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Settlement of Customary Law Community Land Disputes Regarding the Construction of the Lukas Enembe Stadium in Kampung Harapan Jayapura Regency

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Abstract: Land disputes often occur in rural and urban areas, as is the case with customary land disputes between the traditional law community of Harapan Village and the Papua Provincial Government on whose land the Lukas Enembe Stadium was built in Harapan Village. The aim of this research is to determine the responsibility of the Papua Provincial Government towards the ulayat land of the traditional law community of Harapan village where the Lukas Enembe Stadium has been built and also how to resolve the ulayat land dispute by both parties. The results of this research reveal that the responsibility of the Papua Provincial Government in resolving customary land disputes in Kampung Harapan is that the Papua Provincial Government basically submits to court decisions which have permanent legal force, so that all compensation payments for Kampung Harapan's customary land will be directed only to the Plaintiff. The person who won the case in this case was the heir of Plaintiff I, Agustinus Ph Ohee, and the heir of Plaintiff II, Eliab Ongge, S.Ip, MM. and resolving customary land disputes between Harapan village and the Papua Provincial Government, namely through a very long process, either through litigation (court) or non-litigation (outside court), namely through court decisions, through state administration decisions (PTUN) and through customary law decisions. . All these steps were taken to prove who really has the right to the 62 ha (sixty two hectares) ulayat land of Harapan village.

Keyword: Settlement, Disputes, Ulayat Land, Kampung Harapan with the Papua Provincial Government.

INTRODUCTION

Article 28I paragraph (3) of the 1945 Constitution confirms the state's recognition of the cultural identity and rights of customary law communities. Article 18B paragraph (2) of the 1945 Constitution also states that the state recognizes and respects customary law community units (Bushar Muhammad, 2006). Based on this, customary law and the rights related to it have received top priority in the Indonesian legal system. Basically, recognizing customary law means recognizing customary rights as a whole.

Customary law originates from the customs and ways of thinking of indigenous peoples which are inherited traditionally. Several regions have different thought structures that underlie the formation of customary legal norms. This structure is known as "local wisdom", or local knowledge, which is a characteristic of the laws imposed on indigenous peoples in a particular region. Customary law is original Indonesian law because its spirit and patterns of formation are adapted to the nation's culture

With customary law recognized in the constitution, customary law is equal to other sources of law that must be respected and obeyed. Although customary laws are not written laws, they have the power to apply the same sanctions as written laws. As a result, customary law is binding. Therefore, every Indonesian citizen is bound by customary sanctions, both civil and criminal. As long as it does not conflict with other rights protected by law, customary rights remain protected. This also applies to the right to own customary land. Due to the development of society and the principle of a unitary state, recognition and respect for customary law community units, as well as their traditional rights, must be appropriate (Soepomo, 1993).

According to Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, the implementation of customary rights and similar rights of customary law communities, as long as in fact they still exist, must be in such a way that it is in accordance with national and state interests, which are based on national unity, and must not conflict with laws and other regulations, namely laws and other regulations.

In addition, Article 3 UUPA Number 5 of 1960 states that customary rights are recognized as long as they still exist and are implemented in accordance with national and state interests, based on national unity, and must not conflict with laws or other higher regulations. If the implementation of customary rights hinders or hinders national and state interests, then customary rights are considered invalid.

Customary law communities are usually called "indigenous communities" or "traditional communities". Customary law communities are groups of people who obey regulations or laws that regulate their behavior with each other and with each other. This regulation covers all customs and morals that are truly adhered to and violated by individuals who violate them will receive sanctions from traditional authorities (Djamanat Samosir, 2013).

Customary law communities are defined as communities that arise spontaneously in certain areas, are not formed or regulated by higher authorities or other authorities, and have a strong sense of solidarity among their members. They also use their territories as a source of wealth, which only their own members can fully exploit. Apart from that, a customary law society is a human community that is interconnected with a fixed recurring pattern, namely a society with the same behavioral patterns where this behavior develops and is shaped by society. Life association with the same social patterns can only occur when there is a community that is related to a fixed recurring pattern.

