

# Customary Land Law in the Mamberamo Community

*Yan Pieth Rumaikewi*

*Liani Sari*

*Wahyudi Burhan*

Faculty of Law, Universitas Yapis Papua

Faculty of Law, Universitas Yapis Papua

Faculty of Law, Universitas Yapis Papua

This study is entitled Law on Customary Land in the Mamberamo Community, Especially the Warembori Village Community in Tanah Tabi, Papua Province. The main focus of this study is to examine the agrarian conflict between the Warembori Village and Yoke Village communities in Mamberamo Hilir District, as well as to analyze the mechanism of recognition and protection of customary rights of customary law communities in the area. This study uses a qualitative descriptive method with a case study approach. Data were obtained through interviews with traditional figures, community leaders, and parties involved in land disputes. In addition, secondary data was collected from legal documents such as Law Number 5 of 1960 and Papua Provincial Regulation Number 5 of 2022. The results of the study indicate that this agrarian conflict was caused by overlapping claims to customary land. In addition, there are still obstacles in the implementation of legal protection for indigenous peoples, especially in the administrative aspect of land registration. This study provides recommendations to improve the recognition and legal protection of customary land through clearer and more inclusive regulations.

---

## Introduction

The importance of land for human life is because human life cannot be separated from land. Land use must be adjusted to the conditions and nature of its rights, so that it provides benefits for the welfare and happiness of those who own it as well as for society and the state. [1] It is undeniable that land is a valuable commodity in human life. Land is not only a place to live, but also a place where human culture can develop and continue from generation to generation, that is how important land is for society.

Land has an important role in the formation of humans since ancient times, land in society has its own attraction and is related to power. Land is not only seen as a place to sustain life, but also has social, political and cultural functions. [2]

Based on the provisions of the 1945 Constitution, the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations was drafted. The enactment of Law No. 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA) which came into effect on September 24, 1960 has brought about fundamental changes in agrarian law in Indonesia, especially in land law. with a set of regulations regarding land, aimed at ensuring legal certainty for land rights throughout the territory of the Unitary State of the Republic of Indonesia can be realized. [3] The enactment of UUPA is a breakthrough in guaranteeing justice and legal certainty, order, and the welfare of the people of the Unitary State of the Republic of Indonesia related to applicable land regulations, including land disputes.

Customary land that is not legally recognized is often a source of conflict due to the absence of a legitimate legal review, therefore the importance of regulation, namely, clear regulatory protection of rights can help protect the rights of the community, especially indigenous communities, land registration, a good legal land registration system can reduce land disputes by providing evidence of legitimate ownership, as well as the existence of a legal review so that it can be recognized as

legitimate land ownership. [4]

Papua provincial regulation number 5 of 2022 concerning the recognition and protection of indigenous legal communities in Papua province. Considering in letter (a) that the recognition, respect and protection and development of the rights of indigenous legal communities in Papua province have been regulated by Law number 21 of 2001 concerning special autonomy for Papua province. Letter (b) explains that in order to make the recognition and protection of indigenous peoples in Papua province effective, it is necessary to regulate the recognition and protection of indigenous legal communities. And letter (c) emphasizes that based on the considerations as referred to in letters (a) and (b) it is necessary to form a Papua provincial regulation concerning the recognition and protection of indigenous legal communities in Papua province.

## Method

The type of research used in this study is qualitative research. [5] Descriptive qualitative research means that the data obtained will be collected and manifested directly in the form of a description or picture of the atmosphere or condition of the object as a whole and as it is in the form of spoken or written words from people or observed behavior. Descriptive qualitative research is a research procedure that produces data in the form of written words which are a description of something. These data are obtained through field observation activities and interviews.

## Discussion

Mamberamo Raya Regency is one of the regencies located in Papua Province, Indonesia. Mamberamo Raya Regency itself is a division of Sarimi Regency and Waropen Regency on March 15, 2007 with a legal basis, namely Law Number 19 of 2007. With an area of 31,136.85 KM<sup>2</sup> with a population according to data from the Ministry of Home Affairs in 2024, namely, 40,449 people with a population density of 1.7 people/km<sup>2</sup>, consisting of 8 Districts and 60 Villages. [6]

Warembori is a village located in Mamberamo Hilir District, Mamberamo Raya Regency, Papua Province, Indonesia. The area of Warembori Village is 2,910 km<sup>2</sup>, with a population of 501 people.

## **Solutions that can be taken to resolve land conflicts that occur in the traditional areas of the Warembori village community**

In the 1945 constitution, the state regulates indigenous peoples. Article 18B paragraph 2 emphasizes that the state recognizes and respects the units of indigenous legal communities and 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, which are regulated by law. In article 18B, it can be seen that the state guarantees and protects the order of indigenous legal communities within the Unitary State of the Republic of Indonesia.

