transfer the use rights to land to other people.
- 3. Usage rights for pastors, evangelists, teachers, health workers and other people who come to serve themselves in the Waropen area. Land with use rights is usually planted with short-term crops, such as bananas, kasbi, taro, and others. There are also those who plant long-term plants, all of which serve to support household needs. This use right is temporary and can be withdrawn or taken back by the owner, if the officer or user of the property right moves to another location.
- 4. Use rights are also given to traders from Bugis, Makassar, Java and Toraja as a place to carry out business activities; opening kiosks, food stalls, kerosene stalls and furniture businesses. The use rights given to these traders usually require rent from the rights grantor, with the rental price varying greatly from one family to another.

From this research, data was obtained that in the indigenous communities in the Urei Faisey District and the Lower Waropen District there is no tribal land. The land in this area has been completely divided into clans and house units. In accordance with developments, some of these lands have now become property rights, and most of them are still customary land and a small portion has been used for public purposes such as places of worship, dock villages, highways, school buildings, offices. government, sports facilities and infrastructure, cemeteries, markets and so on.

In determining the area they own, it is generally determined through natural boundaries, such as; river, headland, mountain; big rocks and big trees. Generally, indigenous peoples have understood this natural boundary for generations. For example; determining the boundaries of the Sanggei people's land starting from the mouth of the Sanggei river to the Ranggaiwa river (Batu Begha).

CONCLUSION

Land in the Waropen language is called "Anna or anah or Andi anna" which means We Have Land. The Wapoga people call land "Baete, or Ema baete" which means I Have Land. Meanwhile, the people of Awaso Village call land "Kakopa, or Anemek kakopa" which means We Have Land. The Waropen Indigenous People recognize 2 (two) types of land rights, namely ownership rights and use rights. Residents of the Waropen indigenous community can have property rights in the form of individual rights, family property rights which are the same as household property rights, and clan property rights or customary rights. Property rights in the Waropen language are called Mipena (Sanggei Village) or Risanau. Mipena or risanau in the traditional concept was originally a former garden. Former garden land refers to ownership of land or an area that is owned. In the customary rights control system in the Waropen indigenous community, there are also individual property rights obtained from the division of tribal heads or keret heads. This individual property right is the property of an individual whose management rights are entirely the responsibility of the holder of that right. This individual property right cannot be transferred to another person in the form of sale and purchase. In recent developments, indigenous communities have begun to understand the land rental system. Land is rented to a second party for a certain period of time with rent paid in installments or in cash for one rental period. Meanwhile, the right to use is the right to use or collect proceeds from land controlled by the state or land owned by another person, based on a mutual agreement between the land owner and the person who will use the land. In the Waropen indigenous community, this use right can be divided into several groups of users of land rights, including use rights for fellow Waropen residents, this transition is facilitated by the Government, use rights for pastors, evangelists, teachers, health workers who come to serve in the area Waropen and usage rights are also given to traders from Bugis, Makassar, Java and Toraja as a place to carry out business activities.

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