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The Role of The Village Head as Mediator in Resolving Land Disputes

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Abstract

This research was conducted in Oelnasi Village, Central Kupang District, Kupang Regency- Indonesia. In this area, there are still many customary lands belonging to customary law communities which often cause interest conflicts. The purpose of this study is to determine the role of the village head as a mediator in resolving land disputes. The results of the study found that the things that caused land disputes in Oelnasi Village, Kupang Tengah District, Kupang Regency were unclear land boundaries, unfair practices, loss of witnesses and historical actors, increasing economic value of land, maintaining social status, wrong understanding of customs, and lack of socialization. The role of the Village Head as a Mediator in resolving land disputes is as a peace judge in the trial and as a decision maker in which the parties are binding on the disputed decision. While the obstacles that often occur in resolving land disputes through the Oelnasi Village Head are internal factors caused by witnesses who do not want to be witnesses, unclear land boundaries and unclear land owners. External factors originating from third parties that emerged during the dispute deliberations have found a solution, the parties have also agreed, then there are other parties who raise objections so that new problems arise. The conclusion from the results of this study is that the role of the Village Head is very significant in resolving land disputes, because the Village Head is considered a judge of peace between communities in resolving land disputes.

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1. Introduction

Constitutionally, land is regulated in Indonesian Article 33 paragraph (3) of the 1945 Constitution, as it is written "*Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people*" (Fitzpatrick, 1997). The provisions of the article later became the philosophical basis for land regulation in Indonesia which was specifically stated in Law Number 5 of 1960 concerning Basic Agrarian Regulations which became known as the Basic Agrarian Law (UUPA) (Lucas & Warren, 2013). The LoGA provides a different understanding between "earth" and "land". The definition of "earth" in the LoGA is regulated in Article 1 paragraph (4) which states that: "In the sense of the earth, other than the surface of the earth, including the body of the earth beneath it and under water." The article above provides an explanation of what is meant by the term "earth", which includes the surface of the earth (which is then referred to as land) along with what is below it (the body of the earth) and what is under water. Furthermore, the definition of "land" is explained in the provisions of Article 4 paragraph (1) that: "On the basis of the right to control from the state, it is determined that there are various types of rights on the surface of the earth, which are called land which can be given and owned by good people themselves. alone or jointly with other people or legal entities". In the above provisions, what is called land is the surface of the earth. Land rights are rights to the surface of the earth, while the earth includes the land, the body of the earth and what is under it and under water (Adnyana, 2021).

The complexity of the land problem often worries people who feel that their rights are being violated by other irresponsible parties, with the recognition of existing land ownership. It is suspected that the problem was caused by unclear land boundaries and the absence of a land certificate as proof of ownership of rights (Abdunayimova, 2020). Thus, the role of the village head is very much needed in resolving existing cases by prioritizing aspects of justice for the parties. Of course, the implementation of this role must be supported by an appropriate settlement mechanism so that it does not cause destructive access in the village community. To resolve existing land disputes, the Oelnasi Village community takes a non-litigation (mediation) route by involving the Village Head as a mediator.

2. Materials and Method

2.1 Empirical View of Role

Biddle (1986), in 'Recent developments in role theory. *Annual review of sociology*, *12*(1), 67-92. states role is a set of behaviors expected of a person according to a given social position both formally and informally. Roles are based on pre-research (terms) and role expectations that explain what individuals must do in a given situation in order to fulfill their own expectations or the expectations of others regarding those roles. Furthermore, Kiser, E., & Hechter, M. (1991) state that role is a dynamic aspect of position (status). If a person carries out his rights and obligations according to his position.

2.2 Empirical View of Village

Understanding Village in general is more often associated with agriculture. For example, West (2003) defines the village as "every settlement of farmers (peasants)". Actually, the agricultural factor is not a characteristic that must be attached to every village. The main characteristic inherent in each village is its function as a residence (settlement) of a relatively small community group.

Meanwhile, Feuchtwang et al (2002) provides an understanding of the village through dividing the notion of community into two types, namely large communities (such as: cities, states,

countries) and small communities (such as bands, villages, neighborhood associations and so on). In this case, they define a village as "a small community that stays permanently in one place. From this opinion, it does not provide an affirmation that the village community is specifically dependent on the agricultural sector. In other words, it means that the village community as a small community may have various characteristics of economic activity, not only in the agricultural sector.

