

# KARAKATAN (ALTERNATIVE MODEL) OF LAND DISPUTE RESOLUTION IN BADAMAI CUSTOMARY IN SOUTH KALIMANTAN

Mohlis<sup>1\*</sup>  
Jalaluddin<sup>2</sup>

<sup>\*1, 2</sup>UIN Antasari Banjarmasin

<sup>\*1</sup>*email:* mohlismaulanasmd@gmail.com

<sup>2</sup>*email:* Jalaluddin@uin.Antasari.ac.id

**Abstract:** Land disputes in our lives cannot be avoided, this is due to the shift in the function of land in the economic development development sector, especially with the development of plantations and mining sectors managed by companies which has an impact on the loss of a sense of justice in the people who own the land, leaving disputes/disputes. that land. The karakatan that grows in the Banjar community is a local wisdom that has been embedded for a long time, so that the karakatan can become an alternative model for resolving land disputes in the bamalam custom in South Kalimantan. This research aims to analyze the concept of karakatan as an alternative model in resolving land disputes thoroughly in the bacepat custom in South Kalimantan. The research method used is an empirical legal method with a case study approach in describing it qualitatively. The results of the research found that Karakatan is an alternative model for resolving land disputes in the Badunia custom in accordance with the spirit of article 21 of the Sultan Adam Law which reads: Every kampoeng, if there is a dispute about the content of the kampoengnja ija itoe tetoeha kampoengnja koesoeroeh, will discuss the mupaqt-mupaqt of the opponent who toeha-toeha kampoengnja itoe lamoen cannot also discuss the matter and take it to the judge, so the values of local wisdom are very strong, where every time there is a problem in the midst of life the community can be resolved by the village elders, this means that the ishlah carried out by the village elders is none other than to maintain kinship in their environment, meaning that the character of community life becomes a priority in resolving disputes/problems faced by the community.

**Keyword:** Synergy, Customary, Law

## Introduction

Disputes originate from a condition where a party feels that their rights have been neglected by the interests of another person, which begins with a feeling of dissatisfaction with a decision. This can happen both individually and in groups. Conflict will occur if there are differences in interests. Something that causes differences of opinion, quarrels, and arguments. Parties who have different principles trigger a conflict. The emergence of legal disputes over land begins with complaints by one party, which can be a person or legal entity, explaining objections and

demands for land rights regarding the status of the land, in order to obtain a resolution in accordance with existing regulations. According to Rachamadi Usman <sup>1</sup>, a conflict will not develop into a dispute if the aggrieved party only harbors feelings of dissatisfaction or concern. A conflict will develop into a dispute if the party who feels disadvantaged has expressed dissatisfaction or concern, either directly or indirectly. Conflict means a clash between two or more parties, even a large group such as a country. Conflict can be caused by conflicting interests, hatred, feelings of inferiority, domination of weak parties by strong parties.<sup>2</sup>

According to Suyud Margono, disputes usually start from a situation where a party feels disadvantaged by another party which begins with feelings of dissatisfaction that are subjective and closed. This incident can be experienced by individuals or groups. Feelings of dissatisfaction will surface if a conflict of interest occurs. The dispute process occurs because there is no common ground between the disputing parties. Potentially, two parties who have different positions or opinions could potentially lead to a dispute situation.

### Literature Review

According to Prof. Boedi Harsono, land disputes are disputes resulting from legal actions or legal events regarding a particular piece of land. In order to avoid disputes in carrying out a legal action or receiving the legal consequences of a legal incident, a person must first understand what is called "land" and the provisions that regulate it <sup>3</sup>. Land disputes or conflicts are chronic and classic problems and last for years or even decades and are always everywhere. Land disputes and conflicts are a form of problem that is complex and multi-dimensional.<sup>4</sup>

According to Rusmadi Murad <sup>5</sup>, land rights disputes, namely: the emergence of a legal dispute begins with a complaint from a party (person/entity) containing objections and demands for land rights, both regarding land status, priority and ownership in the hope of obtaining an amicable resolution. administration in accordance with applicable regulatory provisions. According to the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1 of 1999 concerning Procedures for Handling Land Disputes, Article 1 point 1: Land Disputes are differences of opinion regarding the validity of a right, the granting of land rights, and the registration of land rights including their transfer and the issuance of proof of rights. , between

---

<sup>1</sup> Rachmadi Usman, 2003, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung, PT itra Aditya Bakti, hlm 1.

