



The Issues of Recognition of the Anamburung Customary Law Community in East Sumba

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Abstract. The system of living together creates culture, as each member of the group feels bound to one another. Indigenous communities are groups of people who interact in social relations with a common culture, territory, and identity. In East Sumba, the lack of recognition and protection through the Permendagri has led to differences in perception between indigenous peoples and the government regarding customary land and state assets. Over three decades, national development focusing on economic growth has resulted in disputes between the government, business actors, and indigenous communities. The Permendagri has not yet addressed the dispute resolution process, and no local regulation exists for the transfer of unregistered customary land, creating a legal vacuum. This study uses socio-legal research methods to examine the reality of dispute resolution of customary land rights between the government and the Anamburung Customary Law Community of East Sumba. The research concludes that disputes over customary land rights in this community involve various historical, social, and legal factors, and the lack of socialization regarding customary land status and boundaries allows powerful groups to claim land as state property without community consent.

Keywords: *National Development; Indigenous Peoples; Customary Land; Customary Law*

Introduction

Land has a very important meaning and role for human life, as every individual needs land throughout their life, from birth to death. This is reinforced by the fact that most people still rely on the agricultural sector for their economic livelihoods. In an agrarian-based country, the increasing demand and need for land elevate its value, leading to higher incidences of land disputes.¹ The system of living together gives rise to culture, as each member of the group feels bound to one another. Indigenous communities, therefore, can be seen as groups of people who interact within social relationships, sharing a common culture, territory, and identity, and having customs, traditions, attitudes, and a sense of unity². Juridically, the existence of customary law is recognized by the state as a form of law ingrained in the life and legal culture of the Indonesian people. The state's recognition and respect for customary law are enshrined in the 1945 Constitution of the Republic of Indonesia. "Article 18 (b) paragraph 2 states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."³

The state of the art regarding land disputes highlights the complexity and frequent occurrence of conflicts over customary land rights. Ulayat land, as common property of a customary law community, is not seen as something obtained by chance but as a gift from supernatural powers, with a religio-magical relationship between the community and the land it occupies⁴. In East Sumba, the process of recognition and protection through the Permendagri has never been implemented, resulting in differing perceptions between indigenous

¹ Julius Sembiring, "Hak Menguasai Negara Atas Sumber Daya Agraria," *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 2 (30 November 2016): 119, <https://doi.org/10.31292/jb.v2i2.65>.

² Tolib Setiady, *Intisari hukum adat Indonesia dalam kajian kepastakaan*, Cet. 1 (Bandung: Alfabeta, 2008).

³ Republik Indonesia, *Pasal 18 (b) ayat 2, Undang-Undang Dasar Negara Kesatuan Republik Indonesia*, 1945.

⁴ Oloan Sitorus, *Kapita selekta perbandingan hukum tanah* (Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2004).

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peoples, who view the land as customary land, and the government, which considers it state land.⁵ The plantation business, historically a collective effort by families within indigenous communities, underscores the authority of adat heads in determining land use and ownership. Disputes over customary land rights are prevalent across regions, resolved through both litigation and non-litigation methods. The literature review reveals a gap in the effectiveness of these methods, necessitating a deeper exploration of the socio-legal dynamics at play.

The urgency of this research stems from the increasing number of land disputes due to national development focusing on economic growth without considering the socio-cultural processes. Development often employs a security and repressive approach, displacing and marginalizing local legal norms, traditions, and indigenous rights.⁶ The Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2020 addresses the handling and settlement of land cases, including the role of customary institutions in dispute resolution. However, in East Sumba, the absence of regulations on customary rights exacerbates land issues, highlighting the need for legal protection and fair treatment in land tenure and ownership.

This study focuses on the dispute between the government and the Anamburung indigenous community over the granting of Cultivation Rights Title to Pt. Asia Beef. The government is accused of taking away customary land rights by unilaterally recording the land as provincial assets. This dispute, initially triggered by the government's claim, underscores the need for comprehensive regulations and clear procedures for the transfer of unregistered customary land. The legal vacuum created by the lack of regional regulation results in unresolved conflicts and potential lawsuits.

⁵ Desy Puspita Sary dkk., "Problems in Determining and Affirming Village Administrative Boundaries" 3, no. 2 (t.t.): 136–54, <http://dx.doi.org/10.29240/negrei.v3i2.8366>.

⁶ I. Nyoman Nurjaya, *Pengelolaan sumber daya alam dalam perspektif antropologi hukum*, Cet. 1 (Jakarta: Prestasi Pustaka Publisher, 2008).

Research Method

The research method used is socio-legal research.⁷ This research is used because it starts from the existence of legal problems in the field (law in action). To conduct the approach is done by looking at the reality that exists in the practice of Dispute Resolution of customary land rights between the Government and the Anamburung Customary Law Society of East Sumba. This research is based on reality in the field by using primary data sources obtained directly in field research from respondents.

However, the empirical research referred to in this case is not empirical as in other social sciences, it will remain limited and limited to the framework of legal science. In addition, the approach is carried out by looking at the reality that exists in practice concerning the settlement of disputes over customary land rights between the Government and the Anamburung Customary Law Community.

The approach used in this research, namely Legal Anthropology, functions to explain the legal culture that develops in the society where the law functions. This legal culture in the next stage affects legal behavior. Factors shaping culture as well as legal behavior.⁸

Descriptive behavioral method is studying human behavior and legal culture through real law without seeing ideal legal rules.⁹ This method is accompanied by the case method. The Behavioral Descriptive Method describes human behavior and legal culture including describing / describing real behavior if they are in dispute / dispute. (see which legal system is used customary law or state law).

⁷ Herlambang P Wiratraman, "Penelitian Sosio-Legal dan Konsekuensi Metodologisnya," *Surabaya: Center of Human Right Law Studies (HRLS), Fakultas Hukum Universitas Airlangga, II*, 2008.

