

DISPUTE OF CUSTOMARY LAND TENURE AND DOMINATION AND THE RESOLUTION IN BULELENG REGENCY

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Abstract

Customary Land Tenure and Domination not infrequently can lead to disputes, such as custom land disputes that occurred in the customary village of Rules, Buleleng District. Therefore, efforts to resolve the dispute need to be known. How is the Implementation of Customary Land Tenure and Domination in Buleleng Regency as well as the Settlement? Furthermore, the type of research used in this study is empirical legal research. The results of this study indicated that (1) the implementation of Customary Land Tenure and Domination in Buleleng Regency is said to have legitimization due to the control and ownership of customary land especially in the village of Anturan, Buleleng Subdistrict, Buleleng Regency has been based on land tenure system according to customary law (2) The settlement of customary land dispute cases that occurred in Anturan Village and Buleleng District was preceded by mediation dispute settlement efforts, but because it could not be resolved through mediation so that the case of this customary land dispute was filed suit to the Singaraja District Court by examining the evidence and witnesses presented by both parties to the dispute.

Keywords: Dispute, Customary Land, Land Tenure

I. INTRODUCTION

Indonesia is a state based on the law (*rechtstaat*) this means that since the independence of the Indonesian nation is determined to have the form of a legal state as a consequence that all aspects of life related to the activities of the state of the Republic of Indonesia shall be subject to and obey the legal norms both related to political, economic, socio-cultural and other aspects. The law must present its role fundamentally as a central point in the life of the individual, the life of the nation and the state.¹

So the law is needed to regulate the life of society in all aspects of human life, which is not less important is the role or function in regulating economic activity. In this economic activity the role of law is needed because of limited economic resources on the one hand and not limited the demand or position of economic resources on the other hand so that the conflict between fellow citizens in fighting for economic resources will often occur.²

The land as a gift of God Almighty is inseparable from human life. Land has a very strategic function, both as a natural resource and as a space for development. Due to the relatively stable availability of land, the need for land continues to increase with increasing population and development activities.

Sorojo Wignjodipuro argued, there are two things that cause the land has a very important position³ : (1) because it is the only thing of wealth which, despite experiencing

1. Saleh, Ismail, 1995, *Pembinaan Cita Hukum dan Penerapan Asas-Asas Hukum Nasional Sejak Orde Baru*, Majalah Hukum Nasional No. 1, Edisi Khusus, BPHN, p. 15

2. Sukardi, Gunarto, 2002, *Pranata Hukum Dalam Pembangunan Ekonomi*, Penerbit : Universitas Atmajaya Yogyakarta, Cetakan Pertama, Yogyakarta, p. 5

3. Wignjodipuro, Sorojo, 1971, *Pengantar dan Asas-Asas Hukum Adat*, Alumni, Bandung, p. 71

the circumstances of anyhow, is still permanent in its state, even more profitable; (2) because of the fact that the land is the dwelling place of the legal community, giving a livelihood to the fellowship, is the place where the fellowship of the dead are buried, and is the shackles of the patrons of the fellowship of the fellowship and the spirits of the communion's ancestors.

In the consideration of Law no. 5 of 1960 on Basic Regulation of Agrarian Principles or better known as Basic Agrarian Law (hereinafter BAL) "a" is defined: "that within the republic of Indonesia the composition of life of its people, including its economy is mainly still agrarian, earth, water and space as the gift of God Almighty has a very important function to build a just and prosperous society." The weighing part of the letter "a" is a philosophical foundation rather than the purpose of the BAL.

Individual rights and legal entities on land gain strong recognition in the legal system and law in Indonesia. Property rights to land are part of material rights guaranteed by the Constitution. In the 1945 Constitution of the Republic of Indonesia as a result of the second amendment, it is stated as follows:

Article 28 g

Everyone is entitled to personal protection, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear to do or not to do something that is a human right.

Article 28 h

Every person shall have the right to own property and such property shall not be taken arbitrarily by any person.

Furthermore, in BAL, stated among others as follows:

Article 4 ayat (2)

The land rights referred to in paragraph (1) of this article authorize the use of the land concerned, as well as the earth and water bodies and the space above them, are merely necessary for the immediate interests connected with the use of the land within the limits of This law and other laws are higher.

