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# The Role of Village Heads in Resolving Customary Land Disputes in Nendali Village East Sentani District Jayapura Regency

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## Abstract

This study aims to determine the role of the village head in resolving customary land disputes in Nendali Village, East Sentani District, Jayapura Regency and to determine the obstacles experienced by the village head in resolving customary land disputes in Nendali Village, East Sentani District, Jayapura Regency. The method used in this study is normative and empirical juridical, namely an approach that refers to legal norms contained in laws and regulations, library materials, written regulations or other secondary legal materials and also sees the reality that occurs in the field. The results of this study reveal that the role of the village head in resolving customary land disputes in Nendali Village, East Sentani District, Jayapura Regency is very important in relation to the rights and obligations in the life of his customary community where a village head is required to be able to play an active role in holding his leadership so that he can organize the community properly, safely and orderly, if there is a problem or dispute that occurs among his customary community, the village head as a mediator to resolve the problem or dispute, acts to restore peace in his customary community and the factors that cause customary land disputes in Nendali Village, East Sentani District, Jayapura Regency, namely the overlapping ownership of customary land, whether the land is used for personal use such as a place to live or shelter or the land is used in groups or together such as a place to farm and graze livestock, where fellow customary communities claim that it is their land while the other party also states that the land is theirs, then the customary land dispute occurs.

**Keywords:** Role, Village Head, Dispute Resolution, Customary Land, Nendali Village.

## Introduction

Land is a gift from God Almighty as one of the fulfillments of human needs. For people in cities, land is needed for the construction of offices and settlements which is a sign of urbanization of villagers to cities, while for people in villages/villages, land is a means of fulfilling the needs of people's lives such as farming and social activities. In the 1945 Constitution, Article 18B paragraph (2), it is explained that the state recognizes and respects the units of customary law communities along with the traditional rights contained therein, Article 28 I paragraph (3) further emphasizes the state's recognition of the cultural identity and rights of traditional communities (Bushar Muhammad, 2006).



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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 certainly related to recognition of all existing customary rights. Customary law is the original law of the Indonesian nation because its spirit and formation patterns are adapted to the culture of the Indonesian people.

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. Customary rights are still recognized as long as they do not conflict with existing rights in positive law, this also applies to ownership rights to customary land. Because recognition and respect for customary law community units and their traditional rights as long as those rights still exist, must be in accordance with the development of society and the principles of a unitary state. Customary law is a legal norm that is formed or created in a society which is related to human behavior. If it is violated, it will result in customary sanctions (Soepomo, 1993).

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. 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 rights and similar rights from 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 is based on national unity and must not conflict with laws and other higher regulations." (Sorjono Soekanto, 2012)

Based on Article 3 above, the recognition of customary rights is limited to two things, namely regarding its existence and implementation. Likewise in Article 3 of UUPA Number 5 of 1960 that customary rights are recognized for their existence (existence) as long as in reality they still exist, if there are still implementation of customary rights must be implemented in accordance with national and state interests, which are based on national unity and must not conflict with other laws or regulations that are higher. The implementation of customary rights that hinder and obstruct national and state interests, then national and state interests will be prioritized over the interests of the customary law community concerned (Suhaily Syam, 2014).

Land disputes are differences in values, interests, opinions and perceptions between individuals and between legal entities (private and public) regarding the status of control and/or ownership status. Disputes arising from social interactions of customary law communities will be resolved quickly without allowing the problems they experience to be buried for a long time which will cause the crystallization of problems into more complex problems. Land cases that often occur when viewed from the conflict of interests of the parties in land disputes include: the people facing the bureaucracy, the people facing state-owned companies, the people facing private companies and conflicts between the people.

Specifically, the author sees that disputes that occur related to the status of control and utilization of customary land areas become overlapping, seen from the unclear control of the land. Likewise, in almost every region there are land disputes, the parties involved and authorized to handle the problem resolve them in various ways. The method of dispute



resolution that has been taken so far is through the courts (Litigation) and dispute resolution outside the courts (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. The dispute resolution mechanism in this way is classified as a non-litigation media, namely a cooperative conflict or dispute resolution concept that is directed at an agreement on one solution to the conflict or dispute that is a win-win solution. ADR was developed by legal practitioners and academics as a method of dispute resolution that has more access to justice (Rachamadi Usman, 2003).

