

Out-of-Court Settlement of Customary Land Rights Disputes of the Malamoi Tribe within the Framework of Land Law Reform

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Abstract

Indonesia faces the challenge of balancing food security and forest preservation while ensuring its legal system serves as both a foundation and driver of effective governance. This study examines customary dispute resolution within the Malamoi tribe, focusing on the resolution of customary land disputes and its implications for land law reform. The research employs a normative juridical approach, utilizing document studies for data collection and normative qualitative analysis. Findings reveal that the Malamoi tribe maintains customary law as a means of resolving disputes, providing a sense of justice and restoring balance in their community through traditional court processes and sanctions. However, these customary decisions lack formal legal recognition, as Sorong City does not have regulations supporting the application of Malamoi customary law. Despite this, customary land release conditions set by tribal chiefs are acknowledged for land ownership registration. Furthermore, the study proposes judicial recognition of customary resolutions within Indonesia's legal framework to address conflicts between customary and national court decisions, particularly concerning land disputes crucial for community livelihoods. This approach aligns with efforts to reform land law and harmonize customary and formal legal systems.

Keywords: *Settlement, Top Dispute, Malamoi Tribe.*

Introduction

The recognition of indigenous peoples in Indonesia is enshrined in the 1945 Constitution, various laws, and subordinate regulations, signifying their acceptance within the national legal framework. This study examines the regulatory provisions addressing the existence and rights of indigenous peoples, as stipulated in the 1945 Constitution and other statutory instruments.

As a derivative of the rule of law principle, the recognition of indigenous peoples is subject to limitations when their rights and customary laws conflict with national interests or statutory provisions. In such cases, the rights and interests of indigenous peoples, as governed by customary law, may be overridden. This reflects the inherent primacy of positive state law within the legal hierarchy. However, the coexistence of customary and positive law highlights the need for an intersectional approach to legal enforceability, particularly when resolving disputes involving customary law.

Customary law, characterized by its dynamic and plastic nature, adapts to societal and temporal changes. Its dynamic nature ensures evolution with societal progress, while its plasticity allows flexibility in response to changing circumstances (Wulansari, 2016). These traits underscore the complexities of customary dispute resolution and its recognition within the positive legal framework. Understanding this interplay is crucial for aligning customary practices with national legal standards, fostering a balanced approach that respects both legal traditions while ensuring consistency and fairness in their application.

One of the key challenges faced by customary law communities is the transfer of customary land rights within the Malamoi tribe, which frequently leads to land disputes. These disputes often surface at the Indigenous People's Institution (LMA) – Malamoi and the National Land Agency (BPN) of Sorong City, referred to as the Sorong City Land Agency. As highlighted in an interview with Stefanus Koridama,

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Secretary of the Iwafo-Imekko Sub-Tribe Traditional Council in South Sorong Regency on August 1, 2022, these disputes arise due to several factors, including:

- Issuance of Letter of Release of Customary Land of Dual Indigenous Peoples
- Disputes over customary land ownership of indigenous peoples related to the boundaries of customary land of indigenous peoples by the Malamoi tribe itself
- Unclear ownership of customary land of indigenous peoples resulting in "sell on sale"
- The customary land registration process of indigenous peoples that is not in accordance with the land registration procedure at the Sorong City Land Agency
- Land that is already owned by other parties, but is still controlled by certain people and so on.

Issues concerning customary land in the Malamoi tribe frequently arise from disputes over land rights following marriage, either within the Malamoi tribe or between members of the Malamoi tribe and individuals from other tribes. These disputes often intensify struggles over land rights, particularly concerning customary land within the indigenous Malamoi community. This challenge was highlighted in an interview with Herkanus D. Kalami, Chairman of the Association for the Empowerment of Customary Rights of Marga Keret Kalami Klakaulus, Sorong City, on August 1, 2022.

As identified, the land rights associated with customary land within the Malamoi tribal community were further elaborated during an interview with Stefanus Koridama, Secretary of the Iwafo-Imekko Sub-Tribe Traditional Council of South Sorong Regency, on the same date. These rights include:

- hereditary land rights called *Pabenum rights*
- protection rights. This right is characterized by the presence of bones or at least marks owned by ancestors. This right is called *wolli right*.
- sub-ban rights. That is the right born from marriages that occur between clans. As is known, women of the malamoi tribe are given land rights, usually the one who takes care of it is their husbands. But the rights remain attached to women.
- Right of exchange (right of *Sumuala*). This right was born from the help of other parties who helped a problem in the malamoi tribe, after there was such assistance the party who helped was given a plot of land.
- Milk rights, rights born out of marriage in which a man is granted land rights.