2.3 Empirical View of Mediator

Etymologically, the term mediation comes from the Latin, *mediare* which means being in the middle. This meaning refers to the role displayed by a third party as a mediator in carrying out their duties to mediate and resolve disputes between the parties. "Being in the middle" also means that the mediator must be in a neutral and impartial position in resolving disputes. He must be able to safeguard the interests of the disputing parties fairly and equally, so as to foster trust from the disputing parties.

Menkel-Meadow, C. (2015) mentions that Mediation as an alternative dispute resolution has also been widely known and has attracted a lot of interest. Furthermore, Boulle, L., & Rycrof, A. (1998) state mediation as an intervention in a dispute or negotiation by an acceptable, impartial and neutral third party who does not have the authority to make decisions in assisting the disputing parties in an effort to reach an agreement voluntarily in solving disputed problems Walton, R. E. (1970). Mediation in negotiation carried out with the assistance of a third party (Baser, B., & Swain, 2008).

In Law No. 30 of 1999, alternative dispute resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment." In general, mediation can be interpreted as an effort to resolve disputes between the parties by mutual agreement through a mediator who is neutral, and does not make decisions or conclusions for the parties but supports the facilitator for the implementation of dialogue between parties with an atmosphere of openness, honesty and exchange of opinions to reach consensus. In other words, a problem-solving negotiation process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement (win-win solution). According to Stulberg, J. B. (2011), the mediator is a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to breaking or imposing a settlement.

2.4 Empirical View of Land Dispute

According to Wehrmann, B. (2008), the offense in the land sector, which in outline can be divided into two parts which include; Land conflicts/disputes regulated in the codification of criminal law, namely land conflicts (delicts) which are regulated in several articles that are spread out in the codification of criminal law (KUHP). Land conflicts/disputes that are regulated outside the codification of criminal law, namely land conflicts/disputes (delicts) specifically related to land laws and regulations outside the codification of criminal law.

2.5 Research Methods

This research took place in *Oelnasi Village, West Rote District, Kupang* Regency, Indonesia. It is classified as empirical research, which is to find out and obtain data related to land disputes in the village of Oelnasi, Central Kupang District, Kupang Regency. Aspects that will be examined in this study include The role of the Village Head as a mediator in land dispute resolution. The population

in this study is the entire community (the parties) in the dispute as many as 15 people. Given the small population, this study did not determine the sample, so the research is a population study.

3. Results and Discussion

Overview of the Land Dispute between Oelnasi Village Communities

Based on the results of research conducted, the Oelnasi Village Government admits that in the last three years (2018-2020) land disputes have often occurred in every hamlet in Oelnasi Village. According to Soleman Suy, Head of Oelnasi Village (Interview, July 11, 2020), if there is a land dispute between villagers, both individuals and groups, the disputing parties will go to the village government so that the conflict/dispute can be resolved. The village government itself admits that resolving the conflict/dispute takes a long time. Data on land dispute conflicts that often occur in Oelnasi village can be seen in the table below:

Table 1
Land rights dispute cases are resolved through litigation

No	Type of Soil	Types of Land Rights	Disputing Party	Number of Cases
1	Rice Fields	Right of ownership	Yunus Ba'ik dan Johanis Naramesah	2
2	Plantation Land	Right of ownership	Yunus Ba'ik dan Fredik Ndun	1

Table 2
Land rights dispute cases are resolved through non-litigation channels (2018-2020)

No	Type of Soil	Types of Land Rights	Disputing Party	number of cases
1	Rice Fields	Right of Ownership	Martinus mooy dan Arsemus Henuk	1
2	Plantation Land	Right of Ownership	Benyamin Mesah dan Musa manafe	1

Table 3
Types of land rights disputes

No	Dispute Type	Disputing Party	Type of Soil	Surface Area (m2)
1	Land grabbing	Martinus mooy and Arsemus henuk	Rice Fields	1,5 ha
2	Land grabbing	Markus amalo and Eduard Dami	Dry Land	1 ha
3	Land grabbing	Agus mesah and Yakob Baba	Dry Land	1,5 ha

Land disputes that often occur in the people of Oelnasi Village where the people of Oelnasi Village see and feel that the existing land is land that has been passed down from generation to generation by their ancestors to them/families so that they will defend it if their rights are violated. With such an understanding, the people of Oelnasi Village assume that the people who inhabit and control the

location of the land are deprivation of their rights which have been passed down from generation to generation so that the existing land and is considered as tribal land must always be maintained.