Legally, in Article 1 letter l of Law Number 21 of 2001 concerning Special Autonomy for Papua Province, a Village or what is called by another name is "a legal community unit that has the authority to regulate and manage the interests of the local community based on local origins and customs that are recognized in the national government system and is located in the Regency/City area". While in Article 1 letter m it is written that the Village Consultative Body (Bamuskam) or what is called by another name is "a group of people who form a unit consisting of various elements in the village and are elected and recognized by local residents to provide advice and considerations to the Village Government". Then in the Special Autonomy Law for Papua Province in Article 3 Paragraph (3) it states that "A District consists of a number of villages or what is called by another name". Then the regional authority in Article 4 is only given to the Papua Province while the authority of the Regency and City Regions as regulated in the laws and regulations.

The role of the Village government or with another name for the village as the Village Government is as a government institution in the village that has an important role in organizing village governance. This means that the existence of the Village Government institution or with another name for the Village in Law Number 6 of 2014 states that the village government consists of the village government and the village head is an equal partner in village governance. Not the other way around, as a rival in government. Village Regulations are legal instruments related to governance in the Village. This is in line with the progress and development of democracy and in order to perfect the formation of stronger institutions as a means and forum for democracy in the scope of villages, especially in Nendali Village, East Sentani District, Jayapura Regency. So that the existence of the formation of "Village Regulations" is a vehicle for implementing democracy in the village in order to accommodate and channel community aspirations in the form of "Village Regulations" as orderly, orderly and secure villages in supporting the implementation of future village development, for the welfare of village residents in Jayapura Regency.

## Literature Review

The Basic Agrarian Law (UUPA) is a basic regulation that regulates the control, ownership, allocation and control of land use which aims to organize the management and utilization of land for the greatest prosperity of the people. One aspect needed for this purpose



is regarding the legal certainty of Land Rights, which is the main basis in the framework of the Basic Agrarian Law (UUPA) is a basic regulation that regulates the control, ownership, allocation and control of land use which aims to organize the management and utilization of land for the greatest prosperity of the people. One aspect needed for this purpose is regarding the legal certainty of Land Rights, which is the main basis in the framework of the legal certainty of land ownership (Mughtar Wahid, 2008).

The word Ulayat comes from the Minangkabau language, "Ulayat" means Territory or Area. The definition of the term Hak Ulayat is emphasized by G. Kertasapoetra, et al. in his book, Land Law, UUPA Guarantee for the Success of Land Utilization, stating that: "Kak ulayat is the highest right to land owned by a legal association (village, tribe) to guarantee the orderly use/utilization of land. Kak ulayat is a right owned by a legal association (village, tribe), where the citizens (legal association) have the right to control the land, the implementation of which is regulated by the head of the association (the relevant tribal/village head)". (G. Kertasapoetra et. al, 1985).

Regulation of the Minister of State for Agrarian Affairs or the Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Settlement of Customary Rights Problems of Customary Law Communities, further provides the following understanding:

- a. Article 1 number 1 states that: "Similar customary rights for customary law communities (hereinafter referred to as customary rights) are the authority according to customary law owned by certain customary law communities over areas that are the environment to take advantage of natural resources, including land in the area for the continuity of life and livelihood that arises from the physical and spiritual relationship that is passed down from generation to generation and is not broken between the customary law community and the area concerned."
- b. Article 1 number 2 states that: "Customary land is a plot of land above which the rights of a certain customary law community are vested".
- c. Article 1 number 4 states that: "Customary communities are indigenous Papuan citizens who live in an area and are bound and subject to certain customs with a high sense of solidarity between its members."
- d. Article 1 number 5 states that: "Customary rights are the rights of consent held by certain customary law communities over a region which is the living environment of its citizens, which includes the right to utilize land, forests, and water and their contents in accordance with statutory regulations."

Customary law communities are also called "traditional communities" or the indigenous people, in everyday life they are more often and popularly called "customary communities". Customary law communities are human communities that obey the rules or laws that govern human behavior in relation to each other, both in the form of all customs and morals that are truly alive because they are believed and adhered to, if violated the perpetrators are sanctioned by the customary ruler. The definition of a customary law community is a community that arises spontaneously in a certain area, the establishment of which is not determined or ordered by a higher ruler or other ruler, with a very great sense of solidarity among members of the community



as outsiders and using their territory as a source of wealth can only be fully utilized by its members.

