The Seybold Report

ISSN 1533-9211

DOI 10.17605/OSF.IO/Y6MPR

CUSTOMARY JURISDICTION IN SPECIAL AUTONOMY FOR PAPUA PROVINCE

DANIEL TANATI

Faculty of Law, Cenderawasih University, Papua, Indonesia. Email : danieltanati3@gmail.com

Abstract

Customary institutions are institutions that play an important role in resolving customary disputes, even though these institutions are needed in customary and tribal law communities to resolve customary disputes in indigenous peoples in order to maintain peace and harmony between indigenous peoples. Likewise in the Special Autonomy Law for the Province of Papua, which states that the general court is a peace court in indigenous peoples who has the authority to examine and resolve general law disputes in civil and criminal matters between members of the customary law community concerned.

Keywords: Customary Courts, Special Autonomy, Papua Province.

INTRODUCTION

During the colonial era, there were two types of courts for indigenous people, namely "ordinary courts" and "village courts". Otherwise there is a fundamental difference between the two judicial authorities. Village courts are usually located almost everywhere in the archipelago within local adat law communities. However, customary law exists in communities that are territorial and genealogical. However, it is clear that these two courts are related to customary activities (adatrechgemeenschap) among various indigenous peoples in the archipelago. However, not all indigenous people know about the existence of general or village courts, they only know about dispute resolution based on local customary law.

The specific authority is to give great responsibility to the province and the Papuan people and to regulate the use of natural resources from the Papua provincial government for the greatest benefit of the Papuan people. Special Autonomy for the Province of Papua is essentially a special authority that is recognized and given to the province and the people of Papua to regulate and manage itself within the framework of a unitary state.

In Article 1 paragraph (1) sub b of Law Number 1 Drt of 1951 it states that within a period of time to be determined by the Minister of Justice in stages, all customary courts will be abolished, except for the Religious Courts, if they are to be formed based on applicable laws, are part of the separate from the Ordinary Court. Then paragraph 3 stipulates that in paragraph 1 does not limit the authority that has been given to the peace village judge in Article 3a Rechterlijk Organisatie.

Abolishing customary justice, a uniform legal system must be created by state courts. Autonomous courts and general courts cannot be abolished when this decision comes into force, because the consequences for district court judges increase their workload. In this regard, the abolition of customary laws will be carried out in stages as needed, taking into account the skills of the judges in the district courts.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/Y6MPR

Law Number 22 of 1999 (LN. 1999 Number 60) concerning Regional Government began to restore the existence of village officials, although not explicitly. Article 101 states that the village head or village council has two duties and responsibilities, namely: (1) To maintain order and security in the village community; and (2) settlement of social disputes in the village. Article 104 states that the duties of the village council or other names are to protect adat, establish village regulations, adapt and channel the wishes of the community and oversee the implementation of village governance. Then it is said in article 106 that other facilities in the village can be formed according to the needs of the village and according to the village structure.

Regarding village institutions, the provincial government uses the Decree of the Minister of Home Affairs No. 64 of 1999 concerning Village Organizations as a guideline for compiling a "regional regulation package" for villages. Regarding the duties and responsibilities of the village head, article 16 is the same as article 101, including the task of resolving community problems/disputes in the village, there is only one new additional task, namely supporting the customs that live and develop in the village. This order made the village head not only the village head but also an ordinary official.

Indigenous peoples, whose structure is based on territoriality, such as customs, whose members feel connected to the same place of residence. That is, customary law communities based on territoriality are very much bound to the land they inhabit and are descendants of their ancestors which have been passed down from generation to generation.

The reality that has occurred to date in indigenous peoples in Papua Province which consists of various ethnic groups, customs and traditions often occurs in disputes within the customary law community or outside the customary law community, where the resolution is often by using deliberation because it is considered in accordance with the personality of the Indonesian nation. And is a solution used from ancient times since their ancestors who occupied the area or local area.

Problems or disputes that occur in the land of Papua that use the court route take longer to process and prioritize winning and losing from the parties to the dispute, as well as the costs incurred are also quite large and the process is long. This is very different from the personality of the customary law community in Papua. Therefore the Provincial Government of Papua will not remain silent with the settlement of disputes through the courts, always the Provincial Government of Papua always pays attention to the fate of the indigenous peoples in the Land of Papua.

Therefore, with the existence of the Special Autonomy Law for the Province of Papua, the rights of indigenous peoples are considered, including disputes that occur within customary law communities, which are also regulated in statutory regulations. Then automatically the legal protection for indigenous and tribal peoples has been regulated in laws and regulations.

Customary justice has become a community need, useful for resolving civil disputes in society. Indigenous peoples are generally more inclined to choose customary courts over general courts over joint settlement institutions. This is influenced by the growing cultural pluralism in this

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/Y6MPR

country. Apart from that, transportation difficulties in many places outside Java, the administrative legal system which is expensive and complicated for most citizens, and the limited capacity of the state apparatus indicate that customary law is a public need.

Customary institutions have the right and authority to represent the community externally, especially in matters related to customary interests and influences, management of customary rights and/or customary assets for the promotion and improvement of people's living standards towards a larger goal. Disputes related to community manners and customs, as long as the settlement does not contradict the applicable laws and regulations.

According to the regulations above, the so-called "customary institution" is also an institution whose job is to resolve customary disputes that occur within the customary law community, both internal and external affairs, so that this institution has the impression of being a village court or commonly referred to as customary justice.

RESEARCH METHODS

The method in this research is normative and empirical juridical where this research is based on the applicable laws and regulations and looks at the reality that occurs in the field.