⁸ H Zainuddin Ali, *Sosiologi hukum* (Sinar Grafika, 2023).

⁹ Okta Wisnu Manggala, "Tinjauan Pendekatan Kompratif Dalam Antropologi Hukum," 2022.

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Results and Discussion

East Sumba Regency is one of the regencies in East Nusa Tenggara Province, Indonesia. East Sumba Regency itself covers 55% of the area on the island of Sumba, which consists of 4 districts. The district government center or capital is located in the sub-district of Waingapu city. At the end of 2023, the population of East Sumba was 265,879 people,¹⁰ The topographic conditions of East Sumba are generally flat (in coastal areas), sloping to undulating (lowland areas <100 meters) and hilly (mountains). Areas with altitudes above 1000-meters are only a few in the hilly and mountainous areas. Agricultural land is mainly in the northern coastal plain where there is sufficient surface water and large rivers.

In East Sumba district, disputes between the government and indigenous communities are caused by the absence of regulations on customary rights, which often triggers many land issues.

In the juridical dimension, land tenure and land ownership require protection, which implies that there must be legal protection of the civil rights of land ownership and fair treatment of land ownership. Land disputes that are protracted and there is no good resolution can cause the aggrieved party to file a lawsuit in court.¹¹

Revocation of rights is possible, but is subject to conditions, such as the provision of adequate compensation. The author suspects that the local Indigenous Peoples are asking for compensation for their customary land that was turned into a cattle ranch. Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles.

Article 26 The "transfer of rights or sale, exchange, donation, gift by will, gift according to adat and other acts intended to transfer property rights and their supervision shall be regulated by Government Regulation".

¹⁰ kemendagri, "Visualisasi Data Kependudukan - Kementerian Dalam Negeri 2023" (visual), 2023, www.dukcapil.kemendagri.go.id.

¹¹ Ahmad Gelora Mahardika, "Potential Irregularities in Arrangements of Amendment Regarding the Term of Office of Village Heads in the Indonesian Constitutional Law System," *NEGRI: Academic Journal of Law and Governance* 3, no. 1 (6 Oktober 2023): 1, <https://doi.org/10.29240/negrei.v3i1.8024>.

These disputes originate from customary lands, or the objects of customary rights. The civil dispute, between the Anamburung indigenous community and the object of customary land, is about land acquisition for the location of Pt. Asia Beef in East Sumba Regency. PT Asia Beef itself is a company with the status of Foreign Investment engaged in cattle farming, and began socializing from breeding to serving the best quality beef in 2015 precisely in Kabar Village, Rindi Umalulu District, with a location area of 986 hectares and a capacity of 2500 cows.

"In this case, the customary land dispute that occurred in 2021 in East Sumba Regency involved customary land rights that were used by the Provincial Government to become cattle farms.

The government is in dispute with the Anamburung indigenous community over the granting of Cultivation Rights Title to Pt. Asia Beef. The government is considered to have taken away their customary land rights, because the customary land is said to be recorded in the Provincial Government's assets. This one-sided claim that the customary land had been transferred was the initial trigger for the dispute between the government and the Anamburung indigenous community.

The protest submitted by the Anamburung Indigenous Community to the government regarding the transfer of customary land must involve the entire Anamburung Indigenous Community. Anyone should certainly not intervene in the customs or "laws" that apply in the Customary Law Community. It should be noted that a leader such as a Governor has a goal in all his actions, namely the welfare of the community.

However, over time there was peace and an agreement between the indigenous people and the provincial government in Lambanapu village, Kambera District, East Sumba Regency in 2022, that the land had indeed been transferred and became an asset of the Provincial government.¹²

¹² Redaksi Sonaf NTT-News.Com, "Kisruh Sengketa Tanah Antara Pemprov NTT & Tokoh Masyarakat Sumba Timur Akhirnya Diselesaikan Secara Musyawarah Mufakat," 13 Februari 2022, <https://sonafntt-news.com/kisruh-sengketa-tanah-antara-pemprov-ntt->

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But the agreement becomes a problem regarding the transfer of customary land that has not been registered not in accordance with the laws and regulations. Therefore, this is something that is questionable because if you pay attention to the Permendagri regulation, the dispute resolution process has not been carried out, and for the transfer of land that has not been registered as customary land, there is no regional regulation that regulates it, resulting in a legal vacuum.

There are at least 88 rivers and springs that do not dry up in the dry season. A series of mountains and steep limestone hills dominate the central region with four peaks: Mawunu, Kombapari, Watupatawang and Wanggameti. Lowlands are found along the coast with a large section at Tanjung Undu (westernmost coast).

The high temperature amplitude causes the rocks to rot, the soil to crack and there is natural selection of plants and animals that can live in these conditions. Therefore, the types of plants that exist are generally perennials such as teak, coconut and aren palm, while domesticated animals are generally cows, buffaloes and horses that have adapted to the natural conditions of Sumba with vast savannas.

The soil in East Sumba contains sand, limestone and coral because hundreds of thousands of years ago this area was below sea level. After the ice age passed, this land emerged above sea level, so it is often found various types of marine animals such as shells, fish and marine plants that have become fossils on the coral hills. Grasses also grow on the rocks. About 40% of East Sumba's area is steeply hilly, especially in the southern part, where the hillsides are quite fertile land, while the northern area is a rocky and less fertile plain¹³.

Matters Causing the Occurrence of Disputes over Customary Land Rights in the Anamburung Customary Law Community of East Sumba

Land ownership status is regulated by customary law and State or Agrarian law. The law limits and directs that every citizen respects the rights and obligations

tokoh-masyarakat-sumba-timur-akhirnya-diselesaikan-secara-musyawarah-mufakat/.