Customary law communities are also a human unity that is interconnected with a fixed recurring pattern, namely a society with the same behavioral patterns, where this behavior grows and is manifested by the community, from this pattern the rules are realized to regulate that social life. A social life with the same social pattern will only occur if there is a community of relationships with a fixed recurring pattern. Definition of Village according to Law of the Republic of Indonesia No. 6 of 2014 "A village is a legal community unit that has territorial boundaries that is authorized to regulate and manage government affairs, local community interests based on community initiatives, original rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia".

Villages generally mean a collection of communities consisting of various ethnic communities or certain ethnicities who live in one area and live in groups with a simple lifestyle that has wise and prudent rules and is practiced in everyday life. The term village itself comes from the general concept of "Village" etymologically derived from the Sanskrit word "swadesi" which means an independent and autonomous region, place or part. Ateng Syafrudin, also provided information about the terms used as a common term for "village", namely "swagarna (gramani), dhisa, marga, nagari, mukim, kuria, turnenggungan, negorey, wanua or negoriy, manoa, banjar and penanian." (Ateng Syafrudin & Suprin Na'a, 2010).

A dispute is a situation where a party feels disadvantaged by another party, which then the party conveys this dissatisfaction to the second party. If the situation shows a difference of opinion, then what is called a dispute occurs. In the context of law, especially contract law, what is meant by a dispute is a dispute that occurs between the parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. In other words, there has been a breach of contract by the parties or one of the parties (Nurnaningsih, 2012).

## Method

The method used in this research is normative and empirical juridical, namely an approach that refers to legal norms contained in statutory regulations, library materials, written regulations or other secondary legal materials and also looks at the reality that occurs in the field (Soerjono, 2009).

## Result and Discussion

In terms of authority concept, based on Article 200 to Article 202 of Law No. 32 of 2004 in conjunction with Law No. 23 of 2014 concerning Regional Government, it is stated that village government consists of 2 (two) elements, namely the village government consisting of the Village Head and village apparatus and the Village Consultative Body (BPD). The duties and authorities of the village head according to Article 14 paragraph (1) and (2) of Government Regulation No. 72 of 2005 concerning Villages state that:



1. The Village Head has the task of organizing government, development, and community affairs.
2. In carrying out the duties as referred to in paragraph (1) the Village Head has the authority:
  - a. Leading the implementation of village government based on policies jointly determined by the BPD;
  - b. Submitting draft village regulations;
  - c. Determining village regulations that have been approved by the BPD;
  - d. Preparing and submitting draft village regulations regarding the Village Budget and determined jointly by the BPD;
  - e. Developing village community life;
  - f. Developing village economy;
  - g. Coordinating village development in a participatory manner;
  - h. Representing the village inside and outside the court and may appoint a legal representative to represent in accordance with laws and regulations;
  - i. Carrying out other authorities in accordance with laws and regulations.

Meanwhile, regarding the obligations that must be carried out by the Village Head according to the provisions of Article 15 paragraph (1) and paragraph (2) of PP No. 72 of 2005 concerning Villages, it states:

- 1) In carrying out the duties and authorities as referred to in Article 14, the Village Head has the following obligations:
  - a) Upholding and practicing Pancasila, implementing the 1945 Constitution of the Republic of Indonesia and maintaining and preserving the integrity of the Unitary State of the Republic of Indonesia;
  - b) Increasing community welfare;
  - c) Maintaining public order and security;
  - d) Implementing a democratic life;
  - e) Implementing the principles of clean village governance that is free from Collusion, Corruption and Nepotism;
  - f) Establishing working relationships with all village government partners;
  - g) Complying with and enforcing all laws and regulations;
  - h) Organizing good village government administration;
  - i) Implementing and being accountable for village financial management;
  - j) Carrying out affairs that are the authority of the village;
  - k) Reconciling community disputes in the village;
  - l) Developing community and village income;
  - m) Fostering, protecting and preserving social, cultural and customary values;
  - n) Empowering the community and institutions in the village;
  - o) Developing the potential of natural resources and preserving the environment.
- 2) In addition to the obligations as referred to in paragraph (1), the Village Head has the obligation to provide a report on the implementation of village government to the



Regent/Mayor, provide an accountability report to the BPD, and inform the community about the implementation of village government.

