

Legal Analysis of the Recognition of Proof of Customary Land Ownership

(Study of Decision Number 39/Pdt.G/2023/PN Mrk)

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Abstract

This study aims to determine the legal considerations of judges in deciding cases of customary land ownership based on Decision Number 39/Pdt.G/2023/PN Mrk, as well as to determine the mechanisms used in proving cases of disputes over customary land rights between Indigenous Peoples and the Merauke Regency Government. The method used is normative legal research that refers to legal norms contained in legislation. The approach used is a case approach. The data collection method used is a literature study method. The Court's decision in the case in question shows that the legal approach applied reflects the principles of justice, prudence, and inclusiveness in the judicial process. The Panel of Judges upheld the principle of *audi et alteram partem* by providing balanced evidence for the parties and critically assessing formal exceptions such as legal capacity, clarity of the subject matter of the dispute, and the completeness of the defendant. The evidence was not only based on formal legality but also took into account evidence representing customary control and the historical social reality of the customary law community. The absence of interested parties in the lawsuit was the main reason why the lawsuit was declared formally flawed and unacceptable, considering the importance of the involvement of all parties in maintaining legal integrity. This decision is an important reflection on the need to protect the rights of the community.

Keywords: Recognition; Proof; Customary Land

Note: The total of word accounts in the abstract should not be more than 300 words



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Introduction

Indonesia is an agrarian country, where all aspects of people's lives are sourced from the land. Therefore, land is very important for human life, because human life cannot be separated from land. Furthermore, land is an object with unique properties and is needed by many people, but its quantity does not increase and remains constant. Essentially, humans live on the land and obtain food and shelter by cultivating it.

The implementation of legal certainty by the state in terms of land ownership fairly and comprehensively and to be able to realize the noble ideals of the Indonesian nation, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia and mandated in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, on September 24, 1960, the Government issued Law Number 5 of 1960 concerning Basic Agrarian Regulations. The birth of the Basic Agrarian Law (UUPA) aims to carry out legal reform from an unwritten form to written law.

In UUPA No. 5 of 1960, the purpose of establishing UUPA as a positive law in the land sector is outlined, one of the purposes is to lay the foundations for providing legal certainty regarding land rights for all people. In the body of UUPA, this purpose is then regulated in Article 19 Paragraph (1) of UUPA, that "To guarantee legal certainty, the Government will carry out land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation."

Merauke Regency is the capital of South Papua Province, located at the eastern tip of Indonesia, and is one of the regions that is very rich in natural resources and the cultural diversity of its indigenous people. This area, which is mostly still forest, has many assets in the form of land, the majority of which is owned by its indigenous people. However, with so much customary land not being managed and utilized optimally, this has led to the government taking action to control the land.

Due to the increasing legal issues in the land sector regarding customary land, the Government issued Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Community Units. In the Regulation of the Minister of ATR/BPN a quo, it is stipulated that the implementation of Customary Rights of Customary Law Community Units over land in their territory, as long as they actually still exist, is carried out by the relevant Customary Law Community Unit according to the provisions of local customary law.

There is a dispute over customary land ownership rights as occurred in Merauke Regency, with the local customary name (Kau) in the name of the owner named Eduardus Yuli Gebze (Alm) which was then sued by the legal heir, namely Lodefikus Limay Gebze, against the Merauke Regency Government Cq. Regional Financial and Asset Management Agency (BPKAD) of Merauke Regency. That the Customary Land (Kau) located at Jl. Sutan Syahrir is the property of the plaintiff which has been owned for generations from the ancestors then down to the Plaintiff's biological parents and then down to the heirs of the biological child, namely the Plaintiff, and the parents and family of the owner of the Customary Land (Kau) have never released the ownership rights of the customary land to other parties including the Defendant. The land measures 100 meters long X 40 meters

wide with a land area of 4,000m² and has a land status issued by the Customary Community Institution (LMA) with Letter Number 149/LMA-MI/XII/2020, which has been controlled by the Merauke Regency Government for approximately 50 (fifty) years by constructing buildings in the form of 2 (two) units of Class II Type C Permanent State Houses belonging to the Merauke Regency Government without the knowledge and consent of the family who owns the customary land.

Since 1969, the State House has been established and is recorded in the Goods Inventory Card (KIB) at the BPKAD of Merauke Regency. The late EYG as the owner of the land never made a claim or objection to the Merauke Regency Government regarding the disputed object until he died in 1993. Then, in 2020 or 27 (twenty seven) years after the death of the late EYG. EYG, then the plaintiff declared himself the owner of the disputed object.

Evidence plays a vital role in ensuring the smooth running of a trial in order to reveal the truth in a legal event. Proof is a crucial aspect in resolving a civil case. Proof-of-conviction efforts undertaken to establish the truth of an event must be based on valid and highly relevant evidence to ensure justice in the judicial process. Proof-of-conviction can be achieved by gathering various types of evidence as stipulated in the Civil Procedure Code and the Civil Procedure Code. "Valid evidence includes written evidence; witness testimony; allegations; confessions; and oaths."

The author understands that proving ownership of customary land is a very complex issue and requires a comprehensive approach. Therefore, further research into universally acceptable proof of customary land ownership is necessary. Therefore, the author tries to raise the research title on "Legal Analysis of Recognition of Proof of Ownership of Customary Land (Study of Decision Number 39/Pdt.G/2023/PN Mrk)" which is important to do. By digging up valid information and data, this research is expected to provide a deeper understanding of customary land ownership conflicts in the area.

Methodology

This research is a normative juridical research with a statute approach. Data collection techniques were conducted through library research. Data analysis was conducted qualitatively, so the data obtained in this study will be analyzed and described qualitatively to produce conclusions.