Based on the meaning of Article 4 paragraph (2), the right to land is the right to the surface of the earth, precisely covering only a limited portion of the finite earth surface, called the plot of land. The right to land does not include the earth's body, water and natural resources contained therein.⁴

The principle that only recognizes that the right to land is limited to the right to the surface of the earth is called the principle of horizontal separation. The principle of horizontal separation is the principle whereby the ownership of land and things or things that are on the land is separate. The principle of horizontal separation separates the soil and other objects attached to the soil.⁵ The principle of horizontal separation is a principle based on customary law, and is the principle adopted by the BAL.

Property rights are the hereditary, strongest and most fulfilling rights people can have on land, have social functions and can be diverted and switched.

Article 20 of the BAL states:

In this Chapter, the properties of property that distinguish it from other rights are mentioned. Property rights are the "strongest and most fulfilled" rights that people can have on the land. The giving of this nature does not mean that the right is an absolute, unlimited and inviolable right "as an eigendom right in its original sense. Such a character will be contrary to the nature of the customary laws and social

4. Boedi Harsono, 2007, *Menuju Penyempurnaan Hukum Tanah Nasional*, Penerbit Universitas Trisakti, ed.3 Jakarta, p. 63

5. Hasan, Djuhaendah, 1996, *Lembaga Jaminan Kebendaan Bagi Tanah dan Benda Lain Yang Melekat Pada Tanah Dalam Konsepsi Penerapan Asas Pemisahan Horisontal*, Citra Aditya Bakti, Bandung, p. 76

functions of each right. The words "strongest and fullest" intend to distinguish them from the right to use, the right to use, the right to use and so forth, that is to show that among the rights to the land which the rightful owners of property can have "(Meaning: strongest) and fulfilled.

While the rights of land ownership, according to Boedi Harsono, are grouped into the rights of the nation, the right to control from the state, customary rights, individual rights and mortgages.⁶

Property rights on land contain elements of material rights and private rights. As a material right, the right on land has absolute characteristics, unlimited duration, *droit de suite*, and grants wide authority to its owner as diverted, secured, leased or used alone. As an individual right, its features are relative, of limited time, of equal power independent of the birth of that right, limited authority to its owner.⁷

The need for the transfer of land rights to ownership is so high that the emergence of new settlement areas and in such a reality can no longer be denied will lead to various legal problems, especially land law and can even cause disputes over the tenure and ownership of land rights in public life Bali, which still survives within the framework of indigenous and tribal peoples (Balinese customary law community), namely Pakraman Village.

Disputes over tenure and ownership of land rights resulting from the transfer of land rights may occur to lands originally controlled according to customary law which are subsequently registered to become individual rights under the provisions of the BAL. Such conflicts have occurred in various districts of the province of Bali, the resolution has never been resolved, and the case has only increased.

The occurrence of land disputes from day to day increasingly sustained, both simple and complex. The current dispute between Pakraman villages and Pakraman villages or between individuals (Pakraman villagers) and Pakraman Village in Bali is a dispute over the seizure of customary land, be it land boundary, central land, land associated with the sacred or other sanctuary. The importance of the land's role to Hindu in Bali as well as the current high economic value of the land is one of the triggers of disputes.

One example of land tenure occurs in Buleleng Regency. The background of the dispute between the village of Pakraman Anturan, Buleleng District with one of the villagers of Pakraman named: I Nyoman Sumatra which originated from the desire of I Nyoman Sumatra to apply for the right of ownership of 2350 M2 land inheritance, which is located in the village of Pakraman Antura, Buleleng Regency, where on the ground there are springs that have previously been made ponds and *pelinggih* by the village of Pakraman Anturan since 1950 and the place has been purified and used as a place of *petirtan* and cleansing of sacred objects belonging to the village of Pakraman Anturan every time there is *odalan* in Pura Kahyangan Tiga. However, on the wish of I Nyoman Sumantra to appeal for the land ownership certificate, Pakraman Anturan Village filed an objection for fear that if the land has been certified on behalf of I Nyoman Sumatra, Pakraman Village no longer has the right to clean up the *petirtan* on the ground), and clearly with the objections from the village of Pakraman Anturan arise a dispute that is complex until I Nyoman Sumatra had a *kepengging* (in out of the village membership Pakraman Anturan). This case is then processed by law through the Singaraja District Court and has been decided by the Judge of the Singaraja District Court with the Verdict of the District Court of Singaraja No: 93/Pdt.G/2007/PN.Sgr, on July 14, 2008.