The understanding of the obligation of the Village Head to resolve community disputes needs to be further explained by referring to a concept where the Village Head can also act as a mediator in every problem that exists. The problem is not only limited to the scope of civil law between one person and another, but the problem can also be viewed from other legal perspectives. Related to the problems that have been raised above, resolving a problem in a more effective and efficient manner is considered necessary as a mechanism for the Village Head to control the dynamics of the community itself.

Legal policy in implementing the nature of resolving a problem outside the courts by the Village Head. Traditionally, the position and role of the Head of the Customary Law community is the same as the Customary Head. Therefore, the Customary Head is the same as the Head of the Customary Law Community. A Head of the Customary Law Community has several authorities as follows:

- a. Actions regarding land affairs related to the close relationship between the land and the association (group of people) that controls the land;
- b. Implementation of law as an effort to prevent violations of the law (preventieve rechtszorg), so that the law can run properly; and
- c. Law enforcement as a legal remedy, after the law has been violated (repressieve rechtszorg).

A Village Head/Sub-District leader is considered fair if he can maintain harmony in the pattern of social interaction, which is the core of the social process. The community will be satisfied if the unity of the community and its leader is realized. A leader must be able to adapt to the development of society. In addition, a ruler must have courage, wisdom, and justice. The implementation of alternative dispute resolution (non-litigation) needs to be carried out as a form of independence and privilege of the village/sub-district and indirectly will make a case more efficient so that it does not pile up in court. The Village Head/Sub-District who acts as a peace judge for his community is a means to create a law that regulates the rights and obligations of legal subjects so that each carries out their obligations properly and obtains their rights fairly. In addition, the law also functions as an instrument of protection for the legal subjects themselves.

The role of the Village government or with another name for the Village as the Village Government is as a government institution in the village that has an important role in organizing village governance. This means that the existence of the Village Government institution or another name for the Village in Law Number 6 of 2014 states that the village government consists of the village government and the village head is an equal partner in village governance. In customary law or any law, society has a very important meaning as a sediment of social reality, stating that society is a form of shared life, whose citizens live together for a long period of time, thus producing culture. Society is a social system that is a container for patterns of social interaction or interpersonal relationships as well as relationships between social groups. For this reason, in customary law it can be concluded that a customary law society can occur in a regional framework known as the territorial principle and based on descent (genealogical principle) or a combination of territorial and genealogical. Customary law communities can be categorized



based on territory, namely an arrangement based on an environment of blood relations, the members of the community feel united and therefore feel that together they constitute the unity of the customary law community in question, because there is a bond between each of them and the land where they live. So the element that unites members of society is the bond between people and the land they have lived in since their birth, inhabited by people and even their ancestors for generations.

For this reason, in this category of society, ties to land (territory) are the core of the territorial principle. One of the distinctive characteristics of ulayat rights in customary law communities is religious communalism which allows individual land control, with land rights that are personal and contain an element of community. This element of togetherness is the collective right of the customary law community to land known as customary rights, as well as a religious nature because the customary land rights obtained by community members are believed to be a gift from God given to their ancestors and the next generation.

Therefore, for the indigenous people in Nendali Village, the status of customary land ownership is communal and also individual, where the utilization of customary rights is carried out by residents as members of the customary law community group (both territorial and genealogical). Each has the right to control and use as jointly owned land to meet family needs. Control of rights can last temporarily, usually carried out indefinitely (ownership rights) individually. There is no obligation to carry out control and utilization collectively or in groups, but it can be done as long as the person concerned wants it.

The role of the Village Head in Nendali Village, East Sentani District, Jayapura Regency is very important in relation to his rights and obligations in the life of the indigenous community in the Village. A Village Head is required to be able to play an active role in holding his leadership so that he can organize the community properly, safely and orderly, if there is a problem or dispute between his community, the village head is obliged to act as a mediator to resolve the problem or dispute, therefore customary deliberation is needed to determine the policy of a village head.

