

Conference Paper

The Role of Traditional Heads in Resolving Land Disputes in Sekerat Village, Bengalon District, East Kutai Regency East Kalimantan Province

Badrunsyah*

Faculty of Law, Universitas Borobudur

ORCIDBadrunsyah: <https://orcid.org/0000-0002-4300-0436>**Abstract.**

The role of traditional heads in resolving land disputes that occur in Sekerat Village, East Kutai Regency provides a solution in solving problems faced by warring communities because of land disputes, especially customary land. This is so that the problem does not take place continuously causing a dispute between the two disputing parties. This type of research is descriptive with a qualitative approach, using purposive sampling techniques as informants. This study uses qualitative data analysis methods. The people of Sekerat Village have their own way of solving the problem outside court or non-litigation, namely through the traditional head in his territory. Where they feel that the problem can be solved relatively faster, can be materialized, low cost, and its settlement is carried out by peaceful means through deliberation. And historically, the culture of Indonesian society is very upholding high deliberative approach.

Keywords: role, traditional chief, settlement, land disputes

Corresponding Author:

Badrunsyah; email: badrunsyah-borobudur@gmail.com

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1. INTRODUCTION

The land for human life has a very strong position important. This is because almost all aspects of his life cannot be regardless of the presence of soil. The significance of land for man as the individual and the state as the highest organization of society, constitutionally stipulated in Article 33 paragraph (3) of the 1945 Constitution which states that: "Earth, water and natural resources are contained in It is controlled by the state and used to the greatest extent for prosperity of the people".

As a follow-up to Article 33 paragraph (3) of the Constitution 1945 with regard to the earth or land, then issued Law Number 5 of 1960 concerning Basic Basic Regulations Agrarian which is hereinafter better known as UUPA.

The main objectives of the Basic Agrarian Law (UUPA) are:

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1. Lay the foundation for the drafting of national agrarian law, which is a tool to bring prosperity, happiness and justice for the State and the people.
2. To establish unity and simplicity in the law Land.
3. To provide legal certainty regarding land rights for all Indonesian people.

In the 1945 Constitution Article 18 B paragraph (2), it is explained that the state recognizes and respects the unity of society customary law and its traditional rights, and Article 28 I paragraph (3) further emphasizes the state's recognition of cultural identity and rights of traditional communities.

Based on this, customary law and rights that Related to customary law has a central place in the system law in Indonesia. One aspect of customary law that is important to study i.e. the right to customary land that is recognized as freehold. Property rights are the strongest and fulfilled rights of all existing land rights while customary property rights constitute a Tenure and utilization rights over land are established based on their law.

The establishment of customary property rights is based on a view of life indigenous peoples are called legal alliances (Sugangga, 2008: 63). Land becomes an object prone to disputes or disputes Between people, this happens because of human needs for land is increasing, but the supply of land is relatively fixed.

Land tenure and land ownership require protection Law on Civil Rights of Land Ownership and Treatment fair to the ownership of the land. Protracted land dispute-Soluble and no good settlement can lead to parties who feel aggrieved to file a lawsuit in court. In general, the area of East Kutai Regency was originally partially big is the territory of Kutai kingdom centered in Tenggarong. East Kutai Regency is one of the areas resulting from the expansion of Kutai Regency which was formed based on Law No. 47 of 1999, about the Division of Provinces and Districts. East Kutai is a forest area with scrub that Then it was opened and worked on by residents or nomads to planted with food crops, especially root crops, fruits, oil palm and so on. The community can have tilled the land through forest clearing for made into a garden.

In Sekerat Village, Benglaon District, East Kutai Regency, land A father's work can be shared with his sons and daughters if: They are married or when the father dies. Deep community understanding This piece of land is interpreted as land ulayat based on the chronology of its acquisition.

Customary rights land, especially in Sekerate Village, is also defined as land custom-ary consisting of land that is still communal or controlled jointly and customary lands that are already individual, which It tends to be mastered by individuals. As time goes

by, the land is acquired on a descending basis. At the time, the cultivator of the land was given a certificate of land ownership in the form of "pedestals" of land created or issued by the Village Head known to the Sub-District, and serves as Certificate of Proof of Ownership of Land Control. It is for Provide legal certainty for the acquisition of land ownership status on the plot of land he cultivated.