Land rights owned by indigenous communities are known as "Ulayat Rights". This right is granted by their laws and culture, which gives them the authority to control all the land called "Ulayat Land" and use it in accordance with the purposes necessary for the survival of indigenous peoples.

The law association has the highest authority over customary land. The legal community's rights to this land include the right to control, utilize, take the results of plants or animals on it, and are also known as "lordship rights". According to C. Van Vollenhoven (Merry Kalalo, 2014) it is called "beschikking" and the land as its territory is called "beschikkingkring." Each region in Indonesia uses different terms to describe customary areas, such as in Ambon (patuan), Kalimantan (panyampeto), Java (wawengkon), Bali (prabumian pajar), Angkola (torluk), South Sulawesi (limpo), Lombok (paer), Batak (golat), and Minangkabau (ulayat).

In almost every area where land disputes occur, the party responsible for resolving them uses two methods: dispute resolution in court (litigation) or dispute resolution outside of court (non-litigation).

A dispute, according to the Big Indonesian Dictionary, is anything that results in a difference of opinion, dispute or argument. In English, the words "dispute", "dispute", and "dispute" are synonymous with the words "dispute" and "dispute", each of which indicates a difference of interests between two or more parties. The word "conflict" is translated as conflict, while the word "dispute" is translated as dispute (John.M. Echlos, 1996).

Disputes can occur anywhere and with anyone. It can occur between individuals and individuals, between groups and groups, between companies and companies, between companies and countries, and so on. In other words, disputes can be public or civil, and can occur at either the local, national or international level.

Disputes occur when one party feels disadvantaged by another party and conveys this dissatisfaction to the second party. Disputes arise in cases where there are differences of opinion. In law, especially contract law, what is meant by dispute is a dispute that occurs between two or more parties due to a violation of the agreement stipulated in a contract, either in whole or in part. In other words, the parties or one of them has made a mistake.

In the problem of customary land in Kampung Harapan, the researcher initially saw that the Papua Provincial Government had a wrong view beyond legal decisions where if they paid an Ondofolo or Ondoafi then all the problems would be resolved. In fact, in Sentani customary law in general and especially in Asei village, not all rights to land are in the hands of the Ondofolo because all rights to land have been distributed since their ancestors to all tribes/keret/Rela/Akhona, even the Uufoi (Pesuru) also own land. according to the duties and functions in the inherent customs, especially for the welfare of the members of the tribal group itself. The Papua Provincial Government has executed compensation payments for the Harapan village land in stages and in error since 2001 to the plaintiff I/Hanock Hebe Ohee and his heir Agustinus ph Ohee in the amount of Rp. 8 billion (Eight billion Rupiah). That de facto Plaintiff I and his heirs have received IDR 7 billion Rupiah (Seven Billion Rupiah) and IDR 1 Billion Rupiah (One Billion Rupiah) the Papua Provincial Government mistakenly paid to Bartholomeus Ongge, namely that Bartholomeus Ongge's brother is not the heir of plaintiff II. should have been paid to the heirs of plaintiff II/Max Ongge, namely Eliab Ongge, S.Ip, MM and the Phumokhoi Iymea family. Therefore, there is a customary land problem between the indigenous people of Harapan village and the Papua Provincial Government.

In a juridical context, land tenure and land ownership require protection. This means that the civil rights of land owners must be protected and land ownership must be treated fairly. The aggrieved party can go to court because of an unresolved land dispute.

Settlement through the courts aims to obtain justice and legal certainty, so settlement outside the court is prioritized for peace in resolving disputes that occur between the disputants and not looking for parties who are right or wrong. Non-litigation or alternative dispute resolution, better known as Alternative Dispute Resolution (ADR), is regulated in Law Number 9 of 1999 concerning Arbitration and Alternative Dispute Resolution. The mechanism for resolving disputes in this way is classified as a non-litigation medium, namely it is a cooperative conflict or dispute resolution concept that is directed at an agreement on a solution to the conflict or dispute that is a win-win solution. ADR was developed by legal practitioners and academics as a way of resolving disputes that provides greater access to justice.

