

BUYING AND SELLING OF ULAYAT LAND JOINTLY OWNED BY SEVERAL TRIBES IN JAYAPURA CITY

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ABSTRACT

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This study is based on the fact that not all *Ondoafi* (clan's leader) understand their position and authority in buying and selling ulayat land, especially for ulayat land whose ownership is carried out jointly by several tribes. This study aims to discuss the legal position of buying and selling customary land in Jayapura City, the Port Numbay Customary Council (LMA) in resolving disputes over customary land in Jayapura City, and position and role of tribal chiefs in Skouw Mabo village. Jayapura City is in the process of buying and selling customary land. This study uses empirical legal research using a structural approach, a stratification approach, and a pluralism approach. The data used is in primary legal materials, then analyzed using qualitative methods. The results obtained are that first, the law of buying and selling customary land carried out in Jayapura City is valid as long as it has received approval from *Ondoafi* as a leader in a government system that uses customary law. Second, the role of the Port Numbay Traditional Deliberation Institution (LMA) organizationally is as a forum when there is a dispute over communal land in Jayapura City. Moreover, third, the role of the tribal chief (*keret*) in carrying out the process of buying and selling ulayat land in Skouw Mabo Village on his land, the tribal chief does not have full rights or cannot personally sell his ulayat land.

Introduction

One of the objectives of the enactment of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (later called the LoGA) was to become the basis for creating legal certainty in national agricultural law, including in the land sector. Legal certainty is considered necessary in agrarian law because its absence can lead to injustice in marginalizing the rights of people whose lives depend on agricultural resources (Sukirno, 2010). Moreover, land certification became a government priority during Joko Widodo's first term as president (2014–2019) (Aditya et al., 2021). In addition, it is also essential that the owner's actions related to land get legal protection, order land

administration, and prevent conflicts in the community due to legal uncertainty.

The land issue is an issue that concerns the most basic rights of the people. In customary law communities, land has a significant role. The influence can see this of institutions outside the customary law alliance which changes the size of the value of the benefit function of customary land rights by each customary law community group itself. The tenure security of individuals under traditional regimes got significantly less consideration (Deininger, Xia, Kilic, & Moylan, 2021). In addition to having social value, the land also has economic value, meaning that customary land can be transferred to rights and ownership (Sukirno, 2010).

The highest land tenure rights in customary law are ulayat rights, as shared land with the members of the customary law community concerned, which contains two elements with aspects of civil law and public law. The subject of ulayat rights is customary law communities, territorial, genealogical, and territorial genealogical as a common form of their citizens. Because customary land is shared land, transferring rights, including buying and selling, must be based on the agreement of all tribes entitled to ownership of the land along with the *Ondoafi* customary head (Yunus & Muddin, 2019).

The process of carrying out the sale and purchase of customary land rights according to customary law in Jayapura City is carried out under the customary law regulations of each region. Still, the implementation is carried out by the buyer looking for the land he wants to buy and finding out the customary law alliance or tribe involves the rights to the land he wants to buy. The buyer goes to the customary law community and expresses its intent and purpose, namely, wanting to buy land belonging to the indigenous community association. After that, the prospective buyer conducts deliberation with the tribal chief or *Ondoafi*, who is in charge of the land in the presence of the local RT or RW head, the customary law community itself, and traditional leaders (Yunus & Muddin, 2019).

After reaching an agreement, the prospective buyer makes a payment for the land to the indigenous peoples, and the payment is carried out in cash and a straightforward manner; the payment can be in whole or can also be paid down payment in advance with a period agreed upon by both parties for further repayment to be made. After the buying and selling process occurs, a traditional ritual process will be carried out by the entire indigenous community, led directly by the traditional leader and elders, and attended by all indigenous peoples and buyers. The customary deliberation decision was made directly by *Ondoafi* and signed by *Ondoafi*, and witnessed by witnesses and traditional leaders, and *Ondoafi* submitted evidence of a letter of customary release to the buyer (Yunus & Muddin, 2019).

Furthermore, the buyer will receive a customary release letter, which can be used as evidence if there is a dispute in the future.

After all, transactions carried out by the buyer and the indigenous peoples are completed. The buyer has received a letter of customary liberation from the customary leader or *Ondoafi*. The buyer can register land on the land purchased from the indigenous peoples to the National Land Agency office by the provisions of the valid legislation invitation (Yunus & Muddin, 2019).

However, in reality, not all *Ondoafi* understand their position and authority in the sale and purchase of ulayat land, especially for ulayat land whose ownership is carried out jointly by several tribes. The customary head/ *Ondoafi* has the power, administration, and designation of customary land. This role has a close relationship with the customary law community (Bao, 2013). The position of the customary head as a leader is a system in customary law communities, including in Jayapura City. The role of the customary head is significant to the status of customary land because he knows the history of ownership of ulayat lands in his area of authority. The legal act of relinquishing ulayat land rights is based on customary deliberations because *Ondoafi* does not own the entire ulayat land but has the power and authority to regulate, administer and allocate ulayat land.