Meanwhile, efforts are being made to resolve land disputes that occur. In Sekerat Village, the Village Government handles this problem through method of deliberation assisted by the local Traditional Head who has appointed as a secondary judge or mediator who assists the second disputing parties in making decisions and provide a sense of fairness of the decision.

The role of the Traditional Head is to mediate by making efforts to resolve land disputes that occur, especially customary land. The aim is to find out the causes of land disputes customary law and what obstacles are faced in the effort resolution of the dispute. Land disputes in Sekerat Village often occur regarding ownership and land control. These disputes originate from land with customary rights, or the object of customary rights. On the other hand, it has happened civil disputes, disputes between indigenous communities and land objects ulayat, namely regarding disputes over land acquisition for activities mining.

In solving this problem, this is done by: it self is considered more effective. Even though there are institutions courts provided by the Government to resolve disputes that arise, they choose another way, namely through external settlement court or non-litigation. Non-litigation settlement was chosen for reasons of time which can be realized relatively quickly, at low cost, and completed. Problems are resolved peacefully, namely through deliberation. By Historically, the culture of Indonesian society highly upholds this approach. The settlement process through customary law is not something new in the cultural values of our nation which has a cooperative spirit. In an attempt resolution of disputes over customary land that occur within an area region, then all parties will handle the problem encourage resolution through deliberation with the assistance of the Head Adat acts as a mediator and mediator for both parties make decisions. Land disputes start from people who want to do it buying and selling with other parties, but there are problems regarding distribution land area that does not match the heirs' expectations, even though it is deep. This land has no right to be bought and sold, let alone fought over because is in accordance with the distribution that has been made in front of the Head Traditional.

In this case, the role of the Traditional Head is in resolving Land disputes are very important. Where the traditional head gives something solutions to solve problems

faced by society who are fighting due to land disputes, so that problems do not occur takes place continuously and causes conflict between the two parties to the dispute. Phenomenon that occurs to Traditional Heads in carrying out Customary Law Rules Regarding Land Tenure Rights in Sekerat Village Bengalon District, East Kutai Regency as follows:

1. There is no written evidence or customary land certificate.
2. Lack of public understanding of customary law regulations.
3. Unclearness regarding the status of customary land.
4. Non-recognition of customary land.
5. Difficulty holding meetings.
6. Witnesses who are not willing to be witnesses.

From the description above, the author is interested in conducting research about “The Role of Traditional Heads in Resolving Land Disputes in Sekerat Village Bengalon District, East Kutai Regency, East Kalimantan Province”

2. METHODOLOGY/ MATERIALS

This type of research is descriptive research, because in Basically, this researcher describes and understands the problem examined in this research, namely the Role of Internal Traditional Heads Resolution of Ulayat Land Disputes in Sekerat Village, Bengalon District

East Kutai Regency, East Kalimantan Province. The data sources in this research consist of two types, according to Pasolong (2013:108), namely:

1. a. .Primary data is data obtained directly from the object under study. This data was obtained through direct interviews with use interview guidelines according to the research focus as follows: Key informant is the Traditional Head; Supporting informants are Village Heads, Community Leaders and several communities.
2. b. .Secondary Data is data obtained indirectly from object of research. This data comes from the following information: Documents from the Village Head's house; Reference books in the library

Data were analyzed using several steps according to theory Miles, Huberman and Saldana (2014:11), namely analyzing data using three steps: data condensation, data

presentation display), and drawing conclusions or verification (conclusion drawing and verification). Data condensation refers to the selection process, focusing, simplifying, summarizing (abstracting), and data transformation (transforming). In more detail, the steps are according to the theory of Miles, Huberman and Saldana (2014:12) will be applied as follows:

