

Dispute Resolution of Oil Palm Plantations between The Dayak Kinipan Traditional Community, The Oil Palm Company, and The Government: A Study

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Abstract. Land dispute is one of the inevitable disputes in Indonesia's development era. Different legal concepts and their development in conjunction with customary law are the antecedents to this problem. The dispute resolution study presented in this article is based on a socio-legal legal research method that focuses on what is occurring in the field, in this case, the legal reaction of the Dayak Kinipan traditional people in Central Kalimantan. This study concludes by examining how land disputes are resolved in customary law communities, particularly Kinipan.

Keywords: Land Dispute; Dispute Resolution; Traditional People.

1 Introduction

Land disputes in Indonesia are cases that are often encountered since the beginning of independence until now. Based on some existing data, Indonesia still has problems with boundary disputes, both nationally, provincially, and in villages.[1]Overlapping of land tenure in Indonesia, which mainly occurs, is caused by legal pluralism.[2]The problem began when Indonesian oil palm plantations were cleared. The issues frequently arise, including a high degree of overlap in land ownership in areas designated as oil palm plantations.[3]Traditional Dayak Kinipan community (hereinafter referred to as traditional Kinipan community) has routinely guarded their remaining forest since 2020, where their customary forest had been dwindling due to government-granted permits to entrepreneurs. Since the government has issued numerous permits for the Kinipan customary forest, the traditional Kinipan residents have been increasingly diligent in monitoring their forest, beginning with patrols and progressing to establish a security post for the Kinipan customary forest. Each time a company activity enters their traditional area, they inform workers to return home and immediately cease all activities in their customary forest, whether logging or other activities that jeopardize the Kinipan customary forest's sustainability.

In June 2020, the traditional Kinipan community members guarded the cleared and remaining forest's border, erecting a boundary portal made of fallen and remaining trees. A few days later, approximately 50 members of the company arrived at the Kinipan traditional community guard post, utilizing a variety of four-wheeled vehicles and heavy equipment. They asked the Kinipan traditional people to open the portal they created, but the Kinipan people were adamant, despite the fact that they were outnumbered and there was an argument, ranging from debate to shouting to enter the ported area earlier.

The following day, residents of Kinipan heard the sound of a saw machine, indicating that wood cutting activity had occurred in an area not far from their monitoring post. At that time, several Kinipan residents came and halted the logging, because previously, there had been issues, namely that when they arrived, company workers ceased their activities but resumed them after the Kinipan traditional people left their land. Riswan (the Kinipan traditional people's representative) seized the company's saws used to cut wood. The event occurred without violence.

According to the symptoms, this dispute falls under the category of diagonal dispute, which is a dispute caused by an unequal distribution of resources among organizations, resulting in an extreme dispute.[4]The dispute spreads in all directions; it may begin with an individual who drags down a business or government agency; the pattern is obscure. It started as an individual and grew into a crowd. The dispute is patterned, but who opposes who becomes complicated [5].

2 Method

This article employed a socio-legal research method to examine law as a human action through an interactional lens. This approach focused on the reactions and interactions that occur when the legal norm system operates in society. This approach aimed to provide an explanation for the problems that arise based on legal considerations and social reality.

4 Result and Discussion

Since 2004, the Kinipan traditional people and the palm oil company have been at odds. At the time, the oil palm company claimed a portion of the traditional community's land as part of its concession forest. Meanwhile, oil palm companies have occupied land that is considered part of the Kinipan customary forest area, according to the Kinipan traditional people. The dispute centers on the Kinipan Traditional people's efforts to protect their traditional territory, mainly their customary forest, from government-issued damage and overlapping permits. Previously, the Kinipan Traditional community conducted participatory mapping with the support of the Traditional Peoples Alliance (AMAN), and its existence was recognized on a national level. The Traditional Territory Registration Agency (BRWA), a civil society organization that advocates for recognizing traditional territories and forests, verified the proposal's feasibility in 2017.

The participatory map-making, which should be able to recognize and protect the Kinipan Traditional territory in the future, does not benefit. Permits to palm oil companies for use in their traditional areas just came out, in addition to the impact of oil palm plantations

which caused many environmental problems to occur.[6]It does not really end there; in this case, when the Kinipan Traditional people express their concerns to the government, the government responds poorly.

This dispute arose due to residents' failure to respond to several reports about palm oil companies' activities that resulted in various environmental problems, ranging from environmental pollution to the sale of village assets to overlapping land permits that have never been addressed by law enforcement. Additionally, the dispute has been exacerbated by the arrest of several Kinipan residents for their struggle to protect their living space, territory, and customary forest from oil palm land clearing.

The government permitted oil palm entrepreneurs to operate in the Kinipan traditional area without the signatures and approval of the village government or Kinipan traditional elders, because the Kinipan traditional people have consistently opposed the establishment of oil palm plantations in their traditional territory. The Kinipan traditional people attempted peace efforts and out-of-court dispute resolution, but the company ultimately refused to implement the mutually agreed-upon memorandum of understanding, which resulted in the criminalization of the Kinipan traditional people.

5 Conclusion

This issue concerns the provisions of Indonesian customary law, which include the boundaries of traditional peoples' traditional territory. The government has taken steps to address this issue, one of which was a June 2018 attempt to mediate the Kinipan traditional land dispute in Jakarta, but the palm oil company did not respond to the invitation. Two years later, the Kinipan Traditional people continue to demonstrate good faith in their efforts to pursue an independent deliberative path. The meeting concluded by signing a memorandum of understanding that halted all land clearing activities within the traditional area.

The granting of permits must be reviewed as deeply as possible, because if there are overlapping permits, disputes may occur in the future, considering that we know that natural resource problems are susceptible in this country.[7]In addition to licensing, the agreement between the traditional community and the company has legal force, which means that if one party fails to implement it correctly, the government should step in to enforce the existing law because if an agreement complies with 1320 BW, the parties must comply with the law and carry out the existing legal provisions.

The Kinipan traditional community filed a lawsuit with Court number 1/P/FP/2021/PTUN PLK in early 2021[8]January 4, 2021, intending to obtain legal certainty regarding the legal recognition and protection of their traditional territories and cancel the government's permit decision that had previously been issued. Following the Ministry of Home Affairs Number 52/2014 concerning Guidelines for Recognition and Protection of Customary law Communities and Based on the Minister of Environment Regulation No. 21/2019 concerning Customary forests and Private Forests Article 1 paragraph 10 it is explained in the two rules that customary law communities must be recognized and given protection against his rights.

Lessons learned from this problem include the importance of mutual respect between the government and employers for traditional peoples' rights, including their rights to their customary forests. When issuing permits, the government should first attempt mediation with traditional peoples. First and foremost, the government should provide adequate space for the

community, in this case, traditional people, to participate in implementing participation, and it is critical to respect each other's expressed differences of opinion.

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