



Indigenous Land Boundary Dispute between Awi Clan and Afar Clan in the Abepura District, Jayapura City

James Yoseph Palenewen¹, Marthinus Solossa²

Cenderawasih University, Indonesia | jamesyosephpalenewen82@gmail.com¹

Cenderawasih University, Indonesia | marthinussolossa32@gmail.com²

Received: 04-05-2023

Reviewed: 12-05-2023

Accepted: 29-05-2023

Abstract

Land border disputes often arise both in rural and urban areas with various problems related to customary land boundaries which can trigger clashes or conflicts between groups. Knowing the things that cause disputes in customary land boundary rights between the Awi and Afar clans and to find out the obstacles and obstacles faced in resolving customary land border disputes between the two groups. The approach used in research is empirical method, namely through field research or direct observation at research locations in order to obtain clarity about the object under study. The results of this research show that the dispute between the Awi clan (in Nafri village) and the Afar clan (in Enggros-Tobati village) occurred because the Afar clan put up a land claim flag on one of the red bridge road axles, but the Awi clan disagreed because they thought the land belonged to their group. Barriers and obstacles in resolving customary land border disputes between the Awi and Afar clans are only two factors, namely internal and external.

Keywords: Disputes, Boundary, Customary Land, Awi Clan, Afar Clan

Introduction

Earth is a gift from the Creator and is also very important for human survival, so automatically land in human life cannot be ignored. Besides being needed by everyone, the earth can also be used as a business object because it has economic value. For people who adhere to customary law, land has a very high value because it is the only asset that is immovable and can be profitable. Apart from that, land is also a shelter, a place to make a living, and a burial place (Soerojo Wingjodipoero, 1973).

In addition, the term land is used in a juridical sense, which has been formally defined by the Basic Agrarian Law (UUPA). Land disputes refer to differences in values, interests, views, and perceptions between individuals and legal entities (private and public) regarding

Indigenous Land Boundary Dispute between Awi Clan and Afar Clan in the Abepura District, Jayapura City

the status of land ownership or control (Nasrun Hipan et. al, 2018). Conflicts that arise from social interactions within customary law communities must be resolved quickly so that problems are not neglected and become increasingly complex (Riska Fitriani, 2012).

Cases of land disputes often occur due to conflicts of interest between the parties involved, as explained by Maria S.W.Sumardjono (2005), namely conflicts between the people and the bureaucracy, the people and state companies, the people and private companies, and conflicts between the people themselves. Indigenous peoples have land rights known as "hak ulayat", which are rights that are attached to them due to law and culture, and give them the authority to control all of the land or ulayat land that is in their control to be used according to their needs.

Conflicts regarding customary rights that occur from the government's side are often seen as obstacles to development, while from the customary law community's side, conflicts or problems that arise give rise to views or attitudes as a form of forced appropriation.

In particular, the author sees that the dispute that occurred within the customary law community between the Awi and Afar clans stems from the claims of each clan that the land bordering the Youtefa Red Bridge belongs to them. The beginning of the conflict between the two clans was when the Afar clan put up one of the road axles of the red bridge with a land claim banner, then the Awi clan felt dissatisfied because they felt that the land belonged to them. Since then, disputes between the two clans have occurred.

Literatur Review

In the early history of Indonesian law, the term land was explained in Law Number 5 of 1960 concerning Basic Agrarian Regulations. In Article 4 of the UUPA it is stated as follows. "On the basis of the right to control from the state as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be given to and owned by people, both alone and together with other people and legal entities".

Dispute is a situation where there is a party who feels aggrieved by another party, which then the party conveys this dissatisfaction to the second party. If the situation shows differences of opinion, then what is called a dispute occurs. In the legal context, 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 default by the parties or one of the parties (Nurnaningsih, 2012).

Research Method

The method used is empirical, namely a field research or by looking at the facts that occur at the research location so that the writer obtains clarity about the matter being studied.

Result and Discussion

The word Injros comes from two syllables, Inj means place or village, while ros means two. Therefore, the people of the Tabati Injros tribe call it the second place or village.