¹³ BPS Kabupaten Sumba Timur, "Kabupaten Sumba Timur dalam angka 2024," 2024, <https://sumbatimurkab.bps.go.id/publication/2024/02/28/c1e8f4ab26a0ec6f81bdd33d/kabupaten-sumba-timur-dalam-angka-2024.html>.

of others, so as to avoid conflicts in common life.¹⁴ However, the existence of law does not guarantee to keep conflicts away in the social life of the community.

The results showed that the things that caused the occurrence of Ulayat land disputes in the Anamburung customary law community of East Sumba.

1. Unclear Boundaries of Customary Land

One proof of ownership of customary land by one group of customary communities is the existence of clear boundaries with land belonging to other tribes or State land. Clear land boundaries will give legitimacy to other tribal communities or the Government, to recognize the existence of land owned by certain tribal or ulayat groups.

Most of the land owned by tribes in East Sumba Regency does not have clear ownership boundaries and land area. Ulayat land boundaries are generally marked by natural boundaries such as trees, piles of stones and mounds of land as well as certain hills or mountains.

Tribal land boundaries using these natural boundaries can be manipulated by certain tribes by being destroyed or moved.¹⁵ For example, trees or rocks can be destroyed or moved by certain tribes from other places to their original places or to expand their tribal land. Some claim that trees or woods or cliffs are naturally occurring, and therefore cannot be used as evidence of tribal land boundaries.

Because the boundaries of customary land or tribes only use unclear natural boundaries, in East Sumba Regency there are always claims between tribes on one plot of land. They often do not recognize each other's customary land

¹⁴ Maburur Syah dkk., "Implementation of Religious Moderation in the Constitution and College: The Effectiveness of Socialization of the FSEI IAIN Constitutional Law Study Program in the 4.0 Era," *NEGREI: Academic Journal of Law and Governance* 3, no. 1 (12 Desember 2023): 89, <https://doi.org/10.29240/negrei.v3i1.8286>.

¹⁵ Wim Fadel Azmilhuda, "The legal consequences of the criminal acts signature in the deed of land purchase in front of the land deed official," *NEGREI: Academic Journal of Law and Governance* 2, no. 2 (31 Desember 2022): 161, <https://doi.org/10.29240/negrei.v2i2.5797>.

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boundaries with other customary lands. As a result of these mutual claims and non-recognition, wars or physical clashes between tribes that cause loss of life and damage to property are often unavoidable.

2. The existence of unfair practices

Customary land conflicts occur not only between different Ulayat groups, but also between tribes or community members within the same Ulayat. Although this is an internal conflict among residents of one tribe, it is not uncommon for the conflict to bring chaos and division which of course creates disharmony in the social life of the community in general.

Customary land is the right of all customary communities, which in customary language is called marapu land or ancestral land, thus all customary communities have the right to work on their land fairly. Therefore, communal land does not belong to the customary chief (Anamburung), nor does it belong to certain tribe members (uma penji, uma andung, uma ndiawa, uma djangga). Every member of the ulayat has the right to cultivate and enjoy the fruits of their ulayat land.

In the distribution of customary land, it must be carried out jointly and must be divided fairly. It is not permissible for certain groups or individuals to get a larger share while others get a very small share or no share at all. Justice in the division of communal or tribal land is important because the acquisition of communal or tribal land is the result of the struggle and efforts of all members of the communal or tribe. Fair distribution is one of the efforts to avoid conflict between all ulayat residents.

Some tribes or community groups in Anamburung East Sumba control land contrary to regulations. For example, in the Uma Penji tribe, each community is free to work on communal land anywhere, any size depending on the tanji marana (diligence and perseverance). Land that is cultivated belongs and is passed down from generation to generation for descendants, and other people within one insight are not allowed to take or cultivate it.

Injustice in the distribution or processing of customary land causes jealousy and dissatisfaction from community members in one ulayat group. Dissatisfaction from the group of victims of injustice is then carried out by grabbing or

working on land that is already owned or worked by other people in the ulayat community group concerned.

In addition to being carried out by certain customary communities, in the customary land ownership of several tribes in East Sumba, the Customary Chief and groups of people who have high social status and have a strong enough influence in the social life of the community act unfairly and carry out roles beyond their authority.¹⁶ Other people who do not own land act as tenants and the results must be shared with the landlord. Even though those who are tenants are the same community members and have the same rights to their customary land.

As a result of arbitrariness and injustice in land tenure by tribal chiefs (Mosalaki) or certain groups within the community, internal conflicts within tribal communities are often inevitable. Such conflicts not only turn tribesmen against each other but also lead to quarrels, fights and damage to property.

3. Claims from the State or Government

So many people's lands under the control of indigenous peoples are claimed by the Government as belonging to the State. This is because the evidence of the land as customary land is not strong and unclear. Apart from the fact that the legal evidence of customary land is unclear, many lands belong to the State because they were handed over by some tribal members to the Government under the pretext that they would be used for public purposes. The handover from tribal members to the Government often does not involve all customary communities, as well as other surrounding customary groups that feel they have rights to the land. The handover is only done by a few people who feel themselves influential or have power in the ulayat community concerned or only by certain tribal leaders.

Claims made by the Government or the State over customary land or tribal land, unilateral surrender by certain tribes of only one plot of land to other tribes or the Government is one of the causes of conflict between the

¹⁶ Etry Mike, "Government System of the Islamic Kingdoms of the Archipelago (Case Study: Sultan's Appointment, Authority, and Exemplar of Former Pekal Kingdom, Mukomuko)," *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (30 Juli 2022): 51, <https://doi.org/10.29240/negrei.v2i1.4903>.

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Government and the landowning customary community and between groups of customary communities. On the one hand, tribal people say that the land owned by the State is their tribal or customary land, on the other hand, the Government claims that the land is no man's land and is under the control of the State. Residents of the ulayat community who feel they have rights to their ulayat land, and feel they have rights to their ulayat land and feel that the ulayat land concerned has never been handed over to anyone feel that they still have rights to their land and continue to carry out activities on it.