Based on the background that has been mentioned above, it is interesting to be discussed further in this paper with the title "Dispute Tenure and Ownership of Traditional Land and Settlement Efforts in Buleleng Regency."

6. Boedi Harsono, *Op.cit.*, p. 40-41

7. Badruzaman, Mariam Darus, 1997, *Mencari Sistem Hukum Benda Nasional*, Alumni, Bandung, p. 31

The problems to be discussed in this writing are: (1). How is the Tenure and Ownership of customary Land in Buleleng Regency? (2). How to resolve the dispute over Indigenous land tenure and ownership in Buleleng Regency?

II. METHOD

The type of research used in the writing of this paper is the research of empirical law, namely legal research which the object of study includes the provision and enforcement or implementation of normative legal provisions (codification, Act) in action/*in abstracto* on every legal event occurring in society (*in concreto*).⁸

The approach in legal research is intended to be the starting point as the basis of the viewpoint and the frame of thinking of a researcher to perform the analysis. In empirical law research there are several approaches: Statutory Approach, Conceptual Approach, Analytical Approach, and Case Approach. Empirical approach is an approach that is able to get a real picture of real conditions in the field on issues related to customary land issues and about efforts to solve it in Buleleng Regency.

III. DISCUSSION

A. Land Tenure and Ownership of Customary Land Buleleng Regency

Customary land is the land owned by alliances, peoples, tribes, clans, villages and so on which are not entirely private, even if the person has taken advantage of his or her survival. In addition, customary land is also formulated as a land on which the rules of customary law apply. So customary land is the lands whose rulers are committed by customary law community and the regulator is still subjected to the rules of customary law of society, such as *awig-awig* in Bali. Then the customary land, owned by a community dwelling in a certain area with the norms held by the local community.

Historically customary land in Buleleng Regency can be seen in the palm of *Markandya Purana* which tells *Maha Rsi Markandya* from East Java to Bali Island (Hendriatiningsih S. dkk. 2008-520)⁹ At that time the concept of land ownership in the Buleleng region did not have the concept of individual property. In the division of land area is determined through the provisions of custom and religion that is believed the community at that time, who are Hindu Ciwa. In the process of development in the period of the 19th - 20th century when the Colonial rule entered into Bali, there was separation of customary land into two, namely: first old village (*pakraman*) and new village (service) which was formed by the Dutch East Indies government. The customary land of Pakraman in the Buleleng area is divided into several parts according to its function and purpose, in accordance with some customary villages which still remain in Indonesian territory, which still adhere to the customary system. The first land is *druwe*, which is land which is controlled by the village, such as field, land and grave land consecrated. Second is *pelaba Pura*, the land that is provided for the construction of the temple as a place of worship. The third land of the village yard is the land of land occupied by the village of *pakraman* which is given to the crack *negak* for shelter. The fourth is the land of *Ayahan*, namely: land which is controlled by *pakraman* village whose cultivation is handed over to the *krama* of the local village with the right to be enjoyed with certain agreement and obligation to give *swahan*. In recent developments where customary land is often the object of problems that can lead to conflict and even disputes, as well as in Kabupaten Buleleng various problems related to customary land have emerged, such as: customary land cases in Kubu Tambahan village, customary land cases in Lemukih village, customary land case in Panji village, customary land case (cemetery) in Temukus village. The case occurs between the local villagers and

8. Muhamad, Abdulkadir, 2004, Hukum dan Penelitian Hukum, Citra Aditya Bakti, Bandung, p. 134

9. Edi Susilo. 2013, Sejarah Tempat Kita Berangkat Dan Pulang "Tanah Adat Pakraman Di Kabupaten Buleleng,Bali", Sosiohistoryedi.blogspot.co.id/2013/07/tanah-adat-pakraman-di-kabupaten.html.

the customary village concerned, where the settlement cannot be done through mediation efforts, so the only solution to be solved and the last attempt is through the Court, namely: the District Court of Singaraja to the Supreme Court RI. In the case of customary land cases mentioned above, only a few of the cases of customary land cases ever existed in Buleleng Regency, as there are still other cases of customary land cases, and one of them is customary land cases raised in this thesis, namely customary land cases (Pool and Land of *Petirtaan Mumbul*) in Anturan Village, Buleleng District, Buleleng Regency.

Against customary land in Anturan village, Pakraman Anturan village in general is the same as other villages in Buleleng Regency, in which it has a land of *pelaba pura*, cemetery, village yard and village land *Ayahan*.

