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Preserving Tradition and Harmony: Customary Law's Role in Resolving Ulayat Land Disputes

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Original Article

Abstract

In Indonesia, Indigenous Law Communities, exemplified by West Biak District, Papua, rely on customary law for conflict resolution in their territories. This research aims to address the resolution of *ulayat* land disputes and the optimization of the existence of customary law in the resolution of *ulayat* land disputes in West Biak District, Biak Numfor Regency. This qualitative study in West Biak District examines customary law's role in cultural preservation and land dispute resolution. Primary data from interviews, secondary data from documents and literature, both analyzed for insights. The study reveals that customary land disputes in West Biak District result from unclear boundaries, unfair practices, the absence of historical witnesses, and increased land value. These are resolved via non-litigious mediation led by the traditional head, offering advantages over litigation.

Keywords: *Customary Law, Land Dispute, Dispute Resolution.*

Abstrak

Di Indonesia, masyarakat hukum adat, seperti masyarakat hukum adat di Distrik Biak Barat, Papua, mengandalkan hukum adat dalam penyelesaian konflik di wilayah mereka. Penelitian ini bertujuan untuk mengkaji penyelesaian sengketa tanah ulayat dan optimalisasi peran hukum adat dalam penyelesaian sengketa tanah ulayat di Distrik Biak Barat, Kabupaten Biak Numfor. Studi kualitatif di Distrik Biak Barat ini mengkaji peran hukum adat dalam penyelesaian sengketa tanah. Data primer dari wawancara, data sekunder dari dokumen dan literatur, kedua-duanya dianalisis untuk mendapatkan jawaban terkait permasalahan penelitian. Studi ini mengungkapkan bahwa sengketa tanah adat di Distrik Biak Barat disebabkan oleh batas yang tidak jelas, praktik yang tidak adil, ketiadaan saksi sejarah, dan peningkatan nilai ekonomi tanah. Hal ini diselesaikan melalui mediasi non-litigasi yang dipimpin oleh kepala adat, yang memberikan keuntungan dibandingkan melalui prosedur litigasi.

Kata kunci: *Hukum Adat, Sengketa Tanah, Penyelesaian Sengketa.*

1. INTRODUCTION

In various regions of Indonesia, Indigenous Law Communities persist in employing customary law as a method for addressing issues and resolving disputes within their customary domains. One such example is the customary law community located in West Biak District, Biak Numfor Regency, Papua Province, where customary regulations continue to serve as the philosophical foundation for daily life. These traditional communities in West Biak District have upheld the traditions rooted in their respective clan-based areas (*keret*) for generations. West Biak District is situated approximately 34.2 kilometers away from the center of Biak Numfor city. From a more scholarly perspective, this practice highlights the steadfast commitment of the Customary Law Community in West Biak District to preserve and perpetuate the use of customary regulations as the bedrock of their daily existence.

Broadly speaking, the presence of customary law in Biak Numfor Regency is evidenced by the operation of customary justice institutions across various customary territories. Biak Numfor Regency is divided into 9 distinct customary regions, each carrying its own associated rights. Within the society, customary rights are construed as collective entitlements, signifying communal land ownership rooted in familial bonds, clan affiliations, or *keret* affiliations. However, the indigenous people of Biak interpret customary land rights as personal rather than collective, signifying that these land rights are vested in individuals or clan/*keret* families. The significance of land in human life cannot be overstated. From a more nuanced and intellectual perspective, this interpretation underscores the divergence of customary land rights in Biak Numfor Regency from the conventional notion of collective rights, emphasizing their personal significance within the context of the lives of the indigenous people of Biak.

According to the perspective of the community, particularly in West Biak District, Biak Numfor Regency, the concept of customary land rights has two dimensions. Firstly, there is customary land that remains collectively owned by the community or by community groups. Secondly, there is customary land that has transitioned into individual ownership, where control primarily rests with specific individuals. These distinctions are codified in Special Regional Regulation (PERDASUS) Number 23 of 2008, which addresses *Ulayat* Rights of Traditional Law Communities and Individual Rights of Indigenous Peoples to Land.