Here, the tribe that surrendered the land to the government and the tribe that has the right to the land and has never surrendered the land to anyone are blaming each other and claiming to be the group that has the right. In this kind of conflict, the group that surrendered the land to the government is usually always on the winning side because it is supported by powerful government institutions.

4. Losing Witnesses or Historical Actors

Traditional leaders are the group of people who know the existence of their customary land best. They are witnesses or perpetrators of history. In determining the existence of customary land, the presence of traditional leaders is very important.¹⁷ Customary leaders are not only a group that helps determine the boundaries of customary land, but they are also a group of fighters who try to get customary land, either through wars between tribes.

Generally, the size of communal land is determined through a joint decision between customary leaders from two or more communes. This oral decision is customarily strong because it is often made through a customary agreement accompanied by animal sacrifices as an agreement. This agreement in customary law has obligations that must be obeyed and should not be violated by the customary groups involved in the agreement. But because the customary agreement is carried out orally and not in writing, then this agreement is

¹⁷ David Aprizon Putra dan M. Anton Alifandi, "Legal Study of The Existence of Genuine Autonomy in Order to Organize Village Autonomy in Indonesia," *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (3 Juli 2021): 35, <https://doi.org/10.29240/negrei.v1i1.2623>.

manipulated. There are certain customary groups that deliberately eliminate traces of customary land boundaries that have been mutually agreed upon since the ancestors.¹⁸ Or because the boundaries of customary land are mountains, rivers, or hills and certain trees, then the boundaries are no longer mutually recognized.

Due to the loss of witnesses and historical actors, anyone who does not know the exact existence of their customary land can appear to provide testimony about the existence of their customary land according to their own views, which of course the truth is very doubtful. In providing evidence of the existence of customary land, it is not uncommon for certain customary groups to convey it through traditional songs at traditional ceremonies. In this song, the name of the place where the tribe's territory is mentioned. The purpose is not only to remind the younger generation

but also, to show that the tribe concerned is the first and original person who owns tribal land and is an immigrant (*dere*). In addition, through fairy tales that have sacred value and are told during traditional ceremonies. They contain stories about the tribe's prowess or strength in fighting for tribal land, or when the tribe first came and occupied an area that later became its hometown and territory. With the loss of historical witnesses and the lack of understanding of cultural values, laws and regulations, the government, tribal chiefs and indigenous community leaders can provide understanding through socialization of cultural values, laws and regulations.

In certain cases, the lack of understanding of indigenous peoples about the status of customary land is used by groups of rulers to take community lands with claims as State land and will be used for public purposes. Customary leaders also often do not notify the existence of land owned by their *ulayat* to certain *ulayat* residents working or cultivating land outside their *ulayat* authority, without notifying or obtaining permission from the community group entitled to the *ulayat* land they are working on.

¹⁸ Rachel Noorajavi, "The Implementation of Asian Value on the Democratic System of Southeast Asia," *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (3 Juli 2021): 1, <https://doi.org/10.29240/negrei.v1i1.2562>.

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5. Increased Economic Land Value

The increasing economic value of land is also a cause of land conflict. When land economically does not provide anything of economic value to people's lives, where land is only used for farming and gardening by providing very little income despite working hard, people tend to control land only to the extent that it can be processed or utilized according to their needs.

If the land they cultivate does not yield satisfactory results in the form of rice, corn or yams, they abandon it and leave it fallow and other people may then cultivate it and take possession of it. People have little interest in acquiring as much or as much land as possible; they feel that the land they own and cultivate is enough and that they can earn a living from it, albeit a very limited one.

The increasing economic value of land has recently affected people's mindset towards land. People are competing to control as much and as much land as possible as wealth, because on the land they are free to do any activity and from the land they can get large amounts of money.

This ulayat land tenure system will increasingly provide opportunities for people or groups of people who do not own land, to claim other people's ulayat land rights, if evidence of land ownership rights by other ulayat groups in one ulayat community group because they feel they have rights to the same land. Such cases often occur where ulayat groups claim and run a business on the land rights of other ulayat groups without the knowledge or authorization of the ulayat that has the right to the land concerned.

As a result of claiming customary land between one tribe and another, the community is involved in a hostility between tribes, even in some tribes or certain ulayat to be involved in war or persecution between residents of other tribes to the point of causing casualties.

6. Maintaining Social Status

Customary communities in East Sumba Regency recognize customary power structures. In regulating tribal land policies, community groups that are at a high social status, feel themselves as landlords and are the most entitled community groups to determine all policies.

In certain tribes, those from the upper social classes do not accept or acknowledge that those from the lower social classes participate in policy-making and control more land, as this is seen as reducing their power and influence. On this basis, many policies or decisions that have been made with the involvement of people from lower social strata have been deemed invalid. If the land has been handed over to another customary community group or to the Government to be used for public purposes, those who consider themselves to be from a higher social class do not recognize and usually take it back. This kind of social behavior often leads to social conflicts between customary communities.

7. Fading Cultural Values

Customary law does not only regulate how indigenous peoples control and cultivate land, but it contains values so that fellow humans respect each other, listen to each other and help each other between fellow social beings.

These noble cultural values are now fading. In relation to land, people tend to pay more attention to themselves or their tribal or ulayat groups. Land that contains social values is starting to disappear, because it is replaced by individualistic values that are so strong. The fading of this cultural value is influenced, among other things, because the customary community has less respect for customary rites.

The erosion of cultural values is marked by the attitude or behavior of the ulayat community where in dealing with land issues they listen and obey positive law rather than customary law. People tend to ignore the advice or advice of parents. This is further influenced by the Government's policy in resolving land issues, all decisions about land that have been agreed upon or decided together by the ulayat community are often not recognized, instead the Government makes new policies and decisions without deliberation together with the ulayat community.