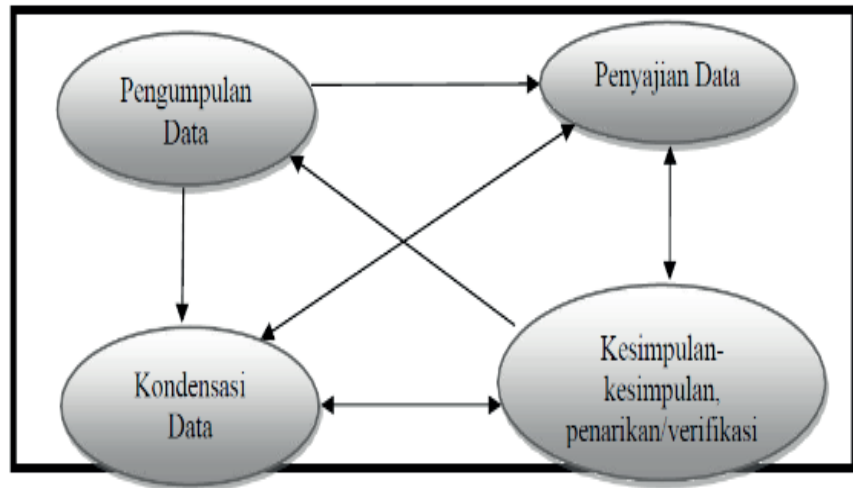


Figure 1:

3. RESULTS AND DISCUSSIONS

3.1. General description of Sekerat Village

Sekerat is one of the villages in Bengalon District, East Kutai Regency, East Kalimantan Province, Indonesia. Village Sekerat has an area of 197 Km² consisting of 14 RTs, located at the beach and around the forest. Sekerat Village based on data collection results, has a population of 3,081 people consisting of 653 families. Distance between the government center of Sekerat Village and the government center sub-district about 40 km. Meanwhile, the distance from Sangatta, the capital The district is 120 km and the distance to the capital of the nearest other district is 180km.

The development of Sekerat Village has grown rapidly so much inviting immigrants from outside the region. The immigrants come from various sources islands in Indonesia such as Sulawesi, Java, Sumatra and others. The original people of Sekerat Village are the Kutai tribe who live in along the coast. They have lived for decades and carrying out gardening or farming activities (Kutai language = huma). Since the expansion of coal companies, palm oil and cement factories and others, many people have switched to

working in internal companies sufficient for life's needs. The community around Sekerat beach is dominated by the Kutai tribe and there are also a small number of Banjar, Bugis, Javanese, and Dayak.

With the company's expansion, there is a lot of public land who are subject to exemption by the company. This is where the problem starts Land dispute in Sekerat Village. Land disputes or conflicts becomes a chronic and classic problem that runs deep over a period of years or even decades and is always everywhere. Land disputes and conflicts are a form of problem it is complex and multi-dimensional. It is an inherent phenomenon in cultural history and human civilization, especially since the agricultural era where resources in the form of land began to play an important role as a factor of production to meet human needs.

The customary law community's customary rights are defined as "authority which according to customary law is owned by certain community groups over a certain area which is the community's living environment This is to take advantage of natural resources including land in the area for the survival of the community, which arises from physical and internal relationships that are hereditary and not disconnect between society and society and its territory

One of the disputes between the people in Sekerat Village is a dispute land between communities on the act of buying and selling by communities occurs on areas of land that are not used by other communities, because The land is still forested, hilly and has not been managed optimally. According to the indigenous people/original land owners, that the lands customs that have been relinquished of rights by the previous owner reclaimed or asked to be returned by his heirs (descendants earlier) under the pretext that they never knew it existed release of rights to the land and the area of land released apparently included part of his land.

3.2. The role of traditional leaders in resolving land disputes in Sekerat Village, East Kutai Regency.

Apart from the Village Head who is the regional head, the Traditional Head is the person most respected by the people of Sekerat Village who is expected to be able to resolve land disputes through customary law. Therefore, the communal condition of the Sekerat Village community which places great importance on the role of a leader as a community figure, the Traditional Head is expected to be:

- a. As a Motivator.