In regions grappling with land disputes, relevant parties and authorities typically employ various strategies for resolution. The settlement of land disputes generally unfolds through two primary avenues: the judicial route (litigation) and the extrajudicial approach (non-litigation). The judicial approach seeks to attain justice and legal certainty, while the non-litigation approach places a stronger emphasis on fostering peace among the disputing parties. Non-litigation resolution prioritizes the pursuit of mutually advantageous agreements, without fixating on ascertaining which party is right or wrong. This approach is favored because assigning blame often fails to yield a satisfactory outcome for all individuals or groups embroiled in the dispute. Out-of-court dispute resolution, also referred to as Alternative Dispute Resolution (ADR), is governed by Law Number 9 of 1999, which pertains to Arbitration and Alternative Dispute Resolution.

Ulayat land conflicts are complex issues that often occur in various regions of Indonesia. The existence of customary law in resolving *ulayat* land conflicts has been the focus of research by several previous researchers. For example, research related to the Policy on the Protection of

Indigenous Community *Ulayat* Rights in Kampar Regency.¹ This research recommends improving the policy on the protection of customary rights in Kampar Regency in accordance with the development of laws or regulations. The research findings emphasize the importance of policy adaptation to local conditions to ensure adequate protection of *ulayat* rights.

Next, there is research related to a model for resolving *ulayat* land rights conflicts based on customary law in Negara Hitulama, Leihitu Sub-District, Central Maluku Region.² This research proposes a model for resolving *ulayat* land rights conflicts based on customary law in Negara Hitulama, Leihitu Sub-District, Central Maluku Region. This model seeks to integrate customary law values into conflict resolution to achieve more sustainable solutions.

Furthermore, there is research related to the legal protection of customary rights in legal pluralism and its impact on the Minangkabau community.³ This research explains that the existence of customary rights of indigenous communities is not a hindrance to agrarian reform. On the contrary, customary law can provide a solution to conflicts between customary rights and state law. Empirical studies illustrate how customary law can be integrated into a broader legal system for the benefit of indigenous communities.

Furthermore, another research also discusses the status of customary land rights in formal Indonesian law, which actually raises issues.⁴ This research discusses the term “*ulayat* rights” and its connotations regarding the communal rights of ethnic communities to land based on their customs or traditions. This illustrates the complexity of the *ulayat* rights concept in the context of formal Indonesian law.

Lastly, there is research related to the influence of legal traditions on transitional justice in post-conflict societies.⁵ This research discusses the influence of legal traditions on transitional justice in post-conflict societies. This study provides insights into how customary law can play a role in building peace and stability after conflicts.

The existence of customary law in resolving *ulayat* land conflicts has provided a better understanding of this issue. Proposed solutions include improving legal policies, developing models for resolving conflicts based on customary law, and recognizing customary law in the constitution. With a deeper understanding of the role of customary law in the context of formal Indonesian law, it is hoped that more effective solutions can be found for resolving *ulayat* land conflicts in the future.

There are several research gaps that can be identified from previous studies, namely that most existing research is focused on specific regions in Indonesia. There is a need for broader comparative research among different regions to compare how customary law is applied and impacts the resolution of *ulayat* land conflicts in various geographical and cultural contexts in Indonesia. Furthermore, in-depth research on the social and economic impacts of successful *ulayat*

¹ D Haryono et al., “Legal Policy on the Protection of Ulayat Rights of Indigenous Peoples in Kampar Regency,” in *IOP Conference Series: Earth and Environmental Science*, 2023, 1–8, <https://doi.org/10.1088/1755-1315/1181/1/012015>.

