

## DELIVERY OF LAND RIGHTS TO LAND FOR DEVELOPMENT OF PUBLIC INTEREST IN KUPANG CITY

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### ABSTRACT

*This paper emphasizes the polemic on the land phenomenon with the label of customary rights which is always a problem in Kupang City. Before there was a surrender of development in the public interest nobody questioned the existence of customary rights. However, after the surrender of the land for development in the public interest there are still parties in the name of ownership of customary rights in order to question ownership of their customary rights. This paper highlights the main problem studied in the form of how the surrender of customary rights over land for development in the public interest? and why is there a polemic on customary land rights for development in the public interest in Kupang City? The method used in this study includes nominative juridical research and empirical legal research in which the writer studies and analyzes it qualitatively. Research results show that the transfer of customary rights to land is done in a final manner between the holders of customary rights to land both communally (ulayat) and individually. However, the surrender was not followed by written evidence so that it was customary to apply immediately. So that the customary rights of the people of Kupang City over the relevant customary law land has been completed after the city of Kupang was formed. So that the customary tenure rights to land no longer exist. The right to control of land has changed individually.*

Keywords: Ulayat Land, Development, Public Interest.

### BACKGROUND

The existence of customary rights is clearly regulated in the customary law in force in the adat law community concerned. In the agrarian legal system, customary law itself is a source of agrarian law. Ahmad Chomzah states that customary law is an unwritten source of law, whose existence is recognized and protected by the 1945 Constitution<sup>1</sup>

Recognition and protection of the existence of this Customary Law are also regulated in Article 4 letter (j) of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX of the MPR 2001 concerning Agrarian Reform and Natural Resource Management (TAP MPR No. IX / MPR / 2001), Article 18B paragraph (2) of the 1945 Constitution, Article 5 of Law No. 5 of 1960 concerning Agrarian Principles (UUPA) along with the implementing regulations.

As a basic law that specifically regulates agrarian issues, Article 5 of the LoGA explicitly states that agrarian law that applies to land, water and space is customary law, as long as it does not conflict with national and state interests, based on national unity, with socialism contained in the law and with other regulations, everything by heeding the elements that rely on religious law.

The provisions of Article 18B paragraph (2) of the 1945 Constitution and Article 3 of the LoGA which states that the state recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of the community and the principles of the unitary state of the Republic of Indonesia, which are regulated in the law Law, has opened a legal loophole which can then be exploited by a number of actors implementing development to eliminate customary rights.

The definition of "as long as it lives" contained in the above provisions is in fact difficult to prove given the dilemmatic nature of customary rights. The provision "must not contradict other laws and regulations that are higher" is used as a legal basis for development implementers to take over customary land through the procurement of a number of regulations that have a higher level compared to customary law that underlies the existence of such customary rights. this is getting worse because until now there has been no regulation detailing these terms.

Agrarian Diaper Law does not regulate in more detail what is meant by customary rights. Article 3 of the Loga only states that customary rights and similar rights are what in the customary law library is called beschikkingsrecht. In the customary law literature, beschikkingsrech is defined as the customary community's right to land. To close the legal vacuum, it is necessary to have criteria that can be used as a reference to determine whether or not there are customary rights in a particular area. For this reason, several legal experts have provided their opinions on these criteria by referring to the fundamental understanding of customary rights themselves.

According to Maria S.W. Sumardjono<sup>2</sup>, customary rights can be said to exist if the following three criteria are met cumulatively:

<sup>1</sup> AliAchmad, Chomzah, *Hukum Pertanahan* (Jakarta: Prestasi Pustaka, 2002), hlm. 118-119

<sup>2</sup> Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasidan Implementasi*, (Jakarta, Kompas. 2001), hlm. 55

1. The existence of customary law communities who fulfill certain characteristics as subject to customary rights:
2. The existence of territorial land with certain boundaries as the main supporter of life and livelihood and the environment (lebensraum) which, are objects of customary rights;
3. The authority of indigenous and tribal peoples to take certain actions as described above.

In Boedi Harsono's<sup>3</sup> opinion, to be able to state that a customary right in a certain place still exists, there are three main elements that must be fulfilled, namely:

1. The element of society, that is a group of people who feel bound by their customary legal arrangements as citizens together with a certain legal alliance that recognizes and applies the provisions of the community in their daily lives;
2. The element of territory, namely the existence of certain customary lands which are the environment of the members of the legal alliance, as well as a place for the members of the indigenous peoples concerned to take their daily needs and;
3. The element of relationship between the customary law community and its territory, namely the existence of a customary law order regarding the management, control and use of customary land which is still valid and adhered to by members of the relevant legal community.

From the two opinions of agrarian law experts mentioned above, it can be concluded that the subject, object and legal relationship that occurs between the subject and the customary land object can determine the presence or absence of customary rights to the land in question. If all three of the above criteria are fulfilled, then it can be said that customary rights still exist. Because it still exists, the customary law community that controls the communal land concerned can exercise its rights and obligations, including to carry out protection for the year of defense against the existence of the communal land.

According to Maria S. W. Sumardjono, technically juridical customary rights are defined as inherent rights as specific competencies in customary law communities. With the existence of customary rights, the local customary law community is given the authority to manage and regulate the entire land with internal and external practices<sup>4</sup>.

Valid means that any person who is not a member of the local customary law community in principle is not permitted to participate in the cultivation or cultivation of land which is the territory of the relevant customary law community, except with the permission of the relevant community and has paid and provided compensation in accordance with customary law prevailing in the region<sup>5</sup>.

Valid in means that all members of the customary law community together as a unit have the right to collect the results of the eternal land in the territory of the partnership. In practice, it turns out that the partnership right limits the freedom of business or space for each community member as an individual, even though the limitation itself is carried out in the interests of the relevant indigenous peoples' community.

Land is an asset or basic capital for development in a nation, to realize prosperity and welfare of the community. This is in line with the provisions of the 1945 Constitution article 33 paragraph 3 which states that the earth, water, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

Land plays an important role in life, including functioning as infrastructure in the fields of industry, agriculture, housing and also infrastructure (roads, etc.). For this reason, the use of land must be based on the principles that grow and develop in a community itself.