The existence of customary land rights, particularly those related to marriage, poses significant challenges for the Malamoi tribe. As highlighted in an interview with Stefanus Koridama, Secretary of the Iwafo-Imekko Sub-Tribe Traditional Council of South Sorong Regency on August 1, 2022, disputes often arise due to greed and attempts to claim land that does not rightfully belong to individuals.

In connection with land disputes as described above, land registration Article 1 point 1 of Government Regulation Number 24 of 1997 concerning Land Registration states that:

Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and flats units, including the provision of certificates of proof of their rights to land parcels that already have rights and property rights to apartment units and certain rights that encumber them.

According to this regulation, land registration is a systematic, continuous, and organized process undertaken by the government. It encompasses the collection, processing, recording, and maintenance of both physical and legal data, presented in the form of maps and registries, related to land parcels and apartment units. This process includes issuing certificates of ownership and other rights, ensuring legal certainty for landowners.

Land registration is a crucial obligation for all legal subjects, including indigenous communities like the Malamoi tribe, to secure their land rights and mitigate disputes. In addition to land disputes, boundary issues present significant challenges, especially during administrative divisions of provinces, districts, or cities.

Proper delineation of boundaries is essential to prevent conflicts and protect communities from becoming victims of unclear territorial demarcations. For instance, Tambrau Regency, part of the proposed West Papua Badaya Province, includes areas such as Kasi and Mubrani Districts that border Manokwari Regency. Without careful planning and agreement on these boundaries, disputes may arise, leading to administrative and social challenges that could adversely affect local populations.

Addressing these issues requires a concerted effort to integrate land registration systems with clear boundary definitions, ensuring sustainable conflict resolution and the protection of indigenous and community rights.

Based on the objectives of this research, the indigenous Malamoi people were selected as the focus of the study for several reasons:

Philosophical Perspective

The indigenous Malamoi people are deeply committed to upholding the ancestral rules and traditions inherited from their forebears. These rules are practiced with sincerity, promoting harmony between humans and the environment under divine guidance. This approach serves as an inspiration for policymakers, politicians, and government institutions to adopt rules grounded in such noble values. However, the use of customary land by third parties, contrary to these ancestral provisions, undermines the cultural and philosophical heritage of the Malamoi people, tarnishing the legacy of this nation's forebears.

Legal Perspective

Laws have a binding and coercive nature that must be universally implemented. For the indigenous Malamoi people, the absence of clear legal provisions poses a risk, particularly amidst the influence of globalization and the rise of individualistic or liberal systems in Papua. These forces may disrupt the communal integrity of customary land within the Malamoi community, exposing it to exploitation by external business interests. To address this, there is an urgent need for robust legal arrangements governing customary land in the Malamoi community.

Additionally, the lack of strong legal recognition for natural territorial boundaries increases vulnerability, as these boundaries are prone to change. Systematic mapping of these areas, supported by GPS technology, is essential to provide legal certainty and protection. Absolute mapping, once implemented, would prevent unauthorized use of Malamoi customary land by third parties, ensuring legal enforcement and safeguarding indigenous assets.

Sociological Perspective

The establishment of legal protections reinforces the state's obligation to safeguard the rights of its legal subjects, including the indigenous Malamoi people. Integrating positive legal systems with customary practices ensures the preservation of Malamoi traditions while offering the community a legal framework that supports and protects their way of life.

These perspectives underscore the importance of aligning philosophical, legal, and sociological considerations to protect and preserve the rights, land, and heritage of the Malamoi indigenous people within the broader framework of national development.

Legal protection is a fundamental right that must be guaranteed to all citizens as a manifestation of state accountability. When the state fails to provide such protection, it can be deemed as neglecting its responsibilities. This principle also applies to the indigenous Malamoi people, who require legal safeguards for their customary land to prevent encroachment or misuse by third parties. Such unauthorized use risks diminishing or even eliminating the customary land that has been preserved by the Malamoi community for generations.

Based on these considerations, the research identifies two key problems:

How can customary disputes involving the Malamoi tribe be addressed effectively in the context of resolving customary land disputes?

What is the appropriate concept for resolving customary land disputes among the indigenous Malamoi people outside the court system, particularly within the framework of land law reform?

These questions aim to explore mechanisms and strategies for resolving disputes while preserving the legal and cultural rights of the Malamoi community, ensuring their ancestral heritage remains intact amidst contemporary legal and developmental challenges.