8. Misunderstanding of Adat

Indigenous communities generally have an attachment to their land, region and customs. In the customary system in East Sumba Regency, tribal land cannot be sold under a private name or mortgaged to another party under a private name.

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Tribal land cannot be titled in a private name to become a property right, because tribal land is the common property of tribal people. However, there are certain individuals who sell communal or tribal land to other parties or certify tribal land for personal interests, without the knowledge and permission of all tribal residents as a whole. As a result, if the tribal land has been transferred to another tribe by a certain person or tribe, the tribal people as landowners do not recognize and take back the land that has been handed over, even though it has been done by sale and purchase or has been certified. Things like this will cause prolonged conflicts and are difficult to resolve.

9. Lack of Socialization

In order for all customary community members to know the status of customary land along with the area, boundaries and how to use it, one of the things that needs to be done is socialization of the existence of customary land so that it is clear proof of ownership. Socialization is not only the responsibility of traditional leaders, but also the responsibility of the Government, in this case the National Land Agency. The function of traditional leaders in socialization is, so that their ulayat residents know the existence of customary land owned, the area and boundaries of customary land owned and the boundaries of existing customary land.

One of the causes of conflict over customary land ownership is because the Government and also traditional leaders who know exactly the customary land do not provide socialization to the community or customary community groups. So that most customary communities do not know the status of customary land only according to customary law. The result is that even though customary land does not have strong evidence according to the law, the community still claims that the land is their customary land.

In certain cases, the ignorance of the community about the position of customary land is used by the ruling group to take certain lands with claims as State land and will be used for public purposes. Customary leaders often do not inform the existence of land owned to all customary residents, especially to the younger generation.

Because of this ignorance, there are community members from certain customary groups working or cultivating land outside their customary authority,

notifying or obtaining permission from the community group entitled to the customary land they are working on.

The Process of Settlement of Disputes over Customary Land Rights Conducted by the Peace Process

Conflicts or disputes also occur due to differences in perception which is a depiction of the environment that is done consciously based on the knowledge that a person has, the environment in question is the physical and social environment, according to Koentjaraningrat.¹⁹

Land conflicts are not new. However, the dimensions of conflict are more widespread today than during the colonial period. Some of the causes of land conflicts are:

- 1) Unbalanced and uneven land ownership/possession;
- 2) Inconsistent use of agricultural land and non-agricultural land;
- 3) Lack of favoritism to the economically weak community;
- 4) lack of recognition of indigenous peoples' rights to land (hak ulayat);
- 5) Weak bargaining position of land rights holders in land acquisition.

1. Land Disputes and Problems

Land conflict is an extreme and violent form of competition. Agrarian conflict is a process of interaction between two (or more) or groups, each of which is fighting for their interests over the same object, namely land and other objects related to land, such as water, plants, mines, as well as the air above the land concerned.

At the macro level, the sources of conflict are structural, such as various inequalities. Micro sources of conflict/disputes can arise due to differences/conflicts in values (cultural), differences in interpretation of information, data or objective descriptions of local land conditions (technical), or differences/conflicts in economic interests that can be seen in gaps in the structure of land ownership and control.

¹⁹ Koentjaraningrat, *Kebudayaan, mentalitas dan pembangunan* (Jakarta: Gramedia, 2000), 103.

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Land issues from a juridical point of view are not simple to solve. The emergence of legal disputes about land stems from complaints from one party (person / agency) containing objections and demands for land rights both to land status or ownership priorities in the hope of obtaining administrative settlements in accordance with the provisions of applicable regulations.²⁰

The real reason for the dispute is that one party is more entitled than the other (priority) to the disputed land. Therefore, the resolution of legal disputes over land disputes depends on the nature of the issues raised and the process will require certain stages before a decision is reached.

Land issues are becoming more complex by the day, as a result of the increasing human need for space. Therefore, the implementation of the Basic Agrarian Law in the field has become increasingly difficult. Competition for space (land) has triggered conflicts, both vertically and horizontally, which have sharpened.²¹

However, it is important to realize that land disputes are not new. Land is not only seen as a means of production but also as a tool for speculation (economics), now it seems that land has become a commodity tool for trade that can be exchanged.

2. Procedures for Resolving Defense Conflicts or Disputes

As is known in Law Number 5 of 1960 in Article 2, regarding the right to control the state over land, it has been outlined that the authority of the state is in the form of:²²

- 1) Regulate and organize the allotment, use, supply and maintenance of the earth, water and space.
- 2) Determining and organizing the allotment, use, supply, and maintenance of the earth, water and space.

²⁰ Rusmadi Murad, *Penyelesaian Sengketa Hukum Atas Tanah* (Bandung: Alumni, 1991), 22.

²¹ Lutfi Nasution, "Catatan Ringkas Tentang Pemberdayaan Masyarakat Dalam Pengelolaan Dan Pemanfaatan Tanah," *Pokok-pokok Pikiran Dalam Sarasehan Oleh Badan Pertanahan Nasional*, 2001.

²² Murad, *Penyelesaian Sengketa Hukum Atas Tanah*, 14.

Determine and regulate legal relations between people and legal acts concerning the earth, water and space. Based on this authority, although not expressly regulated, the authority to resolve conflicts or disputes is with the Republic of Indonesia, whose authority is given to the Head of the National Land Agency.

The provisions that can be used as an operational basis and function for the settlement of legal disputes over land are PP No. 24 of 1997 and Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Problems of Customary Land Rights. PMNA No.3 of 1999, PMNA No. 9 of 1999 and the operational basis in Presidential Regulation No.10 of 2006 concerning the National Land Agency.

Article 2 of Presidential Regulation No. 10/2006 explicitly regulates the duties of the BPN, which states that the BPN is tasked with implementing government in the land sector nationally, regionally and sectorally. The next article in the regulation mentions 21 functions of BPN, where one of the functions is to conduct assessment activities and handling of problems, disputes, cases and conflicts in the land sector. To carry out this function, a Deputy for Assessment and Handling of Land Disputes and Conflicts was established.