<sup>2</sup> Endang Suhendar dan Warni, *Petani dan Konflik Agraria*, (Bandung: Akatiga, 1998), cet. ke 1, hal. 32

<sup>3</sup> Boedi Harsono, 2005, *Sengketa-Sengketa Tanah serta Penanggulangannya*, Jakarta, Djambatan, hlm 18

<sup>4</sup> Sumarto, "Penanganan dan Penyelesaian Konflik Pertanahan dengan Prinsip Win-Win Solution oleh Badan Pertanahan nasional RI" Disampaikan pada Diklat Direktorat Konflik Pertanahan Kemendagri RI tanggal 19 September, 2012. Hlm 2

<sup>5</sup> Rusmadi Murad, "Penyelesaian Sengketa Hukum Atas Tanah" Bandung: Alumni, 1999. Hlm 22-23.

interested parties and between interested parties and agencies within the National Land Agency<sup>6</sup>.

If we look factually, the juridical basis governing agrarian/land issues is not fully implemented consistently for various reasons, which gives rise to problems. Current sources of land problems/conflicts include<sup>7</sup>: (1) Unbalanced and unequal land ownership/control, (2) Inharmonious use of agricultural land and non-agricultural land, (3) Lack of support for people from economically weak groups. (4) Lack of recognition of customary law community rights to land such as customary rights. (5) Weak bargaining position of communities holding land rights in land acquisition.

## Method

Research in the form of this article uses empirical legal research seen from a sociological aspect taken from facts that exist in a society, legal entity or government agency. This type of research is sociological juridical and uses a qualitative approach with a case study approach. Apart from that, the author also analyzes primary legal materials, namely the Civil Code (KUHPerduta), Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Laws Law Number 6 of 2014 concerning Villages, Ministerial Regulation Number 11 of 2016 concerning Settlement of Land Cases, and the Sultan Adam Law Using the techniques for collecting and processing legal materials above, the materials were collected through library research and interviews, then the data has been analyzed and have been collected using content analysis methods.

## Results and Discussion

### Karakatan in the Bacepatan Custom as Local Wisdom

Karakatan comes from the word Rakat in Banjar language terms which means familiar, harmonious, harmonious, Karabatan or badingsanakan in the context of the concept of Karakatan, namely the values and norms that exist in the life of the Banjar community as unwritten rules so that if a dispute or problem occurs, usually the dispute or problem can be resolved. through people who are elders or prominent figures such as community leaders, traditional leaders, village tatuha, religious leaders. According to the Rantau community figure in Tapin Regency, pambakal Isah, known as Pambakal Tuha, he said that *the karakatan in the Tapin community are values and norms of life that have existed for a long time, the karakatan is the embodiment of the community's religious values, socially the karakatan strengthen each other. others, strengthening togetherness, mutual support, reminding each other, and understanding and forgiving each other because to achieve goodness we uphold solidarity,*

---

Lihat Pasal 1 butir 1 Peraturan Menteri Agraria/Kepala BPN Nomor 1 Tahun 1999 tentang Tata Cara Penanganan Sengketa Pertanahan.

<sup>7</sup> Elfachri Budiman, *Ibid.* Hlm 75. Bandingkan dengan Noer Fauzi Rachman, “Rantai Penjelas Konflik-Konflik Agraria yang Kronis, Sistematis, dan Meluas di Indonesia”. Bhumi, Jurnal Ilmiah Pertanahan PPPM – STPN, Nomor 37 Tahun 12, April 2013.Hlm 5

*solidarity is formed from the existence of the community itself, let alone strengthened by the community relationship itself .*

The land dispute cases that occurred in several districts/cities in South Kalimantan were indeed based on the economic transfer of land functions, with the existence of plantations and mining, including:

