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# JURIDICAL ANALYSIS OF SETTLEMENT OF LAND DISPUTES THROUGH DECISIONS OF CUSTOMARY INSTITUTIONS

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**Abstract:** The land is a natural resource that has a very important role because the land is needed by humans for various kinds of life interests such as living, farming, trying, and so on. The policy for the development of the land sector in Indonesia is essentially rooted in the provisions of the 1945 Constitution Article 33 paragraph (3) which reads "Earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". To guarantee legal certainty in the field of land, Article 19 paragraph (1) of the UUPA stipulates: "To guarantee legal certainty, the government will carry out land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated by government regulations". Even though it has been regulated in such a way, the problem of land disputes continues and will forever occur due to conflicts of various interests. In customary law communities, disputes that occur are resolved by deliberation and consensus through customary institutions. This study aims to determine (1) the existence of Customary Institutions in resolving disputes in indigenous peoples, and (2) the authority of customary institutions in resolving disputes in customary law communities.

**Keywords:** Analysis; Juridical; Land dispute; Customary Institution.

## INTRODUCTION

In Indonesia, other than the state court as a conventional question goal establishment whose presence is managed in Regulation No. 48 of 2009 concerning Legal Power, other debate goal foundations allude to standard regulation. This is spurred by the presence of legitimate pluralism that applies in Indonesia, the law that applies isn't the main regulation that comes from the public authority or the state (state regulation), but also a law that comes from the customs of the community (customary law) and laws that come from religious teachings (law religion).[1]

Every dispute that arises in society can disrupt the balance of the social order. Therefore, it is necessary to strive for every dispute to be resolved so that the balance of social order can be restored. The existence of dispute resolution methods is as old as human existence itself. In every society, various traditions have developed regarding how disputes are handled. Disputes can be resolved in various ways, either through formal forums provided by the state or through other forums that are not officially provided by the state.[2]

In the standard regulation local area, questions that have happened have for some time been settled by pondering and agreement through standard establishments which are usually called standard courts. Typically, the people who go about as judges in these foundations are conventional pioneers (customary heads) and strict pioneers. The power of the standard court judge isn't exclusively restricted to harmony, yet in addition the ability to conclude debates in every aspect of regulation which are not separated into criminal, common, and public terms.[3]

In pretty much every region where there are land debates, the gatherings in question and approved to manage these issues settle them in different ways. The strategy for question goal that has been taken so far is through the courts (case) and debate goal outside the court (non-suit). In the juridical aspect, land residency and land possession require assurance, the ramifications is that there should be lawful security for social equality of land proprietorship and fair treatment of land proprietorship. Land debates that are extended and that there is no decent goal can make the distressed party document a claim in court.[4]

Even though land issues and solutions arising from these problems have been regulated in such a way, the parties involved in it have their ways that they deem more suitable to use to resolve the land problems they are experiencing. The most frequently encountered method is the settlement of disputes through customary institutions in their respective areas, as part of a non-litigation effort.

Non-suit or elective question goal which is otherwise called Elective Debate Goal (ADR) is directed in Regulation Number 9 of 1999 concerning Discretion and Elective Question Goal. Debate goal components in this manner are characterized in non-case media, which is an idea of helpful struggle or question goal that is aimed at a settlement on one answer for clashes or debates that is a mutually beneficial arrangement. ADR was created by legitimate professionals and scholastics as an approach to settling questions that

have more admittance to equity.[5]

The non-litigation settlement was chosen by the community because in terms of time, it can be realized relatively quickly, low-costs, and problem-solving is carried out in a peaceful way, namely through deliberations. Historically, the culture of Indonesian society has highly upheld the consensus approach. The development of ADR in Indonesia appears to be stronger than the excuse for inefficiencies in the judicial process. The settlement process through ADR is not something new in our nation's cultural values which have a cooperative spirit. Customary culture, which is still very strong in Indonesia, has made the Customary Institution a mediator in land disputes, because it is considered more practical, easier and will both bring benefits to the disputing parties. Therefore, the author is interested in further researching the "Juridical Analysis of Land Dispute Settlement Through Decisions of Traditional Institutions." The problem in this paper is How is the Juridical Analysis of Land Disputes Settlement Through Decisions of Customary Institutions?.

## MATERIALS AND METHODS

### Method

The strategy utilized recorded as a hard copy this applied paper is the expressive logical technique, specifically by utilizing information that plainly portrays the issues straightforwardly in the field, then the examination is completed and afterward finished up to take care of an issue. Strategies for information assortment through perception and writing study to get critical thinking in the readiness of this paper.[6]

### Approach

The humanistic juridical methodology, in particular the juridical methodology technique used to look at issues from a legitimate and deliberate perspective and as a manual for decides that can be utilized as a reason for examining lawful peculiarities that emerge. The humanistic methodology, in particular the methodology used to concentrate on an issue in the public eye or the local area climate with the plan and motivation behind getting realities, trailed by tracking down issues, recognizing issues, and tracking down answers for issues.[7]

## RESULTS AND DISCUSSION

### Juridical Analysis of Settlement of Land Disputes Through Decisions of Customary Institutions

This research shows that the existence of customary institutions in resolving disputes in customary law communities still exists and continues to run. As a justice system, customary institutions consist of various elements which are interrelated with each other. Lawrance Friedman's theory states that the legal system consists of sub-systems that are mutually integrated between one sub-system and another. The sub is the substance, namely the pattern that shows how a legal institution works with a fixed form, the institutional framework of the system, the structure is the regulations which consist of primary regulations (norms of behavior) and secondary regulations (which regulate how the main norms implemented and the legal culture which is patterned attitudes, values, principles, ideas that are structured in such a way that they are shared by both

individuals and groups in society.[8] The juridical character itself is found in the legal decisions that have been stipulated by the Customary Chief/Customary Institution Head, after going through a deliberation/non-litigation decision.

