

Optimization Of Resolution Of Customary Rights Disputes Between The Dayak Agabag Customary Community And PT. KHL Through Deliberation

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Abstract.

This thesis aims to analyze efforts to resolve disputes through deliberation and the form of legal protection of the customary rights of the Dayak Agabag Indigenous Community with PT.KHL. This study uses an empirical legal research method with a qualitative approach where the research data is obtained through interviews with informants and literature in the form of legislation and data analysis techniques are taken from interviews and literature studies. The results of the study indicate that deliberation is an alternative dispute resolution that results in a mutual agreement, namely the provision of compensation money, UMKM training for the Community and empowering the Dayak Agabag indigenous community to work in the company and build a public facility around the company. As for legal protection for the Dayak Agabag indigenous community issued by the local government specifically for the Dayak Agabag itself, there is no such thing yet, but it is hoped that the government will immediately issue the latest regulations specifically regarding customary rights for the Dayak Agabag indigenous community so that there is strong legal protection and certainty for the Dayak Agabag community.

Keywords: Customary Rights; Customary Law Communities and Land Dispute Resolution.

I. INTRODUCTION

The term "Land" in the legal sense includes the surface of the earth as regulated in Article 4 paragraph (1) of the UUPA that "On the basis of the right to control from the state... it is determined that there are various kinds of rights to the surface of the earth called land which can be given and owned by people". The meaning of "given and owned land" with these rights is not limited to the use of land as the surface of the earth alone but also the body of the earth beneath it and the water and space above it, [1] In addition, the Law that regulates land issues is Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) UUPA is an implementation of the 1945 Constitution which gives the state the power to control the earth, water, and space. Provisions regarding this matter can be found in Article 2 of UUPA where the state has full power to regulate land issues in Indonesia so that the state can create rights that can be attached to a land. [2] Land as the most widely used agrarian resource by humans. In addition, laws and regulations regarding land are the most numerous compared to regulations regarding other agrarian resources. In Law Number 5 of 1960 concerning the recognition of customary rights and also emphasized in the 1945 Constitution Article 18 B paragraph (2) which states that the state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI) which are regulated in the Law. Based on this Article, it is known that the state recognizes and respects the existence and rights of customary communities.

The rights to customary land according to customary law in the agrarian law period before independence, one of the types of customary rights recognized was ownership rights, *yasan* (*yoso*) which means land where a person's rights to the land are derived from the fact that he or his ancestors were the first to open or work the land. [3] Ownership of land rights based on customary law at that time was recognized based on hereditary inheritance from ancestors to the present generation where from generation to generation they continue to work, manage and maintain the land. So that indigenous people believe that land that is still managed, maintained and worked by a person or a certain indigenous group, then according to customary law the person or indigenous group is the legitimate owner of the land they control. The use of land should be adapted to its condition and the nature of its rights, until it is beneficial both for the well-being and happiness

of those who have it and beneficial for the indigenous community itself and the country,[4] In Sebuku District, Nunukan Regency, there was a case regarding a customary land dispute between PT. KHL (Karangjuang Hijau Lestari) and the Dayak Agabag Customary Law community which began in 1998.

The Governor of East Kalimantan, Mr. Suwarna Abdul Fatah, launched a development program centered on converting 1 million hectares of land into oil palm plantations. As part of this program, IPK (Timber Utilization Permit) covering 200,000 hectares was distributed to 11 companies in Berau Regency and Nunukan Regency, one of which was PT. KHL (Karangjuang Hijau Lestari). Then in 2000, PT. KHL took wood from these concessions, but the development of the land into oil palm plantations had not yet occurred because some of the land in question was not suitable for oil palm plantations. Within 3 years, they had exhausted their wood supplies and shifted their focus to oil palm plantations. In 2004 The decision of the Head of the National Land Agency (BPN) to grant a Right to Cultivate permit with Number 85/HGU/BPN/2004 concerning the granting of HGU to PT KHL. Then in the year 2008 when PT.KHL claimed land in the area of 5 villages, namely Bebanas, Lulu, Melasa Baru, Sujau and Tetaban, with an area of approximately 600 hectares out of 20,000 hectares which without the knowledge and permission of the community was included in the Right to Cultivate (HGU) of PT.KHL. Bebanas Village has a land area of 8,969 hectares while the total area of the company's Right to Cultivate is 5,336 hectares divided into PT. KHL's HGU of 3,749.71 ha and PT.BHP's HGU of 1,856.29 ha. Although the community has repeatedly filed objections and protests, the company remains unmoved and does not care about the complaints and objections of the community, even though the community has shown evidence of land ownership.

