

ALTERNATIVE DISPUTE RESOLUTION MODEL BASED ON LOCAL WISDOM IN SETTLEMENT OF LAND DISPUTE IN ALOR REGENCY

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Article history: received 07 August 2023; revised 16 August 2023; accepted 02 September 2023

DOI: <https://doi.org/10.33751/jhss.v7i3.8333>

Abstract. This research is to respond to the problem of land disputes in the issue of land boundary designation and inheritance distribution in the community of Maru Village, which prefers to resolve land dispute problems using local wisdom patterns as a form of settlement through non-litigation channels and applicable in the Maru Village community. Because according to the village community, accommodation using local wisdom patterns is more effective, the settlement process is more straightforward and more practical. This study aims to describe the types and characteristics of land disputes in the last five years and dispute resolution efforts based on alternative dispute resolution (ADR) based on local wisdom. The problem in this study is the characteristics of law in the local knowledge of the Maru community. The chosen approach is a variation between normative and empirical research, so the historical, conceptual, philosophical, and case techniques are preferred. The method offered as a form of alternative dispute resolution (ADR) is an effort to resolve using customary traditions and customary law of Maru Village, namely Hari. The resulting research results are the settlement process using customary law and local wisdom in Maru Village in the field of law, especially land and inheritance cases in the form of settlement efforts in the form of adjudication, conciliation, and customary law, namely Hari, which will undoubtedly have an impact on reducing (litigation lawsuits) because non-litigation settlements have been carried out with the ADR model

Keywords: local wisdom; alternative dispute resolution; non-litigation; land dispute

I. INTRODUCTION

Land has many meanings in human life. *First*, from an economic point of view, land is a means of production that brings prosperity. *Second*, land can politically determine its position in decision-making; third, as a cultural capital, it can determine the social status of its owner. *Fourth*, the land has a sacred meaning[1]. Soil results from a mineral transformation of organic matter found on the surface to a certain depth, influenced by genetic and environmental factors: parent material, climate, living organisms (micro and macro), landscape, and the passage of time[2]. A very long period. Extended periods can be distinguished by the properties of the original parent material, both physically, chemically, biologically, and morphologically [3]. Soil is essential in humans' lives and creates beings above the ground [4]. Man's need for land is not only during his life, but even until he dies, man still needs land [5]. Although land is an essential need for humans, it does not become a basis for someone to control and have land rights easily. Disputes often arise when one party harms the other, starting from subjective and closed feelings of dissatisfaction [6]. Land disputes occur everywhere, and claims for land rights, both status and land ownership, arise between communities[7]. In this case, the government that has been assigned to handle the problem is the National Land Agency (BPN) which in the Presidential Regulation of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency Chapter 1 Article 2, which read "BPN has the task of carrying out government

duties in the land sector following the provisions of laws and regulations. The problem of land disputes that often occur involves not only individuals but also groups with individuals, groups with groups, and even disputes involving groups/individuals with the government as the holder of power. Land conflicts have occurred since the arrival of the colonizers with the indigenous people [8].

The people in Maru Village prefer to solve land dispute problems using local wisdom patterns as a form of settlement through non-litigation channels and applicable in village communities [9] because, in their opinion, settlement using local wisdom patterns is more effective [10], the settlement process is more straightforward and more practical [11], reducing costs because from the temple island, the people of Maru Village must use a motorboat to arrive at Kalabahi and takes approximately 2 hours. There is a sense of complacency and also does not cause a prolonged commotion compared to involving the judicial institution of the state law utilizing legitimacy [12]. Based on the description above and the results of observations regarding the settlement of land disputes based on local activism in Maru Village, Pulau Pura District, Alor Regency, 2 cases of land disputes occurred, namely in 2016 cases of misdesignation of land boundaries, shifts in land boundaries that used to be only marked with stones, when seeing the land boundary mark had changed. In 2018 (inheritance dispute), A was asked to keep the land by B parents, but after B parents died, A claimed that the land belonged to A. Based on the case

that occurred above, the author is interested in examining local wisdom in resolving non-litigation land disputes through *alternative dispute resolution* in Alor Regency, especially Pura Island, Maru Village, by looking at the characteristics of land disputes there and efforts to resolve them through local wisdom.