NO	CONFLICT	CHRONOLOGICAL
1	Eviction land inhabitant 2 Village in Regency. Tabalong by PT. Adaro Indonesia	Since 2011, PT. Adaro Indonesia carried out the eviction land inhabitant in Village Lok Rock, District Haruai And Village Kasiau, District Murung Pudak, Kab. Tabalong, without replacement loss/compensation. Residents consider PT. Adaro Indonesia has trespassing, damage And do forgery letter of sale buy land For interest mining coal
2	Effort expansion landmining PT. Adaro Indonesia in Regency. Tabalong	On beginning Year 2005, PT. Adaro Indonesia try acquire community lands for area expansion the mine. Effort expansion area mine PT. Adaro here it is has triggered conflict between the community and the company in the area, other than the land have been controlled by individual communities, there are also lands Which mastered in a way group by public  Upau Dayak custom. This is also a result of mining activities cause decreasing productivity agriculture inhabitant
3.	Mutual claims of land ownership between public with Company PT. Adaro Indonesia in Subdistrict Juai, Regency. Balangan	Land dispute between residents of Buntu Karau, Juai District Balangan Regency, South Kalimantan with company mining rock embers, PT Adaro Indonesia Which operate in area intended. In mediation Which initiated by Government Regency No meet agreement between company And society so Finally taken track law
4	Activity mining PT. Adaro Indonesia is destructive land community farming	Activity mining by PT. Adaro Indonesia in Balangan Regency is being questioned by rubber farmers in Village Maburai Subdistrict Murungpudak. Matter This caused Because garden rubber farmer submerged consequence safety waste pond coal
5.	Dispute land between community with the Company Mining PT. TIA, Regency Land of Spices	PT. Bud Core Eternal ( TIA) do activity mining in Village Spinach Sari, District Angsana, Regency. Spice ground. PT. TIA even though she already knew that area Which mined problematic Because There is land public in area the, However PT. TIA still do mining activities by ignoring all demands community land owners who have proof of ownership legitimate. PT. TIA stated that they were mining at location Now This Already in accordance with provision Which There is, in accordance with decision Regent Land Spice 545 / 45- EX/ KP / D. FE Date March 16 2005,

Land dispute resolution cases are then carried out through the courts and some also through non-court channels. The resolution of land disputes outside the courts cannot be separated from the customary law that applies in community life, which is also recognized by national law, so

that resolving land disputes outside the courts can show the synergy of customary law and national law in resolving land disputes.

The synergy of customary law and national law can be seen in the case of resolving land disputes in Tapin District, where land dispute cases are not much different from what happens in districts/cities in South Kalimantan, namely land disputes from land conversion in economic aspects, namely plantations, increase and development, so that land disputes occur between communities and companies, territorial border disputes and land disputes between communities and the government, some of which are resolved through court and some also through court as is done in Tapin Regency, there is a resolution land disputes through non-court channels.

Settlement of land disputes in Tapin Regency through non-judicial channels is carried out through mediation carried out through village heads or traditional leaders, or village tatuha who understand agrarian law. The mediation carried out by the village head, village tatuha and/or traditional leaders is in the context of peace, where in Islamic teachings peace is referred to as a way of ishlah in line with article 21 of the Sultan Adam Law, which reads: *Every kampoeng if there is a dispute, the contents of the village are agreed. itoe tetoeha kampoengnja koesoeroehkan not able to talk about the mupaqat-mupaqat opponents who toeha-toeha kampoengnja itoe lamoen can't also talk about the matter of taking it to the judge.*

If we then pay attention to the sound of article 21 of the Sultan Adam Law in the Badunia customary law, then the values of local wisdom are very strong, where every time a problem occurs in the community's life it can be resolved by the village elders, this gives the meaning that ishlah is what the tetuha do. The village is no other than maintaining kinship in its environment, meaning that the character of community life is a priority in resolving disputes/problems faced by the community. Karakatan itself is an embodiment of the religious values of society where every dispute can be reconciled, this is confirmed in the Qur'an surah al hujurat/49: 10, namely:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلَحُوا بَيْنَ أَخَوَيْكُمْ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ

*It means: "The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy."*<sup>8</sup>

From the explanation in the Koran, it is clear that making peace in resolving disputes is the responsibility of a believing Muslim, so that in resolving land disputes, as occurred in the case of land disputes in Tapin Regency, it is certainly the responsibility of the village elder or village head if you look at the law. Invite Sultan Adam. This is in line with Article 26 Paragraph (1) and Paragraph (4) of Law Number 6 of 2014 concerning Villages, where the village head is obliged to resolve disputes that occur in the community. In this case, land disputes are also disputes that occur in the community and therefore the Village Head has the right to mediate these disputes. In civil cases or matters, it is commonly referred to as basuluh or ishlah. However, in cases of moral violations or traffic violations and incidents of violence, fights,