Associated with the customary land dispute that occurred in the village of Pakraman Anturan, Buleleng District, there are several factors that can cause land disputes in the village of Pakraman Anturan:

1. Less knowledge of *krama* Desa Pakraman Anturan regarding the understanding of control and ownership.
2. Lack of socialization from the authorities regarding the land of the village *druwe* (village owned) land/customary land.
3. Lack of socialization from regulatory authorities on land registration, as proof of ownership of land rights.

Potential is conceived as ability¹⁰ that has possibility to be developed; as strength and ability. In the perspective of land registration conflicts, the potential is conceived as a sufficiently strong indicator that can lead to conflict but is latent. While the conflict implies a conflict or incompatibility between the parties who will and are holding relationships or cooperation, resulting in a sense of dissatisfaction or cause harm from either party. If this dissatisfaction is directly expressed to the person causing the loss, then a conflict will be disputed. So the conflict will develop into a dispute if it can not be resolved.¹¹ To be able to provide a clear picture of indigenous land disputes, only one of the many cases of customary land disputes in Buleleng Regency is available; Indigenous land cases in Anturan Village, Buleleng District, Buleleng Regency.

B. Settlement of Customary Land Tenure and Domination Dispute in Buleleng Regency

The settlement of customary land dispute cases that occurred in Anturan Village Buleleng Sub-District of Buleleng Regency as mentioned above was resolved through the court line that is at the District Court of Singaraja by conducting examination of the evidence in the form of evidence of letters and witnesses presented by both parties in dispute. However, before the case has been filed in the Singaraja District Court, efforts have been made to resolve through familial peace in the village through mediation between the parties to the dispute.

The village of Pakraman Anturan has *awig-awig*, but in the *awig-awig* it does not specifically regulate how to resolve land tenure and ownership disputes. The settlement of land disputes is emphasizedly done through deliberations in discussion in the event of *pesangkepan*. There are several stages that can be done in an effort to settle a dispute over land originating from inheritance in the village of Pakraman Anturan;

1. Mediation efforts [at the family / extended family level (when associated with inherited land issues)]

10. Departemen Pendidikan dan Kebudayaan, 1996, *Kamus Besar Bahasa Indonesia*, Edisi Kedua, Balai Pustaka, Jakarta, p. 784.

11. Sarjita. 2005. *Teknik dan Strategi Penyelesaian Sengketa Pertanahan*, Edisi Revisi. Cetakan Kedua, Tugojogjapustaka, Yogyakarta, p. 8

2. Mediation efforts at village level (village of *pakraman*)

3. Bringing the matter to the Court.

By considering the facts of the legal facts revealed both from the evidence of letters and witnesses that have been filed before the court, so the panel of judges gave a decision that the land dispute area of 2350 M² with the certificate of property No. 1 of 1970 on behalf of I Ketut Mas aka Pan Putu Merta located in Subak Anturan No. 167 pipil No. 58 parcels 3b class/Block III located in Munduk, Anturan Village, District Buleleng with boundaries;

North : land of I Negara
 East : seririt highway of Singaraja
 South : rice field pan Diarsi
 West : puppets

It is lawful to belong to the Plaintiff except for the source of the spring and the road leading to the source of the spring.

Decision Number: 93/Pdt.G/2007/PN.SGR contains 2 kinds of judicial verdict (*vonnis*), namely:

1. The Power of Proof (*Bewijzende Kracht*), that the decision as a document is an authentic deed which can be used as evidence for the parties, necessary for appeal, cassation and execution.
2. The Executorial Strength (*Executorial Kracht*) is the power to be executed or executed (forcibly) by the state instrument against what is stipulated in the verdict, despite the submission of a review, *Derden Verzet*. As for who gave the executive power to the decision of the judge is the head of the verdict in the form of a sentence stating "For the sake of Justice by the One Supreme God" (article 4 paragraph (1) of Law No. 14 of 1970 jo article 4 paragraph (1) of Law No.4 of 2004).

Decision Number: 93/Pdt.G/2007/PN.SGR, on July 14, 2008 has a permanent legal force (*Inkracht van gewijzde*) for 2 weeks (14 days) after the announcement of the verdict, both parties made a legal action (such as *verset*, appeal, and cassation) and hence the Decision has a binding power and shall be exercised by both parties.