Research Methods

The research for this journal adopts an analytical-descriptive approach, focusing on the systematic review and analysis of primary, secondary, and tertiary legal materials. The study employs a normative juridical method, emphasizing the examination of secondary data to analyze the existence and implications of laws and regulations. This dual approach, encompassing both literature reviews and field research, provides a comprehensive understanding of the legal framework and its practical applications. The data analysis utilizes a qualitative juridical technique, where findings are presented in narrative form rather than numerical statistics. This method allows for an in-depth exploration of the subject matter, emphasizing the legal and contextual nuances critical for scholarly discourse.

Discussion

Handling Customary Disputes of the Malamoi Tribe in the Context of Resolving Customary Land Disputes

Long before the establishment of the Republic of Indonesia on August 17, 1945, the indigenous peoples of the archipelago, including the Customary Law People (Masyarakat Hukum Adat, MHA), managed land and natural resources in accordance with their customary institutions. These practices underscore the fundamental necessity for the recognition and protection of their rights. The 1945 Constitution of the Republic of Indonesia acknowledges the existence and traditional rights of indigenous peoples, ensuring state recognition and protection of their customary rights. This includes the Moi Indigenous Peoples of Sorong Regency, whose rights and existence are safeguarded through legal provisions.

Normatively, the protection and recognition of the customary rights of indigenous peoples are enshrined in various laws and regional regulations. These legal frameworks provide protection not just for the individual whose name is listed in a land certificate but also for the land itself, ensuring it is safeguarded against disputes or claims by others. This distinction is essential in understanding that legal protection prioritizes the land's integrity and the customary rights attached to it, rather than focusing solely on the person named in the certificate.

The existence of these protections highlights the importance of maintaining indigenous rights and ensuring the harmony between customary practices and national legal frameworks. This is especially relevant in the

case of the Malamoi tribe, where safeguarding their customary land from external interference is not only a matter of legal compliance but also a means of preserving their cultural and ancestral heritage.

Recognition of the customary rights of Indigenous Peoples has received recognition in various provisions of laws and regulations, especially the 1945 Constitution of the Republic of Indonesia. As for some of these provisions:

Article 18B Paragraph (2) and Article 28I Paragraph (3) of the Constitution of the Republic of Indonesia Year 1945.

Article 3 of Law No. 5 of 1960 concerning Agrarian Principles.

Article 5 paragraph (3) and Article 6 of Law No. 39 of 1999 concerning Human Rights.

Article 54 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court

In addition, regulations related to customary rights of indigenous peoples are also found in various sectoral laws and regulations, namely:

- Article 1 Letter (F), Article 4 Paragraph (3), Article 34, Article 37, Article 67 of Law No. 41 of 1999 concerning Forestry;
- Article 34 and Explanation of Article 34 Paragraph (2) of Law No. 22 of 2001 concerning Oil and Gas;
- Article 16 Paragraph (2) letter a of Law No. 27 of 2003 concerning Geothermal;
- In Article 6 Paragraph (2) and Paragraph (3) of Law No. 7 of 2004 concerning Water Resources;
- Article 9 Paragraph (2) and Paragraph (3) of Law No. 18 of 2004 concerning Plantations;
- Article 6 paragraph (2) of Law No. 31 of 2004 concerning Fisheries;
- Article 58 paragraph (3) of Law No. 38 of 2004 concerning Roads;
- Article 30 paragraph (6) of Law No. 30 of 2009 concerning Electricity;
- Article 1 Number 3, Article 63 of Law No. 32 of 2009 concerning Environmental Protection and Management

In addition, legal protection for indigenous peoples, including the Moi Tribe, is explicitly stipulated in Article 43 and Article 57 of Law No. 21 of 2001 concerning Special Autonomy for Papua Province. These articles provide a legal basis for recognizing and protecting the customary rights of the Moi Tribe in Sorong Regency. More detailed provisions are outlined in the Regional Regulation of Sorong Regency No. 10 of 2017, particularly in Article 3 and Article 5, which govern the recognition and protection of the Moi Customary Law Community.

Customary rights are recognized as a distinct form of land ownership if they fulfill two primary requirements:

- The existence of the rights is demonstrable: The rights must still be actively practiced and recognized within the community.
- Alignment with national and state interests: The exercise of these rights must not conflict with

national development goals or other applicable regulations.

The Moi Tribe has a substantial need for land, which serves various purposes, including cattle grazing, market areas, customary hamlets, and village construction (iik fagu). Customary land rights among the Moi Tribe span across eight sub-ethnic groups: Moi Sigin, Moi Lamas, Moi Maya, Moi Kelim, Moi Klabra, Moi Salkhma, Moi Abun Taat, and Moi Abun Jii.