In contrast to what happened in Jayapura City, for communal lands that are jointly owned, *Ondoafi* sells them without going through deliberation and procedures as described previously. This ulayat land or customary land can only be traded in the interest of the State for development and social interests. But unfortunately, the growing need for a country's land is not only needed by the government for development but also needed by some people to build houses, so some people buy ulayat land or customary land in Jayapura City.

Based on the data, the indigenous Papuans who inhabit the area in Jayapura City consist of 5 (five) tribes, namely the Tehupa (who inhabits the villages of Skouw Sae, Skouw Mabo, and Skouw Yambe), the Elsong tribe (who inhabits the villages of Moso and Koya Koso), the Nafri tribe (who inhabit the village of Nafri), the Imbi tribe (who inhabit the villages of Injros/Enggros, Tbadij/Tobati, Kayo Pulau and Kayo Batu) and the Sentani tribe (who inhabit the villages of Yoka and Waena) (Jayapura City Regional

Regulation Number 12 of 2016 concerning Recognition and Protection of Indigenous Peoples). In addition to joint ownership (communal), the customary law community in Jayapura recognizes individual ownership of the *Keret* or *marga* (family).

The existence of a condition in which Ondoafi sold ulayat land unilaterally, making the rights of the indigenous peoples in Jayapura City neglected. Cases like this don't just happen in Jayapura City. Several areas also often have conflicts where Ondoafi sells ulayat land because he considers the land to be his, namely, on ulayat lands in Sorong and Merauke (Ambarsari, 2017). In addition, the disposal of customary land in Merauke Regency for investment reasons lacks legal certainty for investors, resulting in land conflicts (Idris, 2015). The number of similar cases that occurred in Jayapura makes it attractive for the author to analyze the sale and purchase of ulayat land jointly owned by several tribes in Jayapura.

Based on the background of the problem that has been described previously, the formulation of the problem in this study, namely:

1. What is the legal position of buying and selling customary land in Jayapura City?
2. What is the Port Numbay Customary Council (LMA) in resolving disputes over ulayat land in Jayapura City?
3. What is the position and role of the tribal chief in the village of Skouw Mabo, Jayapura City, in carrying out the buying and selling process of ulayat land?

Method

The type of research used is empirical legal research, namely legal research methods that use empirical facts obtained from human behavior through direct observations (Fajar & Achmad, 2010). Empirical legal research seeks to see the law in an absolute sense. In other words, empirical research attempts to see, observe or examine how the law works in society. In this study, researchers will buy and sell land on communal land jointly owned by several tribes in Jayapura City.

The approach used by the researcher is the Structural Approach to analyze the workings of law in society based on the structure that exists in the community itself. In this study, we will examine the workings of

law in indigenous peoples in Jayapura City. In addition, the Stratification Approach was also used to examine directly. The roles and authorities of the Indigenous Community Institutions in Jayapura City, *Ondoafi* in Jayapura City, tribal chiefs and their line of members, and indigenous peoples in Jayapura City, regarding the process of selling land and releasing land ulayat rights, become the property of individuals or legal entities as the party who buys ulayat land. The Pluralism approach is also used to view customary law communities as semi-autonomous social areas that give birth to the law due to mutually influencing relationships between customary law functionaries and members of customary law communities with legal institutions and other members of legal communities. In writing this thesis, we will directly examine the existence of customary law communities in Jayapura City in law formation and legal development regarding ulayat lands.

The sampling technique takes samples from a part of the population, then research, and the research results (conclusions) are applied to the population (generalization). The technique used in this study is a non-probability sampling technique, namely a sampling technique determined by the researcher himself. As for the non-probability sampling technique, the author uses a purposive sampling type; namely, the sampling is done by selecting the subject based on the specific criteria set by the researcher.

Based on the comprehensive data collected from this research, an analysis is carried out using the qualitative analysis method, which is an analytical method carried out by describing the phenomena or facts obtained from the research results based on the data obtained, both primary and secondary data. The final data analysis provides conclusions and suggestions regarding what should be done regarding the legal problem.

Results And Discussion

A. Sale and Purchase of Ulayat Land Rights in Jayapura City

1. The process of buying and selling customary land

The increasing need for people to own land, especially in Jayapura City,

has resulted in tribal chiefs and customary leaders trading customary land to the broader community without considering that the land will be used for personal or customary interests. Provided that in buying and selling customary land, the buyer can carry out the mandatory requirements of the tribal chiefs and customary leaders, namely the tradition of releasing adat.