² Leli Joko Suryono and Saiful Bahri Pelu, “Model for Settling Ulayat Rights Conflict Based on Traditional Law in Hitulama State Leihitu District Central Maluku Region,” *Syiah Kuala Law Journal* 6, no. 2 (2022): 172–84, <https://doi.org/10.24815/sklj.v6i2.29118>.

³ Zefrizal Nurdin, “Legal Protection of Customary Rights Under Legal Pluralism and Its Impact on The Minangkabau Society: An Empirical Study in The District of Lima Puluh Kota, West Sumatra,” *Cogent Social Sciences* 8, no. 1 (2022): 1–10, <https://doi.org/10.1080/23311886.2022.2045722>.

⁴ Perbawati Candra and Malicia Evendia, “Legal Protection of Ulayat Rights: Contextualization and Policies,” in *Proceedings of the 2nd International Conference on Fundamental Rights*, 2019, 1–12, <http://dx.doi.org/10.4108/eai.5-8-2019.2308554>.

⁵ Kenny Cetera and Gagah Satria Utama, “Doctrinal Review on The Legality of Ulayat Rights Release Agreements in Papua Province,” *BHUMI: Jurnal Agraria Dan Pertanahan* 8, no. 1 (2022): 53–60, <https://doi.org/10.31292/bhumi.v8i1.527>.

land conflict resolution based on customary law is crucial. This will help communities, governments, and relevant stakeholders understand the real benefits that can be gained from implementing such solutions. Therefore, this research aims to examine the resolution of *ulayat* land disputes and the optimization of the existence of customary law in the resolution of *ulayat* land disputes in West Biak District, Biak Numfor Regency.

2. RESEARCH METHODOLOGY

This research will utilize a qualitative approach to carefully examine the role of customary law in cultural preservation and the process of resolving land disputes in West Biak District. Additionally, primary data will be obtained through direct interviews with members of the customary law community, traditional leaders, and relevant stakeholders in West Biak District. The interviews will focus on their understanding of customary law, cultural preservation, and land dispute resolution. Secondary data, on the other hand, will be gathered from literature, official documents related to customary law in Indonesia, Regional Regulation (PERDASUS) Number 23 of 2008 regarding the *Ulayat* Rights of Indigenous Community Law and Individual Rights of Indigenous Community Members over Land, as well as relevant case studies and previous reports. Interviews with respondents will be conducted face-to-face following a pre-structured interview guide. The data obtained will be recorded and analyzed to understand their views and experiences related to the research topic. Secondary data will be collected through the analysis of official documents, case studies, and relevant literature. Relevant information will be extracted and analyzed. Subsequently, qualitative data from interviews will be analyzed using a qualitative approach. Data will be organized, coded, and interpreted to identify patterns, themes, and perspectives that emerge from the interviews. To compare primary and secondary data, a comparative analysis will be conducted to identify similarities and differences in views and practices related to customary law and land dispute resolution in West Biak District.

3. RESEARCH RESULTS AND DISCUSSION

a. Factors contributing to land disputes in the Ulayat region of West Biak District, Biak Numfor Regency

Customary and agrarian laws play a role in governing land ownership rights. These legal frameworks aim to facilitate peaceful coexistence by guiding citizens in respecting each other's rights and responsibilities.⁶ However, it is important to note that the law itself cannot guarantee the complete prevention of conflicts or disputes in society. Land rights pertain to the use of land exclusively for activities related to it, encompassing water and the airspace above it.⁷ Indonesia's national identity serves as a unifying force among its diverse population spread across its

⁶ Herlambang P. Wiratraman, "Perkembangan Politik Hukum Peradilan Adat," *Mimbar Hukum* 30, no. 3 (2018): 490–505, <https://doi.org/10.22146/jmh.38241>; Dedi Sumanto, "Hukum Adat Di Indonesia Perspektif Sosiologi Dan Antropologi Hukum Islam," *Jurnal Syari'ah* 17, no. 2 (2018): 181–91, <http://dx.doi.org/10.31958/juris.v17i2.1163>; Muhammad Dahlan, "Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi," *Undang: Jurnal Hukum* 1, no. 2 (2018): 187–217, <https://doi.org/10.22437/ujh.1.2.187-217>; Ridwan, Dimiyati Khudzaifah, and Aidul Fitriaciada Azhari, "Perkembangan Dan Eksistensi Hukum Adat: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi," *Jurnal Jurisprudence* 6, no. 2 (2016): 106–14, <https://doi.org/10.23917/jurisprudence.v6i2.3008>.