Results and Discussion

Legal Considerations of Judges in Deciding on Customary Land Ownership Cases Based on Decision Number 39/Pdt.G/2023/PN Mrk.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and legal certainty, in addition to also containing benefits for the parties concerned. The judge's considerations must be considered carefully, properly, and precisely. If the judge's considerations are not thorough, proper, and precise, the decision derived from those considerations will be overturned by the High Court or the Supreme Court.¹

Article 1865 of the Civil Code states that anyone who presents facts on which he bases a right is obliged to prove those facts; conversely, anyone who presents facts to refute the rights of another person is also obliged to prove those facts. In proving these facts, both parties must be treated equally, impartially, and heard together.² This principle is better known as the principle of *Audi et Alteram Partem*, so that the judge may not accept the statement of one party as true if the opposing party is not heard or not given the opportunity to express their opinion.³

A verdict is the product of a case examination conducted by a judge. Based on Article 178 HIR/Article 189 RBG, after the examination is complete, the judge, by virtue of his or her position, must hold a deliberation to reach a decision. The examination is considered complete once it has completed the stages of the defendant's response, the plaintiff's rejoinder, the defendant's rejoinder, the presentation of evidence, and the parties' conclusions.

Based on Article 3 paragraph (1) of PP 8/1953 concerning Control of State Land, authority over state land lies in the hands of the Minister of Home Affairs. The Minister has the right to: In examining, trying and deciding a case, the Panel of Judges of course has the basis for assessing the events or facts that exist, whether they actually occurred or not, based on legislation and various other considerations.

This can only be seen from the evidence, classifying between what is important and what is not, and questioning the parties again, as well as regarding the testimony of witnesses and the facts that emerged during the trial. Based on the results of the Plaintiff's application, in decision number 39/Pdt.G/2023/PN.Mrk of the Merauke District Court, the legal considerations of the Panel of Judges who decided this case include the following main points.

Considering that the lawsuit filed by the Plaintiff is essentially aimed at confirming the legal ownership status of a plot of land located on Jalan Sultan Syahril, Kamundu Village,

¹Mukti Arto, *Civil Case Practice in Religious Courts*, Pustaka Pelajar, Yogyakarta, 2014, p. 140

²Dian Latifiani, "Problems in the Implementation of Judges' Decisions," *ADHAPER: Journal of Civil Procedure Law* 1, no. 1 (2015):15-29.

³Untung Prasetya, "Analysis of the Principle of *Audi Et Alteram Partem* in the Civil Trial Process (Case Number 20/Pdt. G/2019/PN Pwr)," *Amnesty Journal of Law* 2, no. 2 (2020): 57-75.

Merauke District, Merauke Regency, South Papua Province, with a length of 100 meters (M) and a width of 40 meters (M), so that it has a total area of 4,000 square meters (M²). The Plaintiff argues that the land has been controlled by the Defendant for approximately fifty years, and a building has been erected on it, which according to the Plaintiff is a form of unlawful act.

In the civil dispute resolution process concerning the Plaintiff's claim to land ownership against the Defendant, there are important stages that must be completed before the substance of the case can be examined. One of these stages is the examination of the Defendant's objections. An exception is a form of objection submitted before entering the main case, and aims to test the formal feasibility of the lawsuit being filed. The defendant, through his attorney, has submitted a written response at the trial containing objections in the form of exceptions and responses to the substance of the case. In accordance with the principles of civil procedural law, exceptions must be examined first because they concern formal aspects that can determine whether the lawsuit can proceed to the stage of examining the main case.

In the a quo case, the Plaintiff through his Attorney has filed a civil lawsuit which was then responded to by the Defendant through his Attorney by submitting a response and exception dated October 5, 2022. Before entering into the main points of the case (*bodemgeschil*), the Panel of Judges is obliged to first examine the formal aspects of the lawsuit and the authority to adjudicate, as regulated in the provisions of *the Rechtsreglement voor de Buitengewesten (RBG)*.

Based on a normative legal approach, the lawsuit filed by the Plaintiff must meet the formal requirements as stipulated in Article 144 of the RBG, which requires that the lawsuit letter contain the identities of the parties, a description of the case, the legal basis for the lawsuit, and clear and firm demands or petitions. This provision is imperative because it protects the defendant's rights and ensures legal certainty in the court proceedings.

As considered by the Panel of Judges, after conducting a careful examination of the lawsuit and the response and exceptions from the Defendant, no violations of the provisions in Article 142 paragraph (1) and Article 162 RBG were found. This shows that the Plaintiff's lawsuit, formally, has fulfilled the formal requirements as stipulated in Article 144 RBG, and that the judicial institution that received and examined the case has the authority to adjudicate both absolutely and relatively.

With no exceptions concerning the authority to adjudicate, and no defects in competence found during the *ex officio* examination by the Panel of Judges, the examination proceeded to examine other exceptions raised by the Defendant, which were not related to competence to adjudicate. This is in line with the principle of civil procedural law,

which stipulates that exceptions concerning authority must be resolved before entering into the main case.

The exceptions submitted by the Defendant in this case concern four important matters, namely:

- 1) The plaintiff does not have the capacity as a plaintiff (legal standing);
- 2) The lawsuit contains a defect (obscure libel);
- 3) The object of the dispute is unclear;
- 4) The lawsuit lacks parties (plurium litis consortium).

The panel of judges then carried out an assessment of each of these exceptions. Based on the principles of civil procedural law, if one of the exceptions is proven and acceptable, then this is sufficient to declare the Plaintiff's lawsuit to be formally flawed and cannot proceed to the stage of examining the main case. The exception was submitted as part of the initial response to the Plaintiff's lawsuit, and aims to test the formal feasibility of the lawsuit before entering into the substance of the main case.

The Judge's Consideration in the Main Case in this civil dispute stems from the Plaintiff's claim that he is the legal owner of a plot of land measuring 100 x 40 meters (area 4,000 m²) located on Jalan Sultan Syahrir, Kamundu Village, Merauke District, Merauke Regency. The ownership rights are based on the Certificate of Proof of Ownership of Customary Land Number: 149 / LMA-MI / XII / 2020. According to the Plaintiff's argument, the land has been controlled by the Defendant since 1973 by building an official residence without any compensation to the Plaintiff's parents or the Plaintiff himself. On the other hand, the Defendant argues that the land object in question has been state land since 1969 and is recorded in the Goods Inventory Card (KIB) as a regional government asset in the form of a Permanent Class II Type C State House. Thus, according to the Defendant, the Plaintiff's claim is baseless because the land has been used for official residence purposes for more than 50 years.