In the context of Papuan customary law, two primary systems of land tenure/ownership are recognized:

- *Communal/ Shared Ownership*

Small Clan-Based Ownership: Specific to a particular clan or sub-clan.

Large Clan-Based Ownership: Tied to village-based ownership, reflecting the ethnic group's original settlement in the village.

- *Individual Ownership*

Though termed "individual," it typically refers to descendant-based ownership, ensuring land remains within the lineage of the family or community.

These systems demonstrate the complexity and diversity of land ownership within the Moi Tribe and emphasize the need for legal frameworks that respect and integrate these customary practices while ensuring they align with broader national legal and developmental objectives.

Within the Moi Tribe, there exists an institution that governs various aspects of life and legal relations, both internally and externally, including the management of customary land rights. This institution, known as the Malamoi Moi Indigenous People's Institute (LMA), plays a critical role in the regulation and administration of customary land. One of its key functions is to issue customary release letters (alas hak) for lands that are relinquished by tribes or clans and transferred to parties outside the indigenous community. This process adheres to established customary law procedures, ensuring that the rights and traditions of the Moi community are upheld.

However, over time, the growing influence of external interests and pressures has led to instances where the issuance of customary release letters disregards traditional rules. This deviation from customary procedures poses a significant risk, often resulting in conflicts over the ownership and control of customary land.

Despite this, landholders are not permitted to act arbitrarily with their land. Alongside their rights, landholders bear specific obligations and must respect the limitations imposed by both customary and formal legal systems. These obligations ensure that land usage aligns with communal values and prevents misuse that could harm the integrity of customary land rights.

The evolving challenges faced by the Malamoi Moi Indigenous People's Institute underscore the need for consistent adherence to customary procedures and the establishment of mechanisms to safeguard these processes against external interference. This approach is vital to preserving the cultural and legal integrity of the Moi Tribe while mitigating the potential for land-related disputes.

Customary institution is an indigenous community organization formed by a certain community of customary law people, has a certain territory and has its own property and has the right and authority to regulate and manage and settle matters related to custom (Ismail, 2008). The Malamoi customary institution in Sorong City serves as a traditional forum and is an embodiment of Law No. 21 of 2001 concerning Special Autonomy for Papua. This institution holds the authority to address customary issues, preserve indigenous traditions, and enhance the dignity and status of indigenous peoples in Papua. Its role is central to the management and protection of customary laws and practices, ensuring they remain integral to the

cultural and social fabric of the region.

Although de facto, the existence of customary institutions in Papua predates the enactment of Law No. 21 of 2001, their influence and contribution to the organization and management of indigenous peoples' lives were limited prior to the law's implementation. The law has provided a formal framework for recognizing and strengthening these institutions, giving them a more structured and significant role in addressing the challenges faced by indigenous communities.

The Malamoi customary institution, therefore, not only embodies traditional authority but also acts as a bridge between customary practices and the broader legal framework established under Papua's special autonomy. This dual role is crucial for fostering the recognition, preservation, and development of indigenous systems in a way that aligns with contemporary governance and legal structures.

The Malamoi Sorong Indigenous People's Institution possesses authority to address and resolve various customary land disputes within the community. Its responsibilities include:

Conducting Customary Assemblies Based on Reports from Indigenous Peoples

The customary assembly, a fundamental element of the Moi tribe's customary law, incorporates mystical and cultural elements that allow it to resolve disputes effectively. This mechanism offers a comprehensive, swift, straightforward, and accessible approach to problem-solving. Customary law has proven capable of addressing ethnic conflicts and societal tensions due to its widespread adherence among indigenous peoples. Recognizing this, the Sorong City government actively supports initiatives to empower indigenous peoples by promoting local wisdom and customary law values. These assemblies serve as a platform to resolve disputes and enhance the effectiveness of customary institutions in addressing land disputes prevalent in Sorong City.

Safeguarding and Overseeing Decisions of the Customary Assembly

Ensuring the implementation and maintenance of decisions made during customary assemblies is a vital function of the institution. This responsibility helps uphold the unity and consistency of decisions, promoting justice and harmony within the customary law community. Since societal interactions inherently involve conflicting interests—be they group or individual—guidelines for behavior are essential. These guidelines, rooted in customary law, help prevent harm to individuals and the community, providing a framework for resolving disputes and fostering social order.