⁷ Candra Maulidi Syahputra and Labib Renedy Crisdianto, "Eksistensi Masyarakat Hukum Adat Dalam Menghadapi Tantangan Era Revolusi Industri 4.0," *Simposium Hukum Indonesia* 1, no. 1 (2019), <https://journal.trunojoyo.ac.id/shi/article/view/6386>; Fathor Rahman, "Eksistensi Peradilan Adat Dalam Peraturan Perundangan-Undangan Di Indonesia," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 321–36, <https://ejournalunsam.id/index.php/jhsk/article/download/1066/861/>.

archipelago. Consequently, land within Indonesian territory is regarded as communal, owned collectively by groups of Indonesians unified under the banner of the nation. This underscores that land ownership extends beyond regional boundaries, with all Indonesian citizens having a stake in land, not solely restricted to the native inhabitants of a specific region or island. The research findings reveal a variety of disputes in West Biak District, spanning conflicts within families, disputes with neighbors, and disagreements concerning land boundaries. The causes of *ulayat* land boundary disputes in West Biak District, Biak Numfor Regency, include the following:

a) Ambiguous customary land demarcations⁸

The existence of clearly defined borders that delineate land ownership, either between different tribes or involving the state, provides evidence that customary land is held by specific customary community groups. These well-defined borders confer legitimacy upon tribal groups or customary communities, resulting in their acknowledgment by other tribal communities or governmental entities. In West Biak District, Biak Numfor Regency, a considerable portion of the land owned by indigenous or *keret* (clan) communities lacks distinct ownership boundaries and precise land markings. Usually, customary land boundaries are established using natural elements like trees, rock formations, elevated terrain features, or hills and mountains.

Depending on natural features to define customary land boundaries can be vulnerable to manipulation by specific community groups that may modify or eliminate these natural elements. For instance, certain groups might argue that trees, rocks, or cliffs occur naturally, rendering them unsuitable as evidence for precisely delineating customary land boundaries. This contention complicates the determination of customary land ownership. Consequently, since customary or narrow land boundaries are primarily indicated by unclear natural markers, disputes frequently arise concerning individual land parcels within West Biak District, Biak Numfor Regency. *Keret* community groups often contest each other's customary land boundaries, leading to conflicts and confrontations that unfortunately result in loss of life and property damage.

b) The presence of inequity in the execution of a system or procedure.

Conflicts related to *ulayat* land arise not only between different *ulayat* groups but also frequently occur among community members within the same *ulayat* community. Communal land is a right held by all *ulayat* community members, ensuring that every resident within the *ulayat* has an equitable entitlement to utilize the land. Consequently, the ownership of customary land is not concentrated in a single individual, such as the traditional leader (*mananwir*), or a select few members of a particular *keret*. Each *ulayat* member possesses the right to cultivate and reap the benefits of their *ulayat* land, and the allocation of *ulayat* land must involve collective participation and be carried out impartially. Fairness in the distribution of *ulayat* land holds significant importance since the matter of *ulayat* land stems from the collective struggle and joint efforts of all *ulayat* or *keret* members.

Ensuring equitable distribution is a crucial measure to preempt conflicts among all customary residents. In West Biak District, there are still several *keret* or community groups that exercise control over land in violation of established regulations. In this community, every person enjoys the freedom to cultivate communal land, the extent of which depends on their dedication

⁸ Yulianda Arwakon, "Interview with the Head of West Biak District" (2022).

and sincerity. Successfully cultivated land becomes personal property, inheritable by subsequent generations, while individuals from outside the area are prohibited from claiming or working on the land.