In dispute resolution, there is no formal organizational structure and human resources that are commonly found in state courts. The structure of the customary justice institutions in Central Maluku does not stand alone but is integrated into the structure of the state government institutions, namely the Saniri Raja Pattih institution. Apart from being a state government institution, this institution also functions as a judiciary and dispute resolution institution. The King and Kepala Soa have a role as the head of government as well as customary peace judges (carrying out executive and judicial functions). This is also in line with the opinion of Van Vollenhoven regarding customary law matters which do not separate the government and the judiciary, so that in customary law communities the government and customary justice institutions are in the same structure.[9]

The methods or steps taken in the debate goal process by standard foundations are by and large practically a similar between one nation and another. The strategy starts with an objection by the party who feels bothered to the lord or potentially the top of the soa either straightforwardly or through a delegate, then calls the gatherings, and in the last stage, the ruler/customary appointed authority will close what was examined before in the considerations. If in the deliberation an agreement has been obtained regarding a solution for the disputing parties, then the agreement can be made in the form of a written agreement. The end of the dispute/case settlement process is closed with the reading of a prayer to reject reinforcements, which is read by the local Imam (religious figure). The decision of the king/customary judge is final and binding, the dispute resolution system for indigenous peoples does not recognize the institution of an appeal based on customary law.

The main obligation of customary rulers originating from customary rights is to look after the welfare and interests of the members of the legal community, to prevent disputes arising regarding land tenure and use, and if a dispute occurs he is obliged to settle it.[10] The subject of ulayat rights is the customary community as a whole, namely the entire archipelago, the people controlling ulayat rights cannot be in the hands of private individuals but must be in the hands of the community.[11] While the objects of standard privileges incorporate land (land), water, plants (normal abundance) contained in that, and wild creatures that live openly in the backwoods. Hence standard freedoms show the lawful connection between the legitimate local area (lawful subject) and certain land/domains (object privileges).[12]

The contents of Ulayat Rights are:

a. The freedom of members of the village community to enjoy customary land rights, for example, is earthy, taking wood or fruits that grow on the land;
b. Foreigners are prohibited from controlling or enjoying ulayat land

except after obtaining permission from the customary, village head and paying a recognition fee.

Ulayat rights cover all land within the area of the legal community concerned, whether someone has already claimed it or not. In the context of customary rights, there is no land as "res nullius". In general, the boundaries of the Ulayat Rights of the territorial customary law community cannot be determined with certainty. It is the Customary Law Society, as the embodiment of all its members, who have customary rights, not just an individual.

Ulayat rights are regulated in customary law. This is because the implementation and management of customary rights is following the customary law of each region where the customary rights are located. This then causes customary rights between one region and another to vary. This situation then gave birth to diversity in customary law which indirectly affected land law, because ulayat rights are land tenure rights and customary property. However, along with the development of science in all fields, including the land sector, a legal product was born which was seen as able to accommodate the diversity of land law in our country so that legal unification as one of the objectives of issuing this legal product could be realized. The legal product is Law Number 5 of 1960 concerning the Basic Agrarian Law.

The regulation of customary rights in the UUPA is contained in Article 3, namely recognition of existence and implementation. The presence/presence of standard freedoms shows that standard privileges have a spot acknowledgment as long as a general rule they actually exist. In the implementation aspect, the implementation must not conflict with the national interests of the nation and state as well as other laws and regulations at a higher level. In this case, the interests of indigenous people must be subject to the higher and broader interests of the general public, nation, and state. Therefore it cannot be justified if in the current atmosphere of nation and state there is a customary law community that still maintains the content of implementing customary rights.

Whether customary rights are still valid or not in an alliance area of customary law communities is not the same as one another. There are customary law union areas whose customary rights are still being exercised and have an influence on people's lives. However, there are also areas or regions which, due to the strengthening of the individualistic nature of the community and the weakening of the communalistic nature, have made these customary rights not fully applicable or have faded in the life of their people. This is proven in the territory of the customary law alliance, besides that there are still lands with the status of customary land rights but there are also lands that have the status of privately owned land from the local community individually or as individuals.

With the increase in the economic value of land causing a change in people's mindset, what was previously an agrarian society has turned into an economic society, and with the increasing value of land encouraging people to sell their land to other parties instead of cultivating the land. This factor has encouraged

indigenous peoples to change the shape of the land that was originally controlled with customary rights to become privately owned land, causing the function of the land to change from ulayat land to individual/individual land and the position of customary leader who has been so dominant for indigenous peoples to become its influence is fading.