Based on the debate between the two parties, the panel of judges referred to Article 283 of the Indonesian Civil Code (RBg) in conjunction with Article 1865 of the Indonesian Civil Code (BW), which stipulates that the party alleging a right is obligated to prove the truth of their claim. The principle of *actori incumbit onus probandi* (whoever alleges, must prove it) forms the basis for allocating the burden of proof. However, by referring to the Supreme Court Jurisprudence No. 549 K/Sip/1972, the Judge has the discretion to determine which party the burden of proof is more appropriately placed on, namely the party that is objectively more capable of providing proof. In this case, the panel of Judges emphasized that although the initial obligation to provide proof lies with the Plaintiff, the Defendant is also obliged to prove his rebuttal, so that the proof process runs in a balanced manner and in accordance with the principle of *audi et alteram partem*.

Regarding documentary evidence, the Judge referred to Article 1888 of the Civil Code and Supreme Court jurisprudence No. 3609 K/Pdt/1985, which states that a photocopy of a letter without the original is invalid as evidence unless acknowledged by the opposing party. In practice, the Judge does not strictly apply this rule; as long as the photocopy is acknowledged by the opposing party, it can be used as evidence. This approach aligns with M. Yahya Harahap's doctrine regarding the flexibility of evaluating written evidence in civil cases. Furthermore, a site inspection (*descente*) conducted by the panel of judges on September 14, 2023, revealed that the disputed land contained more than one permanent building belonging to a third party, including the house of a witness presented by the Plaintiff (Priska Amia) and a witness presented by the Defendant (Heince Nehemia Tuanakotta). This fact indicates that another party has a direct legal interest in the disputed land.

Based on the results of the local examination, the Judge referred to Supreme Court Jurisprudence No. 1072 K/Sip/1982 which stated that the lawsuit is sufficiently directed to the party who actually controls the object of the dispute. However, in the *a quo* case, the Judge considered that there were other parties who clearly had legal interests, so that their non-inclusion as parties in the lawsuit resulted in the lawsuit containing a formal defect in the form of a lack of parties (*plurium litis consortium*). This consideration was strengthened by Supreme Court Jurisprudence No. 621 K/Sip/1975 which stated that the lawsuit must be declared inadmissible if the party with a direct interest is not withdrawn from the lawsuit. Thus, the panel of Judges considered the Plaintiff's lawsuit incomplete and formally defective, so it must be declared *niet ontvankelijk verklaard* (NO) without further examining other evidence from both parties. Because the Plaintiff was declared the losing party, then according to Article 192 RBg in conjunction with Article 58 Rv, all court costs were borne by the Plaintiff.

According to the author's analysis, this case essentially stems from the Plaintiff's claim of ownership of a plot of land in Merauke, which the Defendant has controlled since 1973 for the construction of a state official residence. The dispute arose because the Plaintiff obtained ownership documents in 2020, while the Defendant argued that the disputed object was a state asset recorded on the Goods Inventory Card (KIB) since 1969.

The Panel of Judges ultimately declared that the Plaintiff's lawsuit was unacceptable (*niet ontvankelijk verklaard*) on the grounds that the lawsuit lacked parties (*plurium litis consortium*).

a. Judge's Considerations Regarding Evidence

The Panel of Judges emphasized the principle of civil procedural law that whoever makes an allegation must prove it (Article 1865 BW in conjunction with Article 283 R.Bg). However, the Panel also reminded that judges should not be rigid in assessing evidence,

but rather adjust to the principle of propriety and the objective conditions of the trial. This consideration is in line with the permanent jurisprudence of the Supreme Court (Decision No. 549 K/Sip/1972) which gives the authority to the *judex facti* judge to assess on whom the burden of proof is more appropriately placed. This attitude is appropriate because in practice, the Plaintiff and Defendant both claim rights, so the burden of proof must be proportional and not one-sided.

b. Assessment of Documentary Evidence

The Panel of Judges cited Supreme Court jurisprudence No. 3609 K/Pdt/1985, which affirms that photocopies without the presence of the original are worthless as evidence. However, the Judge provided some leeway: as long as the opposing party acknowledges the truth and existence of the photocopies, the evidence remains valid. This approach deserves appreciation because it reflects the flexibility of procedural law in realizing formal and material justice. However, in the *a quo* case, even though the photocopies were acknowledged, this did not change the fact that the disputed object had long been under state control based on KIB data since 1969, long before the Plaintiff obtained ownership documents in 2020. Legally, the existence of documentary evidence obtained long after state control took place can be considered weak and potentially does not meet the requirements for a valid legal basis.

c. Local Inspection and Lack of Facts

A local inspection conducted by the Panel of Judges found that there was more than one permanent building on the disputed object, owned by other parties besides the Defendant, including witnesses presented by the Plaintiff himself. This fact is an important key in the Judge's consideration. Because, if there is another party who actually controls part of the disputed object but is not drawn as a party to the lawsuit, then the lawsuit becomes formally flawed because it is incomplete (*plurium litis consortium*). This is consistent with Supreme Court jurisprudence No. 621 K/Sip/1975 which emphasizes that a lawsuit can be declared inadmissible if the parties directly concerned are not involved. Thus, the Judge's consideration to declare the lawsuit inadmissible is in accordance with the principle of civil procedural law: a formally flawed lawsuit cannot be examined further to the merits of the case.

d. Academic Criticism and Notes

Although the Panel of Judges' decision is legally correct and consistent with jurisprudence, there are several important notes: The substantive aspect of land ownership has not been thoroughly tested. Because the decision stopped at the formalities of the lawsuit (NO), the court did not reach the stage of comprehensively assessing whether the Plaintiff's legal basis is valid or not compared to evidence of state control. This is indeed a consequence of procedural law, but from the perspective of legal

certainty, the land ownership dispute still leaves a question mark. Substantive justice for the Plaintiff. The lawsuit was rejected because there were not enough parties, not because the rights did not exist. This means that if the Plaintiff files a new lawsuit by attracting all interested parties, the potential for a new trial remains open. This shows the importance of the role of advocates in formulating complete and targeted lawsuits.