As a traditional head, he acts as a motivator, namely a person who is able to provide a good solution or motivation for the parties in a dispute. A motivator is a person who can provide motivation to other people to do things that are more beneficial for themselves and others. Based on the results of an interview with the Traditional Head of Sekerat Village, he stated:

"As the traditional head of Sekerat Village, I try to be a good motivator in resolving land disputes that occur in the village. I give input to the people who are in dispute to immediately resolve the dispute so that it doesn't drag on. The parties to the dispute are usually family members, even from the village. or in the neighboring village who previously lived in this village because they inherited it from their family even though customary land cannot be sold. The land dispute occurred because the parties felt they were right and all the land was inherited, as a traditional head he only acted as a good motivator to be able to immediately resolve the problems that occurred in Sekerat Village, where as a traditional head he had to immediately intervene so that wider problems did not occur. between the disputing parties, I studied the problem first, and found out the boundaries of the land owned by the other heirs. There was a dispute about 4 months ago, as a result of the unclear boundaries of the land owned by the disputing parties, only relying on memory. The village head as a motivator in resolving land disputes is by providing enlightenment to the parties carrying out the dispute" (Interview, April 21, 2023).

Furthermore, the results of the interview with the Head of Sekerat Village stated that:

"Motivation is an action in providing good input to the disputing parties, the Sekerat Village community's dispute started with the return of the Sekerat Village community who had moved from this village and then wanted to return to take over ownership of the land or land inherited from their parents, while they did not own it. clear evidence, a dispute occurred in Sekerat Village around 4 months ago, and that is where the role of the traditional head provides good motivation in resolving the dispute that occurred" (Interview, 22 April 2023).

Then the results of interviews with Long Village community leaders Serat stated that:

"The role of the traditional head is a motivator who provides a good understanding of the problems that occur where the traditional head together with the village head and community leaders participate in resolving the problems that occur, but the decision is all in the hands of the traditional head. The people in dispute are still

the people of Sekerat village, it's just that they have moved to the next village, they took the land because they felt the land was inherited from their parents, the dispute itself occurred in Sekerat village about 4 months ago and the problems that occurred were due to land boundaries. "That's where the traditional head plays his role as an elder by providing motivation so that there is no commotion regarding land disputes that have been passed down from generation to generation" (Interview, 23 April 2023). Based on the interview above, the Traditional Head, as a motivator in resolving land disputes in Sekerat Village, can provide explanations to the parties in dispute regarding the basis of land rights and unclear land boundaries by relying only on plants whose nature is not clear. The role of the Traditional Head is very important in coordinating and motivating the community so that their behavior is in accordance with legal provisions. With the knowledge of customs and customary law possessed by the Traditional Head, he is expected to be able to carry out the duties of maintaining, running and resolving problems in his environment. It is impossible for the Sekerat Village community to solve their problems on their own unless there is intervention from traditional parties, therefore, to solve all problems in the community, everything relies on the Traditional Head.

b. As Mediator

The role of the Traditional Head as a mediator is that of an intermediary his job is to help the disputing parties to resolve the problem, by listening to various sources to make decisions. According to an interview with the Traditional Head of Sekerat Village that:

"As a mediator, the Traditional Head only helps the parties understand each other's views which are considered important to you they. The traditional head acts as a mediator between the two

parties to the dispute by looking for authentic evidence for get really real evidence. And you have to behave fair without taking sides against anyone" (Interview, April 21 2023). Meanwhile, interviews with Sekerat Village community leaders revealed that:

"The traditional head will carry out mediation which is expected to be achieved common ground for resolving disputes faced by the parties, then stated in a joint agreement between the two parties to a dispute, by looking for supporting evidence before deciding who is right and wrong."

(Interview, April 22, 2023).

Apart from that, it was also stated that:

“As a mediator, the Village Head facilitates information, encourages discussion regarding differences in interests, perceptions, interpretations of existing situations and problems, and regulates the course of deliberations, so that the traditional head as a mediator is really required to resolve problems that occur by obtaining evidence. and input from all community leaders as well as the Village Head” (Interview, April 23, 2023).

From the results of the interview above, it is clear that the role of the Head Sekerat Village customs as mediators in resolving disputes land is a neutral mediator who offers a solution to the disputing parties and as decision makers. As a leader, the Traditional Chief adheres to actual customs and rules and does not take sides in any matter in every decision. The position of the Traditional Head is very strategic, because he carries out the obligations and authority of the Customs in his community. In an effort to resolve land disputes, the role of the Sekerat Village Traditional Head as a mediator whose role is to mediate between the two parties to the dispute, must be neutral. Therefore, not just anyone can serve as Traditional Head. Apart from that, the role of the Traditional Head in resolving land disputes has an important role in maintaining and protecting harmony and tranquility in the traditional community and the Traditional Head is the place where community members rely in resolving their problems.