The aim of settlement through court is to achieve justice and legal certainty; Therefore, out-of-court settlement is more important to achieve peace between disputing parties than finding out which party is right or wrong. Law Number 9 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates non-litigation or alternative dispute

resolution, which is better known as Alternative Dispute Resolution (ADR). In this way, dispute resolution mechanisms fall into the category of non-litigation media. In this category, they refer to the idea of resolving conflicts or disputes carried out cooperatively with the aim of reaching agreement on a solution to the conflict or dispute that benefits both parties. Legal practitioners and academics developed ADR as a dispute resolution method that allows greater access to justice (Rachamadi Usman, 2003).

METHOD

This research is normative and empirical juridical where the research method refers to legal norms contained in statutory regulations, whether from library materials, written regulations or other legal materials as well as looking at the reality that occurs in the field and the data is analyzed. and can be accounted for (Soerjono Soekanto, 2009).

RESULTS AND DISCUSSION

Both the objections and the payment of compensation for Kampung Harapan land are all correct because the Kampung Harapan land issue has been decided: "that the Papua Provincial Government basically submits to the court decision which has permanent legal force, so that all compensation payments for Kampung Harapan customary land will be directed only to The plaintiff (who won the case)." To find out who is responsible for compensation for village land.

Tanah Kampung Harapan in the local language is called Tanah Nolokla, which is traditional land on:

1. April 1944; used by the NlCA, in 1947 the NlCA Government changed to Netherlands Nieuw Guinea in Holland Binnen and subsequently the Nolokla land was used by the Department of Agriculture as a center for indigenous training and special agricultural activities (Lande Bour Cour Mantrie).
2. 1952; This location was used as a trial garden and in 1954 it became a public demonstration garden (Broove Statlon) so that the area from 40 ha became 62 ha.
3. 1955; This land was used by the Dutch government during the time of the YONAS Resident, for agriculture, animal husbandry and forestry, to which the location would be returned in 1966. At this time the Resident compensated the losses of the 10 Golden plants to the Asei traditional parties, especially for those who own traditional gardens and long-term plants.
4. 1962; There was a transfer of government from the Dutch government to the Indonesian government. At that time, the "New York Agreement" occurred, resulting in the transfer of all development and government activities from the Netherlands to Indonesia through the UN, and in 1964 Max Ongge proposed returning the Kampung Harapan land to the Indonesian government.
5. 1966; Hanock Ohee, Max Ongge, and Obet Ongge asked for the return of the Harapan Village land from the Indonesian government through Governor Frans Kaisepo, represented by Tontje Meset's daily management board at the Sarinah building and the meeting did not produce anything because the government considered it state land.
6. On 18-8-1971, 5-5-1972, 8-2-1973 and 3-4-1973, Max Ongge submitted a letter known to Ondofolo Hanock Hebe Ohee to the Governor regarding the settlement of the land status of "Kampung Harapan", the Governor did not responded but Regent Anwar Ilmar responded by stating that the Regent could not respond to the Kampung Harapan land issue because it was delegated to the Governor.
7. In 1976, Max Ongge and Hanock Hebe Ohee went to the Governor of Irja, Mr Acub Zaena, who was represented by Deputy Governor Domine Yan Mamoribo, asking that the Kampung Harapan land be returned within 3 (three) months. As a result of these demands, in March 1976 the Head of Agrarian Affairs, Sarjono, S.H. issued a letter

signed by Deputy Governor Domine Yan Mamorlbo, saying that the land was State land as a result of meetings with several agencies so that it was delegated to the Minister of Home Affairs, and sent the hope land file to the Minister of Home Affairs.