Conflict over customary land is one of the complicated land conflict problems to be solved. In this land conflict, besides having an impact on economic issues, it can also lead to broader social issues.

Conflicts or disputes can be resolved through deliberation, or directly by the parties to the dispute. It can also be resolved through intermediation through a representative or attorney appointed by each of them.

According to Harsono²³ various land cases, can be grouped into two groups, namely first as disputes that occur outside the court body, generally attempted to be resolved by BPN officials. And secondly, disputes that arise due to civil

²³ Soni Harsono, *Konflik Pertanahan Dan Upaya-Upaya Penyelesaiannya, Studium Generale Disampaikan Menteri Agraria/Kepala Badan Pertanahan Nasional Pada FH-UGM (Yogyakarta, 1996), 14-15.*

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disputes, or State Administrative disputes and their resolution is carried out through the District Court or the State Administrative Court.

Starting from the above, it can be concluded that not all disputes can be resolved by one type of resolution. The forms of dispute resolution can be grouped into three main groups, namely the first is carried out by one of the parties, the second is carried out by the parties to the dispute only, and the third involves a third party.

Another form of dispute resolution undertaken by the parties to the dispute is *negotiation*. This model of dispute resolution is called *dyadic* resolution to produce a decision or agreement without the intervention or assistance of a third party. Usually, this model of settlement is not based on existing regulations but on rules that they make themselves.

Meanwhile, dispute resolution involving third parties includes *adjudication, arbitration and mediation*. These forms of dispute resolution have similarities and differences. The similarity is that this form of settlement is *triadic* because it involves a third party.

The difference is that adjudication is a settlement carried out by a third party who has the authority to intervene, and he can implement the decision that has been determined regardless of what the parties want.

In contrast to adjudication, arbitration is a form of dispute resolution that is conducted by a third party and the decision is agreed upon by the parties to the dispute. Mediation, on the other hand, is a form of settlement that involves a third party to assist the parties to reach an agreement.

3. Using Mediation in Dispute Resolution

Mediation is a good option in dispute resolution, as it is considered more effective. According to Moore, a negotiation process through mediation is said to fulfill three conditions of satisfaction, namely²⁴:

²⁴ Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi, Mediasi, Konsolidasi [i.e. Konsultasi], Dan Arbitrase [i.e. Arbitrase]* (Jakarta: Gramedia Pustaka Utama,

- 1) Substantive satisfaction is satisfaction that relates to the specific satisfaction of the parties to the dispute.
- 2) Procedural Satisfaction, where the parties get an equal opportunity to convey ideas during the negotiation process and are realized in a written agreement to be agreed upon for implementation.
- 3) Psychological satisfaction occurs if each party has controlled emotions, mutual respect, full openness in every problem.

The position of mediation as a first step means that mediation does not rule out the possibility of submitting a dispute to the Court. If a compromise is not reached, then the settlement is escalated through mediation, one of the parties does not comply voluntarily, meaning that he has denied the settlement. In this case the way is open to request a settlement to the Court.

Mediation is not always appropriate for all disputes. In mediation the parties generally represent themselves rather than using lawyers. The mediator endeavors to assist the parties to reach a mutually beneficial bargain. The parties must therefore be able to articulate what they want with a view to reaching an agreement.

Compromise is thus a solution to the dispute and the mediator can help the parties realize that the only solution available is compromise. Parties are more likely to come to their own conclusions if they have thoroughly and reasonably explored each option, including alternatives to agreement.²⁵

The Process of Settling Disputes over Customary Land Rights Between the Government and the Anamburung Customary Law Community of East Sumba

1. Alternative Dispute Resolution in the Anamburung Customary Law Community

A dispute resolution model suitable for family-based communities is alternative dispute resolution (ADR) rather than court litigation, which tends to be

2001), 91.

²⁵ Gary Goodpaster, *Panduan negosiasi dan mediasi* (Jakarta: Proyek ELIPS, Departemen Kehakiman R.I., 1999), 211.

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confrontational and materialistic. In Kabaru Village, East Sumba Regency, ADR emphasizes harmonization and family aspects by considering the diverse interests within the community. The communal and cooperative nature of indigenous peoples, who prioritize feelings and mutual support, makes this method more effective and appropriate. Court litigation often requires significant costs and time, leading the community to avoid it. Additionally, court resolutions are seen as benefiting only those with power and material wealth.

ADR is conducted through deliberations involving a trusted mediator or intermediary from the community. This mediator can be a traditional leader, regional official, or an institution of indigenous peoples with high social competence and knowledge. The deliberation process begins with preparation, followed by gathering statements from the disputing parties, and concludes with summarizing discussions and signing an agreement if one is reached. This approach emphasizes communal harmony and fairness, reducing the likelihood of ongoing conflicts.

Community trust in the deliberative institutions of customary law is high due to the involvement of knowledgeable and experienced local leaders. Solutions are based on past experiences and a deep understanding of the land's history, ensuring fair and acceptable resolutions for all parties. Authentic documentation of agreements is crucial to prevent future disputes. This approach aims to maintain stability and harmony within the community, avoiding prolonged conflicts and fostering a cooperative environment.

2. Stages of the dispute resolution process

Land disputes occur when there is a clash of interests between two or more parties who feel they have rights to the same plot of land. In such cases, the Malamoi community often takes action to block or occupy the land, with each party striving to prove their entitlement. This often leads to harm and disturbances to the surrounding community. Consequently, the parties involved seek to resolve the dispute, typically starting with non-litigation or alternative methods.