Unilateral claims by the company have prevented the community from farming or cultivating because the land managed by the community is included in the concession of the company PT.KHL. The impact then resulted in criminalization of the Dayak Agabag indigenous community in 2010 and 2017, on charges of stealing oil palm fruit by PT.KHL. The same case happened again, 3 Dayak indigenous people from Tetaban village, namely Matius, Suande and Sion. One indigenous person has now been detained, named Suande. The police charged the suspects with Article 107 letter a and/or Article 107 letter d of Law Number 39 of 2014 concerning plantations based on the Decision of the Nunukan District Court case number 164/Pid.B/2021/PNNnk on Thursday, May 20, 2021 with the classification of the Theft case with evidence of 2 sacks of oil palm fruit and sentenced to imprisonment for 4 (four) months. This detention occurred after Suande fulfilled the Invitation for Clarification to investigator Sony Dwi Hermawan S.H, on March 8, 2021, and after providing clarification, Suande was immediately detained at the Nunukan Police and was not allowed to be visited by family and relatives. On April 5, 2021, four residents of Bebanas village were arrested and accused of stealing the company's oil palm fruit. The Nunukan District Court acquitted them because they were not proven to have stolen oil palm fruit from PT.KHL and PT.BHP. The company is still filing an appeal to the Supreme Court. The conflict continues and the BPN has asked for permission from the Minister of Agrarian Affairs and Spatial Planning (ATR)/head of the National Land Agency (BPN) held by Hadi Tjahjanto so that this problem can be resolved better with the current minister.

The transparency of HGU data nationally has been submitted in an information lawsuit by Forest Watch Indonesia (FWI) where in the dispute decision by the Jakarta PTUN in December 2016, the transparency of the HGU data was won, but the transparency has not been carried out by the Ministry of ATR/BPN. Based on this case, the researcher took the research title regarding Optimization of Settlement of Customary Rights Disputes Between the Dayak Agabag Indigenous Community and PT.KHL Through Deliberation, where the results of this study are expected to provide justice for the settlement of customary rights disputes between the Dayak Agabag Indigenous Community and provide certainty of legal protection rights for the Dayak Agabag Indigenous Community.

II. METHODS

The research used by the author to research and write the discussion of this thesis is by using the Empirical research method with a qualitative approach. A qualitative approach is an approach used to understand the meaning of social phenomena through in-depth interaction. [5] This study took research data through interviews with traditional leaders, the Head of the National Land Agency and representatives of the

PT.KHL Company. In addition, data acquisition was taken from literature in the form of legislation and data analysis techniques through interviews and literature studies.

III. RESULT AND DISCUSSION

The conflict that occurred in Sebuku between the Dayak Agabag indigenous community and the palm oil plantation company, PT KHL (Karangjuang Hijau Lestari) began with a land dispute. The Dayak indigenous community claimed that the land was the customary land of the indigenous community which was managed and inherited from generation to generation based on customary law. On the other hand, the palm oil plantation company obtained a HGU (Right to Cultivate) permit from the government to manage the land based on state legal regulations. The conflict arose because of the overlap between the customary land claims by the indigenous community and the government permit given to the palm oil company. The Indonesian government, in order to support economic growth and foreign investment, granted large land concessions to palm oil companies. This was often done without considering the rights of the indigenous people who had lived on the land for centuries. Based on the 1945 Constitution, Article 18B states: "The state recognizes and respects the unity of indigenous legal communities and their traditional rights." Where the government should provide land concessions and to support the country's economic growth, it is necessary to first pay attention to the traditional rights of indigenous peoples. Overall, the law and basic amendments have regulated and also protected the traditional rights of indigenous peoples.

In Article 24 of the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 98/Permentan/OT.140/9 of 2013 concerning Guidelines for Plantation Business Licensing, it states: "In the case that the land used for plantation business originates from customary land rights of the customary law community, then in accordance with the laws and regulations, the applicant for a plantation business license must first hold a discussion with the customary law community holding customary rights and residents holding rights to the land in question, stated in the form of an agreement on the transfer of land and compensation with the knowledge of the governor or regent/mayor according to their authority." In submitting the requirements and business permits, there must be prior deliberation between the company that wants to establish a plantation company and the local customary law community regarding the customary land rights of the customary law community affected by the plantation company's business use rights permit. However, based on the available information, the Agabag Dayak indigenous community has not received deliberation from the company PT.KHL regarding the customary land rights affected by the planting of oil palm trees by the plantation company PT.KHL. Thus, the result is overlapping claims of ownership between the indigenous community and the company. Indigenous communities do not have legal land certificates in accordance with state regulations, even though they have managed the land traditionally, but when the palm oil company obtains a concession permit from the government, there are often clashes of claims between the company and the indigenous community.