Even though the first buyer has paid the price of the land, if the first buyer cannot fulfill the mandatory requirements for the traditional relinquishment tradition, then the sale and purchase of customary land in Jayapura City are not yet valid. The land can be transferred to a new buyer if the new buyer fulfills the mandatory requirements of the tribal and customary leaders in the area.

Article 24, paragraph (1), and paragraph (2) of Government Regulation Number 24 of 1997 state that:

- 1) For registration of rights, land rights originating from the conversion of old rights are proven using such rights in the form of written evidence, witness statements, or statements in question, which are confirmed by the land registration committee sporadically is considered sufficient to register the rights, rightsholders, and the rights of other parties that burden them.
- 2) Suppose no complete evidence is available, as mentioned in paragraph (1). In that case, the bookkeeping of rights may be carried out based on the physical facts of the land parcel in question for 20 years or more in a row by the registration applicant and his predecessors with the provision of:
 - a) The control is carried out in good faith openly by the person concerned with the right to the land and is strengthened by the testimony of a person who can be trusted.
 - b) The control, both before and during the announcement as referred to in Article 26, is not

disputed by the customary law community or the village concerned, or other parties.

Land registration with ulayat rights in the City of Jayapura cannot be carried out by conversion. However, the head of the Jayapura City BPN office must recognize and affirm rights based on rights, namely a letter of customary release as written evidence because there are witnesses from indigenous peoples, tribal chiefs, and knowing the customary head/Ondoafi based on customary deliberations. Based on an interview with Ilham Marowa, Notary Jayapura City, many problems occur in Jayapura City regarding customary relinquishment letters, often overlapping, because many people in Jayapura do not understand management that this land has previously been released or has never been waived. Suppose the rights were released years ago, but the certificate is not immediately processed. In that case, this can cause problems in the future (Marowa, 2021).

Based on the information from the research results obtained above, it is necessary to improve the administration of data on the status of customary lands in each village. The aim is to find out the status of which customary lands have been released or have never released their rights. The solution may be that the government needs a role in this matter, namely the Jayapura City National Land Agency, to help assist the Ondoafi and tribal chiefs and other traditional leaders in every village in Jayapura City.

Land acquisition is any activity to obtain land rights through the transfer of land rights or by affirming land rights with compensation to those entitled. Thus the acquisition of land can be made by:

- a. Transfer of rights is a legal act carried out by the land rights holder to transfer the land rights to another party.
- b. Submission or release is the activity of releasing the legal relationship between the holder of land rights and the land they control with compensation for losses based on deliberation followed by the granting of rights.

The definition of deliberation according to Article 1 paragraph (10) in Presidential Regulation Number 36 of 2006

states that Deliberation is an activity that contains a process of listening to each other, giving and receiving each other's opinions, as well as a desire to reach an agreement regarding the form and amount of compensation and other related issues with land acquisition activities based on equality and volunteerism between parties who own land, buildings, plants and other objects related to land and parties who need land. The process or activity of listening to each other between the holders of land rights and those who need the land is more qualitative, namely the existence of interactive dialogue between the parties by placing an equal or equal position.

Deliberations must meet several elements, first of which, there is an element of volunteerism. For this to mean, both parties must act voluntarily without coercion to relinquish their rights. Second is the attitude of accepting each other's opinions or wishes is based on volunteerism between the holders of land rights and those who need the land. By fulfilling these elements, mutually beneficial results will be obtained for both parties, in this case, the government that needs land and the community holding land rights. Third, the deliberation is to obtain an agreement regarding the form and amount of compensation in land acquisition for the public interest. This is following the provisions of Article 1 paragraph (6) of Presidential Regulation Number 36 of 2005 that land acquisition is carried out through the release or surrender of land rights. The release or surrender of land rights is an activity to release the legal relationship between the holder of land rights and the land they control and the land they control by providing compensation based on deliberation.

However, referring to this research, the deliberation process was not carried out because transferring rights occurred through buying and selling between the parties. This means transferring rights that occur based on an agreement by both parties to carry out a sale and purchase transaction. Meanwhile, the deliberation's implementation is related to the provision of compensation in the release of rights,

which is usually related to the release of rights in the public interest carried out by local governments.

According to customary law, the sale and purchase of land rights is an act of transferring land rights which must be clear and cash, which means that the sale and purchase agreement is carried out in front of a customary leader where the customary leader acts as the official responsible for the validity of the sale and purchase agreement along with transfer of rights so that it is known to the public. Cash, which means the price for the land is paid directly (Soekanto & Teneko, 1981). Customary law uses buying and selling land rights, known as clear and cash sales. This means that the transfer of land rights is carried out in the presence of the customary head and carried out simultaneously with the payment of the price, which is considered paid off even though the buyer has only paid an advance or half payment to the seller.