The function of land is not only limited to the needs of a place to live, but also the social, political and cultural growth of a person or a community. Thus, the more social, political and cultural development in a society, the more narrow the ground to stand on.

The basic right of everyone is ownership of land. This guarantee regarding land is reinforced by the issuance of Law Number 11 Year 2005, concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights)<sup>6</sup>. Land basically has two very important meanings in human life, namely as social assets and capital assets. Land as a social asset is a means of binding unity in the social environment for life

<sup>3</sup> Boedi Harsono, *Hukum Agraria Indonesia: Himpunan Peraturan-peraturan Hukum Tanah* (Jakarta. Djambatan, 2002), hlm. 59

<sup>4</sup> Maria S.W. Sumardjono, *Op.Cit.*, hlm. 55.

<sup>5</sup> Busbar Muhammad, *Pokok-pokok Hukum Adat*, (Marta, Pradnya Paramita, 2000), hlm. 104.

<sup>6</sup> Maria S.W. Sumardjono, *Tanah Dalam Prefektif Hak Ekonomi, Sosial dan Budaya*, Bukum Kompas, Jakarta, 2008, hlm. vii

and life, while land as a capital asset is as capital in development and has grown as a very important economic object as well as a business material and a speculation object<sup>7</sup>.

The concept of development is a change that is planned in nature and has a better and even more perfect shape than the previous situation. The purpose of development itself is to provide value benefits and improve the quality of human life. Development can be said to be successful if it has improved social welfare and justice for all the people of Indonesia. However, until now, the development process in Indonesia has not actually led to an increase in the welfare and fulfillment of the basic needs of its people<sup>8</sup>.

All customary land conflicts identified in this study are evidence that relations and legal events related to customary land in the city of Kupang tend to cause conflicts. The eviction of the Helong Customary Community (KMHA) by the NTT Government for the construction of the 1978 PT Semen Kupang, begins this story. KMHA Helong (and the people who came later) have inhabited the PT Semen Kupang area since Raja Lai Koepan's time. That is, if the Portuguese entered Kupang ± XIV-XV, the KMHA Helong existed before that. Thus in terms of its relationship with the land, then KMHA Helong can be said to be a native of the PT Semen area. Therefore, as far as this research is conducted, there are no more stories about the existence of other parties before the existence of KMHA Helong in this area.

The following customary land conflict, namely revocation of the rights to the customary land of the Tomboy and Saubaki tribes by the Kupang City Government for the 1979 Kota Baru Office Complex and re-emergence in 2005-2006. In 1979, when it was still the Administrative City of Kupang under Kupang Regency, there was an intention to build a new office complex known as the Kota Baru Office Complex. The land where the Kota Baru Office Complex was built, was apparently claimed by the Tomboy and Saubaki Tribes as part of their customary land area. Facing claims from the two tribes, the Kupang District Government cq. The Kupang City Administration used the revocation of land rights approach in the public interest, in accordance with the regulations in force at the time.

In 2005-2006, residents of the Tomboy and Saubaki Tribes occupied the Kota Baru Office Complex and the remaining vacant land was planted with banana and coconut trees. They demand recognition and accountability from the City of Kupang, which has unilaterally revoked their land rights. Through a relatively long deliberation, finally the City Government of Kupang was willing to acknowledge the existence of these two tribes as KMHA in the City of Kupang, and to resolve the customary land issues as well as customary law.

The next communal land conflict, namely the eviction of the Kai'oe Tribe by PT El Nusa in the Tenau Region 1995. This communal land conflict occurred between KMHA against legal entities. The customary land conflict between KMHA and this legal entity, originated from PT El Nusa who bought the Pantai Pantai area which is inhabited by the Kai'oe Tribe from one who claimed to be the local tribal chief to build a jetty for loading and unloading fuel oil (BBM). When PT El Nusa was about to carry out the construction of the pier and asked the residents to vacate the location, the residents refused because they did not feel they had sold their settlement land.

The case then rolled to court. In court, it was revealed that the Kai'oe Tribe as a large tribe had 3 (tiga) tribal children, so it had 3 (three) small tribal chiefs as well. One of the only small tribal chiefs had sold the settlement's customary land on behalf of the Kai'oe Tribe as a whole. Internal divisions within the Kai'oe Tribe caused the judge to later win PT El Nusa, and the Kai'oe Tribe was forcibly evicted and moved to another location in the Bolok Pier area.

The Kai'oe themselves, according to what they believe, come from the Diu (nusak) kingdom on Rote Island. They fled to the Pantai Kelapa Tenau area Kupang ± Century XVI when a war broke out between Nusak Nusak Diu who was about to split with his mother Nusak Bilba. Incidentally their village became a battleground between the two nusak, so that those who did not become soldiers withdrew to save themselves. Their arrival at the Coconut Coast also coincided with a war between the remnants of Raja Lai Koepan's troops and Liurai Sobay's forces against the Dutch. They provided logistical assistance and hiding places for the troops and families of Raja Lai Koepan's troops and Liurai Sobay's forces who were against the Dutch. The Kai'oe Tribal Services, then bound them as brothers with those who opposed the Dutch. This is evident when displaced from their settlements which have been occupied for hundreds of years, they were received by KMHA Helong in the Bolok Pier area. The local KMHA Helong considered the Kai'oe Tribe to be their relatives who were in the midst of disaster and had to be helped, as the Kai'oe Tribe had once given protection to their ancestors when fighting the Dutch.

The next communal land conflict, namely the forced occupation by the Air Force of the 6 (six) tribal land in Penfui since 1945 and re-emerged in 2005-2008. The 6 (six) tribes referred to consist of: (1) Lael Tribe, (2) Banu Tribe, (3) Ome Tribe, (4) Sabaat Tribe, (5) Nifu Tribe, and (6) Takuba Tribe. It is said that, when the Dutch Colonial Government built an air base and a Penfui army dormitory, the land was bought from tribes in this region. The existing KMHA remained around the airbase and army dormitory on land not bought by the Dutch. The new community moved further away from military bases and army dormitories, when in 1942 there was a Japanese air strike and Japanese occupation in Kupang.