c As a Facilitator

The role of the traditional head as a facilitator is that of the party who helping a group of people to understand their common goals and assisting in making plans to achieve those goals in resolving disputes because of understanding their customary law. The results of the interview with the Traditional Head of Sekerat Village stated that:

“As a facilitator, the traditional head is obliged to provide a solution to the parties to the dispute that occurred in Sekerat Village. The traditional head provides the opportunity for the parties to express all opinions and problems that occur, and does not take sides with anyone, but only as a person who provides facilities in order to look for real, real evidence” (Interview, 21 April 2023). The people of Sekerat Village also expressed the same thing, stating that: “The traditional head of Sekerat Village is a facilitator who provides facilities to parties in land disputes by providing clear proof of land ownership by presenting witnesses to decide who is the true owner of the customary land.” (Interview, April 23, 2023). Based on the

interview above, it is clear that the role of the Sekerat Village Traditional Head as a facilitator in resolving land disputes by providing a solution and playing an active role in facilitating land dispute problems is very good. In resolving the land dispute that occurred in Sekerat Village, community members hope for a harmonious and peaceful resolution not only limited to the disputing parties but also parties related to the land dispute. The people of Sekerat Village do not want a decision to win or lose, but what they want is a fair decision for both parties, so that it is hoped that there will be no hostility that results in the breakdown of kinship ties or breaking up due to disputes that cannot be resolved.

Problems involving ownership rights to land often become land disputes and the pattern of resolving these disputes uses patterns of cultural wisdom that prioritize aspects of deliberation and kinship. Thus, the role of the Sekerat Village Traditional Head is as a mediator, amicable judge in resolving land disputes and also as a traditional decision maker, where these decisions are binding on the parties to the dispute and create harmony within the family. Traditional Heads play an important role in organizing and motivating the community so that their behavior is in accordance with the provisions of customary law. This is none other than because the duties of the Traditional Head are very heavy, especially those related to Customary Law, both those related to life and death. So, with the knowledge of customs and customary law that he has, the traditional head is expected to be able to maintain, carry out and resolve problems assigned to the traditional head.

3.3. Inhibiting and Supporting Factors for Dispute Resolution

1. Inhibiting Factors

In carrying out his duties, the Traditional Head is faced with several inhibiting and supporting factors in resolving land disputes that occur in Sekerat Village, Bengalon District, East Kutai Regency. The results of an interview with the Traditional Head of Sekerat Village stated: "The factors that cause disputes are factors from outside and within the scope of the community itself where emotions in resolving disputes are often uncontrolled, and the level of education and discipline also influences, the presence of third parties from outside usually plays a role slow down dispute resolution" (Interview, 21 April 2023). The people of Sekerat Village also expressed the same thing, stating that:

"One of the inhibiting factors in resolving customary land disputes in Sekerat Village is caused by the emotions of both parties to the dispute, because each of them still

maintains their ego, and both feel they are right. “So in resolving land disputes, it could hinder the process of resolving land disputes” (Interview, 22 April 2023). Another Sekerat Village community said that: “what is an obstacle in resolving customary land disputes is internal factors, namely the emotions of the parties when a dispute is resolved, but this can be resolved and mediated by the traditional head” (Interview, 22 April 2023). From the interview above, it is clear that the inhibiting factors in resolving land disputes in Sekerat Village can be categorized into 2 categories, namely from within, namely the emotional nature of both parties to the dispute, the low level of education, as well as discipline in the settlement process, unclear land boundaries, and from the outside, it is usually the third party who is slow to invite dispute resolution.

2. Supporting Factors

Supporting factors in the process of resolving land disputes in Sekerat Village include supporting factors in the form of an agreement between both parties to resolve it according to custom. This is because the costs are cheap and the completion is fast. The results of the interview with the Head of Sekerat stated that: “So far we have used customary land dispute resolution to resolve disputes between the parties, apart from being cheap and quickly resolved” (Interview, 23 April 2023). The same thing was conveyed by the people of Sekerat Village who stated that: “The supporting factor for resolving land disputes is that both parties carrying out the dispute usually choose traditional methods and decisions that have been determined by the traditional head cannot be contested by any party” (Interview, 23 April 2023). Results of interviews with other Sekerat Village residents revealed that: “Settlement through custom to resolve disputes between both parties is better, faster and cheaper, if someone violates it, they will be punished, so that the parties to the dispute are reluctant to fight and are more accepting of the decision of the traditional head” (Interview, April 23 2023). Based on the results of the interview above, it is clear that resolving land disputes through custom is an alternative method chosen by the indigenous people of Sekerat Village, because resolving this method is cheaper and even free. They realize that it is impossible for them to resolve their land disputes through legal channels because the costs are expensive, even though most of them make their living as fishermen and farmers.