8. Until 1980; During Governor Sutran's time, the deliberation process failed but Hanock Hebe Ohee and Max Ongge continued to wait for the Government's answer but never arrived in the end, asking for advice from the chairman of the Jayapura High Court, Mr. Pello, S.H, because it was the Government who was being sued.
9. Date, 9-27-1984; The Kampung Harapan or Nolokla land issue was submitted to the Jayapura Class IB District Court with Case Number 39lPdtlG/1984lPN-Jpr.-and the Legal Subjects are as follows:
   a. Plaintiffs: HANOCK HEBE OHEE as PLAINTIFF I and MAX ONGGE as PLAINTIFF II with his attorney.
   b. Defendant: GOVERNOR et al,
   c. Intervening Plaintiff: PATRAS POLU WALLY, his rights and the rights of the Ongge tribe (21 June 1984 and 26 July 1984) with his Attorney ANTHON MARSELA, SH., Against HANOCK HEBE OHEE and MAX ONGGE and GOVERNOR et al.
10. 18-7-1985: First Court, Decision granting the lawsuit of Hanock Hebe Ohee (I) and Max Ongge (II) winning case Number: 39/Pdt/G/1984/PN-Jpr, stating 'Kampung Harapan Land is Customary Land owned by the plaintiffs in the convention for generations.
11. Date 11-27-1985; Second Court, Appeal Decision Number 31/pdt/1985lPT-Jpr Granted Hanock Hebe Ohee and Max Ongge Win because the Appeal decision stated: confirming the decision of the Jayapura District Court dated 18 July 1985 No. 39/pdtlGI1984/PN-Jpr.
12. 17-11-1987: Third Court, Cassation Decision stated that Hanock Hebe Ohee/Plaintiff I and Max Ongge/Plaintiff II had lost/rejected because the Supreme Court stated that the land in question was land directly controlled by the State (State Land).
13. Date 12-19-1987; Mr. MAX 0NGGE/Plaintiff II died and the case was continued at the PK level by Hanock Hebe Ohee, and the plaintiff II through his family and heirs facilitated the struggle in the lawsuit at the PK level at the Supreme Court of the Republic of Indonesia.
14. 28-7-1992: Fourth Court for Judicial Review (PK) Number: 381/PK/Pdt/1989, Supreme Court Decision granted the Suit for Judicial Review (PK) from Hanock Hebe Ohee/Plaintiff I and Friend (Max Ongge/Plaintiff II) , states: The disputed land is customary land owned by the plaintiffs in the convention for generations.

To carry out the execution of land compensation for Kampung Harapan, it is necessary to know the problems that have occurred so far in order to become a benchmark for the next implementation: from the evidence of the initial documents from 1964-1984, started by Max Ongge and known as Ondofolo Hanock Hebe Ohee. Then together with Hanock Hebe Ohee submitted a case to the Jayapura Class IB District Court which finally determined the legal decision which became the basis for the compensation payment for Land of Hope as follows:

1. Deed of Special Power of Attorney No: 63/1984/Pendaf, dated 25 September 1984 from Hanock Hebe Ohee and Max Ongge to John P Patiwary, BA, HK.
2. Jpr PN Decision Number: 39/Pdt/G/1984/PN-Jpr, dated 18 July 1985.
3. PT Irja Decision Number: 31/Pdt/1985/PT~Jpr, dated 27 November 1985.
4. Supreme Court Cassation Decision Number 2322/KA/Pdt/1986, 30 March 1988.
5. Supreme Court Decision Number: 381/PK/Pdtl1989, dated 28 July 1992.

Next regarding Payment Execution is as follows:

1. That up to now in 2012 the rights of Eliab Ongge, the heir of plaintiff II/Max Ongge together with the Phumokho Iymea family have never been paid from Phase I to Phase IV, so it is requested that compensation for the land of the village of hope for us be immediately realized in October 2012.

2. Whereas the Papua Provincial Government has carried out the execution of compensation payments for the traditional land of Kampung Harapan in stages since 2001 in error continuously to Plaintiff I and his heirs in the amount of Rp. 8 billion (eight billion rupiah). In de facto, plaintiff I and his heirs have received Rp. 7 billion (seven billion rupiah), while the government also mistakenly paid Rp. 1 billion (one billion rupiah) to Bartholomeus Ongge through his attorney Pieter Ell, SH, using a consignment mechanism at the Jayapura District Court.
3. That 'we stated the payment incorrectly to Agustinus Ph Ohee, the heir of Hanock Hebe Ohee/plaintiff I because de facto it had reached Rp. 7 billion (seven billion rupiah), less than Rp. 8 billion (eight billion rupiah).
4. That payment to Bartholomeus Ongge Rp. 1 billion (one billion rupiah) was declared wrong because the person concerned was not the heir of Plaintiff ll/Max Ongge or it was emphasized that the person concerned was not an interested party in the civil decision for the 62 ha Kampung Harapan land.