<sup>7</sup> Achmad Rubaie, *Hukum Pengadaaan Tanah Untuk Kepentingan Umum*, Bayumedia, Malang, 2007, hlm. 12

<sup>8</sup> Abadi, Totok W. Ita Kusuma. 2009. *Penertiban versus Pengusuran: Strategi Komunikasi dan Partisipasi Pembangunan (Studi kasus di Stren Kali jagir Wonokromo-Surabaya)*. Jurnal Ilmiah

In 1945, when Japan surrendered to the allies and then Indonesia became independent, Japan left the Penfui military base. When the Air Force was formed, it later took over the Penfui military base. At this time, KMHA residents who wanted to return to their settlements from their place of retreat during the war, were rejected by the Air Force. Especially after the issuance of the command to nationalize the assets of foreign control by the President/Great Leader of the Revolutionary Bung Karno, the Air Force seemed to have obtained a legal basis for occupying the Penfui military base.

In 2005-2008, the customary land conflict between KMHA and the Air Force reappeared related to land occupation by the Air Force. The residents considered that the land they were selling was only an air base and army dormitory to the Netherlands with an area of  $\pm$  33.3 ha. While the Air Force believes that they are entitled to military bases from Japan as a whole. This view, of course, deserves further consideration, namely:

1. Japan is a foreign party that once controlled the Penfui military base, so the foreign control when nationalized is clearly controlled by the state cq. Air Force.
2. Land designated as a military base by Japan, includes:
  - a. Land located in the south of Jl. Frans Seda and the land which is divided by Jl. Adisucipto, consisting of:
    - (1) Air base (Terminal A) and army dormitories whose land is sold by citizens to the Netherlands with an area of  $\pm$  33.3 ha;
    - (2) Land controlled by PT Angkasa Pura in the form of El Tari Airport (Terminal B), the land of which was purchased from KMHA;
    - (3) Land controlled by NTT's Meteorology and Geophysics Office, whose land was purchased from KMHA;
    - (4) Land controlled by the Navy Navy Lanudal, the process of which cannot yet be traced in this study;
    - (5) Land occupied by the Air Force, namely land south of Jl. Frans Seda until it borders Jl. Enter El Tari Airport (Terminal B), a golf course land located south of the air base (Terminal A) and east of Jl. Adisucipto, the Air Force hospital and the new Air Force dormitory located on the west side of Jl. Adisucipto and the South of the Army Dormitory;
  - b. Land located in the North of Jl. Frans Seda, which is now controlled and owned by a number of parties through the buying and selling process with KMHA, consists of:
    - (1) Land controlled by Undana;
    - (2) Land controlled by STIM;
    - (3) Land controlled by Unkris Artha Wacana; and
    - (4) The land owned by residents around this area.
  - c. The land located on the west side of Jl Adisucipto and the land split by Jl. Frans Seda, which is now controlled and owned by a number of parties through the process of buying and selling and grants, consists of:
    - (1) Land controlled by business entities, namely Said-T-More Hotel, Neo Aston Hotel, Kupang City Golkar Party Secretariat, and Hotel Le de Tadu;
    - (2) Land controlled by the Indonesian Ministry of Law and Human Rights; and
    - (3) Land owned by residents who live around this area.
3. In 2005, the KMHA demanded that a trace of land boundaries be occupied by the Indonesian Air Force. At that time, it was revealed that the existence of land tenure by the Air Force over the former Japanese military base, the certificate of use rights issued by the Government cq. NTT Governor. Facilitated by the NTT Regional Government (NTT DPRD, NTT Regional Secretariat I) and the NTT Land Agency to re-measure land according to the area of land and its boundaries stated in the use rights certificate. However, when the search went on, the Air Force without a clear reason was not willing to continue this process. Mediation failed.
4. In 2008, the KMHA took a civil suit to court, but again the court rejected their lawsuit. The fate of the KMHA related to the struggle for their rights to customary land occupied by the Air Force is still unclear.

The following customary land conflicts, namely the Saubaki and Victor Leric conflicts related to the Saubaki tribal land in front of the Sasando Hotel in 2008. The story of the case, originated from the plan of the Kupang Administrative City Government to build a state guesthouse in front of the Sasando Hotel. This state guesthouse is intended for lodging for state guests who come to Kupang City. For this purpose, the Kupang City Administration through a customary law approach obtained land grants in front of the Sasando Hotel from the Saubaki Tribe. The land in front of the Sasando Hotel was chosen as a place for the establishment of a state guesthouse, because besides being close to the Kota Baru Office Complex, it is also close to the City Hall and a number of NTT Regional Government Offices, Kupang Regency and the Kupang Administrative City, making it easier to coordinate.

At the time of the replacement of the Mayor of Kupang following the upgrading of the status of the Administrative City to the City of Madya, it turned out that the plan to build a state guesthouse on land that had been granted by the Saubaki Tribe was not implemented. The land, by the Government of the City of Kupang, was made into lots and given to a number of officials with land ownership status. One of the lots belongs to the Mayor of Kupang, which is then given to his son Victor Leric.

In 2008, when Victor Leric carried out the construction on the land, there was a rejection by the Saubaki Tribe. The Saubaki tribe feel cheated or deceived by the City of Kupang. According to the Saubaki Tribe, if the grant land given in accordance with the letter of grant is not used according to its provisions, then the grant letter is null and void and the land must be returned. Meanwhile, from Victor Leric's side that he has no legal relationship with the Saubaki, so the rejection of the Saubaki is unacceptable.