Distribution of Customary Land Heritage to the Malamoi Tribe

The distribution of customary land inheritance within the Malamoi tribe is governed by its traditional laws, reflecting generations of ownership and inheritance practices. For instance, the division of land belonging to the Osok Malaimsimsa clan in North Sorong District, including areas in Malanu Kampung and along part of Alteri Road, adheres to these customary principles.

Inheritance Rights: Only children born of lawful marriages—both customary and religious—are entitled to inherited land.

Gender-Specific Rights: Sons inherit and control the land, while daughters are entitled only to the produce of the land. However, if a family has only daughters, or if the daughter is the sole child, she may inherit and control the land.

By adhering to these principles, the institution ensures the equitable and culturally appropriate distribution of land, preserving the tribe's traditions and rights while addressing modern challenges related to land disputes.

The relationship between indigenous peoples and natural resources, including their environment and living

areas, is best understood as a relationship of obligations rather than solely of rights. For indigenous communities, land and natural resource rights are fundamental and closely tied to their identity and existence. These rights carry inherent obligations for customary rulers to safeguard the welfare and interests of their community members while minimizing disputes over land use. In principle, customary rights rulers may sell or transfer parts of their land to third parties, but this is considered an exception and subject to specific circumstances. Additionally, members of indigenous communities are permitted to utilize land within their jurisdiction under certain customary provisions.

In the case of the Malamoi Tribe, land disputes are prevalent and often involve the government, migrant communities, or members of the customary law community itself. These disputes are complex and unique, reflecting the varying characteristics of each situation. Factors contributing to customary land disputes within the Malamoi Tribe include:

- *Lack of Clarity on Customary Land Boundaries*

Unclear or undefined boundaries of customary lands often lead to overlapping claims, resulting in conflicts between individuals or groups.

- *Lack of Awareness Among Indigenous Peoples*

Insufficient understanding of their rights and responsibilities regarding land use and ownership contributes to disputes. This lack of awareness may result in unintentional violations of customary rules or susceptibility to exploitation by external parties.

- *Non-Functioning Customary Leaders*

When customary leaders fail to perform their roles effectively, including managing land use, resolving disputes, and maintaining community welfare, the likelihood of conflicts increases. The absence of strong leadership undermines the stability and harmony of the customary law community.

Addressing these issues requires comprehensive measures, including clear boundary mapping, education to raise awareness among indigenous peoples, and revitalizing the role of customary leaders to ensure the effective governance of land and resources within their communities. Such efforts are essential to preserving the rights and obligations integral to the identity and sustainability of indigenous peoples like the Malamoi Tribe.

Based on interview findings, the sources of land disputes in Sorong City exhibit specific characteristics, including:

Issues with "Alas Hak" (Customary Release Process)

Disputes often arise from the process of issuing certificates involving new customary releases while older releases exist. This discrepancy leads to overlapping claims and has several negative consequences:

Accumulation of PNBP (Non-Tax State Revenue) file arrears.

Unauthorized occupation of land, which may escalate to criminal reports.

Disruption of programs such as PTSL (Complete Systematic Land Registration), Land Redistribution, and Land Procurement activities.

Cancellation of Improperly Issued Certificates

Instances of certificates being canceled due to procedural flaws, such as missing land books, certificates of

ownership (SU), or tables of contents, often conflict with existing documentation within the community (e.g., copies of certificates or presented certificates). This results in:

Unclear land status, leaving landownership disputes unresolved.

Unauthorized land occupation leading to criminal activities.

Criminal reporting against National Land Agency (BPN) officers or employees responsible for issuing improperly documented administrative decisions (KTUN).

Dual Rights Relinquishment by Tribal Chiefs

The relinquishment of land rights by tribal chiefs, a customary practice in the Malamoi tribe, has been exploited by unscrupulous individuals. These parties often manipulate chiefs into issuing multiple releases for the same land parcel, creating overlapping claims. This practice undermines the integrity of customary land governance and results in significant legal and communal disputes.

The identified issues emphasize the need for enhanced governance and transparency in land administration processes, including:

Strengthening documentation and verification procedures for "alas hak" and certificate issuance.

Introducing robust mechanisms to address procedural lapses and ensure accountability among land administration officials.

Educating tribal chiefs and customary communities about the risks of dual rights relinquishment and implementing safeguards to prevent exploitation.

By addressing these challenges systematically, the clarity and stability of land rights in Sorong City can be improved, reducing conflicts and promoting equitable land governance.