Inequity in the allocation or management of *ulayat* land gives rise to envy and discontentment among *ulayat* community members. This unfairness in *ulayat* land ownership is not limited to specific *ulayat* groups; it also extends to several villages within West Biak District. Here, traditional leaders (*mananwir*) and individuals with high social standing and significant influence in community affairs unjustly treat other residents, overstepping their authority. Those without customary land ownership are regarded as cultivators, and the fruits of their labor are shared with the landowner. However, these cultivators are part of the same community and should possess equal rights to their customary land. The repercussions of arbitrary and unfair land control by traditional leaders (*mananwir*) or select groups within society frequently give rise to internal conflicts within traditional communities. Such conflicts not only foster animosity among community members but also frequently result in disputes, altercations, and property damage.

c) Loss of historical witnesses or wrongdoers⁹

As historical witnesses and those responsible vanish, individuals without concrete awareness of the existence of their customary land often present testimonies influenced by their personal perspectives, frequently leading to uncertainties regarding their accuracy. To substantiate their claims regarding this customary land, numerous customary groups frequently conduct traditional ceremonies. In these ceremonies, the *kerep*'s domain is referred to as a means of imparting knowledge to the younger generation, reaffirming the tribe's status as the initial possessors of customary land, and marking their territory as long-standing inhabitants of the region.

In the absence of historical witnesses and due to the limited comprehension of indigenous people concerning cultural values, laws, and regulations, it is essential for the government, traditional leaders, and community representatives to conduct educational outreach programs aimed at enhancing awareness of these cultural values, laws, and regulations. In several instances, the limited knowledge of indigenous people regarding the status of customary land is exploited by governing authorities to claim community lands under the pretext that it is state-owned land intended for public purposes. Furthermore, traditional leaders often fail to disseminate information about the existence of land owned by their *ulayat* to all members of a particular *ulayat*. Consequently, some community members engage in cultivation or other activities on the land without informing or seeking permission from the community group vested with *ulayat* land rights.

d) Escalation in land's economic worth¹⁰

The rising economic value of land also contributes to land conflicts. As land's economic value increases, there is a heightened interest in controlling it due to the anticipation of substantial financial gains. When land has limited economic value, it is typically used for agriculture or plantations, yielding relatively modest income despite considerable effort. However, when land values surge, individuals compete to acquire larger plots as a symbol of wealth and for various income-generating activities with significant potential returns. Changes in people's perceptions of

⁹ Arwakon.

¹⁰ Arwakon.

land, driven by economic value increments, have played a pivotal role in instigating conflicts related to land ownership and utilization. The consequences of competing claims over customary land among *keret* in West Biak District have exacerbated hostilities among these community groups. In fact, in certain *keret* or *ulayat*, these disputes have escalated to physical confrontations and altercations among community members, resulting in loss of life and deteriorating social conditions in the region.

e) Preserving one's societal position¹¹

In West Biak District, indigenous communities have an established power structure governing policies related to customary land. Community groups of higher social status are recognized as landowners with the greatest authority in shaping customary land policies. They function as a collective entity vested with the power to oversee all determinations regarding customary land. In various villages, upper-class community groups are hesitant to acknowledge the involvement of lower-class groups in policymaking and broader land governance. This reluctance stems from their belief that the participation of lower social groups may diminish their influence and control. Consequently, many decisions and policies involving lower social groups are perceived as lacking legitimacy. When land is transferred to other customary community groups or the government for public purposes, upper-class groups often feel overlooked and attempt to reclaim the land. Behaviors of this nature frequently lead to social conflicts among traditional community groups.