This decision implicitly confirms that state assets that are administratively recorded have greater legal force than individual claims that only arise later. The Panel of Judges' decision in this case demonstrates the consistent application of civil procedural principles, particularly regarding the burden of proof, the validity of evidence, and the requirement to involve all interested parties in a case. Although the Plaintiff's lawsuit was declared inadmissible, academically, this case continues to open up space for discussion regarding the tension between the formalism of procedural law and the need for substantive justice in land disputes between individuals and the state.

Mechanisms Used in Proving Disputes Regarding Ownership of Customary Land Rights Between Indigenous Communities and the Merauke Regency Government According to Indonesian Positive Law.

The customary land ownership dispute between indigenous communities and the Government in Merauke Regency is a complex and multidimensional issue. Land rights disputes according to Rusmadi Murad "Land rights disputes, namely: the emergence of legal disputes is initiated from a complaint by a party (person/body) containing objections and demands for land rights, both regarding land status, priority, and ownership with the hope of obtaining an administrative resolution in accordance with applicable regulations."⁴

This not only concerns formal legal aspects, but also touches on the social, cultural, and historical dimensions of Papuan indigenous communities, especially the Marind tribe. From the perspective of Marind Community Anthropology, land can be understood as "Identity". Land is not only a natural resource or inanimate object that can be utilized by humans, but also has very important symbolic and cultural meaning for Indigenous Peoples. For the Marind people, land is an inseparable part of their cultural identity. Land is not only a source of physical life, but also a symbol of sacredness and emotional connection to their ancestors. Land is considered a place inhabited by ancestral spirits and its existence is closely linked to the survival and well-being of the Marind people.⁵

⁴Rusmadi Murad, *Settlement of Legal Disputes Over Land*, 1st ed., Alumni, Bandung, 1999, pp. 22-23.

⁵Langub and Anderson, "Culture and identity of the Marind people of Merauke regency in West Papua, Indonesia. *International Journal of Humanities and Social Science Research*", Vol. 3 No. 1 (February 2015) p. 27-34.

Evidence in civil law is a crucial aspect in determining the truth of the facts that form the basis for resolving disputes in court. This process involves collecting, presenting, and evaluating relevant evidence to support or refute claims made by the disputing parties. Within the legal system, there are two main divisions based on their function: substantive law and formal law. Substantive law refers to the rules governing the rights and obligations of individuals in society. This includes areas such as criminal law, which establishes prohibitions on criminal behavior and its sanctions; civil law, which regulates the relationships between individuals and legal entities; customary law, which regulates the life of traditional communities; state administrative law, which regulates government procedures; and constitutional law, which regulates the structure of the state and the relationship between the government and its citizens.⁶

In the Indonesian legal system, civil law is part of material law that regulates legal relations between individuals and other legal entities, especially regarding rights and obligations that arise in social life. When violations of these rights occur, they are resolved through civil procedure, which is part of formal law. Unlike substantive law, which determines the substance of rights and obligations, civil procedure regulates the procedures for resolving disputes in court, including the procedure for filing lawsuits.⁷

One of the important instruments in civil procedural law is a lawsuit, which is filed by a party who feels aggrieved. In its preparation, there are two main requirements that must be met, namely material requirements and formal requirements. Material requirements of a lawsuit are requirements related to the content or material that must be included in the lawsuit, such as the identity of the parties, a description of the legal relationship, the legal basis, and demands (*petitum*).⁸ In other words, material requirements are the main substance in preparing a lawsuit. Meanwhile, the formal requirements of a lawsuit are requirements to fulfill the provisions of the procedural rules determined by statutory regulations. If the formal requirements are not met, the lawsuit will be declared inadmissible (*niet ontvankelijke verklaard*) or the court is not authorized to adjudicate.⁹

In the civil lawsuit filed by the Plaintiff, it is important to understand that there is a discrepancy between the arguments of the lawsuit and the main points of the lawsuit regarding the location of the disputed object. In the arguments of the lawsuit, the Plaintiff

⁶Nursadi, H., *Indonesian Legal System*, Second Edition First Printing, Publisher: Open University, Department of National Education, 2008, p. 45.

⁷Efa Laela Fakhriah, *Selected Chapters of Indonesian Civil Procedure Law*, 2nd Edition, CV. Mandar Maju, Bandung, 2020, p. 205.

⁸Sri Wardah and Bambang Sutiyoso, *Civil Procedure Law and its Development in Indonesia*, 3rd ed., Gama Media, Yogyakarta, 2007, p. 33

⁹ *Ibid*, p. 34.

states that the land that is the object of the dispute is located in Sultan Syahril, Kamundu Village, Merauke District, however, in the main points of the lawsuit, there is a lack of clarity regarding the certainty of the location which can affect the panel of judges' understanding of the issues raised. This discrepancy can cause confusion regarding the disputed object, potentially resulting in legal uncertainty and inappropriate decisions.

Furthermore, in reviewing the formal requirements, there was an error in persona because the parties involved in the dispute were incomplete. The lawsuit does not clearly list all parties who have a potential interest in the object of the dispute, either from the plaintiff's or defendant's side. This incompleteness risks creating further legal issues, both during the lawsuit examination and in the subsequent enforcement of the decision. The plaintiff must ensure that all parties with relevant legal interests in the dispute are included in the lawsuit to ensure an effective and fair judicial process.