Based on the foregoing, the relinquishment of rights within the Malamoi tribe is intrinsically linked to the authority of the tribal chief. The chief holds a pivotal role in granting waivers of customary land rights, which serve as prerequisites for land management and certification processes with the National Land Agency (BPN) of Sorong City. This arrangement highlights the following key points:

Recognition of the Tribal Chief by BPN

The National Land Agency (BPN) formally acknowledges the tribal chief as the legitimate authority for issuing the relinquishment of customary land rights. This recognition underscores the chief's central role in facilitating the transition of customary land into the framework of formal land administration.

Recognition of Indigenous Peoples by Positive Law

The process reflects the broader principle that positive law recognizes the existence of indigenous peoples and their customary institutions. This acknowledgment affirms the legal status of indigenous communities like the Malamoi tribe and their traditional practices within the national legal framework.

This dual recognition fosters a bridge between customary law and positive law, enabling indigenous practices to coexist with modern legal systems. However, it also underscores the importance of safeguarding the process from misuse or manipulation, ensuring that the integrity of both customary and formal systems is maintained.

An intriguing aspect of dispute resolution in Papua, particularly among the Malamoi tribe, is the prioritization of customary mechanisms over formal judicial channels. For the Malamoi people, court

proceedings are considered a **last resort**, often undertaken only after attempts to resolve disputes through customary practices or when customary law decisions require reinforcement. Interestingly, even when court rulings are issued, the community often continues to reference customary law decisions, especially when these align more closely with their values and norms.

The preference for alternative dispute resolution methods within the Malamoi tribe is rooted in several key principles:

Harmonization and Deliberation

The indigenous community emphasizes maintaining harmony and resolving disputes through deliberation. This approach fosters communal unity and prioritizes the interests of the community over individual conflicts.

Familial and Relational Considerations

Dispute resolution focuses on familial relationships and the broader community's well-being. This includes prioritizing rational and empathetic solutions, fostering mutual understanding, and encouraging voluntary sacrifices for the benefit of others within the community.

Practicality and Accessibility

Customary dispute resolution is seen as more practical than formal judicial processes, which are often perceived as costly and time-consuming. The lengthy procedures and high financial burden associated with court cases make customary mechanisms a more accessible and efficient alternative for indigenous peoples.

Positive Outcomes for All Parties

By resolving disputes through deliberation and consensus, indigenous peoples aim to achieve outcomes that are mutually beneficial and sustainable, strengthening social cohesion and reducing the potential for recurring conflicts.

This reliance on customary practices reflects the Malamoi tribe's commitment to their cultural values and the importance of preserving traditional mechanisms that prioritize community harmony and collective well-being over adversarial approaches in formal judicial systems.

Within the Malamoi tribe, dispute resolution processes prioritize alternative (non-litigation) mechanisms, emphasizing traditional and community-oriented approaches. The key methods include:

Dispute Resolution Through Deliberation (Negotiation)

Customary land disputes among the indigenous Malamoi people can be resolved through negotiation and deliberation between the disputing parties. This process involves direct dialogue aimed at reaching mutual understanding and consensus, fostering harmony and maintaining relationships within the community.

Dispute Resolution Through Mediation

Mediation involves appointing an intermediary or mediator to facilitate resolution between disputing parties. The mediators may include:

The Malamoi Indigenous People's Institution (LMA) of Sorong Regency.

Local government figures, such as district heads.

The Sorong Regency Customary Council.

The Sorong Regency Land Office.

This approach leverages the authority and influence of these individuals or institutions to ensure fair and balanced mediation, promoting outcomes aligned with customary and legal principles.

Dispute Resolution Through Customary Court

The customary court process involves proving ownership of disputed customary land. This is done by presenting evidence such as the geographical location of the land and conducting a customary oath.

Customary sanctions are imposed on the guilty party and may include:

Payment in the form of money.

Provision of eastern cloth as a symbolic penalty.

Customary Oath Practices include:

Eating Land: Symbolizing the solemnity of the oath.

Molobelo: A traditional ritual to affirm truthfulness.

Stabbing Wood, Red Iron, Cutting Tui Bamboo: Physical acts signifying the seriousness of the resolution process.

However, some of these practices, particularly those associated with severe sanctions such as death, are becoming less common or have disappeared due to their intensity and the evolving cultural context. These methods of dispute resolution highlight the Malamoi tribe's reliance on traditional mechanisms that respect their cultural heritage while adapting to contemporary realities. By prioritizing deliberation, mediation, and customary courts, the Malamoi people strive to maintain harmony, fairness, and community cohesion in addressing disputes.