Referring to the disputes that occurred, it is known that Alternative Dispute Resolution Customs still exist and become a very important need for every member of the community. Dispute resolution using non-litigation methods or ADR is a dispute resolution model that is very suitable for the character and way of life of the community which is familial in nature, compared to dispute resolution through court institutions which tends to be confrontational, takes more into account wins and losses, takes more into account aspects that are materialistic and ignores the social elements in society that are kinship and cooperation.

Alternative/non-litigation dispute resolution in certain regions in Indonesia relatively prioritizes harmonization in people's lives. Besides that the settlement in this way also prioritizes the family aspect by taking into account aspects of the interests that exist in a heterogeneous society, which is identical to the nature of indigenous peoples which is described as a society that prioritizes the side of feeling without putting aside the rational side, communalistic nature, relationships with one another tend to be selfless because they are a group of indigenous peoples whose social interaction is based on high voluntarism in making sacrifices for other community members. Unlike the settlement of disputes through the courts where settlement in this way requires relatively large costs and requires a relatively long time because the process is quite long in the proceedings. It is for this reason that people avoid settling through the courts. In addition to these reasons, the community has also been instilled in the idea that settlement through the courts will only bring about justice for those who have power and have relatively high/established material possessions.

Disputes that are delegated to the decision of the Customary Institution, in practice still require a Mediator. The existence of a mediator or intermediary in alternative dispute resolution (ADR) plays a very important role. The mediator or intermediary is usually an indigenous person or institution that is believed and trusted by the community to be able to resolve disputes that occur, so it is hoped that an agreement will be reached that the result can provide justice for the parties to the dispute.

The appointment of a person or an adat law community deliberative institution as a mediator or intermediary is not based on a particular specialization, but rather prioritizes and pays attention to knowledge, social competence in the community, and observations in resolving land disputes that have occurred. A mediator or intermediary understands the law and understands matters of land existence and the history of land in the disputed area. Extensive knowledge of a mediator or intermediary like this will make the intermediary or mediator able to carry out their duties effectively and practically.

The parties appointed as mediators or intermediaries by the community are selected based on different levels of confidence in their ability to resolve land disputes that occur. The level of public trust in each figure is determined by the type of community and the complexity of the land disputes that occur.

In carrying out his duties as a mediator or intermediary, there are several stages carried out by an intermediary, namely:

1. Determine deviations.
   At this stage the intermediary is obliged to sort out based on aspects of society the forms of deviation that have been committed by the parties that are directly related to the land dispute that has occurred.
2. Qualify the characteristics of the dispute.
   This stage implies that in this case the arbitrator will qualify the characteristics of the land dispute that occurred and then compare it with other land disputes.
3. Looking for a way out.
   At this stage, the intermediary will try to find a way out to resolve the land dispute that has occurred. The way out offered is an alternative

At a practical level, the existence of a Mediator is needed to be able to resolve any land disputes that occur where the community still holds firm customs and culture. The existence of the Mediator will always be in line with the existence of Customary Institutions. Even so, in the end, the authority of customary law communities in Indonesia today over customary rights is already limited, because some laws and regulations regulate it. As explained in General Elucidation II number (3) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it has been regulated regarding the implementation of customary rights, in which the government places restrictions with the aim that development can be carried out in the interests of the people.

Regulation Number 5 of 1960 concerning the Essential Agrarian Guidelines in Article 1 additionally manages the privileges of the country, Article 2 in regards to one side to control the state, and Article 3 of the UUPA which expresses that the execution of standard freedoms is perceived the length of the truth actually exists.

UUPA does not explicitly regulate ulayat rights, because it will affect the natural development of ulayat rights in the life of customary law communities. However, this had fatal consequences, customary land rights were increasingly weakened by the existence of recognition and became the property of the authorities and private entrepreneurs.

Legal protection of customary rights in our country is regulated in various laws and regulations. However, with so many laws and regulations that provide such protection, there is confusion which results in an even more unclear fate of customary rights in our country. The lack of clarity regarding the protection of customary rights has resulted in the weakening and even loss of customary rights of indigenous peoples.

## CONCLUSIONS

In view of the portrayal of the conversation in the past part, it tends to be presumed that Debates that are designated

to choices of Standard Foundations, practically speaking actually require a Middle person. The existence of a mediator or intermediary in alternative dispute resolution (ADR) plays a crucial role. Even so, in the end, the power of standard regulation networks in Indonesia today over standard privileges is as of now restricted, because some laws and regulations regulate it. As explained in General Elucidation II number (3) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it has been regulated regarding the implementation of customary rights, in which the government places restrictions with the aim that development can be carried out in the interests of the people. Along with the development of science in all fields including the land sector, a legal product was born that was able to accommodate the diversity of land law in our country so that legal unification as one of the objectives of issuing this legal product could be realized. The legal product is Law Number 5 of 1960 concerning the Basic Agrarian Law. The legal product is the highest law recognized by the State of Indonesia and is located at the top when compared to Customary Law and decisions issued by Customary Institutions.

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