Overall, although this lawsuit reflects the Plaintiff's serious efforts to fight for his rights to customary land, the discrepancies regarding the object of the dispute and errors in defining the parties involved imply the need for revision and clarification in the drafting of the lawsuit to comply with applicable provisions. By taking all these aspects into account, the panel of judges is expected to be able to make a decision that is not only fair, but also in accordance with applicable legal principles.

The Indonesian Civil Code (BW) in its Fourth Book and the Civil Registry Regulations also contain regulations on Civil Procedure Law, the rules of which from the beginning only apply to certain groups of people, for whom Western Civil Law applies. Civil Procedure Law is contained in Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power (State Gazette of the Republic of Indonesia of 1970 No. 74), Law of the Republic of Indonesia No. 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 1985 No. 73), Law of the Republic of Indonesia No. 2 of 1986 concerning General Courts (State Gazette of the Republic of Indonesia of 1986 No. 20), Law of the Republic of Indonesia No. 7 of 1989 concerning Religious Courts (State Gazette of the Republic of Indonesia of 1989 No. 49) and in Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage, as well as its implementing regulations (Government Regulation No. 9 of 1975). Meanwhile, the 1947 Law No. 20 concerning the Retrial Court, which came into force on June 24, 1947, regulates appeals, particularly for the Java and Madura regions. This Law, which came into force on June 24, 1947, came into force. Based on the jurisprudence of 1947 Law No. 20, it now also applies to regions outside Java and Madura.¹⁰

¹⁰Ridwan Syaharani, Collection of Indonesian Civil Procedure Regulations, 1st Edition, Alumni, Bandung, 1991, p. 414.

In addition, for several issues that are not regulated in the HIR and RBg, if it is truly felt necessary and useful for court practice, the regulations contained in the Reglement of de Burgerlijke Rechtsvordering, abbreviated as RV, can be used. For example, regarding merger (voeging), guarantee (vrijwaring), intervention (interventie) and civil rekes (request civiel).¹¹ Also the Circular Letter of the Supreme Court, abbreviated as SEMA, specifically addressed to its subordinate courts (High Court and District Court), which contains instructions and guidelines for legal practitioners in dealing with civil cases, influencing Civil Procedure Law. For example, SEMA No. 02 of 1964 contains instructions for the removal of hostages (gijzeling), while SEMA No. 13 of 1964, SEMA No. 06 of 1975 and No. 03 of 1978 provide instructions regarding decisions that can be executed first (uitvoerbaar bij voorraad).¹²

Supomo in his book "Civil Procedure Law of the District Court" explains that proof has a broad meaning and a limited meaning. In a broad sense, proving means strengthening the judge's conclusion with valid evidence. In a limited sense, proof is only necessary if what is stated by the plaintiff is denied by the defendant. If what is not disproved does not need to be proven. The truth of what is not disproved does not need to be proven.¹³

Sudikno Mertokusumo in his book "Indonesian Civil Procedure Law" says that proving has several meanings, namely logical, conventional and juridical meanings. Proving in the logical sense is providing absolute certainty, because it applies to everyone and does not allow for counter-evidence. To prove in the conventional sense, here also means providing certainty, only not absolute certainty, but rather relative or relative certainty in nature and proving in the legal sense means nothing other than providing sufficient basis to the Judge examining the case in question to provide certainty about the truth of the events presented.¹⁴

¹¹Supomo, Magazine of the Indonesian Legal Experts Association (PAHI), 1st ed., Pustaka Abadi, Bandung, 1953, p. 53.

¹² Sudikno Mertokusumo, Indonesian Civil Procedure Law, Second Edition, First Printing, Liberty, Yogyakarta, 1985, p. 45.

¹³ Op.Cit, Civil Procedure Law of the District Court, Bina Aksara, Jakarta, 1983, p.188.

¹⁴Sudikno Mertokusumo, Loc.Cit, p. 5.