According to Marcel, “Actually it is Injros. However, because people from outside said Injros it was rather difficult, they called it Enggros and until now we still call it Enggros. However, if we are native children in Tobati-Enggros, we know that Injros is the 2nd village, Tobati is the 1st village and Injros is the 2nd village. So, such is the history that the mention of Enggros is more popular than the term Injros.

The people of Enggros village and Nafri village have a livelihood system that is more focused on the ecological environment. They make use of the natural resources found above or below the land which is collectively owned land or communal land managed by clans or clans. They have hereditary knowledge about the land they manage. However, if there are those who carry out activities that cross the mutually agreed upon boundaries, it can cause conflicts and disputes both within and outside the community.

Generally, in indigenous culture, the economy plays an important role in meeting daily needs. The people of Enggros and Nafri villages also have a variety of livelihoods such as farming, raising livestock, hunting, gathering, planting sago and fishing.

Specifically, disputes or disputes that occurred within the indigenous community between the Awi clan (Kampung Nafri) and the Afar clan (Enggros-Tobati village) originated from the claims of each clan that the land adjacent to the Youtefa Red Bridge belongs to them.

Initially, this conflict began in Jayapura, Thursday (10/09/2020), when the Afar Marga put up a land claim flag on one of the red bridge road axles, which was then opposed by the Awi Marga because they felt that the land belonged to them. As a result, there was conflict between the two clans. Then, the customary heads from Nafri village and Enggros village came to the location of the flag installation to ask about the purpose of this action. However, residents of Enggros village spontaneously attacked several residents of Nafri village who were at the location, causing 5 (five) injuries from Nafri village.

At 15.30 WIT, after learning that there was news about an attack from the residents/people of Enggros against residents/people of Nafri, the residents of Nafri village immediately gathered to take countermeasures. This resulted in several inns being damaged and burned. Then at 16.00 WIT, security forces from the Jayapura City Police arrived at the location and immediately acted to disperse the crowd, help secure the situation and stop clashes between the two tribes at the Village Border. At 19.07 WIT, the Papua Regional Police Chief, Inspector General of Police Drs. Paulus Waterpauw arrived at the location of the incident and made a mediation approach with the Nafri tribe community. From the results of this incident, there were victims who suffered minor or serious injuries totaling 7 people, from Enggros four people were injured and from Nafri there were three and all of them who became victims have been brought to the hospital to receive treatment to restore their condition and health again.

The obstacles faced in resolving the customary land boundary disputes by these two villages were two factors, namely the first internal factor of the two clans was the desire to win alone, where each of them insisted on defending their territory which was the customary land of their clan, while those who secondly, from external factors, there are parties who are irresponsible and exacerbate the problems that occurred between the two villages. Even though these outsiders were not residents of the two villages and did not know the history of the two villages.

Indigenous Land Boundary Dispute between Awi Clan and Afar Clan in the Abepura District, Jayapura City

As a result of this incident there were also residents who were injured and made him want revenge, so that the two clans even involved other clans which were one village joining in to attack each other between villages.

In addition, there is a lack of insight and knowledge from the two villages that clashes or disputes can have fatal consequences, many residents are injured by sharp weapons. Meanwhile, external factors from the two clans were the intervention of a third party who was also not the owner of the disputed communal land, but joined the attack between one village and another. This automatically exacerbated the problems that occurred between the two villages.

Therefore, in customary law, settlement of land disputes is often carried out through non-litigation channels with mediation or customary deliberations. In cases of communal land boundary disputes between Enggros Village and Nafri Village which resulted in clashes and injuries to residents, the authorities (police) acted as mediators who only assisted the disputing parties in resolving their problems and did not have the authority to make decisions.

Tribal chiefs (Ondoafi) from the two villages attended as mediators/mediators to help resolve problems that occurred regarding the customary land boundaries of the two villages. Dispute resolution through Non-Litigation or ADR means is actually compatible with the character and lifestyle of the community which is familial in nature. Unlike the settlement of disputes through court proceedings which tend to be confrontational, pay more attention to victory or defeat, and ignore the social elements in society. In fact, many cases have piled up in court and never been completed. Therefore, mediation is the right choice in resolving disputes, because it is considered more effective. Some of the considerations that encourage people to choose dispute resolution through mediation include:

1. Quick solutions can be reached with only two or three meetings between the disputing parties, without having to go through a lengthy process.
2. Affordable fees, usually the mediator does not take a fee.
3. Privacy security guaranteed.
4. The result achieved is a joint victory for both parties.
5. Cooperation that is not emotional is used to reach a mutually beneficial agreement or peace.

