The Role of The Customary Head in Alternative Land Dispute Resolution in Batu Tuhup Village

Retno Sukma Putra  
IAIN Palangka Raya  
e-mail: retnosukmaputra07@gmail.com

Akhmad Kamil Rizani  
IAIN Palangka Raya  
e-mail: akhmadkamil23@gmail.com

Aris Sunandar Suradilaga  
IAIN Palangka Raya  
e-mail: arissunandarsuradilaga@iain-palangkaraya.ac.id

Abstract

This study discusses the role of adat/customary mantir in alternative land dispute resolution in Batu Tuhup Village, Murung Raya Regency, Central Kalimantan Province. Some factors causing land disputes in Batu Tuhup Village are unclear land boundaries between communities, these lands also sometimes lack clear land certificates and the characteristic of increasing land selling prices. Customary law is a community law that has developed from generation to generation. As an authentic law that grows in Indonesian society, disputes among indigenous peoples can be resolved according to custom as an alternative to dispute resolution. This analytical descriptive research method collects data to describe or present an image of an object under study. While this research is in the field in nature, namely seeking an expression of meaning by searching for data in the form of interviews with villages, traditional leaders, and traditional heads/mantir adat. The results of this study are the role of the customary head as a facilitator who becomes a liaison between the disputing parties, as well as a mediator for the disputing parties, a leader of the customary court, as well as a judge of peace in making decisions on land dispute resolution in the customary deliberation process.

Keywords: customary head, alternative dispute resolution, customary law

A. INTRODUCTION

Compared to Western law, some people still lack respect for customary law that lives in society or customary law. The community thinks that customary law is out of date. This is because customary law is a community law that has developed from generation to generation. As an authentic law that grows in Indonesian society, its role is significant in developing national law. As seen from its development, customary law is one of the unwritten sources of federal law, namely its values, concepts, principles, and legal institutions. This is expected to contribute to the development of national law.

Development of National Law that fulfills the demands of a sense of justice and legal certainty but ensures that it satisfies national instincts with the philosophy of Pancasila and the 1945 Constitution. President July 5, 1959. According to Article II, the transitional rules of the 1945 Constitution state that "all state bodies and regulations that are still valid as long as they have not been enacted are new according to this Constitution." Article 18b (2) of the 1945 Constitution "The state recognizes customary law community units and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law. Indische Staatsregeling (IS) article 131 paragraph b sub (b). According to this provision, their customary law applies to the Original Indonesian Law class and the Eastern Foreign group. Here it shows the power of customary law that applies to Indigenous Indonesia. Law No. 4 of 2004 on the Main Law on Judicial Power does not mention Customary Law. However, according to Article 17, paragraph 2 of Law Number 19 of 1964 and following the elucidation of Article 10, it has been stated that there is a written law and an unwritten law. So, the law
that is not reported here means customary law. In addition to the article above, although it has now been repealed and replaced by Law number 14 of 1970 in the general explanation section 7, it has also mentioned unwritten Customary Law, which means Customary Law.

The significance of land for human life is very diverse. First, the means of production that will bring prosperity from an economic point of view. Second, a person's position in community decision-making can be influenced politically by his land. The third cultural capital has the power to determine the social status of its owner. Fourth, this has a sacred meaning because everyone will eventually return to earth. The multidimensional importance tends to mean that people who own land will defend their land in any way if their rights are violated. The significance of land for human life and for a country is proven by the constitutional regulation in the 1945 Constitution of the Republic of Indonesia article 33 paragraph (3) that "Earth, water and the natural resources contained therein are controlled by the state and used for the maximum for the prosperity of the people. The provisions of this article later became the philosophical basis for land management in Indonesia, legally regulated in the 1960 Law of the Republic of Indonesia concerning the basic agrarian regulations, which became known as the Basic Agrarian Law (UUPA).

Ownership of land expressly regulated in the Basic Agrarian Law is also regulated by customary law provisions. Customary law also provides guarantees and legal certainty of land ownership based on the togetherness and unity of indigenous peoples. Customary Land Law, as part of Customary Law, has experienced several developments that often result in land disputes. Land disputes usually occur between Indigenous people or companies. Likewise, land disputes often arise in Batu Tuhup Village, Laung Tuhup District, Murung Raya Regency, Central Kalimantan Province. When conflicts over land disputes occur, efforts to resolve land disputes through the customary head take precedence as a forum for deliberation. The customary head is considered to have an essential role in resolving land disputes that occur by being able to resolve customary land disputes through reflection for consensus. The position of the Traditional head in resolving land disputes in the community in Batu Tuhup Village, Laung Tuhup District, Murung Raya Regency, Central Kalimantan Province, is to become a mediator and facilitator in the process of resolving land disputes so that harmony and peace are maintained in society so that conflicts do not occur.