Another thing that encourages them to prefer using this method alternative, because this method has become a habit in the environment them where every dispute in society will be resolved by deliberation between them. Non-litigation or alternative settlement is a practice where the outcome of the agreement depends on the good faith of each party in resolving the dispute, which sometimes causes chaos between the two parties due to their unstable tempers. There is no legal certainty because it is usually not

stated in written evidence (authentic evidence). This method has been going on for generations and is the reason why respondents prefer alternative solutions, namely the relatively short completion time. To resolve one dispute usually only takes a few weeks. This is different from settlement through court which takes a relatively long time, namely months or even years.

From the description above it can be concluded that Customary Law is local wisdom which stems from the authenticity of local culture which is the cultural heritage of ancestors. As part of the ancestral heritage, the role of the Traditional Head in resolving customary land disputes in Sekerat Village is to lead and hold deliberations with family members and the community. This deliberation aims to find the main problem, things that will cause conflict, as well as steps that will be taken if it becomes a prolonged conflict. The traditional head can appeal to his community to exercise restraint so that conflicts do not break out which give rise to disputes.

In this case, the role of the Traditional Head is to handle land dispute issues arising from both parties by presenting witnesses who know the history and history of the land in dispute to ask for information or information related to the land ownership issue. If the traditional head finds irregularities in the information, the steps that will be taken as a final resolution of the land dispute are to ask for an agreement from both parties to make peace, which means that the land will be distributed equally to both parties in the dispute as fairly as possible so that Later it does not cause conflict between the two parties to the dispute.

According to Soepomo, (1979: 45) the Traditional Head is the father of the community, he heads the association as head of a large family, he is the leader in the life of a group of traditional communities in his area. In this way, the traditional head is tasked with maintaining the law and ensuring that the law can run properly. Nothing in the lives of its citizens is closed to the Traditional Head from intervening whenever necessary to maintain peace, balance, inner and outer balance to uphold the law.

4. CONCLUSION AND RECOMMENDATION

4.1. Conclusion

Based on the results of the data presentation and discussion that has been described from the research focus, the role of traditional leaders in resolving customary land disputes has been determined;

The first is as a motivator, where the Traditional Head provides a good understanding of the problems that occur together with the village head and community leaders in resolving problems that occur to the parties in dispute with the motivation of ensuring that there is no commotion regarding disputes over customary land which has been passed down from generation to generation.

Second, as a mediator, the traditional head assists the parties understand and find solutions to land disputes by looking for authentic evidence first in order to get evidence that is truly real.

The third Traditional Heads are facilitators who provide a solution for the disputing parties by conveying all opinions and problems that occur, not taking sides with anyone, but only as people who provide solutions and facilities to look for truly real evidence.

The fourth inhibiting factor in resolving customary land disputes in Sekerat Village is the emotional factor of both parties to the dispute, this is because each of them still maintains their ego and feels right. This can certainly hamper the process of resolving land disputes.

The five supporting factors for resolving land disputes for the disputing parties are low cost and fast time, so that it is the alternative chosen by the community in resolving land disputes that occur in Sekerat Village.

4.2. Suggestions

From the description above, the suggestions that the author can put forward are as follows:

Firstly, the Traditional Head is a person who is trusted to be an arbitrating judge. He must be able to be firm and make rules that are attractive and provide sanctions for anyone who violates them.

Second, the installation of land boundary signs must be known to witnesses and the materials used are stronger, so that they are not easily shifted or lost until the land ownership marks become more certain.

Third, make regional regulations regarding the provisions of customary lands in the East Kutai Regency area, so that the public can clearly understand the regulations regarding the existence of customary lands in the area.

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