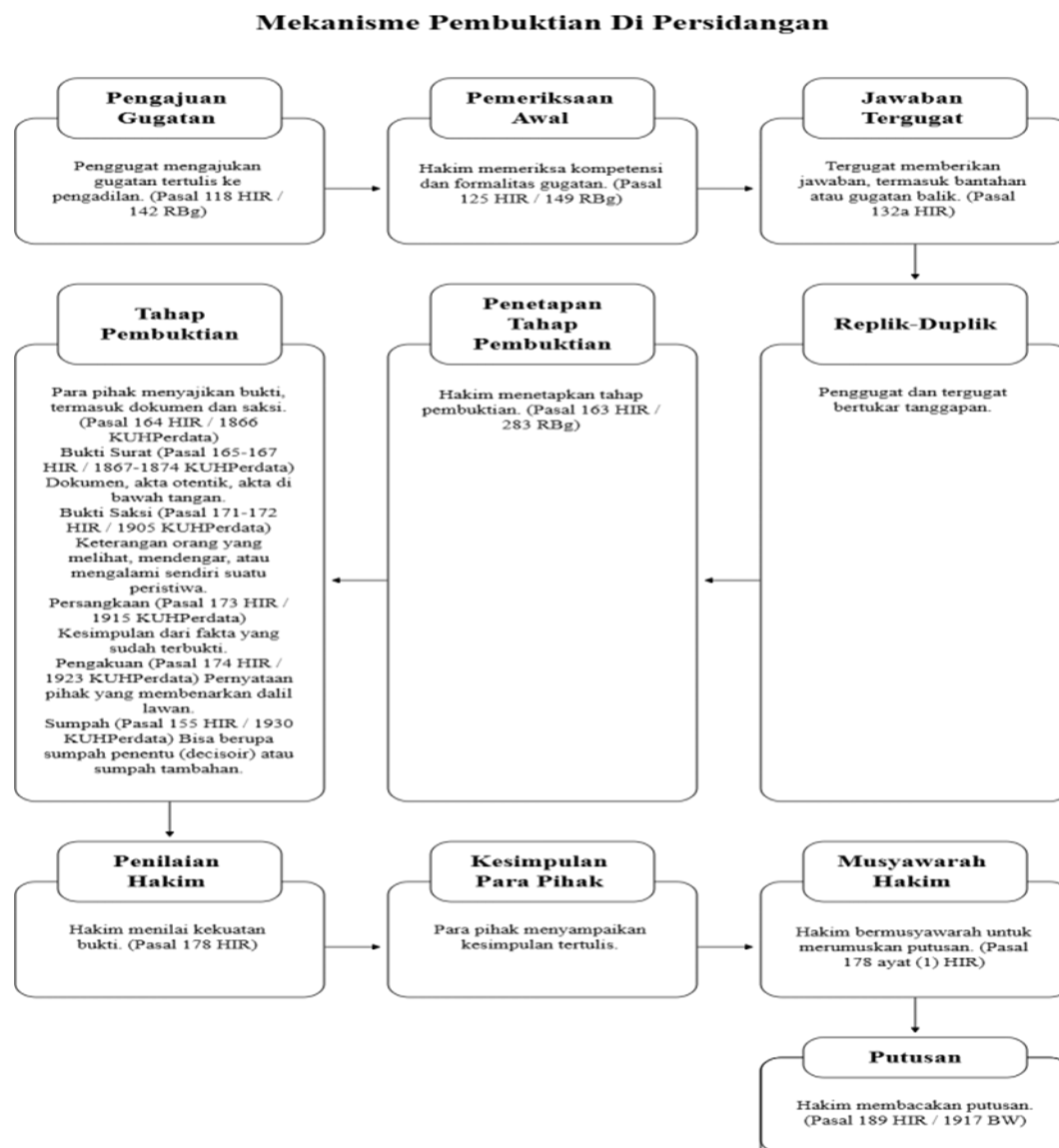


Figure 3.1 Diagram of the Proof-of-Proof Mechanism in Trial

Evidence plays a central role in the civil legal process. This is the stage where disputing parties present evidence to support their claims or defenses. The credibility and relevance of evidence are key to this evidentiary process, as they directly impact the court's ability to make a fair decision based on legally proven facts.¹⁵

In a civil proceeding, one of the judge's duties is to investigate whether a legal relationship that forms the basis of a lawsuit truly exists. The existence of this legal relationship must be proven if the plaintiff wishes to win a case. If the plaintiff fails to

¹⁵Smith, RKM, N., Ranheim, C., Arinanto, S., Falaakh, F., Soeprapto, E., Kasim, I., Rizki, RM, Marzuki, S., Agus, F., Yudhawiranata, A., Sudjatmoko, A., Pradjasto, A., Eddyono, SW, & Riyadi, E, Human Rights Law, 1st ed., Pustaka, Yogyakarta, 2008, p. 76.

prove the arguments that form the basis of his lawsuit, his lawsuit will be rejected, whereas if successful, his lawsuit will be granted. Not all arguments that form the basis of a lawsuit must be proven true, because arguments that are not denied, let alone fully admitted by the opposing party, do not need to be proven further. The judge examining the case will determine which of the parties in the case will be required to provide evidence, whether it is the plaintiff or the opposite, namely the defendant. In other words, the judge himself determines which party will bear the burden of proof.

The definition of proof specifically encompasses the intellectual and technical processes of discovering the truth of facts relevant to the case under consideration. Proofing involves more than just gathering evidence, but also a thorough analysis of that evidence to ensure that the court's decision is based on objectively verified facts.¹⁶

In the context of civil litigation, it is necessary to distinguish between "matters of fact" and "matters of law." Evidence focuses on the facts that form the basis for the application of the legal principles applicable in the case. This emphasizes the importance of courts in deciding based on valid and relevant evidence, and applying the law fairly and consistently.¹⁷

In Decision Number 39/Pdt.G/2023/PN Mrk., the Plaintiff through his Attorney submitted evidence in the form of a Photocopy of the Certificate of Proof of Ownership of Customary Land Number 149/LMA-MI/XII/2020 in the name of LLG (Plaintiff) and the Minutes of Examination of Customary/State Land Rights dated December 21, 2020. The evidence shows that the disputed land is part of the customary territory of the Marind Tribe in South Papua. Meanwhile, the Defendant submitted a Photocopy of the 2023 Regional Property List (BMD) which records the use of fixed assets in the form of buildings and intrakomtabel structures by the regional government.

The fact that since 1969 the Regional Government has built a state house on the land indicates the existence of physical control and use of the land by Government agencies, but does not necessarily prove legal ownership of the land. Based on Government Regulation Number 8 of 1953 concerning Control of State Lands, land used by Government agencies without a certificate can be categorized as State Land, namely land that is not attached to land rights and is directly controlled by the state. However, in the context of Papua, land control by the Government must take into account the existence of

¹⁶Lubis, TS, Law of Evidence in Indonesian Courts, (Fajaruddin (Ed.). 4th Edition, CV. Pustaka Prima, Medan, 2021, p. 256.

¹⁷ Purwadi, A., Fundamentals of International Private Law, 2nd Edition, Center for Legal and Development Studies (Pphp), Bandung, 2024, p. 89.

customary rights of indigenous legal communities, as regulated in the Special Regional Regulation of Papua Province Number 23 of 2008.

The Regional Regulation emphasizes that customary rights and individual rights of customary law communities to land are rights that are recognized and protected by the state, as long as the existence of the customary law community and its customary territory has been officially determined by the regional government. Therefore, even though the local government has been using the land since 1969, without a land title certificate or release of rights from the indigenous community, this control cannot be categorized as legal ownership.

In practice, the use of land by the government without a certificate often gives rise to agrarian conflicts, especially in areas with strong customary law systems. In this case, the Certificate of Proof of Ownership of Customary Land and the Minutes of Rights Examination are valid initial evidence to show that the land is still under the control of the customary community. The use of land by the Government for decades, although indicating physical control, does not remove the rights of indigenous peoples, unless done through a mechanism of relinquishment of rights or legal compensation.