In the deliberation stage, the first step involves preparation, where a mediator is selected. The mediator's role is to understand the dispute, determine the place

and time for resolution, involve necessary parties, and arrange other essential aspects to support the deliberation. Once preparation is complete, the opening phase begins. Here, the mediator gathers statements from the applicant/plaintiff and the respondent/defendant and hears testimony from their witnesses. The final part of the deliberation stage is the closing, which involves summarizing the discussion, drafting a peace statement, and signing the agreement by the disputing parties and witnesses if an agreement is reached.

In the implementation stage, the parties voluntarily carry out the agreement reached during deliberation, making the process relatively cost-effective. Once an agreement is reached, the deliberation is formally closed by the leader of the session. If no agreement is reached, the dispute is escalated to the Kelurahan or Kecamatan/District Office. The unresolved disputes are documented and submitted to the appropriate authorities who will appoint a mediator or form a mediation team.

The mediation must be attended by all relevant parties, including the disputing parties, witnesses, and the mediator. Invitations can be informal, delivered orally if necessary. The mediator emphasizes the importance of adhering to social values, family values, religious values, and politeness throughout the deliberation.

Based on research and information from involved parties, compensation in the form of "betel nut money" is often used to resolve disputes. This method is particularly common for disputes involving customary land used for public facilities. For disputes within the community or with outsiders, a socio-cultural approach involving deliberations with Customary Law Community Institutions, Religious Leaders, and Government Functionaries is preferred.

Traditional ceremonies play a role in dispute resolution. They require providing livestock and monetary compensation (betel nut money) from migrants to the indigenous community. These ceremonies, although effective, are becoming less common due to their impracticality and time-consuming nature. Instead, compensation in the form of betel nut money is more frequently used.

The Anamburung indigenous community uses alternative dispute resolution to find win-win solutions, ensuring both parties benefit equally. This contrasts with court resolutions, which result in clear winners and losers. If no agreement

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is reached through deliberation, the mediator may recommend another session or suggest formal legal channels.

For effective dispute resolution, it is crucial to document the agreements in authentic letters, such as Minutes of Meeting or Peace Agreement Letters, witnessed by authorized officials. Without legal documentation, future disputes may arise from heirs or descendants unaware of the original agreement. Strong legal evidence is essential to prevent recurring disputes and ensure stability in East Sumba Regency.

By employing a systematic and culturally sensitive approach, the Anamburung community and migrants can achieve lasting resolutions to land disputes, maintaining harmony and justice for all parties involved.

3. Obstacles or Deterrents in the Dispute Resolution Process

Each land dispute has unique characteristics. In dispute resolution, whether through litigation or non-litigation, various factors can hinder the deliberation or implementation of its results. These obstacles can be broadly categorized into internal and external factors.

Internal factors significantly influence the dispute resolution process. One key internal factor is the temperament of the disputing parties. The disposition of individuals can impede deliberations, as emotional responses often overshadow logical reasoning. When parties refuse to listen to each other and assert their correctness, the deliberation process becomes unproductive. Another internal factor is the education level of the indigenous peoples involved in the dispute. Many disputants have relatively low levels of education, which makes it difficult for them to grasp the core issues, thereby complicating the resolution process. Discipline also plays a crucial role; frequently, when it is time to formalize an agreement, one party may refuse to sign, claiming they do not understand the terms due to illiteracy, even if the agreement had been mutually decided upon earlier.

Additionally, unclear land boundaries pose a significant challenge. Historically, land boundaries were marked by natural landmarks such as rivers, rocks, or trees. This ambiguity makes it difficult for parties to definitively prove the

boundaries of the disputed land. These unclear boundaries often become a central issue in land disputes, complicating the resolution process further.

External factors also play a role in hindering deliberations. These factors originate from third parties who are not directly involved in the dispute but have an interest in its outcome. Often, family members of the indigenous community interfere and influence the disputing parties, sometimes due to issues like insufficient betel nut compensation. These external influences can derail the deliberation process and create additional complications.

The effectiveness of land dispute resolution, both during deliberation and the implementation of its results, hinges on the awareness and cooperation of all parties involved. It is essential for everyone to recognize the importance of the deliberation process in resolving the dispute. Active participation from all parties is crucial in achieving a fair and beneficial settlement for everyone involved. Only through comprehensive engagement and understanding can disputes be resolved in a way that maintains social harmony and ensures justice for all parties.

Conclusion

The dispute over customary land rights in the Anamburung indigenous community of East Sumba is a complex issue involving historical, social, and legal factors. Customary land, jointly controlled by indigenous communities under customary law, frequently becomes the subject of conflicts despite attempts to regulate it through customary and state laws. Government claims that often consider customary land as state property without involving all stakeholders cause conflicts not only between the government and indigenous peoples but also within the indigenous groups themselves. The lack of socialization regarding the status, boundaries, and use of customary land is exploited by powerful groups to claim land as state property without the consent of the entire indigenous community. Effective dispute resolution requires a comprehensive approach that involves the active participation of all parties, considers cultural values, and enforces applicable laws. It is essential to establish clear land boundaries, ensure fair land distribution, recognize and protect the rights of indigenous peoples, and effectively socialize the status and

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rights of customary land to minimize conflicts and maintain social harmony within the Anamburung community.

Land conflicts represent extreme competition involving interactions between groups vying for their interests over land and related resources. These conflicts are structurally rooted in social inequalities and culturally in differing interpretations of technical information or clashing economic interests. Juridically, land problems are difficult to resolve as legal disputes often arise from complaints by parties who feel their rights have been violated, seeking administrative settlements according to regulations. Conflicts over customary land have wide-ranging economic and social impacts, complicating their resolution. In East Sumba, alternative land dispute resolutions involve deliberations between the Anamburung community and migrants to reach agreements. These agreements on compensation must be documented in authentic letters, such as Minutes of Meeting or Peace Agreement Letters, in the presence of authorized officials to prevent future disputes from descendants unaware of the agreements. Strong evidence of ownership is crucial to avoiding future conflicts and maintaining stability in East Sumba Regency. A systematic and measured approach is needed to ensure justice and prevent future conflicts.