On the other hand, parties receiving compensation in land disputes are obligated to acknowledge and address the concerns of other families involved, prompting the need for a customary hearing. In such cases, the dispute resolution process involves the participation of traditional leaders, customary councils, customary institutions, and local government representatives (such as district heads) in a customary assembly to deliberate and resolve the matter.

The role of customary justice in Indonesia is pivotal, functioning as an informal and autonomous community justice system within indigenous territories. Rooted in local culture, customary justice serves as both a mechanism for behavior regulation and a tool for restoring social harmony. As noted by Soebroto (1994), customary justice systems are instrumental in problem-solving and maintaining community order.

By integrating cultural values and traditions, customary justice provides a flexible and community-centered approach to conflict resolution. This approach not only addresses disputes effectively but also strengthens the social fabric by reinforcing shared norms and values, ensuring that resolutions are both fair and culturally resonant.

The existence of the Malamoi tribe itself is a medium for customary settlement that prioritizes local wisdom in the Papua region. This is also regulated in Articles 50 and 51 of Law Number. 21 Year 2001 concerning Special Autonomy for Papua Province states:

Judicial power in Papua Province is exercised by the Judiciary in accordance with laws and regulations.

In addition to the judicial powers referred to in paragraph (1), customary courts are recognized within

certain customary law communities.

The recognition of community rights and customary law is contained in Article 43 paragraphs (1) to (3) of Law Number 21 of 2001 concerning Papua Special Autonomy, among others, the Papua provincial government is obliged to recognize, protect, and develop the rights of indigenous peoples and customary law. then in the explanation of paragraph (5) it is stated that the settlement of disputes between indigenous peoples is resolved through mediation or customary courts as referred to in the special autonomy law. The article also shows the duty of the Provincial and District / City Governments to support the strengthening of customary courts in their territories

The problem when related to customary problems, in this case, customary land in the indigenous people of the Malamoi tribe is the absence of regional regulations in Sorong City as an applicator of Law Number. 21 Year 2001 and Perdatus Number. 20 Year 2008. This is inversely proportional when it is associated with Sorong Regency which already has Regional Regulation Number. 8 of 2016 About Traditional Villages. The purpose of the enactment of this Regional Regulation is to strengthen the role of traditional villages, protect and preserve and provide wider space in development efforts and community services as well as the implementation of customary courts in traditional villages. In Chapter IX of Regional Regulation Number 8 of 2016 concerning Customary Villages, regulates customary courts which include the composition of customary courts in accordance with the religious system of indigenous peoples, as well as about the duties and functions of customary courts in Jayapura Regency which include:

Prosecute any indigenous and non-indigenous peoples who violate customary norms in the territory of indigenous peoples.

Enforcing norms within the customary law community

The absence of this regional regulation certainly has significant implications for the settlement of customary disputes in this case regarding customary land in the indigenous people of the Malamoi tribe because there is no legal certainty of customary decisions in Sorong City. However, customary decisions can be addressed in steps to gain legal force, with customary decisions transferred to the courts, which may:

Used as evidence, if the customary decision is challenged by one of the parties

Obtain attestation from the court if, the parties agree to the customary judgment.

The Concept of Resolving Customary Land Disputes Among the Indigenous Peoples of the Malamoi Tribe Outside the Court in the Context of Land Law Reform

Resolving customary land disputes within the Malamoi tribe emphasizes the integration of traditional mechanisms into the national legal framework. If customary courts established by Malamoi customary institutions—or similar institutions elsewhere—are to be incorporated into the national justice system, three possible approaches can be considered:

Independent Customary Courts

Customary courts could function as an independent fifth jurisdiction alongside the existing general, religious, administrative, and military courts. This approach would recognize customary courts as autonomous judicial bodies dedicated to resolving disputes based on customary laws and practices.

- Advantages: Upholds the autonomy and integrity of indigenous systems, preserving cultural identity.
- Challenges: Issues such as jurisdictional boundaries, judge qualifications, and procedural consistency would need to be addressed.

Customary Courts Integrated into General Courts

Customary courts could be incorporated into the general court system, positioning them at the same level as state courts. This integration would ensure formal recognition while maintaining a connection to the national legal framework.

- **Structure:** Career judges and customary judges could work collaboratively, with customary judges either serving on an ad-hoc basis or holding permanent positions.
- **Challenges:** Addressing procedural differences, appellate processes, and maintaining the distinct identity of customary practices within the formal legal system.

Accommodating Customary Values in Formal Court Rulings

This approach does not establish a formal customary court but ensures that customary values are embedded in judicial decisions within the existing court system.