So far, the Papua Provincial Government has used the classic view outside of legal decisions that by paying an Ondofolo all problems are resolved. This is a wrong view because "In Sentani customary law in general and especially in the Asei village, not all land rights are in the hands of the Ondofolo because all land rights have been distributed since the ancestors to all tribes/keret/Rela/Akhona, even the Uufoi (pesuru) also own land, in accordance with the duties and functions in the inherent customs, especially for the welfare of the members of the tribal group themselves.

That the realization by the Papua Provincial Government of the obligation to pay compensation for the traditional land of Kampung Harapan covering an area of 62 ha (sixty two hectares) in the amount of IDR 18,600,000,000.00 (eight billion six hundred million rupiah) has been executed in stages, for Phase I to with Phase IV amounting to IDR 8 billion (eight billion rupiah) having been implemented and acknowledged by the parties to the dispute, while the realization of Phase V payments after the death of Plaintiff I Hanoch Hebe Ohee and Plaintiff II Max Ongge and in accordance with the Supreme Court Letter Instructions Number 244/PAN2 /XI/2668PK/Pdt/2013 dated 2 December 2013 who are entitled to compensation for customary land are Plaintiffs I and Plaintiffs II of the Convention, namely Hanoch Hebe Ohee and Max Ongge, which compensation is intended to finance the continued development of the Ongge Tribe villages in Daito and Kampung Harapan to the left of the main road towards Sentani. And the Phase V compensation payment has been paid by Defendant I (Papua Provincial Government) in the amount of Rp. 3,000,000,000.00 (three billion rupiah) received by Agustinus Phanaa Ohee and the amount of Rp. 7,600,000,000.00 (seven billion six hundred million rupiah) received by Eliab Ongge is the heir of Max Ongge.

That with the completion of payments for Phase I to Phase V, the obligations of Defendant I (Papua Provincial Government) have been completed in case Number 381Pk/Pdt/1989, so the actions of Defendant I (Papua Provincial Government) are not unlawful.

In the process of resolving the Kampung Harapan customary land dispute with the Papua Provincial Government, it went through a very long process through both Litigation (Court) and Non-Litigation (outside court) where the parties to the dispute proved to each other the truth about the ownership of the Kampung Harapan land:

1. Through the Court Decision are as follows:
   a. Whereas based on the decision of the Jayapura District Court No: 39G/Pdt/1984/PN-Jpr dated 8 July 1985, and the Decision of the Jayapura High Court No: 31/Pdt/1985/PT-Jpr dated 27 November 1985, which has been confirmed by Decision of the Supreme Court of the Republic of Indonesia Number: 381/PK/Pdt/1989, dated 28 July 1992. In the application for review of the civil case by Hanock Hebe Ohee (Plaintiff I) and Max

Ongge (Plaintiff II) in the first review the cassation applicant I/plaintiff II/appellee stated: in the convention the defendant's land is customary land owned by the plaintiffs in the convention for generations.

b. That this decision is a decision at the level of extraordinary legal action so that it has permanent and binding legal force (in cracht van Gewisjde). And from the Aquo decision, it is clear and firm that the customary land which is the object of the case is the customary land owned by the plaintiffs in the convention for generations. Plaintiff I is Hanock Hebe Ohee and plaintiff II is Max Ongge.
c. Whereas because Plaintiff I and Plaintiff II, the principals in the case or the right to receive compensation have died/deceased, it is strictly legal that all legal actions on the customary land and regarding the execution of compensation payments are a legal matter for the heirs of the plaintiffs. in accordance with the area of customary land owned by plaintiffs I and II respectively.
d. Plaintiff I is Hanock Hebe Ohee and plaintiff II is Max Ongge who has died, so the heir of Plaintiff I is Agustinus Ph Ohee and the heir of plaintiff II is Eliab Ongge, S.Ip, MM.