This triangular conflict between the Saubaki Tribe, Kupang City Government and Victor Lerik after the three parties were initiated by the Mayor of Kupang sat together and held a family discussion. In the meeting, the Kupang City Government acknowledged their mistake and was willing to fulfill the customary obligations demanded by the Saubaki Tribe as a condition for conflict resolution. After the customary requirements put forward by the Saubaki Tribe in the form of *okomama* (betel-areca nut) as a sign of reestablishing fraternity between the Saubaki Tribe, Kupang City Government, and Victor Lerik were fulfilled, then this communal land conflict ended in peace. The disputed communal land is still owned by Victor Lerik, but the award of the Saubaki tribe as the owner of the origin of the land is still carried out.

There is also a main problem in this research is

1. How to surrender customary rights to land for development in the public interest? and
2. Why does the polemic over customary land rights for development in the public interest in Kupang City?

## RESEARCH METHODS

This legal research is a type of normative and empirical legal research. Normatively research with the intention of studying legal principles, legal norms, legal concepts and positive legal rules relating to the main problem of research. This study also uses secondary data and primary data in studying and tracing the norms and regulations governing the surrender of customary rights to land for development in the public interest.

The type of legal research is a comprehensive study of analytics on secondary legal materials. The results of the study are presented in full, clear, detailed and systematic way regarding the discussion of the problem. The research problem approach used is content analysis by identifying and inventorying normative provisions and implementing them empirically in the field. The approach taken in this research is normative and empirical.

## DISCUSSION

### 1. Arrangement of the Transfer of Customary Rights over Land for Development in the public interest in Kupang City

The city of Kupang was the capital of the Province of East Nusa Tenggara (NTT) which was also an agreement of the community members from the transition of the status of the Kupang Regency then turned into a city by covering the surrounding areas because of the very large area of Kupang Regency at that time. Previously included Rote Island, Sabu Island and a part of the mainland of Timor Island. All of the islands mentioned have become separate districts such as Rote Island, which were divided into Rote Ndao Regency and Sabu Island, which expanded into Sabu Raijua Regency and Kupang City. While Kupang Regency shifted to the eastern part of Kupang City and has its capital in Oelamasi.

It should be recognized that the position of the residents who inhabit the Kupang City area is a resident of Kupang Regency, through an agreement also the location of land and Government buildings and various other public facilities can be established in the City of Kupang. Because the position of the City of Kupang as the Capital of the Province of NTT should be seen as a transition of the location from the Regency of Kupang to become the property of the City of Kupang. Of course it must be admitted that the existence of the Kupang Regency gave birth to the City of Kupang.

The population of Kupang City is indeed very heterogeneous because the people who inhabited Kupang City were residents of other islands from all of the islands in the NTT region. However, if traced from the origins of the original residents of the City of Kupang, it would be seen from the various status of land ownership status that is recognized from generation to generation in the form of tribes. In the records of the social history of the City of Kupang as examined and written by Drs. R.Z. Leirissa, et al<sup>9</sup> said that the Helong Tribe was the oldest tribe who first inhabited the area of Kupang City but in development shifted to Semau Island because in the interest and safety of all members of the kingdom at that time because the security situation was disrupted by the Portuguese-sponsored war and inter-royal rivalry when when the Dutch established their office in the city of Kupang.

The area around the Kupang coast at that time was the territory of King Helon. Who became king at the beginning of the 17th century was KoEn Lai Bisi<sup>10</sup>. At the beginning of the 17th century came to the East Nusa Tenggara region, two foreign powers competing in the Sandalwood trade. The two powers were Portuguese and VOC. The Portuguese pioneered its power in 1561. As the center of activity, the island of Solor was chosen because of its strategic location. Meanwhile, at Solar a fort was built which was defended by a fortress guard force. From Solar Portuguese undertakes activities to various regions in NTT, including activities on Timor Island. But on the other hand, the VOC based in Batavia also attempted to carry out trade activities in the East Nusa Tenggara region. The Kupang area before the arrival of the VOC was the territory of Helong's little king named "KoEa Lai Bissi". At the time of the establishment of the Concordia fortress by Johan Burger in 1653, there was no permanent government in Kupang governing the fort and its surroundings<sup>11</sup>.

<sup>9</sup> Leirissa, R.Z., dkk, *Sejarah Sosial Kota Kupang, Nusa Tenggara Timur*, diterbitkan oleh Departemen Pendidikan dan Kebudayaan RI, 1983, hlm.82

<sup>10</sup> J.J. Detaq, 1975, *Kota Kupang selayang Pandang*, Percana Kupang, 1970, hlm. 6

<sup>11</sup> Leirissa, R.Z., dkk Op. Cit, hlm.84

The position of the VOC government in NTT was in Solar and was held by an Opperhoofd. The permanent position of the VOC in Kupang with the leadership of a new Opperhoofd started in 1655. As the first Opperhoofd was Jacob Verheyden. Jacob Verheyden on 2 July 1655 succeeded in entering into the first contract with Raja Amarasi, Raja Sonbai, Raja Amabi and Raja Kupang. The contract contained seven articles which among other things stated that the kings were not hostile to the Dutch, they allowed the land and its people to be used for the interests of the Company in dealing with enemies. These kings recognized the sovereignty of the Governor-General and had an obligation to help fight the enemies of the Dutch Company (VOC).

Since 1655, the names of the VOC leaders who served as Opperhoofd have changed names in Kupang. Until 1810 there were thirty Dutch occupying the Opperhoofd position in Kupang<sup>12</sup>. But the VOC leaders in Kupang were more than a century preoccupied with the resistance of the Black Portuguese (Topasses) and the kings in the interior of the island of Timor, therefore important actions of the VOC government were aimed at fighting the clan to pass kings who were resisting. To achieve this goal with the seat of domicile in Kupang, the VOC had to strengthen the position of the Kupang fortress, multiplying contracts with petty kings in Timor and its surroundings.

Since 1810 in Kupang, a resident of JAA has been placed. Hazaart, in the context of safeguarding Kupang, the Resident formed a buffer zone around Kupang. For this purpose residents from Solor, Sabu and Rote were brought in, around Kupang<sup>13</sup>. Particularly in the Babau and Pariti regions, colonialism was formed, with the population brought from Rote Island. To better secure Kupang in 1886 under the Greeve resident the Kupang City boundaries have been announced in state sheet No. 171 in 1886. The area of the City of Kupang was called "Vierkante paal gebied" and the region included "Rechtstreeks Bestuurs Gebied", ie governed by the Governor, and areas outside the area included "Zelf bestuurs".