II. RESEARCH METHODS

This research shows the normative type, namely about principles of customary law norms, and the empirical side is in the study of empirical behavior/experience that is in sync with regulations and standards. This elaborates on Von Savigny's theory that laws are not made but grow and develop with society. Local values are instrumental in ADR-based dispute resolution by conducting anthropological studies related to the role of local importance in ADR-based settlement. In line with that, Ehrlich emphasizes "living law". The natural law, living in society, is constantly evolving beyond the rigid and immovable laws of the state [13]. The task of legal science is to solve this constant tension. Legal science is between making and implementing laws, and both produce legislative products as a driver of social developments so that the operational framework created can produce conflict resolution so that it does not reach the litigation path but is adequately resolved according to local customary laws and traditions. For this reason, legal history is also used in empirical types of law, namely identification (unwritten) and legal effectiveness.

The problem in this study is the characteristics of law in the local wisdom of the Maru community, so the approach chosen is a variation between methods in normative research and empirical research so that the historical, conceptual, philosophical, and *case techniques* are preferred. There are two types of data, namely primary data obtained from observations to obtain data or information from the object studied, FGD to collect qualitative data on group experiences, views, and perceptions on the topic of resolving land and inheritance disputes in Maru Village, interviews to obtain in-depth information from indigenous leaders at the research location and secondary data obtained from the results of literature review. This research was conducted on the people of Maru Village, who inhabit Pura Island in Alor Regency.

III. RESULTS AND DISCUSSION

The types of soil dispute characteristics in Maru Village, Alor County, in the past five years are as follows:

Mr. Djumata stated that the type of land boundary dispute that became a problem was caused by differences of opinion and the value of interests regarding the location of boundaries and land parcel area [14]. The land, filled with trees and grasses, has not been cultivated for six years, and the border of the land is only marked by stones [15]. Then Mr. Djumata went to develop his land, and he saw the boundary

of the land that Mr. Pulamau had shifted because he did not know the border of the land, so he cultivated beyond the limit determined jointly by Mr. Djumata and Mr. Pulamau. Seeing this, Mr. Djumata gave a warning to Mr. Pulamau. However, Mr. Pulamau said that, so far, he had paid land tax up to the limit that had been processed. Mr. Pulamau ignored Mr. Djumata's reprimand. This caused a dispute between the two families, so Mr. Djumata reported it to the village office to resolve the matter. Based on the results of an interview by a researcher with Mr. Obisuru (45), a party who experienced firsthand the land case in Maru Village on December 14, 2021, at Mr. Obisuru's house with the question of what types and characteristics of land disputes experienced by fathers. Mr. Obisuru stated that this type of land dispute case involves inherited land. The ownership of the land belongs to his late father, with a land area of 500 m². Initially, this land was entrusted to Mr. Kelendonu to cultivate the land. However, in 2015, Mr. Obisuru's father passed away, and this land was wanted to be managed again by Mr. Obisuru as his son in 2018. However, Mr. Kelendonu did not allow and wanted to order unilaterally because the land was considered to have become his right. Therefore, Mr. Obisuru's family felt aggrieved and reported the matter to the village to resolve it with local wisdom.

Case Characteristics of Dispute:

1. Disputes between Mr. Djumata (40) with Mr. Pulamau (type of land boundary dispute, 2016). Description of the characteristics of land disputes is the land was not cultivated for six years, filled with trees and grasses, and the boundary of the land was marked only by using stones as markers. Then Mr. Djumata went to cultivate his land, and he saw the boundary land that Mr. Pulamau had shifted because he did not know the boundaries of the land to shifted because he did not know the boundaries of the land to develop beyond the limits jointly tented by Mr. Djumata and Mr. Pulamau. Seeing this, Mr. Djumata warned Mr. Pulamau, but Mr. Pulamau said that he had paid the land tax up to the limit that had been processed. Mr. Pulamau ignored Mr. Djumata's rebuke, so a dispute between the two families occurred, which caused Mr. Djumata to report to the village office to resolve the matter. Settlement Pattern is Efforts to resolve are carried out utilizing customary tradition and customary law, where parties who experience conflicts will report to the experience conflicts will report to the village head and submit their complaints. The village chief will ask about the chronology of events and problems. Then, the village head, as a third party or listener, looks for solutions to overcome the problem. After getting a solution, the guilty party will be fined 50 KG of rice, 20 L of liquor, and one pig. The fine will be brought to a mutually determined one and get all Maru Village residents to eat and drink together. The people of Maru Village prefer to use this method because they think that if they go through legal channels, it will be complicated.