f) Misinterpretation of traditions¹²

Indigenous communities typically hold deep emotional and spiritual connections to their lands, territories, and traditional practices. In the customary structure of West Biak District, Biak Numfor district, customary land is governed by principles that prohibit its sale or use as collateral in private names. Customary land cannot be individually owned via a certificate, as it is collectively owned by members of the customary community. However, some individuals persist in selling or registering *ulayat* land under their personal names without the collective approval and consent of all *ulayat* residents. Consequently, when *ulayat* land is transferred to another *ulayat* by specific parties or individuals, the original *ulayat* residents, who are the rightful owners of the land, do not acknowledge the transaction and attempt to reclaim the land, even if it was transacted through a purchase or sale or holds a certificate. This scenario often results in ongoing conflicts that prove challenging to resolve.

g) Insufficient awareness and education within the community¹³

One of the causes of conflicts related to customary land ownership is the lack of effective communication and information dissemination from both the government and traditional leaders to the community or customary groups. This deficiency in information results in most customary communities lacking a clear understanding of the legal status of their customary land based on customary law. Consequently, even without substantial legal evidence, the community continues to assert its ownership of the land as customary. To establish a comprehensive understanding of

¹¹ Arwakon.

¹² Arwakon.

¹³ Arwakon.

the status, extent, boundaries, and utilization methods of customary land among all community members, it is crucial to conduct effective awareness campaigns. The responsibility for these awareness campaigns does not solely rest on traditional leaders; it is also a shared responsibility with the government, particularly the National Land Agency. The role of traditional leaders in this awareness process is pivotal to ensure that all *ulayat* residents have a profound understanding of the ownership, territory, and boundaries of their *ulayat* land, as well as the territorial limits of *ulayat* land within the area.

In specific cases, the lack of awareness among individuals regarding the status of customary land is manipulated by the governing group, who use it as an opportunity to claim the land as state-owned for public use. Traditional leaders frequently neglect to inform all members of their customary community about the existence of the land they possess, particularly the younger generation. Consequently, certain *ulayat* groups have community members who engage in cultivation or land use activities beyond their *ulayat* jurisdiction without seeking consent or notifying the community group that holds the rightful claim to the *ulayat* land they are working on.

The research findings indicate that individuals in the West Biak District continue to lack comprehensive comprehension of agrarian law, land regulations, and customary rights. This observation is noteworthy as it reflects the challenges faced by the local populace in West Biak District, where they encounter difficulties in addressing issues autonomously, without the involvement of traditional authorities. This study underscores the intricacies of the situation and emphasizes the necessity of enhancing community awareness regarding legal provisions and customary rights to facilitate improved problem-solving.

The customary land dispute within the West Biak District community can be categorized into two primary factors: internal and external elements. Internal factors encompass economic considerations, insufficient public awareness regarding the significance of land and land regulations, sentiments of envy related to land ownership, and susceptibility to agitation when land-related issues arise. Conversely, external factors entail the alteration of land stakes due to natural disasters and the unilateral sale of land in transactions that can impact the state of customary land. Grasping these dual factors is crucial for resolving conflicts and devising enduring solutions for the residents of the West Biak District.

b. Resolution of Ulayat Land Conflicts in West Biak District, Biak Numfor Regency

Dispute resolution pertains to attempts made to address issues between conflicting parties. In the context of land disputes in Indonesia, two common systems for resolving conflicts are employed: the adjudication pathway and the non-litigation pathway. Adjudication, often referred to as "litigation," entails legal proceedings in court or through arbitration and is considered a final or last-resort remedy for dispute resolution. This approach is utilized when attempts at reconciliation and extrajudicial settlements prove unsuccessful. Conversely, the non-litigation pathway is a dispute resolution method that does not require court involvement.

This approach encompasses discussions, harmony, familial ties, and customary agreements as substitute methods for reaching resolutions. This method demonstrates a commitment to settling disputes in a peaceful and cordial manner, without the necessity of engaging the formal legal system. By integrating these two approaches, the community gains a broader range of options

for resolving land disputes, aiming to achieve more effective solutions tailored to the preferences of each party involved.