Indigenous communities also mark land boundaries in the form of natural boundaries such as rocks, rivers, mountains, and trees. These things are what give rise to conflicts of overlapping ownership of land where the company claims the boundaries of the business use rights permit based on legal data and physical data provided by the government, but the indigenous law community only knows the boundaries of the customary area based on natural boundaries. This is what causes the absence of a meeting point and agreement between the indigenous legal community and the PT.KHL company itself, because of different goals and desires where based on the main problem that occurs from the indigenous community is afraid of losing their homes and jobs because the land they have occupied so far has been occupied by the PT.KHL plantation company and several times the indigenous community took palm oil directly from the plantation which the indigenous community thought that the land was still the right of the indigenous community, but legally, the land belonged to the company on the basis of the Right to Cultivate. Likewise, the PT.KHL company claims legally with the permit granted by the governor to establish and build a plantation on the HGU Permit and the actions carried out by the indigenous community are very detrimental to the company because of the theft on the PT.KHL HGU land.

Settlement of land dispute with PT.KHL

Mediation is one form *Alternative Dispute Resolution* (ADR), which is a way of resolving disputes outside the court with the help of a neutral third party (mediator) who prioritizes the process of dialogue and negotiation so that mediation can help the parties reach a mutual agreement. According to Fisher and Ury, mediation becomes effective when the parties are willing to understand each other's interests, not just maintain their positions. Moore emphasizes that mediation is a flexible and participatory process that emphasizes achieving a mutually acceptable solution, not the victory of one party. Deliberation is a mediation that is not only oriented towards positive law, but also considers customary norms, cultural values, and family relationships. Rahardjo calls this approach a living law in society (*Living law*) so that deliberation not only aims to reach logical decisions, but also build harmony and strengthen social cohesion. In an effort to resolve the customary land rights dispute of this indigenous community, PT. KHL and the Dayak Agabag indigenous community have gone through several mediation and deliberation processes with different mediators. This is in accordance with the theory of non-adversarial dispute resolution (Alternative Dispute Resolution – APS) which involves a more flexible and collaborative dispute resolution method. As the mediation method has been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Regulation Number 1 of 2016 concerning mediation procedures in court.

In this approach, the disputing parties try to reach a mutual agreement without having to go through the courts. In an effort to resolve this dispute, the mediation and deliberation methods are used. In the application of the mediation and deliberation methods, it has been carried out several times by both parties with different mediators. The first deliberation was conducted by a mediator of traditional figures attended by the traditional head, the Dayak Agabag indigenous community and the head of the PT. KHL office in 2010 in Seuku, North Kalimantan. In this first deliberation, it was decided that the PT. KHL Company would provide compensation money or what is commonly called "Plasma" for the indigenous community, but because the deliberation and decision were not based on a valid agreement, it finally made one of the parties, namely PT. KHL, default and cause another dispute. So this first deliberation was unsuccessful so the next deliberation was held. In the second deliberation, it was carried out by a mediator from the National Land Agency Office, namely Mr. Benlius Simanjuntak, S.H. which was attended by the Customary Head, the Dayak Agabag Indigenous Community and PT. KHL's attorney. The second deliberation was held in 2022 at the Nunukan Regency National Land Agency Office. In this second deliberation, the indigenous community only demanded that the BPN show proof of PT.KHL's HGU certificate and the indigenous community only wanted to see the actual company boundaries, because the indigenous community felt that the company's land had exceeded the boundary permit granted.

However, the Company and BPN could not show proof of PT.KHL's HGU certificate because the mediation process was carried out outside the court so that the BPN directed the indigenous community to file a lawsuit in court so that further dispute resolution in court could show evidence of PT.KHL's HGU certificate if the judge asked to be shown in court. Until now, after the last mediation, the indigenous community has not filed a lawsuit with the Nunukan Regency District Court. This second meeting was also unsuccessful, so the meeting was held at the next meeting. In the third deliberation, carried out by the mediator of the Adat figure, Mr. Panggeran, which was attended by the Dayak Agabag Indigenous Community, the Customary Head and the Head of the PT.KHL branch office in 2023 in Seuku, North Kalimantan. In this third deliberation, the results of the deliberation were finally formulated which was a joint agreement between PT. KHL and the Dayak Agabag Indigenous Community. The decision resulted in 3 joint agreements, namely Providing compensation money to the Dayak Agabag Indigenous Community of 20% until the company's business use rights permit ends, providing training and empowering the Dayak Agabag indigenous community as workers in the plantation sector, building public facilities around the company.