B. RESEARCH METHOD

The method used in this paper is analytical descriptive, namely by collecting data or samples that describe or present an image of an object under study. While this research is field research, namely looking for an expression of meaning by looking for data in the form of interviews with villages, traditional leaders, and traditional heads/ mantir traditional.

C. RESULT AND DISCUSSION

1. Authority And Influence Of The Custom Head

"The traditional head is the father of the community. He becomes the head of the association as the head of the extended family; he is the social leader of community life." Soepomo defines the meaning of a traditional head. As a result, the adat head is tasked with maintaining the existence of law in the association and ensuring that it functions properly. The daily activities of the Traditional head cover all areas of society. In society, there is no closed place for customary heads to take a role in maintaining and maintaining peace, balance, and harmony.

---

The activities of the Traditional head can be divided into three parts, namely:

a. Actions regarding land affairs are related to the existence of close ties between the federal land (human group) who control the land.

b. Completion of the law as an effort to prevent violations of the law (Prevenlieve Rechizorg) so that the law can work properly.

c. Carrying out the law as a legal correction after the law has been violated (Repseive Reshtszorg). 4

In every action, the customary head is always based on the law that applies in his community. He plays the role of a village peace judge in the field. The traditional head takes action to restore customary peace, chooses a balance in the village atmosphere, and converts the law in the event of a dispute or unlawful act. Teer Haar stated that if the customary head makes a decision, the traditional law that applies to the community can become binding law in behavior. Because according to him, as long as the customary head has not determined the community's behavior, the law still needs to be binding. According to this view, customary heads are important in determining customary law norms. 5

The word custom comes from the Arabic "Adah," which means habit, which is something that is often repeated. The custom in the sense of custom is actually a normative habit that has embodied the rules of behavior that apply in society and are maintained by the community itself. 6 With the combination of the meaning of the term Traditional Head and custom, as stated above, the Traditional head has the meaning of a leader who leads normative habits and has embodied the rules of behavior that apply in the area or area of customary law, which is continuously maintained continuously.

The function of the Traditional head in society is not much different from the function of Customary Law because it is a function of the Traditional head in society as follows 7:

a. Provide guidelines to members of the community on how they should behave in social life. And the basis of this behavior is normative habits, namely Custom and Customary Law.

b. Maintaining the integrity of the community in the community so that the community remains preserved and can be felt by various actions of members of the community that are not in accordance with Customary Law and Customary Law.

c. Giving support to members of the community to establish a social control system. Social control is more in the nature of supervision of the community's behavior so that the association's life can be maintained as best as possible.

d. Pay attention to every decision that has been determined by customary law so that the decision has authority and can provide legal certainty that binds all members of the community.

e. It is a place for community members to rely on to solve, protect and guarantee peace, so the Customary head is the only place for community members to rely on to solve their problems.

Customary law is the law of society that grows and incarnates from the cultural soul of the Indonesian nation. Customary law grows and develops from community habits that cover all aspects of life. Therefore, in the life of traditional society, there are many values that grow to guide behavior and become a reflection of attitudes based on values in society. Accepting and acknowledging behavior will give birth to habits that guide the behavior of society.

The role of the Traditional head is to become an environmental balance with one another so that harmony and peace are maintained in society. Therefore, where there is a balance disturbance in society, it must be prevented and restored, either by means of payment in the form of material or non-material. In the context of solving and restoring this balance disturbance, of course, the customary head can impose sanctions on community members who have violated these customs. In addition, as executors of customary law, traditional heads are required to be able to maintain the integrity of customary law by resolving problems that occur in society. In addition, according to Soepomo, the customary head also acts as a peace judge who measures the severity or lightness of the sanctions given to members of the community in dispute. With the existence of customary sanctions, it is expected to be able to restore the image of customary law so that its integrity can be upheld.

2. Factors Of Land Disputes In Batu Tuhup Village, Laung Tuhup Sub-District, Murung Raya District, Kalteng Province

A land dispute is a process of interaction between two or more people or groups who each fight for their interests or the same object, namely land and other objects related to land, such as water, plants, mines as well as air which is on the boundary of the land in question. In general, according to Rusmadi Murat, there are several types of problem characteristics of a land dispute, including:

- Issues related to priority can be applied as holders of legal rights to land with the status of rights or to land with no rights.
- Objection to a reason for rights or evidence of processing used as a basis for granting rights.
- Mistakes or mistakes in the granting of rights due to the application of fewer or incorrect rules.
- Disputes or other issues that contain practical social aspects.