In the process of addressing customary land disputes within West Biak District, Biak Numfor Regency, the customary legal system is employed, emphasizing family-oriented negotiations and mediation conducted by the Traditional Head (Mananwir). The utilization of Customary Law in this region as a method for settling customary land disputes prioritizes familial procedures. Conflict resolution takes place through collaborative deliberations, rooted in the bedrock of trust. This family-oriented approach initiates by embracing family law through negotiation. In cases where consensus cannot be achieved through family law procedures, disputing parties have the option to seek the intervention of a third party to mediate and facilitate the resolution of the dispute.

In the West Biak District community, when conflicts arise concerning customary land, the *mananwir* assumes the responsibility of initiating negotiation steps involving the parties to resolve the dispute. This practice is rooted in their societal structure built upon familial connections. Within the communal framework of the West Biak District, the role of a Traditional Head or *mananwir* holds significant importance in coordinating and motivating the community to adhere to legal regulations. Consequently, the Traditional Head or *Mananwir's* grasp of customary law plays a pivotal role in upholding their responsibilities and addressing issues in accordance with established norms and customary laws.

From the research findings, it is evident that the practice of dispute resolution through the customary law approach remains active in West Biak District and holds great significance for all community members, particularly those involved in disputes. Mediation-based dispute resolution in West Biak District aligns well with the area's character and lifestyle. This approach is characterized by strong familial bonds, cooperative efforts, and communal values, which stand in contrast to litigation, which tends to be adversarial, focused on winning or losing, and less attentive to the social aspects of a society that values cooperation and kinship.¹⁴

Here are the procedures or phases typically followed in addressing customary land disputes frequently observed within the West Biak District community:

a) Gather the individuals entangled in the conflict¹⁵

During the initial phase of summoning the conflicting parties, they are encouraged to engage in discussions regarding their disagreements and present any supporting evidence. The traditional leader (*mananwir*) ensures that throughout this judicial process, the parties have a chance to present their case fairly, and if necessary, decisions can be delayed to allow for witness statements to be included as evidence in the customary court proceedings.

¹⁴ Indah Maulidiyah, Yusdiyanto Yusdiyanto, and Ahmad Saleh, "Kedudukan Dan Partisipasi Lembaga Adat Dalam Pembentukan Peraturan Pekon Di Pekon Way Empulau Ulu Kec. Balik Bukit Kab. Lampung Barat," *Fiat Justitia: Jurnal Ilmu Hukum* 8, no. 3 (2014): 500–516, <https://doi.org/10.25041/fiatjustisia.v8no3.308>; Indah Maulidiyah and Yusdiyanto, "Kedudukan Dan Partisipasi Lembaga Adat Dalam Pembentukan Peraturan Pekon Di Pekon Way Empulau Ulu Kec. Balik Bukit Kab. Lampung Barat," *Fiat Justitia: Jurnal Ilmu Hukum* 8, no. 3 (2014): 500–517; Laurensius Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat* 5, no. 2 (2018): 177–90, <https://doi.org/10.31629/selat.v5i2.320>; Tody Sasmitha Jiwa Utama and Sandra Dini Febri Aristya, "Kajian Tentang Relevansi Peradilan Adat Terhadap Sistem Peradilan Perdata Indonesia," *Mimbar Hukum* 27, no. 1 (2015): 57–67, <https://doi.org/10.22146/jmh.15910>.