The practice of buying and selling land to indigenous peoples in Jayapura City can be done through several ways of buying and selling land rights, namely by buying and selling land based on the customary law system, namely by private deed carried out before the head of the customary law union, in this case, Ondoafi, in before (Notary/*PPAT*), orally known by the families and traditional elders. Several factors cause why indigenous peoples still use oral or private deeds in their land sales and purchase agreements. The first is socio-cultural factors, where most indigenous peoples are still obedient to their customary law. Both processes are fast, easy, and inexpensive, and assume that they are legal if known by the traditional elders.

The sale and purchase of rights to customary lands of indigenous peoples in Jayapura City occur with an underhand deed written on paper or in the form of a receipt. This is because the indigenous peoples in Jayapura City, including the people who, until now, still use the applicable customary law. According to customary law, there are three buying and selling elements: clear, cash, and accurate. This can be seen from how indigenous peoples are still carrying out

the practice of buying and selling land under their hands. In this case, what is meant by "underhanded" is a land sale and purchase agreement in customary law where legal actions are carried out in the form of transferring land rights through cash payments or carried out based on an agreement between the parties (the seller and the buyer) which is attended by traditional elders and heads of state. Ondoafi custom.

Indigenous leaders in the indigenous peoples of Jayapura City are commonly referred to as Ondoafi, namely community leaders who are trusted by indigenous peoples to be authorized to determine any matters relating to legal relations and legal actions relating to their territory. This is written in Article 15 of the Jayapura Regional Regulation No. 8 of 2016 concerning traditional villages given by functionaries as customary government. Therefore, the role of the Ondoafi/customary leader is significant in the sale and purchase agreement of land according to customary law because it has the power to decide whether the land can be sold or not by looking at the function of the use of the customary land as long as it does not conflict with the norms that exist in the community. Moreover, *Ondoafi* is authorized to issue a customary release letter. This customary release letter serves as strong evidence and has an essential function in selling and purchasing land according to customary law.

The statutory provisions governing the authority of indigenous peoples, in this case, the relinquishment of adat for the sake of development, are contained in Article 43 of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province, which emphasizes that recognizing the ownership rights of indigenous peoples must be protected and respected. The buyer first looks for the land to be purchased and looks for an association of indigenous peoples who are entitled to the land. Then, after finding a party who wants to sell the land, the buyer goes to him and expresses the intent and purpose of the buyer, namely wanting to buy the land. After the negotiation process between the seller and the buyer finds a result, the seller, as an

indigenous community, will summon the indigenous community associations and the customary leader/ *Ondoafi* and hold a deliberation in which the deliberations must be attended by the traditional elders and the indigenous people themselves. If one Ondoafi is not present, then the deliberation is canceled. In these deliberations, the customary leader will usually ensure that the land belongs to the seller and has been approved by the indigenous peoples, who have collective and individual rights to the land. The customary leader/ *Ondoafi* is the one who has the right to decide whether the land can be sold or not. After the deliberation is complete, *Ondoafi* will state customary relinquishment.

After a sale and purchase transaction occurs, the buyer will receive a letter of release of rights to customary land. This customary release letter is made directly by *Ondoafi* and witnessed directly by indigenous peoples and other indigenous community associations. This release emphasizes the transfer of land ownership rights from the seller to the buyer. This customary release letter is used as evidence that the rights to the land have been transferred to avoid conflict with the dependent. The letter of relinquishment of customary land rights signed by *Ondoafi* customary leader is considered valid because *Ondoafi* acts as a customary village government which has been regulated in Article 15 of the Jayapura Regional Regulation Number 8 of 2016 concerning Traditional Villages, which states that Ondoafi as a traditional village government is inherited by inheritance. from generation to generation as functionaries of customary government, one of which is functionaries concerning indigenous peoples over land and natural resources. Transferring legal rights to land according to customary community law is attended by all tribal chiefs and indigenous peoples. The results of the deliberation discuss the origin of ownership of the land and ensure the legal owner of the land so that there will be no overlapping recognition by other tribes in the future, which can lead to conflict.

Finally, after the sale and purchase transaction and customary release have

been completed, it is better to directly register the land with the National Land Agency by bringing a customary release letter and other conditions needed for administrative purposes to obtain legal certainty and legal protection. This usually happens because the customary land that another party has purchased is no longer customary land. Due to the transfer of rights from what was initially customary land by a particular customary law community, the ownership changes after a sale and purchase transaction occurs to individuals who are no longer bound by the community's customary law.

2. Parties involved in buying and selling

Based on the results and information from sources obtained by the researcher, the parties involved in the sale and purchase of customary land are the buyer (the party who wants to buy the communal land), the tribal chief (the party who wants to sell his customary land) and the party who must know regarding the release of the ulayat land such as a straight line from the head of the Keret/tribal head, and community members as witnesses from the area of the head of the Keret/village head, *Ondoafi* from the area or who is in charge of the area/object, along with the sub-district/district head, village, and the head of the local RW and RT (Soekanto & Teneko, 1981).