The status of land ownership is regulated in customary law, and state law or Agrarian law limits and directs every member of the community to respect the rights and obligations of others so that conflicts in life together can be avoided. However, the existence of a law does not guarantee to keep conflict away from social life. The results showed that the things that caused the land dispute in Batu Tuhup Village, Laung Tuhup District, Murung Raya Regency, Central Kalimantan Province included:

a. Land Boundary

The existence of clear land boundaries with land belonging to other people or state land is an indicator that the community legally and clearly owns the land. If land boundaries are clear, it will be easier for other parties or the government to accept the legitimacy that someone owns the land. In Batu Tuhup Village, some of the community's customary land used for fields or plantations needs clear boundaries of ownership and land area. Natural boundaries such as trees, piles of stones or wood (Patok), and certain soil mounds usually mark customary land boundaries. Natural land boundaries can be destroyed or moved by certain individuals or groups to manipulate boundaries. Trees and rocks, for example, may be destroyed or moved from one site to another by an individual or group to expand land. Nordin Anwar explained that land problems are more likely to arise when customary land boundaries rely on natural

---

boundaries such as large trees. Thus, the emergence of mutual claims on the land.\textsuperscript{12}

b. No Certificate of Land Rights

Land rights are rights granted by the state in accordance with the 1945 Constitution, articles 27–34. In addition, the Law of the Republic of Indonesia Number 5 of 1960 states that every citizen has the right to have absolute land rights.\textsuperscript{13} Most people who own land in Batu Tuhup Village do not have clear and convincing proof of ownership, as the provisions stipulated in UUPA No. 5 of 1960 or provisions of local customary law as the basis for land ownership rights. Mr. Nordin Anwar said that land boundaries were not fixed and there were no certificates of land rights in the form of certificates, SKTs, or customary certificates as a basis, and this caused a land dispute that occurred in Batu Tuhup Village.

c. Increasing Economic Land Selling Value

The land is a basic need for every human being.\textsuperscript{14} So an important island for everyone; it is common for people to want to own good land by buying it, receiving an inheritance from their parents, and clearing forests from state land. So valuable is land for human life; the increasing need for land for both development and business premises will also impact the selling value of the land. Development developments that are taking place in Batu Tuhup Village in the agricultural and plantation sectors continue to increase, so the need for large-scale land will also increase. According to Mr. Akhmad Readi, an Indigenous Community Leader, he stated that the increasing selling value of land prices would also increase the level of land disputes that occur. The increasing selling value of land causes the parties to want to acquire/own land in an improper manner, and it will be resold to the community with a high selling price. With a high selling price, profits will increase.\textsuperscript{15}

Increasing the selling price of land will not necessarily bring happiness and prosperity as mandated in the constitution, but its development can lead to land disputes. Land disputes will arise when individuals want to own land in an improper way (against the law) by claiming or seizing other people's land rights with threats of violence. Likewise, Mr. Heriyadi, the Village Head of Batu Tuhup Village, said that with many plans to enter companies/PTs and investors coming to Central Kalimantan, precisely to Batu Tuhup Village, which is a lowland area that merges with the Barito river, therefore it will create a great opportunity for risks. Disputes over land ownership, both in terms of land tenure boundaries and mutual claims of privilege by siblings because the land was inherited from previous parents who had passed away. So things like this will later become a source of dispute over land ownership because it will be sold to the PT/Investor.\textsuperscript{16}

The high selling price of land is not infrequently used to gain profit by breaking the law. Land disputes will always go hand in hand with land prices. With the increase in land prices in Batu Tuhup Village, many people reported land disputes that occurred both with individual/group communities claiming land boundaries and land ownership. Increasing the economic value of land is also a cause of land conflicts. When economically the land does not provide anything of economic value to people's lives, where the land is only used for farming and gardening with very little income even though they work with difficulty, people tend to control the land only as long as it can be processed or used as needed. If the land they cultivate does not produce satisfactory yields of rice, corn, or tubers, they leave it and are allowed to

\textsuperscript{12} Interview with Nordin Anwar (Tokoh adat masyarakat dan mantan Kepala Desa Batu Tuhup), February 11, 2023.
\textsuperscript{13} Sari, I, \textit{Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)}, 2017.
\textsuperscript{15} Interview with Akhmad Readi (Tokoh Masyarakat Desa Batu Tuhup), February 11, 2023.
\textsuperscript{16} Interview with Heriyadi (Kepala Desa Batu Tuhup), February 12, 2023.
become neglected, and other people may then cultivate it and become their property.