The solution that can be taken to overcome the Land Problem in the customary area of the Warembori Village community, as explained by Mr. Luhter Rumaikewi as the traditional elder of Warembori Village in an interview on November 29, 2024, has gone through a discussion process with the local government. In the discussion, historical evidence has been presented which is the basis for land ownership rights, the problem related to the land dispute was actually resolved on September 18, 2013, where both parties involved, namely the Warembori village community and the Yoke village community, have been resolved peacefully and a statement of position by both parties that the Warembori village community will continue to live on their land and likewise the Yoke village community will continue to live on their land, but the minutes of the settlement have not been followed up by the responsible party (local government). [7]

According to Mr. Luhter Rumaikewi, if this problem reappears in the future, the best solution that can be taken is through the implementation of a customary oath. This is considered the most appropriate approach because the resolution process through customary law has been witnessed by customary elders from various regions, such as Marinavalen, Burmeso and others. [8] Thus, the customary oath becomes a resolution mechanism that is respected and in accordance with the traditional values of the Warembori Village community.

## **The mechanism for protecting the customary rights of the Warembori village community over land that has been inhabited for generations**

Customary rights protection mechanisms are very important to protect land and natural resources and avoid problems. This also supports the empowerment of indigenous communities as the LEGAL owners of their land. [9]

The weak recognition of customary rights of indigenous legal communities causes customary rights to be in a dilemma when faced with the right to control or take sides unilaterally with either individuals or groups. [10] The mechanism for protecting customary rights is as follows:

### **Legal Recognition**

Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). In UUPA, customary rights are rights held by indigenous communities over land and natural resources. [11]

### **Registration of Rights**

Indigenous communities need to register their customary rights to gain formal recognition. This process involves tracing the history and evidence that shows the existence of the customary rights.

### **Protection through public policy**

The government needs to create policies that support and protect customary rights. For example, by establishing regulations that protect customary land from being controlled by other parties without the consent of the indigenous community. [12]

### **Mediation and Dispute Resolution**

In the case of land disputes, mediation can be carried out between the disputing parties (for example, indigenous peoples and investors) to reach an agreement. The government can also act as a mediator. [13]

### **Legal Sanctions**

Violations of customary rights can be subject to legal sanctions. [14] This can include administrative or even criminal action for violators who harm indigenous communities.

### **The Role of Institutions and Organizations**

Humanitarian agencies and non-governmental organizations play an active role in fighting for customary rights and providing advocacy for indigenous communities.

From the explanation above regarding the mechanism of protection of customary rights seen from the results of the meeting of the traditional leaders between the Warembori Village community and the Yoke Village community on September 18, 2013, there was also the presence of the Mamberamo Raya district government and the TNI/Polri, where the results of the decision from the

meeting did not yet have a LEGAL protection mechanism. However, in the decision it was only a joint decision that the customary rights belonged to the Warembori village community.

Based on the observation results obtained by researchers in the field, the land dispute problem between the Yoke and Warembori villages is still ongoing, where the results of the decision of the customary meeting held on September 18, 2013 at the Warembori Village soccer field have not been followed up by the responsible party (local government), and there is also no protection mechanism from the government related to the problem. [15] Researchers found problems in the field where the Yoke village community still claims that it is their land, based on information and documentation obtained by researchers in the field.

## Conclusion

The cause of the land dispute between the Yoke and Warembori villages was due to social jealousy. The social jealousy in question is where the Warembori village community geographically has advantages and also the local economic turnover is very fast because the Warembori village community is directly connected to public transportation. While the Yoke village geographically does not have advantages, and also the local economic turnover has not run well because it is not directly connected to public transportation.

The land dispute between Yoke Village and Warembori Village, located in Mamberamo Hilir Regency, Mamberamo Raya, Papua, has been ongoing since 2013. The conflict centers on land ownership claims, with both communities asserting their rights to the disputed area. Despite attempts to resolve the issue through customary meetings and local government involvement, the issue remains unresolved, leading to social tensions between the two groups.

The land dispute between Yoke Village and Warembori Village is an example of the challenges faced by indigenous communities in asserting their land rights amidst conflicting claims. Although legal and customary frameworks exist, the lack of effective implementation and government support hampers resolution efforts. Engaging in dialogue and mediation, alongside formal legal recognition, is critical to achieving a successful resolution of this conflict.