The sale and purchase of ulayat land are carried out by deliberation and consensus with the customary law community whose ulayat land will be sold. Once an agreement is reached, the sale does not take place immediately. The sale will only occur after a letter of acknowledgment from the local village head is made, and acknowledgment from the community that the ulayat land belongs to the party who will sell it. This aims to avoid disputes or conflicts with other tribes because customary land rights do not have land certificates.

3. Conditions that must be met in buying and selling

Before and after carrying out the process of buying and selling customary land. As explained above, the conditions that must be met include the following:

a. Discussion

Customary deliberation between the seller and the buyer in the customary court and witnessed by the parties present until the appropriate deliberation decision is reached.

b. Transaction Process

There is a handover of money as a sign of payment of customary land from the buyer to the indigenous community who sells the land or, in this case, the tribal chief, according to what was decided in the regular meeting and witnessed by other traditional leaders and witnesses from the community of the tribal chief along with a straight line from the chief of the tribe.

c. Transfer and Handover

There is a legal transfer from the seller to the buyer witnessed by witnesses and parties involved with the sale and purchase of land on the ulayat rights. A letter of delivery or release letter from the seller to the buyer is made to fulfill the requirements for land registration.

4. Registration of customary land at the Jayapura City Agrarian and Spatial Planning Office/National Land Agency

Government Regulation Number 24 of 1997 concerning land registration activities covers land registration for the first time, namely data collection, physical data processing, proof of rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, storage of general registers and documents. Meanwhile, the maintenance of land registration data includes registration of transfers and encumbrance of rights, and changes to land registration data.

Processing land registration data and information activities is a very strategic factor in providing legal certainty and protection of land rights, including their maintenance. Determination/recognition and affirmation by the State Administrative Officer of a new application for customary land rights based on the provisions of customary law and applicable laws and regulations.

The process of registering customary land at the Jayapura City Land Agency Office, namely:

1. Registration is based on a certificate of customary release that has been legalized by the Ondoafi party, the tribal chief, or the party selling it to the buyer as legal evidence and as one of the conditions for registering land for the first time for the buyer.
2. Registration is based on a certificate of customary ownership approved by the tribal chief and Ondoafi. It is known by the indigenous peoples and witnesses who are in the village as evidence of ownership of the customary land itself.

Based on an interview with the Head of the Jayapura City Land Office, Keliopas Fenitiruma that the conditions that must be met to carry out the customary land registration process at the Jayapura City BPN Office are submitting a registration application file and attaching a letter of customary release for the buyer and just registering the land, or a certificate of customary ownership for the owner who wants to register his customary land for those who have never registered land (Fenitiruma, 2021).

This land registration process has been stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (*BPN*) of the Republic of Indonesia Number 18 of 2020 concerning the Establishment of Organizations, Work Areas, Duties, and Functions of Representatives of the Jayapura City Land Office in Papua Province. In general, land problems handled by the Jayapura City BPN Office are related to land dispute reports. Some are reported directly to the Jayapura City BPN Office or a report letter. The resolution must be fast and responsive so that there is no conflict. Examples of problems commonly occurring at the Jayapura City BPN office are land ownership and control disputes. Some complaints regarding ownership disputes between the two parties who have 2 releases in the same 1 land object. According to Keliopas Fenitiruma, the Head of the Jayapura City Land Agency Office stated that if there was a problem, the actions taken by the Jayapura City BPN Office under the provisions of Article 43 of the Minister of ATR/ BPN Regulation No. 21 of 2020 concerning Handling and

Settlement of Land Cases Chapter IV, mediation efforts. The mediation will be carried out 3 times. Suppose there is no solution from both parties and no agreement is reached. In that case, the BPN will suggest a settlement at the court level to get a permanent judge's decision so that the parties take legal action at the court level District Court, High Court to Cassation level at the Supreme Court (Fenitiruma, 2021).

Legal disputes over land cannot be separated concerning the concept of our Unitary State of the Republic of Indonesia, namely, the State of Law oriented to the general welfare as stated and implied in the 1945 Constitution of the Republic of Indonesia. Based on the above explanations, the legal status of selling The purchase of ulayat land in Jayapura City is legal as long as it has received approval from Ondoafi as a leader in a government system that uses customary law. In addition, it is necessary to involve the relevant parties as described above. This aims to avoid the possibility of disputes or conflicts in the future.

B. The Role of the Port Numbay Traditional Deliberation Institution (LMA) in settlement of Disputes over Communal Lands in Jayapura City

1. The LMA Port Numbay mechanism in problem-solving

The Port Numbay Traditional Deliberation Institution (LMA) is one of the social infrastructures that accommodates twelve (12) traditional leaderships in the administrative area of Jayapura City. The twelve traditional leaderships are Kayu Batu customary leadership, Kayu Pulau adat leadership, Tobati-Enggros adat leadership, Nafri adat leadership, Skouw Sae adat leadership, Skouw Mabo leadership, Skouw Yambe adat leadership, Waena adat leadership, Yoka adat leadership, Leadership Koya Koso custom.