Mediation is used as a means of settlement, but the main role is the customary head. Therefore, customary heads always pay attention to changes in all their actions and in carrying out customs. With the growth of law, work in the field or as a village/village peace judge became very important under the leadership and supervision of the customary head.

The role of the Traditional Head/Leader in indigenous peoples is the same as their function, namely:

- 1) Provide direction to community members on how to behave in social life. The basis of this behavior is customary and customary law which is normative.
- 2) Maintain togetherness, unity and unity in society so that harmony is maintained.
- 3) The social control system in society is maintained.
- 4) Every decision in customary law must be considered and guarded so that misunderstandings do not occur.

- 5) Become a sanctuary for community members to resolve disputes and ensure security.

Conclusion

Based on the results of the research above, the conclusions that can be drawn by the authors are as follows:

1. Factors causing disputes over the land boundaries of the Awi and Afar clans in Jayapura are generally related to cultural aspects or the views of customary law communities who have been defending customary land from their territory for generations. Indigenous land is considered as a legacy from the ancestors which is automatically passed down to the next generation. In addition, customary land is also used as a source of livelihood for gardening (farming), livestock farming, hunting, gathering, tapping sago, and fishing. In particular, the conflict that occurred within the customary law community between the Awi clan (Kampung Nafri) and the Afar clan (Enggros-Tobati village) stems from the claims of each clan that the land bordering the Youtefa Red Bridge belongs to them.
2. The obstacles faced in the land disputes that occurred between the Awi and Afar clans were internal and external factors. The internal factor of the two clans that were in dispute was that they wanted to win each other, each of them persisted in defending their territory which was the customary land of their clan, there were residents who were injured as a result of clashes that made the two clans want to take revenge even involving other clans which were members of the clan. one village also joins in attacking each other between villages, and the lack of insight and knowledge from the two villages that clashes or disputes can result in fatal injuries to many residents from sharp weapons. While the external factor from the two clans was the interference of a third party who was also not the owner of the communal land that was being fought for but joined the attack between one village and another, so that the problems that occurred between the two villages became even worse. Settlement of communal land boundary disputes between Enggros Village and Nafri Village by the authorities (police) as a mediator who acts as a party that does not side with anyone in this case can be said to be neutral. It is mandatory to reconcile and resolve the problems that occur between the two clans who are fighting over land so that this problem does not drag on and spread here and there.

After drawing the above conclusions, the authors recommend the following steps:

- 1) The Jayapura City Government needs to provide a place for tribal chiefs from each village around Youtefa Bay to discuss the customary land boundaries of each village and set clear benchmarks. This aims to avoid misunderstandings that can trigger conflicts between villages.
- 2) Indigenous peoples in each Abepura District of Jayapura City also need to take part in socialization organized by the local government regarding customary land boundaries between villages. It is hoped that the example of the clash between Enggros-Tobati Village and Nafri Village can be used as a lesson so that it does not happen again and avoid serious injuries from sharp weapons.

Indigenous Land Boundary Dispute between Awi Clan and Afar Clan in the Abepura District, Jayapura City