- **Implementation:** Judges would be required to have a thorough understanding of local customary laws to make rulings that reflect indigenous principles.
- **Advantages:** Maintains flexibility while reducing the need for institutional restructuring.
- **Challenges:** Ensuring judges' competence in customary law and addressing the potential for inconsistent application of customary principles.

Each of these approaches offers unique opportunities and challenges. While establishing independent customary courts would provide the most robust recognition of indigenous systems, integrating customary courts into the general court system or embedding customary values into existing rulings might be more feasible in the short term. Ultimately, the choice of approach should reflect the need for cultural preservation, legal certainty, and harmonization between customary practices and national legal systems, ensuring the rights and traditions of the Malamoi tribe and other indigenous communities are respected and upheld.

It is important to note that these three proposed positions for customary courts are not mandatory solutions, as each carries its own set of challenges. However, these concepts emerge from the aspiration to enhance the role of customary courts in resolving disputes within their cultural context. The ultimate goal is to ensure that customary courts are valued, respected, and recognized by the state, which operates within its own legal frameworks and systems.

This perspective is grounded in Article 24(3) of the 1945 Constitution of the Republic of Indonesia, which provides opportunities for the establishment of courts outside the traditional judicial system. While Article 24(2) mentions the Supreme Court and its subordinate courts—namely, the General Court, Religious Court, Military Court, and State Administrative Court—as well as the Constitutional Court, Article 24(3) allows for the possibility of additional courts, provided they are authorized by law.

This constitutional provision opens the door for the formal recognition of customary courts, provided they are regulated by law (Sudantra, 2004). The establishment of such courts would integrate traditional justice mechanisms into the national judicial framework, offering a platform for resolving disputes in a manner that aligns with the cultural values and norms of indigenous communities.

The recognition and institutionalization of customary courts could strengthen their legitimacy and ensure that the unique principles of customary justice are respected within the broader legal system. This approach balances the preservation of cultural heritage with the necessity of aligning customary practices with Indonesia's constitutional and legal framework.

Customary justice is a mechanism of peaceful dispute resolution within communities governed by customary law. It serves as a justice institution among members of customary law communities, operating within the framework of their cultural and legal norms (Mertokusumo, 1999). While the terminology "customary justice" is normative and mentioned in various laws and regulations—particularly those enacted after the reform era—its formal recognition is often expressed differently across communities.

In various indigenous communities, customary justice systems are referred to by local terms, reflecting their unique cultural identities. Examples include "*siding adat*," "*para-para adat*," "*pokara adat*," and "*rapat adat*," among others. These terms signify the diverse manifestations of customary courts, which operate based on local customs and traditions. The revival of these customary courts, as juridically recognized within Indonesia's justice system, highlights their evolving role in resolving disputes while preserving cultural heritage (Wojkowska, 2006).

However, the integration of customary justice into the national judicial system is not without challenges. Conflicts often arise when customary court decisions contradict rulings from national courts, particularly in cases involving land disputes, which are deeply tied to the survival and identity of indigenous communities. These conflicts underscore the tension between customary law and formal legal systems, creating a paradox where the very mechanisms meant to resolve disputes sometimes lead to further discord.

This situation calls for a harmonization of customary and national justice systems, ensuring that customary courts are respected and their decisions hold validity within the broader legal framework. By doing so, disputes, especially those concerning land—an essential resource for livelihood and cultural identity—can be resolved equitably, reducing the potential for conflicts and fostering greater societal harmony.

Conclusion

The resolution of customary land disputes within the Malamoi tribe is rooted in the preservation of their customary law, which is trusted to provide justice, restore social and spiritual balance, and address disruptions caused by disputes. Customary courts, with their unique processions and sanctions, are conducted according to traditional procedures, yet their decisions lack formal legal force due to the absence of regional regulations validating Malamoi customary law in Sorong City. Nonetheless, waiver conditions issued by tribal chiefs are recognized as part of land registration requirements, reflecting partial integration of customary practices into the formal legal system. To address the frequent conflicts arising from discrepancies between customary decisions and national court rulings, a harmonized approach is necessary, involving juridical recognition of customary law within Indonesia's judicial framework. This requires formulating regional regulations to enforce Malamoi customary law, integrating customary values into the national justice system, and fostering collaboration between customary institutions and formal legal authorities to ensure equitable and culturally sensitive dispute resolution. Such efforts would preserve the cultural heritage of the Malamoi tribe while addressing the critical issue of land disputes central to their survival and identity.

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