The Tabi tribe has a philosophical foundation, namely "reconciliation." This philosophy ensures a balance between applying customary sanctions/punishments on the one hand and the harmony of peace and tranquility on the other. Based on an interview with the Chair of

the Port Numbay LMA, Geroge A. Awi, the case decision must be executed by showing three essential aspects, namely:

- 1) Decisions must comply with customary rules and norms and guarantee that such cases will not occur again.
- 2) The form of day-to-day decisions always prioritizes collective responsibility.
- 3) The customary decision must ensure the realization of the security and tranquility of the community as a whole (Awi, 2021).

In the past, indigenous peoples, especially in the Port Numbay area, used to use traditional *para-paras* (traditional houses) as a place of deliberation in discussing various problems because the function of these traditional *para-paras* (traditional houses) had authority and was believed to be a sacred place, so they were not Any person may sit or follow the conversation carried out by the clan head or traditional elders (people who are elders).

Based on the interviews above, LMA is an institution for dispute resolution for customary law communities that puts forward the concept of deliberation and consensus in the mechanism for resolving a problem that occurs in the community. From the three essential aspects described above, it can be seen that every decision produced must be able to provide a solution that can resolve disputes to create security and peace in society in general. This is also appropriate, as stated later by the Chair of LMA Port Numbay, George A. Awi, that was referring to the philosophy of "reconciliation," the judicial processes and mechanisms and forms of customary decisions (customary sanctions) are oriented to the principle of community life, namely maintaining and creating a safe life. And prosper in one social, cultural, economic, and political unit (Awi, 2021).

Based on the researcher's information obtained directly from the

head of LMA Port Numbay, "if there is a dispute in the community, then the handling of the case at the first level is carried out by the clan head. Usually, those who file cases or demands feel they have been harmed or those who feel they are right. At this stage, it is more about submitting a report in the form of a chronological problem by the reporter and determining the form of settlement by the clan head. The next stage is the clan head trying to facilitate the settlement, and if it doesn't work, it will be reported to the clan leader (*Ondoafi*) to resolve the dispute.

The problem at the Ondoafi level is a kind of filing of a case that has been carried out at the clan head level in the form of a report. After Ondoafi and the clan head are present to hear the report, they determine the type of case with the type of punishment or sanction according to the applicable customary rules and then decide on the case. In this process, there is no opportunity to make a defense or response or objection to the decisions that have been taken, especially in civil or criminal cases related to self-respect or dignity, or related to ethics, or morals (behavior).

If the case is handled is related to the territory of Ondoafian in another village, then the initial discussion is carried out by Ondoafi's messenger. The implementation of case settlement by Ondoafi's crew usually reaches 80 percent, so that 20 percent is more of a traditional ceremonial procession attended by the two Ondoafis. If the case settlement is at the Ondoafi level, then the decision, especially in the form of material fines (bracelets, stone tomako), will automatically become Ondoafi's rights." According to the researcher, there is a need for strict sanctions by LMA Port Numbay, through the Port Numbay Customary Council (MAPN).

2. Forms of Customary Courts

Reconstruction of past experiences in resolving civil and criminal disputes in customary law

communities requires complete mastery and understanding of the leadership system and local mechanisms in indigenous peoples. Therefore, carrying out forms of customary justice within the Tabi customary law community, especially those who inhabit the Humboldt Bay bay area, is part of re-actualizing adat as social infrastructure in social life.

If viewed from the type of case, the function of customary justice is to resolve civil and criminal cases. Based on the instructions/guidelines made by the secretary of LMA Port Numbay, Eddy Ohoiwutun, with the title "Mechanisms for Settlement of Cases Outside the Court," there are several forms of customary justice that have been used by the Port Numbay Customary Council in facilitating the settlement of customary cases (Ohoiwutun, 2010):

1) Ordinary Court

The implementation of ordinary justice is a form of case settlement generally handled directly by the clan head/clen, concerning civil and criminal cases. If the case occurs within the same clan, then the judiciary is led directly by the head of a different clan in the same village, the leadership that applies. However, if the case involves the clan head or *Ondoafi*, they usually use a mediation institution such as the LMA.

2) Customary Court Court

A customary court trial is a form of justice only followed by Ondoafi related to severe violations. Usually, the victim is the clan head or Ondoafi, and the perpetrators are community members from outside the local customary law area. The development of this judicial mechanism refers to the conventional system of normative rules that apply in the village concerned.