2. Disputes between Mr. Obisuru with Mr. Kelendonu (the type of dispute is inherited land, 2018). Description of the characteristics of land disputes is The ownership of the land belongs to his late father, with a land area of 500 m². Initially, this land was entrusted to Mr. Kelendonu to cultivate the land.

But in 2015, Mr. Obisuru's father died, and this land wants to be managed again by Mr. Obisuru as his son in 2018. However, Mr. Kelendonu did not allow it and tried to control it unilaterally because the land was considered to have become his right. Therefore, Mr. Obisuru's family felt aggrieved and reported the matter to the village to resolve it with local wisdom. Settlement Pattern is the settlement process will be carried out by customary law, through the Sea (Hari), in the settlement process, each of the disputing parties brings one red chicken as a condition given by the traditional leader to carry out the problem resolution process, namely, both sides parties will be together with traditional figures go to the sea and cut the chicken and flow chicken blood and at sea with the aim that if in the future there is another problem then from the wrong party by itself will have an accident at sea within three hours, three

Efforts to resolve land dispute cases based on local wisdom in Maru Village, Pura Island District, Alor Regency refer to the concept of local wisdom, various efforts to resolve land disputes, according to Mulyo, as for several ways of the resolution, namely adjudication, arbitration, and mediation [16].

Based on an interview by researchers with the Head of Maru Village, Mr. Manikita (53), on November 29, 2023, the Maru Village Administrator Manikita Village office, who handles land dispute resolution at the Maru Village office, questions about how to resolve land dispute cases based on local wisdom in Maru Village, Pura Island District, Alor Regency. Mr. Manikita stated that efforts to resolve it are carried out with customary tradition and applicable customary law; there are stages in resolving land disputes by custom [17]; that is, parties who experience land conflicts will report to the Village office and submit their complaints to the Head of Maru Village. After raising the case, the village head determined when both parties would be called to resolve the issue. After being contacted by both parties, the settlement will begin with a question from the village head to tell the chronology of the case, then find out what solution can be used to get the results of the land dispute settlement; after getting a key and knowing the truth, the next stage is that the guilty party will be subject to sanctions in the form of applicable customary law where the guilty party is subject to a fine of 50 kg of rice and 20 liters liquor one pig. The penalty will be brought on a day to be determined together, and all the citizens of Maru Village will be encouraged to eat and drink together as a deterrent so as not to repeat it. People of Maru Village are presented so that they can witness firsthand and know the customary punishments that apply so that people are afraid and do not do the same thing again [18].

The people in Maru Village prefer to use this method because they think that if they go through legal channels, it will be complicated to resolve, and more clearly, they will wait for a long time to get the results of resolving land disputes [19]. However, if the solution is based on local wisdom, it is fast, easy, and avoids grudges. Another reason is that people trust the settlement of land disputes by the Maru Village government more because the community appreciates and believes that the local government knows more about the

history and existence of land in Maru Village. Based on the results of an interview with Mr. Lawangdunu (62) on November 30, 2023, on the question of how local wisdom efforts are used in resolving land disputes in Maru Village, Pura Island District, Alor Regency. Mr. Lawangdunu believes settling land disputes in Maru Village can be done with applicable customary law. The traditional law referred to in settlement of land disputes is through the Sea (Hari); in the process of resolving, each of the disputing parties brings one red chicken as a condition given by the traditional leader to carry out the problem resolution process, that is, both parties will together with traditional leaders to the sea and cut the chicken and flow chicken's blood and at sea with the aim that if in the future there is another problem then from the wrong party by itself will have an accident at sea within three hours, three days, three minutes, three months and three years.

Description of the dispute resolution effort :

1. Disputes between Mr. Djumata with Bapak Pulamau (the type of dispute is land boundary, 2016), forms of settlement efforts is adjudication with completion results he process of solving problems between two conflicting parties with the presence of a third person as a mediator. After getting a solution, the guilty party will be fined 50 KG of rice, 20 liquor, and one pig. The fine will be brought on a day to be determined together, and all residents of Maru Village will be brought to eat and drink together.

2. Disputes between Mr. Obisuru with Mr. Kelendonu (the type of dispute is inherited land, 2018), forms of settlement efforts is conciliation and customary Law of Hari (sea) with completion results dispute resolution process through Laut (Hari), in the process of settlement, each of the disputing parties brings one red chicken as a condition given by the traditional leader to carry out the problem resolution process; that is, both parties will together with traditional leaders to the sea and cut the chicken and flow chicken blood and at sea with the aim that if in the future there is another problem, the wrong party will naturally experience an accident at sea within three minutes, three hours, three day, three months, and three years.