Thus, in this case, the evidence submitted by the Plaintiff has stronger evidentiary power legally, because it is based on the recognition of customary rights regulated in special regional regulations. Meanwhile, the evidence submitted by the Defendant only shows administrative control without a legal basis for legitimate ownership. This emphasizes the importance of recognizing and protecting customary land rights in the national agrarian legal system, particularly in the Papua region, which has special characteristics in regulating autonomy and customary law.

In civil case Number 39/Pdt.G/2023/PN Mrk., the Panel of Judges conducted a site inspection on Thursday, September 14, 2023. Based on the results of the inspection, it was found that on the disputed object there was more than one permanent building standing and controlled by parties who were not drawn as parties to the lawsuit. This fact was not disclosed by the Plaintiff in his lawsuit, including the existence of the building belonging to Witness PA, which was presented by the Plaintiff himself, as well as the building belonging to Witness HNT, which was presented by the Defendant. Both witnesses have permanent buildings located on the disputed object.

The Panel of Judges considered that although there is a jurisprudence of the Supreme Court of the Republic of Indonesia Number 1072 K/Sip/1982 dated August 1, 1983 which states that a lawsuit is sufficient to be directed to the party who factually controls the object of the dispute, however in the a quo case there are other parties who clearly have a legal interest in the object in dispute. Therefore, the Panel of Judges referred to the jurisprudence of the Supreme Court of the Republic of Indonesia Number 621

K/Sip/1975 dated May 25, 1977, which confirms that if there is another party who has a direct legal interest in the object of the dispute but is not drawn as a party to the lawsuit, then the lawsuit contains a formal defect because it lacks a party (*plurium litis consortium*).

Based on the results of the local inspection, it was discovered that the object of the dispute, a 4,000 m² plot of land located on Jalan Sultan Syahril, Kamundu Village, Merauke District, Merauke Regency, South Papua Province, was also controlled by other parties not sued by the Plaintiff. Therefore, the presence of these parties as Defendants in this case is very important to clarify the boundaries and ownership of the land claimed by the Plaintiff.

Furthermore, the Panel of Judges also considered the fact that since 1969, the regional government has built a state house on the land and has used it continuously to this day. Although the land does not yet have a land title certificate, the government's physical control over it for more than five decades indicates administrative use. However, in the national agrarian law system, control alone does not necessarily prove legal ownership. Based on Government Regulation Number 24 of 1997 concerning Land Registration and Special Regional Regulation of Papua Province Number 23 of 2008, recognition of land rights, particularly customary land, must go through a legal legalization and registration process, including the release of rights from customary law communities if the land is used by the government.

The Panel of Judges concluded that the Plaintiff's lawsuit contained formal defects because it did not include all parties who had a legal interest in the object of the dispute. Based on the provisions in Article 192 Rechtsreglement voor de Buitengewesten (R.Bg.) in conjunction with Article 58 Reglement op de Rechtsvordering (RV), the Plaintiff's claim is declared inadmissible (*niet ontvankelijk verklaard*). The legal consequence of this decision is that all other evidence, from both the Plaintiff and the Defendant, does not need to be considered further, and all court costs are borne by the Plaintiff as the losing party.

In resolving customary land disputes, particularly those involving customary law communities such as the Marind Tribe in South Papua, the courts do not solely rely on a normative legal-formal approach. On the other hand, in practice, the court adopts a more contextual and empirical approach, namely by conducting a local inspection of the object of the dispute (*descente* or *schouwplaats*) and listening to the testimony of customary witnesses, including customary leaders or local community leaders. This approach reflects an effort to assess and understand legal issues based on the social realities that exist and develop in indigenous communities, while remaining grounded in the applicable national legal framework.

On-site inspection as a form of evidence in civil procedural law is regulated in Article 153 HIR (Herzien Inlandsch Reglement) and Article 180 RBg (Rechtsreglement voor de Buitengewesten). This provision provides a legal basis for the panel of judges to go directly to the location of the disputed object to assess the physical condition and actual land ownership. In the context of the Marind Tribe's customary land case, this step is very relevant considering that customary areas are generally not formally mapped and are only recognized through natural boundaries and oral history passed down from generation to generation. The presence of the Judge on site allows for a more comprehensive assessment of the location, boundaries and form of land ownership, as well as understanding the social structure of indigenous communities related to the collective ownership system.

In addition, in the evidentiary process, the court actively listens to the testimony of customary witnesses such as customary leaders, clan heads, or community elders, who have direct knowledge of the history of land ownership, genealogy, and customary territorial division systems within their communities. This is very significant because the land ownership system in customary law communities such as the Marind Tribe is not based on administrative documents or property rights certificates, but rather relies on customary norms, traditional values, and genealogical relationships that are maintained from generation to generation. Therefore, testimony from customary leaders has a central role in exploring the existence of customary rights that are still valid in reality (in concreto), as well as a form of recognition of local knowledge systems. This approach also reflects the implementation of the principle of recognition of the existence of customary law communities as affirmed in Article 18B paragraph (2) of the 1945 Constitution which states that "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This principle is reinforced by Article 3 of the UUPA which states that the customary rights of indigenous legal communities are recognized as long as they actually still exist. Therefore, an empirical approach through field inspections and strengthening the role of customary witnesses is important to ensure that the substantive justice values that grow in customary communities are not ignored by rigid legal procedures.

According to the author's analysis, the evidentiary mechanism in civil procedural law has a very central position, because it is through this process that the judge determines the formal truth of the parties' arguments.

1) Obligation of Proof of the Parties

Article 1865 of the Civil Code in conjunction with Article 283 of the Civil Code emphasizes the principle of *actori incumbit probatio*, namely "whoever claims to have a right, or mentions an event to confirm his right, is obliged to prove the existence of that right or

event." This principle is a general principle of evidentiary law in civil cases. Sudikno Mertokusumo states that evidentiary law is "an effort to convince the judge of the truth of the arguments or evidence presented in a case."¹⁸

Thus, the purpose of evidence is not to seek absolute truth, but rather formal truth acceptable to the judge. In a land dispute in Merauke, the plaintiff claimed land ownership based on a 2020 deed, while the defendant claimed the land had been used as a state official residence since 1969 and was recorded on the Property Inventory Card (KIB). Both parties presented and refuted each other's claims. Therefore, both are given the burden of proof. However, the Supreme Court, through Jurisprudence No. 549 K/Sip/1972, provided leniency, allowing the judge (*judex facti*) to determine who bears the burden of proof, preferably the party with the best ability to provide evidence. This is in line with the principle of justice, so the judge in this case is not strictly bound by the text of Article 1865 of the Civil Code, but rather considers objective conditions and the principle of propriety.