<sup>8</sup> Department Religion RI, *Al-Qur'an And Translated*, (Surabaya: References Greetings,2010) , 97.c

abuse and matters involving criminal matters, it is commonly known as baendam, bapacbaik (ignore), baakuran, bapatut or mamatut and so on referring to karakatan in the bacepat custom.<sup>9</sup>

If Customary Law is formulated as stipulated in the Seminar on Customary Law and National Development (1975) as Original Indonesian Law which is not written in the form of the legislation of the Republic of Indonesia, which here and there contains religious elements, then it can be said that what is meant by Bamalam Customary Law in Banjar society is the whole unwritten law that applies among the Banjar people which is partly influenced by Islamic law.<sup>10</sup>

Based on these references, a framework can be created that the Ba Peace Customary Law in the Banjar community consists of 3 elements, namely: *(1) unwritten elements, in the form of habits that grow and develop in the social practices of life in the community. This includes everything that is considered good by society and will cause reactions from various levels of society if this is violated. Strictly speaking, violations will receive minimal sanctions in the form of censure from the community. Such habits in Banjar society differ from one place to another, especially in terms of the influence of education, modernization and other development activities carried out by the Government. (2) elements originating from Islamic law, which includes all provisions of Islamic law and fiqh laws which are maintained and adhered to by society as a major part of their religious teachings. In this regard, determining what constitutes a religious teaching depends on the perception of the community members in accordance with what has been conveyed by the ulama in this area since ancient times. The determination of whether something is obligatory, circumcision, permissible, makruh and haram is basically determined by the ulama and continues to be held as an assessment criterion when someone faces certain facts that require assessment. (3) elements originating from the era of the Banjar kingdom, for this there is no provision other than what is called the Sultan Adam Law (1835), a Sultan who was known to be pious and respected by his people. The implementation of this law, which consists of several articles, seems to be very dependent on the Sultan, so that after the death of Sultan Adam, especially after the death of Sultan Adam, it received little attention except in the field of land law which was still obeyed by the community.*<sup>11</sup>

Paying attention to the bacepat custom as a form of dispute resolution that lives in society (customary law), its position in the future is quite prospective and will continue to exist, considering several things: 1. Constitutionally it has received recognition from the Constitution 45 Article 18 B (2). 2. There are laws and regulations that are still ambiguous, for example Law no. 5 of 1966 concerning Basic Agrarian Provisions, that the applicable agrarian law is customary law. The same thing is also implied by Law no. 41 of 1999 concerning Forestry. 3.

<sup>9</sup> Gazali Usman, Kerajaan Banjar Sejarah Perkembangan Politik ..., h. 185

<sup>10</sup> Lapoaran Hasil Penelitian, Hukum Adat Kalimantan Selatan, Tim Peneliti Unlam bekerjasama dengan Badan Perencanaan Pembangunan Daerah Propinsi Dati I Kalimantan Selatan Banjarmasin, 1990.

<sup>11</sup> H. Abdurrahman, Menggagas Format Baru Peranan Peradilan Agama Pasca Lahirnya UU No. 3 Tahun 2006 tentang Peradilan Agama, Makalah yang disajikan dalam Seminar tentang Peranan Peradilan Agama Pasca Lahirnya UU No. 3 tahun 2006, 18 September 2006, Fakultas Syari'ah IAIN Antasari Banjarmasin.

Academically, many legal universities have developed non-positivistic legal studies such as "Law and Society" and Legal Anthropology which emphasize the study of Folk Law and legal pluralism. 4. Development of post-reform regional autonomy which began with the enactment of Law no. 22 of 1999 concerning Regional Government which has now been replaced by Law no. 32 of 2004 has opened up opportunities for the widest possible autonomy, providing fresh air for the development of local laws, although in some cases there is a tendency for legal regulation through Regional Regulations as a form of formalization of applicable customary law. 45 5. The emergence of the adaptive community movement which originated from holding the Congress of Indigenous Peoples of the Archipelago March 15-22 1999 by declaring March 17 as the Day of Awakening of Indigenous Peoples and the formation of the Alliance of Indigenous Peoples of the Archipelago (AMAN). 6. There is a political statement promising to prepare legal instruments. Legislation that will specifically regulate the existence and recognition of indigenous peoples, such as President Soesilo Bambang Yudhoyono's statement on the commemoration of the International Day of Indigenous Peoples on 9 August 2006. 7. Finally, the issue of the position of customary law was discussed in the Seminar on Legal Pluralism and its Challenges for System Establishment National Law organized by the National Legal Development Agency of the Republic of Indonesia's Department of Law and Human Rights in Makasar, 1-2 May 2007. The issue discussed was the issue of legal pluralism which would be shifted to the political realm, at least national legal politics.<sup>12</sup>