Based on efforts to resolve disputes through the courts, whose results are often disappointing or the effects of decisions are not satisfactory, they require high costs and a very long time. The slow resolution of disputes through the courts led to the issuance of a Supreme Court policy in 1992, which stated that every case at the district and high court levels be resolved within no more than six months [20]. This is based on the fact that many cases are piled up in court and go unresolved. With this situation, the choice of settlement through local wisdom is a good choice in resolving land disputes because it is considered more effective, according to the people of Maru Village. Considerations where people tend to use dispute resolution with local wisdom include:

1. Fast turnaround realized

The achievement process can sometimes require one or two meetings between the parties to the dispute.

2. Low cost

Generally, the mediator, in this case the village head, is not paid; the administrative costs are minor and do not need to be accompanied by a lawyer.

3. Confidential

Everything the parties express in emitting their opinions to the mediator is closed, not open to the public, as in court proceedings.

4. Unemotional

The approach is directed at mutually beneficial cooperation to reach a compromise.

In addition to the advantages of choosing dispute resolution by local wisdom, there are also disadvantages, namely:

1. Intricate execution mechanism due to the manner of execution of the verdict
2. It depends on the good faith of the parties' reasonable faith dispute to completion.
3. The mediator will not bring good results, especially if insufficient information and authority are given to him

IV. CONCLUSION

Based on the results of research and discussions that have been carried out in Maru Village, Pulau Pura District, Alor Regency, it can be concluded that the types of dispute cases that occur in Maru Village, namely, land boundary dispute cases and inheritance land disputes that arise are of course due to differences of opinion from various thoughts so that they forget what has been mutually agreed. Of course, villagers must have the awareness to make ownership rights over land, and the settlement must be done with customary traditions and applicable customary law. The payment of land disputes carried out by customary practice in Maru village is Hari; that is, both parties agree with the village head and traditional leader to determine the time for settlement. The process of solving the problem is that both parties will, together with traditional leaders, go to the sea and cut the chicken under both parties; after that, the traditional leader uses customary language (sacred language) to solve the problem, and the traditional leader gives a period to be determined which is three hours, three days, three minutes, three months and three years within this period there will be victims from one of the problematic parties. The consequences that both parties will receive are if those who are not the owners of the above will have an accident at sea and die. People choose this method because if it is resolved through legal channels (litigation), it takes a long process and has considerable costs.

REFERENCES

- [1] C. Goytia, E. J. Heikkila, And R. A. Pasquini, "Do Land Use Regulations Help Give Rise To Informal Settlements? Evidence From Buenos Aires," *Land Use Policy*, Vol. 125, P. 106484, Feb. 2023, Doi: 10.1016/J.Landusepol.2022.106484.
- [2] A. Mentovich, J. J. Prescott, And O. Rabinovich-Einy, "Legitimacy And Online Proceedings: Procedural Justice, Access To Justice, And The Role Of Income," *Law Soc. Rev.*, Vol. 57, No. 2, Pp. 189–213, Jun. 2023, Doi: 10.1111/Lasr.12653.
- [3] T. Rejekiningsih, "Law Awareness Forming Strategies To Reinforce The Principles Of Social Function Of Land Rights Within The Moral Dimension Of Citizenship," *Procedia - Soc. Behav. Sci.*, Vol. 211, Pp. 69–74, Nov. 2015, Doi: 10.1016/J.Sbspro.2015.11.011.
- [4] D. Szablowski, "'Legal Enclosure' And Resource Extraction: Territorial Transformation Through The Enclosure Of Local And Indigenous Law," *Extr. Ind. Soc.*, Vol. 6, No. 3, Pp. 722–732, Jul. 2019, Doi: 10.1016/J.Exis.2018.12.005.
- [5] J. Webber, V. Napoleon, M. Fournier, And J. Borrows, "Sally Engle Merry, Legal Pluralism, And The Radicalization Of Comparative Law," *Law Soc. Rev.*, Vol. 54, No. 4, Pp. 846–857, Dec. 2020, Doi: 10.1111/Lasr.12518.
- [6] M. T. Sirait, B. White, And U. Pradhan, "Land Rights And Land Reform Issues For Effective Natural Resources Management In Indonesia," In *Redefining Diversity & Dynamics Of Natural Resources Management In Asia, Volume 1*, Vol. 1, Elsevier, 2017, Pp. 141–155. Doi: 10.1016/B978-0-12-805454-3.00009-8.
- [7] B. W. Woodson And C. M. Parker, "The Chief Justice Versus The Iconoclast: Popular Constitutionalism And Support For Using 'Sociological Gobbledygook' In Legal Decisions," *Law Soc. Rev.*, Vol. 55, No. 4, Pp. 657–679, Dec. 2021, Doi: 10.1111/Lasr.12578.
- [8] S. Legg, "Legal Geographies And The State Of Imperialism: Environments, Constitutions, And Violence," *J. Hist. Geogr.*, Vol. 37, No. 4, Pp. 505–508, Oct. 2011, Doi: 10.1016/J.Jhg.2011.08.012.
- [9] K. M. Young And K. R. Billings, "Legal Consciousness And Cultural Capital," *Law Soc. Rev.*, Vol. 54, No. 1, Pp. 33–65, Mar. 2020, Doi: 10.1111/Lasr.12455.
- [10] M. Lengoiboni, C. Richter, And J. Zevenbergen, "Cross-Cutting Challenges To Innovation In Land Tenure Documentation," *Land Use Policy*, Vol. 85, Pp. 21–32, Jun. 2019, Doi: 10.1016/J.Landusepol.2019.03.023.
- [11] Nober, P. Pasapan, And L. Lumentut, "Penerapan Asas Rechtsverwerking Dalam Perolehan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (Kajian Hukum Terhadap Putusan Peninjauan Kembali Mahkamah Agung Nomor : 336 Pk/Pdt/2015)," *Paulus Leg. Res.*, Vol. 1, No. 1, Pp. 1–8, 2021.
- [12] Ľ. Hudecová And P. Kyseľ, "Legislative Protection Of Agricultural Land," *Land Use Policy*, Vol. 131, P. 106719, Aug. 2023, Doi: 10.1016/J.Landusepol.2023.106719.
- [13] Marsianus Ampat, Yustinus Pedo, Ernesta Uba