From the problem of land disputes between Yoke Village and Warembori Village, the solution that can be taken to overcome the problem of land in the customary area of the Warembori Village community, according to the traditional elders of Warembori Village, if this problem reappears in the future, the best solution that can be taken is through the implementation of a customary oath. This is considered the most appropriate approach because the resolution process through custom has been witnessed by traditional elders from various regions, such as Marinavalen, Burmeso and others. Thus, the customary oath becomes a resolution mechanism that is respected and in accordance with the traditional values of the Warembori Village community.

The mechanism for protecting customary rights is very important to protect land and natural resources and avoid problems. It also supports the empowerment of indigenous communities as the LEGAL owners of their land. The weak recognition of customary rights of customary law communities causes customary rights to be in a dilemma when faced with the right to control or side unilaterally with either individuals or groups. A good mechanism for protecting customary rights is legal recognition of Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). In UUPA, customary rights are rights held by indigenous communities to land and natural resources, registration of customary rights, communities need to register land in order to get recognition and also collect historical evidence, protection through public policy, the government can also take policies and protection, mediation and dispute resolution here the government must also be a mediator so that there is an agreement, legal sanctions if a decision has been made and there are those who violate must be subject to legal sanctions as regulated. The problem of land disputes between the Yoke and Warembori villages until now there has been no protection mechanism only

in the form of a decision that the land belongs to the Warembori village community, until now the Yoke village community still claims that it is their land and place. The unilateral claim by the Yoke village community can be seen from the houses built at the Warembori village port, as well as the many sales huts built at the port. Therefore, a protection mechanism is needed so that the Yoke village community respects the Warembori village community more.

## References

1. F. H. Ardiansyah, A. Alfitra, and T. Elda, "Upaya Hukum Peninjauan Kembali Dalam Perkara Perdata (Studi Putusan Mahkamah Agung Nomor 118/PK/Pdt/2018)," *J. Leg. Res.*, vol. 2, no. 2, pp. 289-306, 2021, doi: 10.15408/jlr.v2i2.14638.
2. T. Rejekiingsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum," vol. 5, no. 2, pp. 298-325, 2016.
3. P. H. Cipta, J. Ciptaan, J. Ciptaan, and A. Dasananto, "KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA SURAT PENCATATAN," 2023.
4. "Kepastian Hukum Bagi Tanah Adat Setelah Adanya Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (08\_01)".
5. F. S. R. Nurul Qamar, *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*, vol. 11, no. 1. 2020. [Online]. Available: [http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484\\_SISTEM\\_PEMBETU\\_NGAN\\_TERPUSAT\\_STRATEGI\\_MELESTARI](http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETU_NGAN_TERPUSAT_STRATEGI_MELESTARI)
6. L. Penelitian, "Pendapat tentang perencanaan kolaboratif tata ruang wilayah di Kabupaten Mamberamo Raya, Papua, Indonesia".
7. E. C. H. Vasco javarison Zaharias, Rafael Maita, "Penyelesaian sengketa perdata tentang tanah dalam perspektif hukum agraria di indonesia," vol. 7, no. 1, 2024, doi: 10.21111/jicl.v7i1.12342.
8. M. H. M. Rajab Lestahu, "Sengketa Tapal Batas & Solusi Menurut Hukum Adat," *Indoneisa Sos. Sains*, vol. 2, no. 7, pp. 1188-1195, 2021.
9. N. Komang et al., "ANALISIS YURIDIS HAK ULAYAT TERHADAP KEPEMILIKAN TANAH ADAT BERDASARKAN UNDANG-UNDANG NOMOR 5 TAHUN 1960 TENTANG PERATURAN DASAR POKOK-POKOK," vol. 3, pp. 112-121, 2023.
10. M. A. Mahfud, "Hak Menguasai Negara Dan Perlindungan Hukum Terhadap Hak Ulayat Masyarakat Hukum Adat: Kajian Teoritis Dan Implementasinya," vol. 19, no. 1, pp. 63-79, 2017.
11. S. Hukum and A. Nasional, "Kedudukan dan Pengakuan Hak Ulayat Dalam Sistem Hukum Agraria Nasional," no. 50, pp. 49-66.
12. K. Muhammad, S. U. Firdaus, M. Hasrul, and L. Aci, "Kebijakan Publik dan Politik Hukum : Membangun Demokrasi Berkelanjutan untuk Masyarakat," vol. 2, pp. 354-368, 2023.
13. N. Kurniati, ""Mediasi Arbitrasi"" Untuk Penyelesaian Sengketa Tanah," vol. 18, no. 3, pp. 207-217, 2016.
14. A. Oktavianto, S. M. Pide, and S. S. Nur, "HUKUM ADAT NGATA TORO," vol. 7, pp. 228-239, 2020.
15. D. E. Prasetyo, "Perlindungan Dan Pengakuan Hak Ulayat Masyarakat Adat Biak Papua," vol. 2, no. April, pp. 54-82, 2024.