Legal protection for the Dayak Agabag customary law community

The Nunukan Regency Government has so far issued regulations to protect, recognize and respect the Dayak Agabag customary law community, which is one of the customary tribes in the Nunukan Regency

area, as stated in the Nunukan Regency Regional Regulation Number 3 of 2004 concerning Customary Rights of Customary Law Communities, which has undergone changes to the regulations in the Nunukan Regency Regional Regulation Number 15 of 2018 concerning amendments to the Nunukan Regency Regional Regulation Number 3 of 2004 concerning Customary Rights of Customary Law Communities. The PERDA only discusses the criteria, subjects, objects and transfer of customary rights of customary law communities, while regarding the boundaries and specific rules for each customary tribe in the Nunukan Regency area, there have been no regulations issued by the Nunukan Regency government itself. Based on the statement of Mr. Benlius Simanjuntak, S.H. as the head of land dispute resolution at the Nunukan Regency National Land Agency office, explained that the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency issued a new regulation, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities with the existence of this PERMEN ATR/BPN can be a solution to land problems, especially related to the control of Customary Rights and also to guarantee legal certainty over the customary rights of customary law communities.

From this regulation, in 2025 the BPN office will create a special Task Force to run this program, but in the North Kalimantan Province area it will only start in one Regency/City, namely Malinau Regency, then in the following year registration for these Customary Rights will be opened in other Regencies/Cities. So for the Nunukan Regency area, especially for the Dayak Agabag customary law community, they have not been able to register their customary rights. Therefore, with the Regulation of the Minister of ATR/BPN or the regional government, it is hoped that it can immediately open a registration program for the administration of customary rights for customary law communities and can immediately provide strong legal protection and certainty regarding the boundaries of customary rights in the customary territory of the Dayak Agabag customary law community. This is in accordance with the theory of legal protection according to Utrecht which states that legal protection is given by law to legal subjects in order to guarantee the rights that have been regulated by legal norms and enforce them through authorized institutions, where Utrecht distinguishes two forms of legal protection and can be analyzed as legal protection for the customary land of the Dayak Agabag Customary Law Community which can be analyzed as follows:

1) Preventive Protection

Protection that aims to prevent violations of rights. This form is realized through the creation of fair, transparent laws and regulations, as well as restrictions on government authority so that it is not arbitrary. The Provincial Government to the Nunukan Regency Government have made laws and regulations governing the Dayak Indigenous Community in North Kalimantan, especially in the Nunukan Regency area. The regional regulations regulate, respect the existence of the customary law community in the North Kalimantan and Nunukan Regency areas, empowerment of customary communities and customary land in the Nunukan Regency area. The Regional Regulation only regulates the entire customary community in Nunukan Regency in general and there are no specific regulations governing each indigenous tribe in Nunukan Regency, especially regarding the Dayak Agabag Customary Law Community.

2) Repressive Legal Protection

Protection provided after a violation of rights occurs. This protection is realized through a dispute resolution mechanism, either through litigation (court) or non-litigation (alternative settlement), as well as recovery for losses experienced by the injured party. Based on the dispute over the customary land of the Dayak Agabag customary law community with PT.KHL, it is known that the regional government has provided repressive protection according to Utrecht which can be proven by the existence of a non-litigation dispute resolution mechanism, namely mediation and deliberation, which resulted in a joint agreement where the results of the joint agreement provide recovery for losses experienced by the injured party. So based on the results of the dispute resolution, the regional government, especially the Nunukan Regency Government, needs to make laws and regulations

governing legal protection for the customary land of the Dayak Agabag customary law community so that violations of rights that have occurred previously do not occur again either in the Dayak Agabag customary law community or for other customary law communities in the Nunukan Regency area.

IV. CONCLUSION

In this study, the author draws the conclusion that:

1. Optimization of the settlement of customary rights disputes between the Dayak Agabag community and PT.KHL (Karangjuang Hijau Lestari) can be resolved through deliberation, where the deliberation resulted in 3 joint agreements, namely the company PT.KHL provides compensation money to the Dayak Agabag Customary Law community every month of 20% until the PT.KHL business use permit is revoked or transferred, provides training and empowers the Dayak Agabag Customary Law Community as workers in the plantation sector, and PT.KHL will build public facilities around the company such as schools and bridges for the Dayak Agabag customary law community.
2. Legal protection has been regulated through the Nunukan Regency government in the form of Nunukan Regency Regional Regulation Number 15 of 2018 concerning amendments to Nunukan Regency Regional Regulation Number 3 of 2004 concerning Customary Rights of Customary Law Communities. The Regional Regulation regulates all Customary Law Communities in the Nunukan Regency area and has not specifically regulated the Dayak Agabag Customary Law Community.

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