The land or property rights of the Oelnasi village community in dispute consist of various ethnic groups, including Land belonging to the Kanaketu tribe which is the land of their ancestors left by generations until now. The land belonging to the feosoru tribe which is the land of their ancestors until now. In addition, according to Yakobis Suy, Chairman of the Feosoru Tribe, (Interview, July 12, 2020), said that land owned by the people of Oelnasi Village based on the origin and history of acquisition can be classified as follows. Inherited land within the tribe and owned by all members of the tribe related to the ownership of traditional houses and traditional ceremonies such as building traditional houses, killing buffalo, hunting chickens. Land acquired as a result of winning a war where ownership is communal and cross-tribal if the war over the land involves other tribes

Several things that caused land disputes in Oelnasi Village namely, there is an unclear land boundary; the existence of unfair practices; there is a claim from the state or government; loss of witnesses or historical actors; increased economic value of land; maintaining social status; the decline of cultural values; misunderstanding of customs; lack of socialization

The Role of the Village Head as a Mediator in Resolving Land Disputes in Oelnasi Village

In general, mediation can be interpreted as an effort to resolve the dispute between the parties by mutual agreement through a neutral mediator, and does not make decisions or conclusions for the parties but supports the facilitator for the implementation of dialogue between the parties with an atmosphere of openness, honesty and exchange of opinions to reach consensus. In other words, a problem-solving negotiation process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement (win-win solution).

In the case of frequent land disputes between residents of Oelnasi Village, the Village Head as the regional leader is considered by local residents as a trusted party to be a mediator to resolve land disputes that are often faced by residents. Mediation efforts are carried out if there is a conflict regarding ulayat lands, usually the Village Head will take steps to carry out negotiations. In this negotiation, settlement steps were taken by the Village Head and the disputing parties. This is because their lives are bound in a fellowship based on blood (geneological) descent.

The communal situation of the Oelnasi Village community attaches great importance to the role of a Village Head to coordinate and motivate the community in order to resolve disputes that occur in accordance with applicable legal provisions (Oelnasi Village customary law). So that the understanding of customary law owned by the Oelnasi Village Head will be able to maintain the duties, carry out, complete the customs and customary laws that have been imposed on him. The oelnasi village community in a life alliance is unlikely to be able to solve the problem on their own unless there is intervention from traditional functionaries as a forum for the community to rely on when there is a problem that cannot be solved by the Oelnasi village community. If there is a customary land dispute that has been resolved through the Oelnasi village head, it has become a big dispute case. The customary settlement for the settlement of ulayat land disputes between the Oelnasi Village community was put forward by Soleman Suy as the Village Head as follows: "The way to settle the customs is the Village head summoning the disputing parties to a customary court. The purpose of the summons is to hear the problems and testimonies of the parties who are aware of the matter. then the parties or the village head seek data from related parties to clarify the truth, because the data found can be disclosed in the customary trial, so that based on these data, the village head can give a decision on the basis of deliberation.

Barriers That Often Encountered in The Mediation Process

There are several inhibiting factors that are often encountered during the mediation process, such as described as follows.

Internal factors

The witness does not want to be a witness

To be able to obtain accurate data and information regarding disputes experienced by the community so that the mediator can make decisions fairly and wisely, it is necessary to provide information from witnesses who clearly know the problems that occur. However, in reality the witnesses who were summoned to provide information on attending the deliberation activities were carried out for certain reasons.

Unclear land boundaries

The ambiguity of the boundaries of the land in question, is due to the habits of the previous generations who determined land boundaries through trees, hills, piles of stones, and so on which could be manipulated by certain parties and could be destroyed due to natural disasters, causing land disputes.

Unclear land owner

The unclear land owner is caused by part of the land which is ulayat land which is jointly owned, besides that there are also individual land disputes due to the unclear land owner caused by the lack of legal evidence in the form of land certificates from the government through the National Land Agency.

External factors

Another inhibiting factor is external factors originating from third parties, both from the family of one of the disputing parties and third parties outside the disputing parties. Other third parties can appear when the land dispute deliberation has found a solution and the parties have also agreed then another party appears and states that he also has the same rights to the disputed land and raises objections, thus creating new problems that must be resolved.