## Conclusion

Karakatan as an alternative model for resolving land disputes in the bamalam custom in accordance with the spirit of article 21 of the Sultan Adam Law which reads: *Every kampoeng, if there is a dispute about the content of the kampoengnja ija itoe tetoeha kampoengnja koesoeroeh, will discuss the mupaqt-mupaqt of the opponent who toeha-toeha kampoengnja itoe lamoen cannot also discuss the matter and take it to the judge*, so the values of local wisdom are very strong, where every time a problem occurs in the midst of life the community can be resolved by the village elders, this means that the ishlah carried out by the village elders is none other than to maintain kinship in their environment, meaning that the character of community life becomes a priority in resolving disputes/problems faced by the community. The karakatan values in the badalam custom are considered important as part of a culture that from time to time experiences a process of ups and downs. Especially when dealing with change and modernization.

When society changes in accordance with the changes and modernization that occur, the position of the bacepat custom still has a place in the civil aspect, namely when it is in a space

---

<sup>12</sup> Abdurrahman, Hukum Adat dalam Perkembangan Pluralisme Hukum di Indonesia, Makalah pada Seminar Tentang Pluralisme Hukum dan Tantangannya Bagi Pembentukan Sistem Hukum Nasional yang diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI di Makasar, 1-2 Mei 2007.

and social order characterized by organic solidarity, which relies more on dispute resolution mechanisms using a non-litigation approach.

## References

- Abdurrahman, Hukum Adat dalam Perkembangan Pluralisme Hukum di Indonesia, Makalah pada Seminar Tentang Pluralisme Hukum dan Tantangannya Bagi Pembentukan Sistem Hukum Nasional yang diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI di Makasar, 1-2 Mei 2007.
- Boedi Harsono, 2005, *Sengketa-Sengketa Tanah serta Penanggulangannya*, Jakarta, Djambatan
- Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, (Surabaya: Pustaka Assalam, 2010)
- Endang Suhendar dan Warni, *Petani dan Konflik Agraria*, (Bandung: Akatiga, 1998), cet. ke 1
- H. Abdurrahman, Menggagas Format Baru Peranan Peradilan Agama Pasca Lahirnya UU No. 3 Tahun 2006 tentang Peradilan Agama, Makalah yang disajikan dalam Seminar tentang Peranan Peradilan Agama Pasca Lahirnya UU No. 3 tahun 2006, 18 September 2006, Fakultas Syari'ah IAIN Antasari Banjarmasin.
- Lapoaran Hasil Penelitian, Hukum Adat Kalimantan Selatan, Tim Peneliti Unlam bekerjasama dengan Badan Perencanaan Pembangunan Daerah Propinsi Dati I Kalimantan Selatan Banjarmasin, 1990.
- Noer Fauzi Rachman, “*Rantai Penjelaras Konflik-Konflik Agraria yang Kronis, Sistematis, dan Meluas di Indonesia*”. Bhumi, Jurnal Ilmiah Pertanian PPPM – STPN, Nomor 37 Tahun 12, April 2013
- Peraturan Menteri Agraria/Kepala BPN Nomor 1 Tahun 1999 tentang Tata Cara Penanganan Sengketa Pertanahan.
- Rachmadi Usman, 2003, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung, PT itra Aditya Bakti
- Rusmadi Murad, “*Penyelesaian Sengketa Hukum Atas Tanah*” Bandung: Alumni, 1999
- Sumarto, “*Penanganan dan Penyelesaian Konflik Pertanahan dengan Prinsip Win-Win Solution oleh Badan Pertanahan nasional RI*” Disampaikan pada Diklat Direktorat Konflik Pertanahan Kemendagri RI tanggal 19 September, 2012