References

- Adrian Sutedi (2018), *Peralihan Hak Atas Tanah dan Pendaftarannya*, Jakarta, Sinar Grafika.
- AP Parlindungan (1973). *Berbagai Aspek Pelaksanaan UUPA*, Bandung, Alumni.
- A.Setiady et.all (1985). *Hukum Tanah, Jaminan Undang-Undang Pokok Agraria Bagi Keberhasilan Pendayagunaan Tanah*, Jakarta, Bina aksara.
- Boedi Harsono (2003). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya*, Jakarta, Djambatan.
- Djamanat Samosir (2013). *Hukum Adat Indonesia*, Medan, CV. Nuansa Aulia.
- Elviriadi (2007). *Sebuah Kitab Hutan Untuk Negeri Gundul Mereguk kearifan Tetua Kampar*, Pekanbaru, Suska pers.
- Fakultas Hukum UGM (1978). *Laporan Penelitian Integrasi Hak Ulayat ke dalam Yuridiksi UUPA*, Depdagri-FH UGM.
- Fitriani Riska (2012). *Penyelesaian sengketa lahan hutan melalui proses mediasi di Kabupaten Siak*, Jurnal Ilmu Hukum Riau 3, no. 01.
- Muchsin (2006). *Kedudukan Tanah Ulayat Dalam Sistem Hukum Tanah Nasional*, dalam Varia Peradilan Talum XXI No. 245 April 2006, Jakarta, Ikahi.
- Mudakir Iskandar Syah (2019). *Panduan Mengurus Sertifikat & Penyelesaian Sengketa Tanah*, Jakarta, Bhuana Ilmu Populer.
- Maria S.W Sumardjono (2005). *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Jakarta, Kompas.
- Nia Kurniati (2016). *Hukum Agraria Sengketa Pertanahan Penyelesaian Melalui Arbitrase Dalam Teori dan Praktik*, Bandung, Refika Aditama.
- Nurnaningsih, (2012). *Mediasi: Aternatif Penyelesaian Sengketa di Pengadilan*, Jakarta, PT. Raja Grafindo Persada.
- Palenewen, JY, & Solossa, M. (2023). Penyelesaian Sengketa Tanah Melalui Hukum Adat Pada Masyarakat Adat Sentani Kabupaten Jayapura. *International Journal of Multicultural and Multireligious Understanding* , 9 (11), 458-463.
- Peraturan Menteri Negara Agrariaan /atau Kepala Badan Pertanahan Nasional nomor 5 tahun 1999 tentang pedoman penyelesaian masalah hak ulayat Masyarakat Hukum Adat.

https://toolsfortransformation.net/wp-content/uploads/2017/05/Permen-Negara-Agraria-NO.5-Tahun-1999_hak-ulyat.pdf

- Rusmadi Murad (1991). *Penyelesaian Sengketa Hukum Atas Tanah*, Alumni, Bandung, Mandar Maju.
- Shadily Hasan dan John.M. Echlos (1996). *Kamus Inggris Indonesia dan Indonesia Inggris*, Jakarta, Penerbit Gramedia.
- Sumarto (2012). “*Penanganan dan Penyelesaian Konflik Pertanahan dengan Prinsip Win-Win Solution oleh Badan Pertanahan nasional RI*” Disampaikan pada Diklat Direktorat Konflik Pertanahan Kemendagri RI.
- Tanati, D., & Palenewen, J. Y. (2022). Penerapan Ipteks Tentang Penyelesaian Sengketa Batas Tanah Ulayat Melalui Jalur Litigasi Dan Non Litigasi Pada Masyarakat Hukum Adat Di Kampung Nendali. *AMMA: Jurnal Pengabdian Masyarakat*, 1(09), 1133-1138.
- Tanati, D., Rongalaha, J., & Palenewen, JY (2022). Penerapan IPTEKS Tentang Penyelesaian Sengketa Tanah Ulayat Pada Masyarakat Hukum Adat Melalui Jalur Non Litigasi Di Kampung Asei Besar Distrik Sentani Timur Kabupaten Jayapura. *Jompa Abdi: Jurnal Pengabdian Masyarakat*, 1 (4), 42-51.
- Tanati, D. (2023). Peran Lembaga Adat Dalam Penyelesaian Sengketa Tanah Adat antara Marga Wonatorey dan Watopa di Kabupaten Waropen. *International Journal of Multicultural and Multireligious Understanding*, 10 (3), 278-283.
- Undang-Undang Republik Indonesia No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria. <https://s3.amazonaws.com/rgidocuments/27a192a9022ef8355f318e3f18efdf3925c79c37.pdf>
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria. <https://spi.or.id/wp-content/uploads/2014/11/UNDANG-UNDANG-No-5-Tahun-1960-1.pdf>
- Vollenhoven Van (1956). *Ichtisar lengkap DC Indonesier en zijrt grand jilid 1 (terjemaban Soewargono)*. Jogjakarta, Yayasan Badan Penerbit Gajah Mada.
- Wingjodipoero Soerojo (1773). *Pengantar adan Azaz-Azaz Hukum Adat*, Bandung, Alumni.