2) Proof by Letter

Documentary evidence plays a key role in land disputes. Article 1866 of the Civil Code in conjunction with Article 164 of the Legal Reform Act (HIR) stipulates that a document is the primary form of evidence that can be used. According to Subekti, an authentic document has absolute and binding evidentiary power unless proven otherwise.¹⁹ In the *a quo* case, the plaintiff can only present documentary evidence in the form of a photocopy. Pursuant to Article 1888 of the Civil Code, a photocopy cannot be considered valid evidence if the original cannot be presented. This is emphasized in Supreme Court Jurisprudence No. 3609 K/Pdt/1985, which states that a photocopy is only valid if supported by the original.

3) Witness Examination and On-site Examination

Documentary evidence, both parties also presented witnesses. Both the plaintiff's and defendant's witnesses provided testimony regarding land ownership. However, the value of witness evidence is independent and does not bind the judge. What is interesting in this case is the on-site inspection (*descente*) conducted by the Judge in accordance with Article 153 HIR. The inspection results revealed that above the disputed object there are permanent buildings belonging to other parties who were not named as defendants, for example, the houses belonging to witnesses Priska Amia and Heinze Nehemia Tuanakotta. This fact indicates a formal flaw in the lawsuit, as not all interested parties were named in the case.

¹⁸ Sudikno Mertokusumo, *Indonesian Civil Procedure Law*, 4th ed., Liberty, Yogyakarta 1993, p. 124.

¹⁹ Subekti, *Law of Evidence*, 9th Edition, PT. Pradnya Paramita, Jakarta, 2015, p. 45.

4) Plurium Litis Consortium (Less Party)

The principle of Plurium Litis Consortium requires that all parties who have a legal interest in the object of the dispute be drawn as parties to the lawsuit. If not, the lawsuit is declared incomplete and results in *niet ontvankelijk verklaard*. In Jurisprudence No. 621 K/Sip/1975, the Supreme Court emphasized that if not all interested parties are included, a lawsuit cannot be accepted. In this case, the plaintiff sued only the defendant, even though another party clearly controlled part of the disputed land. Therefore, the panel of judges found the lawsuit to be formally flawed.

5) Judge's Considerations and the Principle of Audi et Alteram Partem

In its deliberations, the Panel of Judges upheld the principle of *audi et alteram partem* (the judge must hear both parties). The burden of proof rests not solely on the plaintiff but also on the defendant, ensuring a balanced evidentiary process. However, because the plaintiff's lawsuit contained a formal flaw in the form of a lack of parties, the Judges issued a NO (*niet ontvankelijk verklaard*) ruling. This decision is declaratory in nature, meaning that the court has no authority to further assess the subject matter of the dispute.

6) Legal Consequences of Decision NO.

With the issuance of a NO decision, the main case will not be examined further. The plaintiff may still file a counterclaim by correcting the formal flaws, namely by bringing in another party with a legal interest as a defendant. This aligns with the principle of protecting the right to a fair trial, where a NO decision does not preclude the plaintiff from seeking justice at a later date. However, if a lawsuit is filed again, the plaintiff must strengthen the proof of ownership with authentic documents in order to match the defendant's administrative evidence.

Conclusion

Decision Number 39/Pdt.G/2023/PN Mrk shows how the Panel of Judges applied the fundamental principles of civil procedural law in deciding customary land ownership cases. The legal considerations provided by the Judge have accommodated the principles of legal certainty (*rechtssicherheit*), justice (*gerechtigheit*), and benefit (*zweckmassigkeit*), even though the final result is a *niet ontvankelijk verklaard* (NO) decision. The Judge has placed the principle of burden of proof as per Article 1865 BW in conjunction with Article 283 RBg proportionally, namely that the Plaintiff as the party claiming the right is obliged to prove his claim, but the Defendant is also burdened with proving the objection submitted. This approach is in line with Supreme Court jurisprudence No. 549 K/Sip/1972, so that the trial process runs fairly and maintains the principle of *audi et alteram partem*. The NO decision in this case is a form of application of the principle of judicial prudence, while also emphasizing that customary land disputes

require careful formulation of claims, valid proof of ownership, and the involvement of all interested parties. This decision not only serves as a resolution of individual disputes, but also provides normative and practical lessons for indigenous communities and legal practitioners regarding the importance of formal and material clarity in fighting for land rights in court. The evidentiary mechanism in cases of disputes over customary land ownership rights in Merauke Regency shows a tug-of-war between the legitimacy of customary law and the formal procedures of Indonesian positive law. On the one hand, the Marind indigenous people view land as a collective identity and a source of life that is passed down from generation to generation, so that its existence is protected by Article 18B paragraph (2) of the 1945 Constitution, Article 3 of the UUPA, and the Papuan Regional Regulation Number 23 of 2008. On the other hand, the regional government claims control of land based on the management of state assets without a certificate, which in agrarian law does not automatically prove legal ownership. The process of proof in civil procedural law, as regulated by Article 164 HIR in conjunction with Article 1865 BW, emphasizes that every party claiming a right is obliged to prove their argument. Thus, the mechanism for proving customary land disputes in Merauke requires integration between the legal-formal approach (material and formal requirements for the lawsuit, valid evidence) and the contextual-empirical approach (recognition of customary rights through local examination and customary witnesses). Synergy between the two is needed so that the rights of indigenous peoples are not neglected by rigid legal procedures, and for the realization of substantive justice in Indonesian legal pluralism.

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