In 1917 the Kupang Swapraja was formed consisting of the Raja Amabi, Kupang, Sonbai Kecil, Funay and Tabenu areas. Kupang city until 1942 was included in the "Rechtstreeks bestuurs gebied". With the end of World War II based on the Governor's Governorate on February 6, 1946 No. 9 Kupang City land was returned to Kupang's Swapraja. With the Decree of the Head of Kupang Self-Employment dated May 31, 1946 No. 3 formed Raad. While Kupang had 30 councilors, on 30 September 1949 the city of Kupang was granted the status of Kupang Haminte. For the first time the Mayor of Kupang was appointed namely Th. J. W. Mesakh, but based on the Decree of the Head of Kupang Self-Employment dated 9 July 1951 No. 1, Haminte Kupang is dissolved. Subsequently on September 15, 1951, Kupang Haminte was handed back to the Kupang Swapraja<sup>14</sup>.

Kupang was originally the residence of the Helong people. Raha Helong (Kupang) is located in locations named Kai Salun (Fatufeto area) and Buni Baun (Lai-Lai Bissi Kopan area). The existing villages are Helong villages which are located scattered around the mouth of the Kupang river. With the arrival of the VOC which established "Fort Concordia", the fort was the residence of government officials and VOC troops. VOC troops consisted of white people, white group originally lived in the Citadel. The indigenous group which originally consisted of Solor people, were placed outside the fort and occupied the area that would later become Solor Village. These Solors had existed in 1653. The VOC, with its position in Fort Concordia, was always under threat from the Portuguese/Topasses who were allied with several inland kings on the island of Timor.<sup>15</sup> To maintain its position the VOC had to strengthen its forces consisting of white people (Dutch), Solor people, Rote people, Sabu people and Mardykens.

On April 15, 1886 with State Gazette Number 171 of 1886, Resident Greeve established the boundaries of the City of Kupang called "Vierkante paal gebied". As for the boundaries of the city of Kupang to the west of Tenau to Kampung Nun Hila. to the east towards the Pasir Panjang boundary near the GMTI Synod Office. The Tears majors reach the Hanging Bridge in Mantasi and the Kuanino majors are near the Army Hospital now. On each boundary sign there is a monument (paal), and a guard post is erected which must be guarded by the residents in rotation.

The Kupang City area is called "Rechts Treek Bestuurs gebied", this area includes Fatufeto Village, Nun Hila Village, Airmata Village, Fontein Village, Solar Village, Tade Kisar Village and OEba Village. In addition to these villages as centers of settlement, Fort Concordia is a center of defense. The Kupang harbor, located at the mouth of the Kupang river near the Concordia fortress and the coastal area between the port and the village of Solor, is a trading center and the area on the edge of the Kupang river called "Herenstraat" is the center of Dutch government and residence.

In the city of Kupang, there was a high degree of social mobility from the 17th to the 20th centuries. Because of the war that occurred around Kupang, there were various shifts in settlements due to security considerations. The original inhabitants of Kupang, namely Belong, were displaced to the Semau island, many Dutch allies who came from various regions in the interior of the islands of Timor, Rote, Sabu, Solar, settled in Kupang and its surroundings. Kupang, which was originally only inhabited by residents of Helong, developed into a multi-ethnic group. For the language of instruction the Kupang Malay language develops, which is a Malay dialect characterized by Ambonese Malay influence, which is quite strong, mixed with Portuguese and Dutch. For example: beta (me), dorang (them), kotong (us people), sonde (not), antero (whole), nyong (youth), miss (young woman), strat (street), gujawas (guava), huk (corner), pi (go), kunyado (brother in law), and so on<sup>16</sup>.

<sup>12</sup> H.G. Schult e Nordhuldt, 1969 dalam Heijmering, G, "*Bijdragen tot de geschiedenis van het eiland Timor*", TVN!, 9ej 3 dee! biz 1 - 62.hlm 332

<sup>13</sup> J.D.V. Alderwerelt, "*Anttekeningen over Timor en onder horigheden*," TBG dee! 47 , bbz 194-225, hlm. 224

<sup>14</sup> Leirissa, R.Z.,*Loc.Cit.*, hlm.90.

<sup>15</sup> *Ibid*

<sup>16</sup> Leirissa, R.Z., *Op, Cit.*, hlm. 101.

History records that the name Kupang actually comes from the name of a king, namely Nai Kopan or Lai Kopan, who ruled the city of Kupang before the Portuguese came to East Nusa Tenggara. In 1436, the island of Timor had 12 cities but there was no name. This assumption is based on that the city is located on the coast, and one of them is strategically facing the Kupang Bay. This area was the territory of King Helong and the king at that time was Raja Koen Lai Bissi<sup>17</sup>.

Initially the Tempo Doeloe Koepang, for the Helong people was called "Kai Salun-Buni Baun". This is known through the history and origins of the City of Japan. Is King Koen Bissi II or Koen Am Tuan ordered his citizens to build a stone fence around the palace fence. The stone fence is Natural stone stacked up to four layers. This condition according to the Helong language is "PAN". These people or citizens deal with or meet Raja Koen in a place called PAN, so it is often called "KOENPAN". In the development of etymological use of language (speech) the word "KoenPan" changed to "Koepang", then with a new spelling it was adjusted again to "KUPANG". As a sign of respect for the ancestors of Lai Bissi, the ancestor of KoEn Lai Bissi, the Kupang District government replaced the name Kampung Cina to Lai Bissi Kopan Village.

In 1613, the VOC based in Batavia (Jakarta) began trading in East Nusa Tenggara by sending 3 ships led by Apolonius Scotte, to the island of Timor and anchored in Kupang Bay. The arrival of the VOC group was received by Raja Helong, who also offered a plot of land for the purposes of the VOC headquarters. At that time the VOC did not have permanent power on Timor.