RESEARCH RESULTS AND DISCUSSION

Judging from the differences in the composition of customary law communities, in general it can be divided into two groups or types, namely according to regional size (criteria) or often also regionalism according to ancestral dimensions or criteria or also called according to genealogical principles. This division into two types only meets theoretical criteria, because in reality there is a territorial-genological legal society, that is, in this society there are both elements, but the territorial element is more prominent. Or conversely, a genealogical-territorial legal society, meaning that in this society there are genealogical and territorial elements, but the genealogical elements are more prominent.

Indigenous peoples are characterized by being bound by their own customary laws, meaning that indigenous peoples have their own laws that bind those who live in them and the legal community has the right to make their own laws. In the same way as indigenous peoples in Papua, in controlling and managing their community, there is a leader who is appointed as the customary head who has the authority to protect and manage the territory and the customary law community.

Government Regulation no. 76 of 2001 (LN. 2001 No. 142), regarding general guidelines for village regulations. With regard to dispute resolution and customary institutions, we find arrangements in Regulations 16, 39 and 40, which among other things contain the duties and responsibilities of the village head to carry out village administration, foster village community life, develop the village economy, to maintain peace. And order in the village community, represent the village inside and outside the court and can appoint their attorneys to resolve disputes in the village community.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/Y6MPR

In addition, Article 39 also states that local governments are obliged to pay attention to and respect customs. 39/1999 on Human Rights and local governments may enact different policies to strengthen, maintain and develop the customs and institutions used in their territories.

The customary institutions referred to in the provisions above are institutions whose function is to assist the village head in resolving customary disputes. Customary institutions are not customary courts, but only institutions that assist village heads in resolving customary disputes.

Papua Province Special Autonomy Law No. 21/2001 is a public policy tool for the Government of Indonesia whose main objective is to provide solutions/outgoings to important problems that occur in Papua. The problems include, among others, political conflicts demanding independence for Papua, as a separatist movement seen by the Indonesian government, social conflicts among citizens because there is no solution to reveal the political conflicts that were created before, and community economic development, especially in Papua which is lagging behind other provinces.

Thus, it can be said that politically Otsus involves the distribution of power between the center and the regions through a more appropriate decentralization policy, which socially includes recognition and respect for socio-cultural identity and basic rights of the local indigenous Papuan people.

Recognizing and respecting the basic rights of socio-culture and community identity by implementing the provisions of Article 18B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states: The state recognizes and respects special or special regional government units that are regulated by law.

Definition of Article 50 and Article 51 Paragraph 1-8 Special Autonomy for Papua Province Law no. 21/2001 regulates the existence of ordinary legal entities in ordinary civil and criminal cases. The point is that the general court handles cases where the court decision is "reconciliation" between the parties, but if the parties want the court decision to "win and lose", then the place is in the district court and the next level.

The law provides recognition of living law, especially customary law. For example Law No. 21 of 2001 concerning Special Autonomy for Papua. Article 50 confirms that the government recognizes the existence of general courts in certain customary law communities, in addition to general law authorities. Under the Papua Special Autonomy Law, customary law is the common court of customary law communities that has the power to hear civil and criminal cases.

Likewise at the regional level, the existence of customary courts has been accepted in several areas, for example in

In Papua, the Papua Special Autonomy Law No. 21 of 2001 (Article 50, Paragraph 2 and Article 51 of the Papua Special Autonomy Law, Papua Special Regional Regulation No. 20 of 2008 concerning the Papuan Customary Court.

The implementation of customary law based on the special autonomy of the province of Papua, if it is necessary to get serious further explanation of its existence so that it does not conflict with a higher law, especially when examined in more detail Article 51 (1) states that common

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/Y6MPR

law is a court of the common law community, which authorized to investigate and mediate civil and criminal cases between members of their own legal community. In addition, paragraph 3 stipulates that public courts hear and adjudicate ordinary civil disputes and criminal cases referred to in paragraph 1 based on relevant common law.

The provisions referred to in these two paragraphs and their explanations do not clearly indicate which civil and criminal disputes should fall under the jurisdiction of an ordinary court acting as an information society judge. However, if you take a closer look, common law does not recognize the separation between civil law and criminal law, so of course the wording in the article does not explicitly cover civil disputes or issues or the field of criminal law.

CONCLUSION

In essence, the customary courts of the Papua Province have a legal basis, their existence is recognized normatively based on the Special Autonomy Law for the Province of Papua, according to which the customary courts are the judiciary of indigenous and tribal peoples who have the authority to examine, adjudicate and issue decisions. Where it relates to legal disputes in civil and criminal matters which are common law crimes between members of one legal community and another. With the existence of Otsus, customary justice in Tanah Papua has always been maintained and has become a tradition in customary law communities in resolving disputes that occur within or outside of customary law communities.

References

1) Suasthawa Dharmayuda, I Made 2001. Desa Adat, Kesatuan Masyarakat Hukum Adat di Provinsi Bali. Denpasar: Upada Sastra.

2) Ter Haar, Bzn 1960. Bab-bab tentang Hukum Adat. Jakarta: Djambatan.

3) Tresna 1978. Peradilan di Indonesia Dari Abad Ke Abad, Jakarta: Pradnya Paramita.

4) Undang-Undang Dasar Negara Repubhik Indonesia Tahun 1945.

5) Undang-Undang Republik Indonesia Nomor 21 tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua.

6) Keputusan Menteri Dalam Negeri Republik Indonesia Nomor 64 Tahun 1999 tentang Pedoman Umum Pengaturan mengenai Desa.