Bibliography

Ali, H Zainuddin. *Sosiologi hukum*. Sinar Grafika, 2023.

Azmillhuda, Wim Fadel. "The legal consequences of the criminal acts signature in the deed of land purchase in front of the land deed official." *NEGREI: Academic Journal of Law and Governance* 2, no. 2 (31 Desember 2022): 161. <https://doi.org/10.29240/negrei.v2i2.5797>.

BPS Kabupaten Sumba Timur. "Kabupaten Sumba Timur dalam angka 2024," 2024.
<https://sumbatimurkab.bps.go.id/publication/2024/02/28/c1e8f4ab26a0ec6f81bdd33d/kabupaten-sumba-timur-dalam-angka-2024.html>.

Desy Puspita Sary, Auliasari Auliasari, Nisfathur Roi'fah, Yeny Nurita Sari, Rahmadini Mutiara Rizani, dan Lukman Santoso. "Problems in

Determining and Affirming Village Administrative Boundaries” 3, no. 2 (t.t.): 136–54. <http://dx.doi.org/10.29240/negrei.v3i2.8366>.

Emirzon, Joni. *Alternatif penyelesaian sengketa di luar pengadilan: negosiasi, mediasi, konsolidasi [i.e. konsiliasi], dan arbitrase [i.e. arbitrase]*. Jakarta: Gramedia Pustaka Utama, 2001.

Goodpaster, Gary. *Panduan negosiasi dan mediasi*. Jakarta: Proyek ELIPS, Departemen Kehakiman R.I., 1999.

Harsono, Soni. *Konflik Pertanahan dan Upaya-Upaya Penyelesaiannya, Studium Generale Disampaikan Menteri Agraria/Kepala Badan Pertanahan Nasional Pada FH-UGM*. Yogyakarta, 1996.

kemendagri. “Visualisasi Data Kependudukan - Kementerian Dalam Negeri 2023’ (visual).” 2023. www.dukcapil.kemendagri.go.id.

Koentjaraningrat. *Kebudayaan, mentalitas dan pembangunan*. Jakarta: Gramedia, 2000.

Mahardika, Ahmad Gelora. “Potential Irregularities in Arrangements of Amendment Regarding the Term of Office of Village Heads in the Indonesian Constitutional Law System.” *NEGREI: Academic Journal of Law and Governance* 3, no. 1 (6 Oktober 2023): 1. <https://doi.org/10.29240/negrei.v3i1.8024>.

Manggala, Okta Wisnu. “Tinjauan Pendekatan Kompratif Dalam Antropologi Hukum,” 2022.

Mike, Etry. “Government System of the Islamic Kingdoms of the Archipelago (Case Study: Sultan’s Appointment, Authority, and Exemplar of Former Pekal Kingdom, Mukomuko).” *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (30 Juli 2022): 51. <https://doi.org/10.29240/negrei.v2i1.4903>.

Murad, Rusmadi. *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni, 1991.

Febryanto Umbu Nggau Warandoy, I Nyoman Nurjaya, Herlindah

The Issues of Recognition of the Anamburung Customary Law Community in East Sumba

- Nasution, Lutfi. "Catatan Ringkas Tentang Pemberdayaan Masyarakat Dalam Pengelolaan Dan Pemanfaatan Tanah." *Pokok-pokok Pikiran Dalam Sarasehan Oleh Badan Pertanahan Nasional*, 2001.
- Noorajavi, Rachel. "The Implementation of Asian Value on the Democratic System of Southeast Asia." *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (3 Juli 2021): 1. <https://doi.org/10.29240/negrei.v1i1.2562>.
- Nurjaya, I. Nyoman. *Pengelolaan sumber daya alam dalam perspektif antropologi bukom*. Cet. 1. Jakarta: Prestasi Pustaka Publisher, 2008.
- Putra, David Aprizon, dan M. Anton Alifandi. "Legal Study of The Existence of Genuine Autonomy in Order to Organize Village Autonomy in Indonesia." *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (3 Juli 2021): 35. <https://doi.org/10.29240/negrei.v1i1.2623>.
- Redaksi Sonaf NTT-News.Com. "Kisruh Sengketa Tanah Antara Pemprov NTT & Tokoh Masyarakat Sumba Timur Akhirnya Diselesaikan Secara Musyawarah Mufakat,," 13 Februari 2022. <https://sonafntt-news.com/kisruh-sengketa-tanah-antara-pemprov-ntt-tokoh-masyarakat-sumba-timur-akhirnya-diselesaikan-secara-musyawarah-mufakat/>.
- Republik Indonesia. *Pasal 18 (b) ayat 2, Undang-Undang Dasar Negara Kesatuan Republik Indonesia*, 1945.
- Sembiring, Julius. "Hak Menguasai Negara Atas Sumber Daya Agraria." *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 2 (30 November 2016): 119. <https://doi.org/10.31292/jb.v2i2.65>.
- Setiady, Tolib. *Intisari bukom adat Indonesia dalam kajian kepustakaan*. Cet. 1. Bandung: Alfabeta, 2008.
- Sitorus, Oloan. *Kapita selekta perbandingan bukom tanah*. Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2004.
- Syah, Maburur, Tomi Agustian, Habiburrahman Habiburrahman, dan Windi Puspitas Sari. "Implementation of Religious Moderation in the Constitution and College: The Effectiveness of Socialization of the

FSEI IAIN Constitutional Law Study Program in the 4.0 Era.”
NEGREI: Academic Journal of Law and Governance 3, no. 1 (12 Desember
2023): 89. <https://doi.org/10.29240/negrei.v3i1.8286>.

Wiratraman, Herlambang P. “Penelitian Sosio-Legal dan Konsekuensi Metodologisnya.” *Surabaya: Center of Human Right Law Studies (HRLS), Fakultas Hukum Universitas Airlangga, tt*, 2008.