On 29 December 1645, a Portuguese padri named Antonio de Sao Jacinto arrived in Kupang. He got the same offer as the VOC received from Raja Helong. The offer was welcomed by Antonio de Sao Jacinto by establishing a fort, but then the fort was abandoned because of a dispute between them. The VOC became increasingly aware of the importance of East Nusa Tenggara as one of its trade interests, so that in 1625 to 1663, the VOC fought against the Portuguese occupation area on the island of Solor and with the help of the Muslims in Solor, Fort Henricus Fort was captured by the VOC.

In 1653, the VOC landed in Kupang and succeeded in capturing the former Portuguese fort of Fort Concordia, located at the mouth of the Kupang Bay river under the leadership of Captain Johan Burger. VOC's position in Kupang was directly led by Openhofd J. van Der Heiden. During the occupation of Kupang from 1653 until 1810, the VOC had placed as many as 38 Openhofd and the last was Stoopkert, who ruled from 1808 until 1810.

The name Lai Kopan was later called by the Dutch as Koepan and in everyday language it became Kupang. To safeguard the city of Kupang, the Netherlands established a buffer zone in the area around Kupang Bay by bringing in residents from the islands of Rote, Sabu and Solor. To increase the security of the city, then on April 23, 1886, the Resident Creeve established city boundaries that were issued in Staatblad No. 171 of 1886. Therefore, April 23, 1886 was designated the date of birth of the City of Kupang<sup>18</sup>.

In accordance with the proposal of the people and the Kupang Municipal Administration to change its status to the Municipality of the Kupang Level II Region, was approved by the DPR RI with the ratification of the Draft Law Number 5 of 1996 concerning the Establishment of the Kupang Level II Municipality into the Law on March 20, 1996 and determined by The President of the Republic of Indonesia and stated in the State Gazette of the Republic of Indonesia Number 3632 of 1996. The formation of the Kupang Second Level Regional Municipality was inaugurated by Minister of Home Affairs Mohammad Yogi SM on April 25, 1996. Until now the City of Kupang is divided into six subdistrict regions namely Alak District consisting of eleven sub-districts, Kelapa Lima subdistrict consists of seven kelurahans, Kota Raja subdistrict consists of six kelurahans, Kota Lama sub-district consists of ten kelurahans, Maulafa sub-district consists of nine kelurahans and Oebobo sub-district consists of seven kelurahans<sup>19</sup>.

History records that there are no ulayat activities that can be known throughout the life of the kings and then turn to Swapraja, so it is difficult to know if there are ulayat activities by community associations both in the community of kings or individually such as clans. This means that the City of Kupang, which has switched status from the royal system or self-government system, has not been able to measure all life that has been preserved for generations.

## 2. Polemic on customary rights to land for development in the public interest in Kupang City

The life of tribal kings, ownership of the territory is not free from conflicts and land cases in the city of Kupang, for example, the results of previous studies or research, by the Undana Study and Advocacy Center in collaboration with the NTT PIAR-Advocacy NGO (PSA-HAM Undana and NGOs PIAR NTT) found that Kupang City had a number of phenomenal communal land conflicts. The customary land conflict referred to, namely<sup>20</sup>:

1. The rejection of the Helong Customary Community (PMHA) Group for the planned dam construction by the Kupang City Government 2013-2014, until this research was carried out the said dam had not yet been built.
2. Eviction of KMHA Helong by the NTT Government for the construction of the 1978 PT Semen Kupang.

<sup>17</sup> Sejarah Kota Kupang, diakses dari <http://www.kupangkota.go.id/v5/index.php/template-explore/kota-kupang/sejarah-kota-kupang>, tanggal 15 Juli 2019.

<sup>18</sup> Kota Kupang, diakses dari laman [https://id.wikipedia.org/wiki/Kota\\_Kupang](https://id.wikipedia.org/wiki/Kota_Kupang), tanggal 15 Juni 2019.

<sup>19</sup> Sejarah Kota Kupang, diakses dari laman <http://v8.kupangkota.go.id/2018/10/15/sejarah-kota-kupang-2/> Tanggal 10 Juli 2019

<sup>20</sup> Pekuwali, Umbu Lily, *Konflik Tanah Ulayat Di Kota Kupang (Penyebab Dan Model Penyelesaian)*, Hasil Penelitian Undana, Hibah Penelitian Dikti, 2016-2017, hlm. 78-79.

3. Revocation of the rights to the customary land of the Tomboy and Saubaki tribes by the Kupang City Government for the 1979 Kota Baru Office Complex and re-emerged in 2005-2006.
4. Conflict of the Sonbai Tribe and Korasa Tribe in the Raja City Area for  $\pm$  30 years and began to be executed 1996-2006.
5. Conflicts of the Konay and Sabaat tribes in the Liliba-Oesapa Region  $\pm$  30 years and began to be executed in 1996.
6. Eviction of the Kai'oe Tribe by PT El Nusa in the Tenau Region 1995.
7. Forced occupation by the Indonesian Air Force against the customary land of 6 (six) tribes in Penfui since 1945 and re-emerged in 2005-2008.
8. Conflict of the Saubaki and Victor Lerik tribes related to the Saubaki tribal land in front of the Sasando Hotel 2008.
9. Internal conflicts of the Konay Tribe in the 2017 Oesapa Region.