¹⁵ Arwakon, "Interview with the Head of West Biak District."

b) Calling upon witnesses

To bolster the evidence concerning the assertions made by the parties engaged in the customary land rights dispute, external witnesses were called upon. These witnesses are impartial individuals with knowledge, firsthand accounts, and comprehension of the pertinent occurrences in the conflict. The aim is for the testimony provided by these witnesses to offer pertinent and credible details to ascertain the truth in the matter.

c) Process of Discussion and Deliberation¹⁶

Before commencing the mediator or mediator meeting, the traditional head or *mananwir* in West Biak District makes efforts to establish favorable conditions to ensure that all present parties can concentrate and participate effectively in the deliberations. The goal is to foster a harmonious atmosphere with a sense of community during the deliberations. Once it is deemed that the environment is conducive and the participants are ready to begin, the traditional head or *mananwir* initiates the deliberations by conducting a joint prayer, usually led by a religious figure. This practice stems from the inclination of customary law adherents to place a higher regard on divine law compared to positive law or the legal framework of the country.

Following the communal prayer, the traditional head or *mananwir* proceeds to deliver an introductory speech, expressing gratitude to all attendees for their presence at the deliberation. During this speech, the traditional head emphasizes the pivotal role of witnesses in providing honest and accurate testimony to the best of their knowledge. The witnesses' presence is crucial in uncovering the absolute truth, with the goal of the deliberations being to benefit all parties involved in the land dispute. The hope is that the resulting agreement will restore the community's state and various aspects of their lives to normalcy, as it was prior to the land dispute.

Once the traditional head or *mananwir* is confident that the deliberation participants comprehend the aims, objectives, and applicable regulations governing the process, they grant the disputing parties the opportunity to sequentially present their respective rationales and interests. Additionally, the involved parties are encouraged to report any misconduct or irregularities committed by others on the land they administer, which may have contributed to the emergence of land disputes.

In the initial phase, the party initiating the dispute is afforded the opportunity to present the grounds for their ownership claim, delineate the boundaries, and elucidate the land's origin that is the subject of contention. Furthermore, the applicant is expected to elucidate the actions undertaken by the respondent that have led to the alleged loss, substantiating their claims with pertinent evidence. While there are no specific regulations governing the order of argument presentation, it is feasible that the respondent or respondents might be given precedence in presenting their arguments.

Upon both parties having presented their arguments and all relevant aspects related to the land dispute, including testimonies, the mediator, typically the traditional head or *mananwir*, will provide another opportunity for the parties to propose potential resolutions to the land dispute under deliberation. Given their extensive experience and knowledge, traditional heads or *mananwir* are adept at discerning solutions to land disputes involving parties with similar interests.

¹⁶ Arwakon, "Interview with the Head of West Biak District."

If the alternative dispute resolution process becomes gridlocked due to both parties rejecting the proposed solution, the mediator will persist in acting as a facilitator until an agreement is reached or until the most suitable resolution for the ongoing land dispute is identified, ensuring that both parties are content with the attained agreement. If, after several meetings under the same mediator's guidance, a satisfactory resolution remains elusive, the mediator may suggest that the dispute be resolved through the involvement of a more experienced mediator, such as at the district level (*mananwir sup mnuk*), traditional council (*sup bar*), or through legal proceedings in court.

4. CONCLUSION

Land boundary disputes in West Biak District, Biak Numfor Regency stem from a multitude of factors, encompassing indistinct land demarcations, inequitable land administration, land claims asserted by the State or government, the absence of historical witnesses, the influx of migrant communities elevating land's economic value, endeavors to uphold social status via land assertions, misconceptions surrounding local customs and traditions, and a dearth of awareness about land rights and mechanisms for dispute resolution. In West Biak District, customary land disputes are resolved through a non-litigious or mediation-oriented approach, overseen by the traditional head, known as the *mananwir*. The *mananwir* assumes a dual role as a peacemaker and a traditional decision-maker, facilitating dialogues among disputing parties with the objective of arriving at a binding resolution. This method is characterized by its efficiency, cost-effectiveness, and commitment to upholding justice. Recommendations stemming from this research encompass enhancing traditional leaders' understanding of land law and customary community entitlements via outreach initiatives, establishing Regional Regulations (Perda) governing customary land matters, and urging the government to acknowledge customary law communities and their customary rights legally and politically.

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