3) Customary Appeal Court

The form of customary appeals court carried out is related to civil cases, namely customary

land disputes. The judicial mechanism in adat is carried out by taking into account the principles of kinship and the history of ownership of customary land rights, and the traditional political leadership system that applies among indigenous peoples, especially in the Tabi customary law area.

One example is the settlement of customary land disputes used by Ondoafi Skouw Yambe to build an agricultural vocational school with the head of the Merahabia clan from the village of Nafri. From April 2003 to December 2004, the first complaint was filed by *Ondoafi* Skouw Yambe. Furthermore, the LMA confirms the report by examining the case files in the form of legal evidence regarding the ownership of the disputed land. In the next stage, a meeting was held with Ondoafi and clan heads to offer solutions to problem-solving through:

- a) LMA facilitated a re-meeting in November 2004 in the same place and mechanism as with the agenda for clarifying customary decisions in April 2003, and the result remained the same. Namely, the disputed land had Skouw Yambe and was under the control of the Rollo clan, and again the results of the clarification decision were rejected.
- b) After two rejections of the decision issued by the adat leaders of the Nafri village, the LMA then developed the problem by investigating the relationship between clans with historical ties to the disputed area, namely the walsa clan from the Keerom district.
- c) In December 2004, LMA facilitated the third meeting through the appeals court by presenting a clen warsa from Keerom to provide customary considerations and opinions on the two previous decisions. The result was that the disputed land had Skouw Yambe and was controlled by the Rollo clan. Furthermore, the LMA issued a letter attaching the results of the first, second, and third decisions to the Papua Provincial government (Vice Governor) as a report on the final settlement of cases related to the

location of agricultural vocational schools.

The description of case settlement as described above is a form of reconstruction of the principles of customary justice. At the same time, the procedures and mechanisms used are part of improvisation and rationalization to re-describe the customary justice mechanism acceptable within the Tabi tribal community, especially in the community. Indigenous Peoples in Port Numbay (Ohoiwutun, 2010).

The illustration above shows that even though it uses judicial nomenclature in resolving cases, it prioritizes the concept of mediation by prioritizing the principles of deliberation and kinship by listening to statements from the local community so that both parties can accept the results.

C. Position and Role of Tribal Heads in Skouw Mabo Village, Jayapura City in the Process of Buying and Selling of Communal Land

1. Buying and selling customary land in the village of Skouw Mabo

The process of buying and selling customary land in Skouw Mabo Village itself has several things that the buyer must pay attention to, namely, finding out information about the customary land, such as the boundaries of the territorial stakes of the customary land that the buyer wants to buy, knowing the owner of the customary land rights. This ensures that the customary land has not previously been problematic or has been previously sold to another party so that problems do not occur in the future and must know the parties who will be related to the buying and selling process of the customary land rights before the buyer enters the stage the sale and purchase transaction.

After the buyer searches for and knows the information, then the buyer can process the sale and purchase transaction with the related parties, which begins with customary deliberations with the parties concerned to determine whether the land can be traded or not because if

the customary land does not meet the requirements in the decision of the customary deliberation, the land cannot be traded, on the contrary, if it is approved in the decision of the customary deliberation, a letter of release will be issued for the customary land. Furthermore, the buyer and seller can determine the right and safe time to process the sale and purchase transaction. The letter of release of customary land usually contains several things, including:

- a) Issued by the customary council marked on letterhead indicating the institution that issued the letter officially;
- b) It is expressly stated that the letter is a release letter for customary land, which is accompanied by a letter-number;
- c) It contains the whole identity of the parties and their position as the party giving up the right and the party receiving the right;
- d) Contains the rights and obligations of the parties in relinquishing customary land rights;
- e) Contains the name of Ondoafi, who owns a piece of land whose rights will be released along with the complete and detailed location of the land;
- f) Contains the boundaries of a plot of land released from another land;
- g) Contains a clear statement that the land whose rights have been released is not in dispute with another party, is not guaranteed, and is not being occupied or cultivated by another party;
- h) The ability of the parties to carry out their respective obligations properly
- i) Signed by the parties with stamp duty and contains the names of the appointed witnesses.

The letter of relinquishment of customary land rights, as mentioned above, according to the author, can be said to be a form of a sale and purchase agreement made by both parties and has binding power as law for both parties. As stipulated in Article 1338 paragraph (1) of the Civil Code, every agreement made

legally applies as law for the parties who make it.

Therefore, the parties should carry out every obligation in the letter of relinquishment of land rights. If there are parties who violate, then the implementation can be sued by the party who feels their rights have been violated.

2. The authority of the tribal chief and his lineage in the process of releasing ulayat land

In the life of people who adhere to tribalism, the role of tribal chiefs or Keret is very central, not just any in the group or tribe. This distinguishes people belonging to tribal life from people who have embraced modernity or know civilization. Several determining factors make a person can be elected and occupy the position of chief of the tribe. Usually, a tribal chief is chosen based on heredity and must be male. If the direct lineage of a tribal chief is not male, then the position of the chief will be determined through a traditional ceremony. In the traditional ceremony, the elders and leaders of the tribe usually decide who the new tribal chief will be.