In addition to the customary land conflicts, in this study also found a number of customary land conflicts in Kupang City, where from the informants found a court decision document with a permanent legal force was found. The customary land conflict referred to, namely<sup>21</sup>:

1. Conflict of communal land between the plaintiff Benyamin Ballo against the defendant Ayub Saubaki and 46 (forty six) other persons/legal entities as resolved through Decision No.21/PDT.G/2002/PN.KPG, related to customary land in the Oebufo area.
2. Conflict of communal land between the plaintiff Sofia Ballo-Tomboy and 2 (two) other people against the defendant Andreas Sinyo Langoday and 17 (seventeen) others as decided by decision Number 60/Pdt.G/2013/PN.Kpg, related to land ulayat in Fatululi area.
3. Conflict of communal land between the plaintiff Fransina Manafe-Penun and 7 (seven) other people against the defendant NTT Governor as decided by Decision Number 144/Pdt.G/PN.Kpg, related to customary land in the Manulai area.
4. Conflict of communal land between the plaintiff Bernadus Natun against Drs. Libert Funay, MS and 9 (nine) other people as decided through Decision Number 1075 K/Pdt/2013, related to customary land in the Oepura region.
5. Conflict of Ulayat Land between the plaintiff of the Kupang Regent against the defendant Ferdinand Konay and 23 (twenty three) other people as decided through Decision Number 1151 K/Pdt/2014, related to customary land in South Oesapa region.

Ulayat rights to the land are defined as joint land with the members of the indigenous peoples concerned. However, in its development in Kupang City it is not yet known with certainty that customary rights are an effort to control land by the Adat Legal Community Group (KMHA). Of course this must be ensured that the set of authority and obligations of a customary law community, which is related to the land located in the area of its territory. This customary right has been recognized in the legislation in the agrarian sector, namely Law no. 5 of 1960 concerning Basic Rules on Agrarian Principles: as long as in reality they still exist.

The existence of KMHA Helong over the dam construction plan by the City Government of Kupang 2013-2014 has revived the discourse about the existence of ulayat land<sup>22</sup>. Imagine, Kupang City has a long history related to the customary land conflict. As has also been reviewed and stated that the Center for the Study and Advocacy of the Rights of the University of Nusa Cendana (PSA-HAM Undana) and the NGO PIAR NTT, noted that there are a number of phenomenal communal land conflicts, namely<sup>23</sup>:

- 1) the eviction of KMHA Helong by the NTT Government for the construction of PT Semen Kupang 1978;
- 2) revocation of the rights to the customary land of the Tomboy and Saubaki tribes by the Kupang City Government for the 1979 Kota Baru Office Complex and re-emergence in 2005-2006,
- 3) conflict between the Sonbai Tribe and Korasa Tribe in the Raja City Area for  $\pm$  30 years and began to be executed from 1996 to 2006,
- 4) conflict between the Konay tribe and the Sabaat tribe in the Liliba-Osapa region  $\pm$  30 years and began to be executed in 1996,
- 5) the eviction of the Kai'oe Tribe by PT El Nusa in the Tenau Region 1995,
- 6) forced occupation by the Air Force of the six tribal ulayat land in Penfui since 1945 and re-emerged in 2005-2008;
- 7) Saubaki and Victor Lerik conflicts related to the Saubaki tribal land in front of the 2008 Sasando Hotel, and also
- 8) internal conflicts of the Konay Tribe in the 2017 Oesapa Region.<sup>24</sup>

The issue of customary land conflicts that always arise in the city of Kupang, in fact becomes a logical consequence of the development of the city of Kupang itself. Imagine, Kupang City in its development today, is not only a center of government, but also a center of various community activities. In addition, Kupang City is the Capital of the Province of East Nusa Tenggara (NTT). With this status, making Kupang City a place of residence for government officials and the community<sup>25</sup>. As a consequence, Kupang must provide various supporting facilities for the lives of its residents, such as educational facilities, economic facilities, recreational facilities, and other living facilities.

<sup>21</sup> Ibid, hlm. 89

<sup>22</sup> Ibid, 89

<sup>23</sup> Kepala PSA-HAM Undana, *Alternatif Solusi Bagi Pemenuhan Hak Kelompok Rentan Dan Potensi Konflik 'Sara' Dalam Pilpres 9 Juli 2014 Di NTT Serta Kasus Rencana Pembangunan Bendungan Kolhua Kota Kupang*, Bahan Audensi Undana-Komnas HAM RI 16 Juni 2014, Kupang, hal. 6-8.

<sup>24</sup> PSA-HAM Undana dan LSM PIAR NTT, *Proceding FGD dengan KMHA di Kota Kupang, Kabupaten Kupang, dan Kabupaten Rote Ndao*, Bahan Penyusunan Naskah Akademik Pengakuan dan Penguatan KMHA, Kupang, 2008; Deddy R. CH. Manafe, dkk., *Peta Konflik NTT 1994-2013 (Penyebab, Bentuk, dan Penanganan)*, PSA-HAM Undana-Badan Kesbangpol dan Linmas NTT, Kupang, 2013.

<sup>25</sup> Harian Umum Timor Express, *2 Kubu Keluarga Konay Saling Klaim Tanah Suku*, tanggal 15 Februari 2017.

The impact of the availability of various facilities to meet the needs of life in the city of Kupang, in turn makes a special attraction for residents from various parts of NTT, even from various regions outside NTT to come and try their luck in the city of Kupang. As a result, from year to year the population of Kupang City continues to grow, in addition to natural growth. At the same time, the wheels of economic growth are rolling, giving birth to increasingly intensive and expansive exchanges in the fields of information, service industries, investment, and also changes in the behavior patterns of public consumption.

In essence, the development of the City of Kupang has a direct impact on the need for land. Which, does not rule out the possibility of triggering an increasingly massive communal land conflict. Moreover, the current value of land is relatively increasing and competitive. Exactly at this point, this research has been referred to for a number of reasons, namely: first, to be part of an historical learning effort so that: (1) those who need land in Kupang City, do not get caught up in the customary land conflict, (2) understand the root of the ulayat land conflict in Kupang City, for prevention efforts in the future; secondly, this research is part of an effort to reassemble the color episodes of Government policies regarding ulayat land; and third, as an evaluation material on the preference for customary land rights in relation to the dualism of the implementation of national agrarian law and customary law in Kupang City when facing real conflicts.