2. Through the State Administrative Law Decision (PTUN), the Plaintiff Bartholomeus Ongge's lawsuit to cancel the Kampung Harapan Land Certificate in the name of Eliab Ongge, S.lp, MM, through the Jayapura PTUN court was declared not accepted or lost the case with the results of the case as follows:
   a. PTUN Decision No: 53lG/2010lPTUN-Jpr, dated 7 March 2011 stated that it rejected Plaintiff Bartholomeus Ongge's lawsuit, the lawsuit was not accepted but there was still a waiting period of 14 days for an appeal. Furthermore, after an appeal was made at the request of the Plaintiff Bartholomeus Ongge through his Attorney Fidelis Masriat, SH, against the Head of the Jayapura Regency Land Office and Eliab Ongge, Intervention Defendant II.
   b. Makassar PTUN Appeal Decision No: 66/B.TUN/ 2011/PT.TUN.MKS, dated 22 August 2011, states that it upholds the Jayapura PTUN decision No: 53/G/2011 dated 7 March 2011, and this second decision is not appealed and the time for cassation has passed, the decision has permanent legal force (In Cracht). The Kampung Harapan land certificate in our name has permanent legal force: "That the 50 ha land certificate is only issued on the customary land of Plaintiff II (Max Ongge and his heirs) and is an important document for the Papua Provincial Government when paying land compensation to the plaintiff's heirs II in the name of Eliab Ongge, S.Ip, MM as a substitute for the true and valid legal subject, then the authentic evidence will be behind the name only."
3. Through a Customary Law Decision, on the advice of the Government through the Deputy Governor and SEKDA of Papua Province to be resolved through customary law, the legal representative is requested in writing to be resolved through the customary council with the results of the customary council's decision as follows:
   a. Decision of the Customary Council Number: 02/DASS/IX/2007, dated 4 September 2007 concerning the resolution of the status of ownership of 62 ha (sixty two hectares) of Kampung Harapan land based on the keret's rights according to the customary name and clear boundaries and right.
   b. Decision on customary cases by the Indigenous Community Association (LPMA) Number: 20/Kep.LPMA-WR-Sentani/2008 dated 11 March 2008 concerning the resolution of disputes over claims of land rights to Kampung Harapan in accordance with the Decision of the Supreme Court of the Republic of Indonesia Number: 381/PK/ Rev/1989.

CONCLUSION

The responsibility of the Papua Provincial Government in resolving customary land disputes in Kampung Harapan is that the Papua Provincial Government basically submits to court decisions which have permanent legal force, so that all compensation payments for Kampung Harapan's customary land will be directed only to the Plaintiff who wins the case in this case. This is the heir of Plaintiff I is AUGUSTINE PH OHEE and the heir of Plaintiff II is ELIAB ONGGE, S.Ip, MM. Meanwhile, the resolution of customary land disputes between Kampung Harapan and the Papua Provincial Government goes through a very long process, either through litigation (court) or non-litigation (outside court), namely through court decisions, through state administrative decisions (PTUN) and through customary law decisions. All these roads were taken to prove who has the right to the 62 ha (sixty two hectares) Kampung Harapan customary land.

In the case of a customary land dispute, the researcher suggests that the Papua Provincial Government in terms of paying compensation for customary land must really know the history of the customary land to avoid irresponsible individuals claiming ownership of the customary land so that in the future there were no disputes such as the Kampung Harapan land which covers an area of 62 ha (sixty two hectares). Meanwhile, for customary law communities throughout Papua Province, ownership of customary land must be discussed together with the traditional leaders so that it is clear where the boundaries of customary land belong to the tribe/keret which has been passed down from generation to generation since their grandmother. Their ancestors must still be protected and maintained by the next generation and also to avoid disputes between tribes/ethnic groups in indigenous communities in the future.

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