3. The Role Of The Head Of Adat/Mantir Adat In Alternative Dispute Settlement

Land ownership in urban and rural areas is always affected by land disputes. The community tries to find a solution to the argument so that it doesn't happen again. To carry out the settlement process, steps will be taken to resolve any customary land disputes. The actions taken by the community to reach an agreement with the disputing parties were discussed in this discussion. This is done to avoid prolonged conflicts, and the community still believes that the customary head (Damang/Mantir) can resolve land disputes intelligently and maturely. The community strongly desires that land disputes can be resolved per applicable customary law provisions. So that customary heads can carry out and resolve customer issues delegated to them following the Belom Bahadat principle and carry out their duties as enforcers of customary law. When there was a communal land dispute, the Batu Tuhup Village residents knew that all community members would respect their position if there were problems the community could not resolve. Reporting land disputes to the customary head and providing evidence of ownership of land rights is usually the first step in resolving land disputes in Batu Tuhup Village. Findings from previous interviews with Damang Adat indicate that there are many steps taken to resolve land disputes:

a. Summons of Disputed Parties

The summons the disputing parties here, namely the parties to the dispute with a summons letter by the customary head, the parties to the conflict were asked to tell each other what issues were in dispute and were asked to show evidence of the argument. In this trial, the customary head (Damang) always allowed the parties to defend the truth mutually; for this reason, the decision was postponed due to the need for witness testimony in the customary trial.

b. Calling Witnesses in Disputes

Witnesses are parties who know directly the history of the disputed land, such as witnesses who are directly adjacent or the original owner of the land. Calling witnesses to hear testimony from witnesses strengthens the evidence against the parties' statements. The witnesses other people have experienced, seen, and attended to the best of their knowledge about the case of the land dispute. Each witness took turns giving information about land disputes without any intervention from any party. The information provided was free according to what was known about the land dispute.

c. Mediation Process (Deliberation)

Deliberation is resolving land disputes through mediation led directly by the village-level customary head (Mantir) in Batu Tuhup Village, traditional leaders, village heads, RT, and security forces. Before starting the meeting, the customary head, who acts as a mediator (mediator), begins to prepare for deliberations at the appointed place and at a predetermined time based on the invitation given to the parties involved in land dispute resolution. Before starting the meeting, the traditional head or the mediator will try to condition that all parties present focus their attention on the deliberation so that it can run effectively and the consideration runs well as a family. Suppose the Damang/Mantir adat feels that the conditions where the review is held are conducive and the participants in the deliberation have focused their attention on starting the meeting. In that case, the customary head will begin the consideration by holding a joint prayer led by the customary Mantir according to their respective religions and beliefs. After praying with the customary head, the next step is to open the deliberations. The vital thing conveyed by the Customary head, especially to the witnesses,

---

17 Interview with Sonny Gunawan (Mantir Adat Desa Batu Tuhup), February 12, 2023.
was that when giving testimony, it was hoped that the witness would give his testimony honestly and following what he knew. Because the existence of a witness is intended to seek the absolute truth so that it will be beneficial for the disputing parties to reach a mutual agreement.\textsuperscript{18}

In the mediation process (deliberation), the customary Mantir considers that the disputing parties know and understand the intent and purpose of holding the consideration in resolving the land dispute and the regulations that apply therein. Then the Damang/Mantir adat will provide an opportunity for the disputing parties taking turns conveying matters which are the reasons for their interests resulting in a dispute. In addition, the parties are also allowed to get cases that constitute deviations committed by other parties on the land parcels under their control, which have resulted in disputes. Usually, in resolving land disputes, the disputing parties will act alone and do not authorize other parties to represent them so that the problem will not widen because the Customary Mantir and other interested parties will quickly know the interests and issues of the parties. In addition, the parties can easily convey what they want directly to other parties and the Mantir Adat. The first opportunity to report matters of interest is given first to the applicant. On this occasion, the applicant will convey the basics of ownership and the boundaries and origins of his land, which is the object of the dispute. The respondent will also bring the things done by the respondent which caused harm to the applicant accompanied by evidence.

In the implementation stage of the deliberation, the traditional head has a significant role apart from being a mediator for the customary head and a referee (jury) during the deliberation process. The witness from the respondent was the first to be allowed to testify. In presenting his testimony, the witness may give on the initiative that comes from not coercion. From the answers to the questions posed to the witness, it will be able to help the customary head find a solution to the land dispute being deliberated for material consideration for its settlement.