From the above description can be drawn an analysis, that the action of the village cricket Anturan, Buleleng District Buleleng District claims against the land object disputes as customary land village Anturan, Buleleng District, Buleleng regency which has been based on the mastery, management and utilization of the existing water pool over the land of the disputed object has been since the 1950s, it means that the customary village of Anturan has exercised more than 20 years)continuously without any interference from any party including the heirs who claim the land the object of the dispute as its property. Such mastery is the implementation of the land tenure system according to customary law, so that the *krame* of the customary village of Anturan has proven to have control over the land of the object of dispute because of the continuous mastery within the grace period for ± 38 years has caused a legal relationship between *Krame* the traditional village of Anturan with the land of the object of the dispute. Customary land associated with indigenous customary law in Bali is known as customary land or village land or village *druwe* land (village-owned land). The land of the village *druwe* in Bali is associated with this customary law literature which is equated with "*hak ulayat*".

More broadly, the meaning of the word "*druwe*" in the land sentence *druwe* village (land belonging to the village) implies not only as a mastery, but also has, so the land of the village *druwe* is land belonging to the village (*desa adat*). And this is equated with the "*ulayat right*" whose existence has been regulated in the provisions of Article 3 of the BAL. Thus the *Krame* of the customary village of Anturan is proved not only as the ruler of the land of disputed objects, but furthermore where the *krame* *desa adat* anturan also as the

owner of the land of the object of the dispute;

Furthermore, the dispute between Anturan traditional village, Buleleng sub-district, Buleleng district with the heirs, by the Singaraja District Court has been broken with Decision Number 93/Pdt.G/2007/PN.SGR, on July 14, 2008. In terms of the formalities of the Decision Pengadilan Negeri Singaraja is considered to have fulfilled the philosophical, sociological and juridical requirements, even further the verdict can be said has fulfilled the sense of justice for the parties who litigation, because with the dropping of the verdict, where the case/dispute between the customary village of Anturan, Buleleng District, Buleleng District with the heirs being completed and both parties have the same acceptance of the content of the decision.

However, against the verdict of the State Court of Singaraja, there is one consideration that is less precise, namely the legal considerations that states:

"that in this case as mentioned in the disputed land there is a source that is needed by the people of Anturan village either because of the need for religious ceremonies or other ceremonies and is considered to contain Spiritual Vibration by the people of Anturan village so it needs to be kept from changing hands between individuals in social community outside the village Anturan then therefore specifically to the water *mumbul* and access or means of the road to the water source that already exists as it is now according to the assembly needs to be preserved and sanctity and given protection so that based on the above consideration is limited then the source of water and the road to the water source is State property used by the village and granted legal protection ". In that consideration, the judges' panel has deviated from the facts of the existing legal facts, which to the source of the springs and the road to the springs located on the land of the disputed object has been controlled, managed and exploited by the customary village of Anturan since the 1950s, it means that the customary village of Anturan has mongakukan mastery has been more than 20 (twenty years) continuously with no interference from other parties, and when associated with land tenure system according to customary law has been proven springs and roads/facilities to the source springs located on the land of the disputed object is the land of village *druwe* (village-owned land) anturan, and no longer the status of State land, but has become customary land (land belonging to the village *krame* of customary Anturan) and Ownership of land disputed objects can be said to have legitimacy.

IV. CONCLUSION

Based on the above description, the conclusions can be drawn as follows: First, the Implementation of Tenure and Ownership on customary land in Buleleng Regency can be said to have legitimasi due to customary land ownership and ownership by traditional village, especially in Anturan village, Buleleng Subdistrict, Buleleng Regency, has been based on land tenure system according to customary law, and customary land has been utilized for the benefit of traditional village. Second, the settlement of disputes over land Tenure and Ownership in Buleleng District, Especially in Anturan Village, Buleleng Subdistrict, Buleleng Regency is done through Judicial Court namely Singaraja District Court. And such Settlement by the litigants is deemed to have provided a sense of justice justice, because with the Court's decision the dispute has ended.

Based on all the above, the writer can suggests: Firstly, village *Krame* (villagers) in controlling the village land must be done continuously (uninterrupted) because the continuous mastery with uninterrupted is the main element in the system of land ownership and ownership in customary law. Secondly, the government should always give understanding and socialization to the community (village *Krame*) on matters related to land owned by customary village (customary land), so that the action of mutual claims against customary village land can be avoided, at least can be minimized.

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