Meanwhile, according to the author, in the customary law community in Nendali Village, East Sentani District, Jayapura Regency, disputes generally occur because of internal factors in terms of control and ownership of customary land. If it is from internal factors, then the customary leaders/village heads play a role in resolving problems that occur in their customary community, by explaining the boundaries of which land is the common property of their customary community, for example for grazing livestock, markets, and places for gardening or farming, as well as which is owned by individuals or individuals who are used as residences and shelters by their customary community for the sake of their daily survival. If there is a dispute or actions that are contrary to customary law, then the Leader/Customary Head/Village Head acts to restore peace in his customary community. The role of the Village Head in a customary community is not much different from the function of the customary head because the function of the Village Head in the customary community in Nendali Village, East Sentani District, Jayapura Regency is as follows:



- a) Provide guidelines to community members, when they should behave in community life and the basis of this behavior is normative habits, namely customs and customary law
- b) Maintain the integrity of the community, so that the community is maintained and not damaged by various actions of community members that are not in accordance with customs and customary law.
- c) Provide guidance to community members to establish a social control system. This social control is more of a supervision of community behavior so that community life can be maintained as well as possible.
- d) Pay attention to every decision that has been determined in customary law, so that the decision has authority and can provide legal certainty that binds all members of the community.
- e) Is a place for community members to rely on to resolve, protect, and ensure peace. Therefore, whenever there is a dispute, the Customary Head/Village Head is the only place for members of the customary community to rely on to resolve their problems. If the role of the Village Head in society is investigated, many people ask for the involvement of the Customary Head to resolve problems, both those concerning life and death. However, the more important role of the Customary Head is to maintain the balance of the living environment with each other, so that harmony and peace can be created in society.

The issue of land rights, especially those related to customary land, is one of the most important things because it concerns its legal certainty. With the guarantee of certainty of customary land rights, it will be able to prevent the emergence of social unrest so that it is expected to be able to create an atmosphere that is beneficial for the continuation of development in all fields, especially in the land sector. Control of customary land carried out by the community only controls the customary land physically.

Whereas legal control generally gives the right holder the authority to physically control the land. So not all legal control of land gives the right holder the authority to physically control the land, because what is called legal control is not always followed by physical control of the land.

In the customary law community in Nendali Village, East Sentani District, there is also a concept of a customary law system, namely religious communalism, which allows individual land control, with land rights that are personal and contain elements of togetherness. This element of togetherness is the common right of the customary law community to land known as customary rights, as well as a religious nature because the customary land rights obtained by the community are believed to be a gift from God given to their ancestors to the next generation. However, the reality in the customary community in Nendali Village, East Sentani District, Jayapura Regency, which causes customary land disputes is the overlapping ownership of customary land, whether the land is used for personal use such as a place to live or shelter or the land is used in groups or together such as a place for farming and grazing livestock, where fellow customary communities claim that it is their land while other parties also state that the land is theirs, so the customary land dispute occurs.



## Conclusion

The role of the village head in resolving customary land disputes in Nendali Village, East Sentani District, Jayapura Regency is very important in relation to the rights and obligations in the life of his customary community where a village head is required to be able to play an active role in holding his leadership so that he can organize the community properly, safely and orderly, if there is a problem or dispute that occurs among his customary community, the village head as a mediator to resolve the problem or dispute, acts to restore peace in his customary community. While the factors that cause customary land disputes in Nendali Village, East Sentani District, Jayapura Regency are the overlapping ownership of customary land, whether the land is used for personal use such as a residence or shelter or the land is used in groups or together such as a place for farming and grazing livestock, where fellow customary communities claim that it is their land while the other party also states that the land is theirs, then the customary land dispute occurs.

The author's suggestion to the Head of Nendali Village, East Sentani District, Jayapura Regency, if resolving customary land disputes within his customary community, must be fair without siding with one party so that a safe, peaceful and calm atmosphere is created. Meanwhile, for the local customary community, especially the customary community in Nendali Village, East Sentani District, Jayapura Regency, if they want to use the land for personal or group interests, it would be better to discuss it first with the village head and the local community so that the status of the customary land is clear so that there will be no disputes in the future.

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