The role of a tribal chief is to regulate the problems of customs in his tribe, where if there are problems that occur, then the tribal chief must solve them directly. Therefore, the people all heard what was done by the tribal chief. A tribal chief or keret is a person who is elected in a tribe as the chief or chief of the tribe, and this title is passed down from generation to generation in his lineage within the tribe. The problem of the role of tribal chiefs has a social role and is not bound by formal laws that apply in a country. Based on an interview with the head of the Mallo clan, Isak Samuel Mallo, the tribal chief has a lot of customary lands, but the tribal chief does not have full authority to trade this customary land and his lineage. Process of releasing ulayat land or customary land, a tribal chief must obtain approval from an Ondoafi in the village (I. S. Mallo, 2021).

According to the researcher, based on interviews with the Mallo clan chief, the tribal chief does not have full rights

over all the ulayat land he owns, or the tribal chief cannot personally sell the ulayat land he owns. Because to sell the ulayat land according to the applicable customary law, the process of selling ulayat land must obtain approval from Ondoafi in the village and along with the lineage of the tribal chief must also be aware of it so that there are no future problems that can harm the buyer of the land.

3. Ondoafi's authority in the process of releasing ulayat land

Ondoafi is an informal leadership located in Jayapura City, precisely in Skouw Mabo Village. Ondoafi has leadership qualities that are very influential and respected by the indigenous people of Skouw Mabo Village. Ondoafi is considered to be able to influence the activities of indigenous peoples in interacting because they have charismatic or leadership influences. Ondoafi's leadership titles and systems have been passed down from generation to generation. Ondoafi is the holder of a lineage drawn through a straight line with the village's founder.

Ondoafi has the duty and authority to regulate all indigenous peoples and includes all tribal chiefs from all tribes who live and inhabit Skouw Mabo Village and regulate territorial boundaries or customary lands belonging to all tribes and tribal chiefs in the village. Based on an interview with *Ondoafi* Skouw Mabo, Yans Mahil Mallo that *Ondoafi* leads based on truth based on rules that have been passed down from generation to generation who grew up living in indigenous peoples and traditional elders in the past. In this way, there are no communities or tribes. Tribal chiefs who live in the village of Skouw Mabo act arbitrarily or claim the territorial boundaries of one tribe with another. Still, Ondoafi acts with justice and honesty without taking sides (Y. M. Mallo, 2021).

According to researchers, life characterized by indigenous peoples, Ondoafi's role has a central position in community development and leadership. Ondoafi is the head of government and a judge in resolving disputes in the

customary law community in his village. The ulayat land that will be traded by the owner of the rights, namely the tribal chief, must obtain approval for the release of ulayat land from *Ondoafi* in his village because *Ondoafi* as the holder of the highest authority in the village, has the full right to release or not to release ulayat land in the village. According to the researcher, in this case, an *Ondoafi* as the highest officeholder must be an example of a good leader figure. An *Ondoafi* cannot arbitrarily use his power for his interests which can harm his indigenous people. This is because *Ondoafi* as the highest leader, has a responsibility to indigenous peoples. Even though the authority possessed is considerable, which includes the legislative and executive fields, in its implementation, it must still be subject to customary law, which in principle prioritizes the principle of deliberation and consensus involving elements of the customary law community itself.

Conclusion

Based on the discussion and analysis results from the author regarding the sale and purchase of ulayat land jointly owned by several tribes in Jayapura city.

The legal status of the sale and purchase of ulayat land in Jayapura city is legal as long as it has received approval from *Ondoafi* as a leader in a government system that uses customary law. In addition, it is also necessary to involve related parties such as the Village Head and the village head as parties who can be asked for information that the land that is the object of the release belongs to the party who will sell the land. This aims to avoid the possibility of disputes or conflicts in the future.

The role of the port numbay traditional deliberation institution (Ima) organizationally is a forum when there is a dispute over communal land in Jayapura City. The port numbay traditional deliberation institution (Ima) only acts as a facilitator between the disputing parties. The port numbay customary council (Ima) has no right to make unilateral decisions because each party has different customary rules.

The position and role of the tribal chief/keret in carrying out the process of

buying and selling ulayat land in skouw mabo village on his land, the tribal chief does not have full rights or cannot personally sell his ulayat land. Because to sell the ulayat land according to the applicable customary law, the process of selling ulayat land must meet the requirements in the customary deliberation decision to get approval from *ondoafi*, and the lineage of the tribal chief must also know it. This is done to prevent problems/ conflicts within indigenous groups and disputes over land from being traded.

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