Discussion

Conflict can be likened to a fire that can burn and spread everywhere and destroy if not handled properly. The conflict control process starts from the perception of the conflict itself, what its components are and where it comes from, then goes to the stages of realization, avoidance, intervention, strategy selection and implementation and evaluation of the impacts caused by conflict. To be able to resolve existing conflicts, the leader must mediate by providing opportunities for all members of the disputing group to express their opinions about the important conditions desired.

Leadership authority as a source of group strength. A leader who is in charge of leading a group, to take a decision, or solve a problem effectively, needs to have the skills to use the power and

authority inherent in his role and that is the task of the leader who in this case is the village head who acts as a mediator in resolving a conflict with the community. mediation way.

The definition of mediation in the Regulation of the Supreme Court of the Republic of Indonesia No. 02 of 2003 is not much different from the essence of mediation put forward by conflict resolution experts. However, this understanding emphasizes one important aspect in which the mediator proactively seeks various possible dispute resolutions. The mediator must be able to find alternatives for dispute resolution. It is not only bound and focused on what the parties have in their dispute resolution. The mediator must be able to offer other solutions when the parties no longer have an alternative dispute resolution, or the parties have experienced difficulties or even have a deadlock in their dispute resolution. This is where the important role of the mediator as a neutral third party in assisting dispute resolution. Therefore, the mediator must have a number of skills that can facilitate and assist the parties in resolving their disputes. Regarding the role and function of the village head or village apparatus in resolving disputes that occur, that they must be able to carry out their duties as mediators who try to resolve disputes that occur between their citizens. Disputes, whether land disputes, inter-community disputes, or household disputes. The function of the mediator here is a mediator who does not take sides with any party. The duties and functions of a mediator are merely a means of building communication that is hampered between these residents. If it is seen that the function of a mediator that should be used by village officials, lurah or village heads is a mediator that is settlement mediator by using settlement mediation.

As described in the previous research, where in Oelnasi Village, Central Kupang District, Kupang Regency there are often conflicts/disputes over land by the local community, so this is where the role of a Village Head as a leader of rural areas is needed to be able to resolve disputes experienced by community members. through a mediation process led by the local Village Head. This is supported by the habit of the local community where in finding a way to resolve land disputes, the people of Oelnasi Village always want a harmonious and peaceful settlement that can be reached by way of deliberation by the Oelnasi Village Head.

In carrying out his role as a mediator, the Village Head has the following duties. The judge of peace between the communities, in this case the Village Head must act as a mediator in resolving land disputes that occur, then data is needed that can provide information regarding the status of the land and the origin of the land in dispute.

A place to rely on community members to resolve disputes that occur, protect, and ensure public peace. Therefore, whenever there is a dispute, the village head is the only place for community members to rely on to resolve the problem. Decide and stipulate customary law regulations that bind the disputing parties and create harmony.

Through several tasks of the Village Head as a mediator described above, wisdom from the Village Head as a mediator is needed in resolving disputes that occur in the community so that the solutions offered through the mediation process can apply fairly and benefit both parties to the dispute. Thus, the decisions made based on the joint deliberation can avoid further conflicts.

In addition, in carrying out his role as a mediator, the Village Head is required to have adequate insight and/or knowledge so that the mediation process can run well. The intended insight and/or knowledge is knowledge of good and correct mediation techniques, as well as knowledge of local customary law because most land disputes experienced by residents are related to ulayat rights which of course requires a good understanding of customary law applicable in the area. customary area of the local community. Therefore, the Village Head in carrying out his duties as a mediator is considered necessary to involve other parties in the mediation process such as traditional figures, historical figures and religious figures who are in the Oelnasi Village area.

4. Conclusion

Things that often cause land disputes in Oelnasi Village are clear land boundaries, no unfair practices, claims from the State or Government, the presence of immigrant communities so that it affects the economic value of the land, maintaining social status, wrong understanding of customs and lack of socialization.

The role of the Village Head in resolving land disputes is as a peace judge in adat and also as a customary decision maker in which the parties decide on decisions taken in the mediation process in order to create harmony between community members.

Obstacles that often occur in the settlement of land disputes through the Village Head are caused by witnesses who are not clear about land boundaries and unclear land owners. In addition to other inhibiting factors, there are external factors originating from third parties, both from the family of one of the disputing parties and third parties outside the disputing parties. A third party can appear when the land dispute deliberation has found a solution and the parties have also appeared then another party appears and states that he also has the same rights to the disputed land and puts it forward, giving rise to new problems that must be resolved

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