- Wohon, And S. Don Rade, "Tu'a Golo's Role In Resolving Land Disputes Between Poka Indigenous People, Longko Village, Wae Ri'i District, Manggarai Regency," *Al Ahkam*, Vol. 19, No. 1, Pp. 48–58, 2023, Doi: 10.37035/Ajh.V19i1.8962.
- [14] M. T. Geme, B. P. Lay, And S. D. Rade, "Identifikasi Indikasi Geografis Pada Tenunan Sapu Lu ' E Lawo Dan Perlindungan Hukum Sebagai Hak Kekayaan Intelektual Komunal Pada Masyarakat Adat Bajawa," *Unes Law Rev.*, Vol. 6, No. 1, Pp. 1015–1034, 2023.
- [15] R. F. Sopamena, "Alternative Dispute Resolution Dalam Sengketa Bisnis Internasional," *Balobe Law J.*, Vol. 2, No. 1, P. 1, Apr. 2022, Doi: 10.47268/Balobe.V2i1.767.
- [16] M. T. Lay, Benediktus Peter; Rade, Stefanus Don; Geme, "Implementation Of Customary Law Values In A Traditional Marriage Of The Timorese In Realizing Laws Based On Local Wisdom," *Int. J. Polit. Sociol. Res.*, Vol. 11, No. 2, Pp. 349–358, 2023, Doi: <https://doi.org/10.35335/Ijopsor.V11i2.172>.
- [17] H. A. Simanjuntak And M. H. Sh, "Peranan Kearifan Lokal Dalam Penyelesaian Sengketa Pertanahan," *J. Justiqua*, Vol. 3, No. 1, Pp. 19–31, 2021.
- [18] D. S. Reta, "A Human Rights Approach To Access To Land And Land Dispossession: An Examination Of Ethiopian Laws And Practices," *African J. Leg. Stud.*, Vol. 9, No. 2, Pp. 100–123, Jul. 2016, Doi: 10.1163/17087384-12340006.
- [19] R. Subrata, "Mechanisms Of Alternative Dispute Resolution In Conflict And Dispute Resolution In Indonesia," *Litigasi*, No. 24, 2023, Doi: 10.23969/Litigasi.V24i1.7198.
- [20] A. Yunari, "Alternative Dispute Resolution (Adr) Sebagai Penyelesaian Sengketa Non Litigas," *Inov. J. Penelit. Pendidikan, Agama, Dan Kebud.*, Vol. 2, No. 1, Pp. 133–152, 2016.