After it is felt that the parties are sufficient to convey their arguments and all their interests related to the disputed land parcels and the testimonies presented, the intermediary, in this case, the customary head, will provide another opportunity for the parties to offer their respective solutions to the land dispute—deliberations with the testimony and evidence that has been presented in reviews. The role of the customary head in resolving disputes by consideration (mediation) is used to seek a settlement in a way win-win solution, namely a form of compensation that benefits both parties to the conflict because no one wins and no one loses; both have the same position, namely peace. The resulting agreement is the best way out for land disputes, and both parties are satisfied. If the parties are unwilling to accept all the results of land dispute settlement decisions through mediation by the customary head, then the last resort will be taking an oath. According to Mr. Sonny Gunawan, the role of Basir or Pisor (religious leader) in land disputes can be needed if the land dispute cannot be resolved by the damang adat head/mantir adat, and the land dispute case is not continued, it is carried out through an oath according to the religion adhered to.\textsuperscript{19}

The role of religious institutions (Basir), if there is a gap, can act as an intermediary if the process does not go according to the results of deliberations (mediation). Both parties to the dispute can take an oath, and the Basir becomes the mediator. As for the means of a promise, it is usually used to cut rattan, sprinkle salt and ashes, and those who are guilty will receive the consequences of their actions.\textsuperscript{20}

Suppose no agreement is found in deliberation (mediation) in resolving disputes. In that case, the implementation of taking an oath is the last resort to seek the truth about who has the

\textsuperscript{18} Interview with Sonny Gunawan, Op.Cit.
\textsuperscript{19} Ibid
\textsuperscript{20} Ibid
right to the disputed land. As a result of taking the oath mediated by the basir/pisor, who does not have rights to the ground, will receive harmful consequences and even die, per the agreement conveyed by the basir/pisor with the means of cutting rattan and sowing the salt.

d. Closing Mediation (Deliberation)

Mediation results are the final decision of the land dispute resolution process. At this stage, the mediator, in this case, the Damang adat head and the customary Mantir will conclude what was discussed earlier in the deliberations. If, in the reflection, an agreement has been obtained regarding a solution to the land dispute that occurred, then the contract can be made in the form of a written agreement and a customary density decision letter which is given to both parties as a binding legal basis that the land dispute has been resolved and both parties have accepted the outcome of the decision gracefully.

With the results of the mediation (deliberation), it was emphasized that the customary head of Damang had a significant role in resolving land disputes in Batu Tuhup Village. Besides being the customary head damang, the customary head is also a peace judge as a mediator in resolving land disputes that are reported to adat. It is said to be a judge of peace in resolving land dispute cases because decisions are taken based on the mediation (deliberation) of all the parties to the dispute. The final decision is based on an agreement to create peace between the disputing parties. Decide and establish customary law regulations that bind the parties to the dispute in the form of a customary head decision which must be accepted and implemented.

D. CONCLUSION

The role of the customary head in resolving land disputes through mediation in the community in Batu Tuhup Village, Laung Tuhup District, Murung Raya Regency. The causes of land disputes in the community in Batu Tuhup Village are due to the existence of land boundaries/land boundaries that still use natural boundaries so that they are effortless to destroy/shift and move so; that they often cause land disputes between communities that own land. The absence of a certificate of land rights/land certificate, a land certificate is proof of legal ownership, so its lack often causes disputes because both of them cannot legally prove the land rights. The economic increase in the selling value of land and high/expensive land prices will always cause land disputes because high land prices will cause every person/community to want to control the ground in any way.

The role of the customary head in resolving land disputes through alternative dispute resolution is as a facilitator who facilitates/liaisons with the disputing parties before the mediation process. As a mediator for both parties to the dispute in the land dispute settlement process in Batu Tuhup Village. As the leader of the customary court in the process of resolving land disputes in Batu Tuhup Village. As a peace judge in making decisions on land dispute resolution during the customary Mantir density deliberation process.

E. REFERENCES


Koswara, I. Y. Pendaftaran Tanah Sebagai Wujud Kepastian Hukum dalam Rangka Menghadapi

Interview with Nordin Anwar (Tokoh adat masyarakat dan mantan Kepala Desa Batu Tuhup), February 11, 2023.
Interview with Akhmad Readi (Tokoh Masyarakat Desa Batu Tuhup), February 11, 2023.
Interview with Heriyadi (Kepala Desa Batu Tuhup), February 12, 2023.
Interview with Sonny Gunawan (Mantir Adat Desa Batu Tuhup), February 12, 2023.