All customary land conflicts identified in this study are evidence that relations and legal events related to customary land in the city of Kupang tend to cause conflicts. The eviction of KMHA Helong by the NTT Government for the construction of the 1978 PT Semen Kupang, begins this story. KMHA Helong (and the people who came later) have inhabited the PT Semen Kupang area since Raja Lai Koepan's time. That is, if the Portuguese entered Kupang ± XIV-XV, the KMHA Helong existed before that. Thus in terms of its relationship with the land, then KMHA Helong can be said to be a native of the PT Semen area. Therefore, as far as this research is conducted, there are no more stories about the existence of other parties before the existence of KMHA Helong in this area.

KMHA Helong, which has inhabited the Bolok area, including the area of PT Semen Kupang, must be willing to be terminated for hundreds of years in relation to the land where they live and live, based on the wishes of the NTT Government to develop PT Semen Kupang. The NTT government, as the ruler of the state really uses a power approach. The Head of the Public Relations Bureau of the East Nusa Tenggara Province Secretariat (Karo Humas NTT Regional Secretariat) who was sent to lead the team to disseminate information about the development plan of PT Semen Kupang, was rejected by the community.

The NTT Governor continues to insist on carrying out the construction of PT Semen Kupang. The will of the Governor of NTT is precisely opposed by the Karo Humas NTT Regional Secretariat who prefer dialogue and negotiation space with the community to reach a fair consensus. This contradiction, then led to an open conflict between KMHA Helong with his attorney Karo Humas NTT Regional Secretariat and the Governor of NTT. The community's claim was rejected by the court, so by deploying KHMA Helong security forces and other residents who inhabited the PT Semen Kupang area were forcibly evicted. While the Karo Regional Secretariat of NTT, was dismissed from his position and status as a civil servant without a decree. Later, the former Karo NTT Regional Secretariat conducted a lawsuit against PTUN, and won the suit, so that his status was restored.

In its development, PT Semen Kupang, which is very proud of the NTT Government as the first big industry icon and predicted to be one of the contributors to local revenue, failed in its business. The failure of this business, not only detrimental in terms of regional finances, but certainly very detrimental to KMHA Helong and residents who have lived in the region. The NTT government should be responsible for the blood and tears of the people who spilled during the forced eviction process along with the NTT people's right to benefit from the presence of PT Semen Kupang that they had to receive.

The following customary land conflict, namely revocation of the rights to the customary land of the Tomboy and Saubaki tribes by the Kupang City Government for the 1979 Kota Baru Office Complex and re-emergence in 2005-2006. In 1979, when it was still the Administrative City of Kupang under Kupang Regency, there was an intention to build a new office complex known as the Kota Baru Office Complex. The land where the Kota Baru Office Complex was built, was apparently claimed by the Tomboy and Saubaki Tribes as part of their customary land area. Facing claims from the two tribes, the Kupang District Government cq. The Kupang City Administration used the revocation of land rights approach in the public interest, in accordance with the regulations in force at the time.

The argument developed by the Kupang City Administration is that there is no more customary land in NTT, including in the Kupang Administrative City. This argument, based on:

1. The results of the NTT Indigenous Peoples Symposium in May 1972 in Kupang concluded that there was no more customary land in NTT.
2. Since 1960 after the enactment of the Basic Agrarian Law and registration of land rights, the land claimed by the two tribes in question has never been registered, so that it becomes land controlled by the state.
3. Article 2 paragraph (1) of NTT Regional Regulation No.8/1974 states that former communal land is controlled by the Government cq. NTT Governor.

The NTT Indigenous Peoples Symposium in May 1972 in Kupang was attended by KMHA representatives from various districts in NTT. The representative referred to, turned out to be the authority of customary rights who sit in the governance structure in NTT. Therefore, what was desired by the NTT Government at that time was impossible for them to resist, so the conclusion was that there was no more customary land in NTT.

The scenario of destroying KMHA in NTT is actually not the result of the results of the NTT Indigenous Peoples Symposium in May 1972 in Kupang alone. Article 2 paragraph (2) of the Regulation of the Minister of Agrarian/Head of the National Land Agency Number 5 of 1999 states that there are 3 (three) conditions for a KMHA to be recognized by the state, namely: (1) there is a group of people who feel bound by their customary legal arrangements and the community recognizes and applies the terms of community in everyday life; (2) there is a certain customary land which is the environment of the fellowship residents and a place to take their daily needs; and (3) there is an order of customary law regarding the administration, control and use of customary land that is applicable and adhered to by the community members. This means that the KMHA element consists of: (1) customary law, (2) ulayat land, and (3) structure.

Act No.1/1946 jo. Law No.1/Drt /1950, namely the reversal of the Indonesian Criminal Code (KUHP) abolished customary criminal law. The Criminal Code, which adheres to the principle of formal legality, does not open space for customary criminal law. Moreover, constitutionally Article 24 of the 1945 Constitution which regulates judicial power, does not open the space for customary law courts. At this point, the first element of the KMHA in Kupang was destroyed by state policy.

The bias of interpretation of the provisions of Article 33 paragraph (3) of the 1945 Constitution which states the word 'master' is equated with the word 'possess'. Therefore, the right to control the state (HMN) is in practice equated with the ownership rights (HM) version of the LoGA. This interpretation bias is then juxtaposed with the understanding that narrower interests must be defeated by broader interests, HM is seen as narrower interests and HMN is seen as broader interests. In this context, ownership rights over land by KMHA must be outdone by HMN when the government wants it. At this point, the scenario of destroying the existence of ulayat land from KMHA in Kupang City occurs. Even in several places in the city of Kupang, there is still a sign that reads the property of certain agencies. In fact, if traced the rights held are certificates of use rights granted by the Governor of NTT.

Law Number 16 of 1965 jo. Law Number 5/1974 jo. Law Number 5 of 1979 relating to regional and village governments abolished the traditional law community structure. The formation of the NTT Province and followed by the formation of Regencies, Districts and Villages (Gaya Baru), apparently had a direct impact on the structure of KMHA in NTT including those in Kupang City. The Bupati, Camat and the first generation of Village Heads in NTT were recruited from the existing KMHA leaders. There are kings who become regents, there are fetors who become sub-district heads, and countless amaf who later become village heads. When the KMHA leader concerned sits in the state government structure, there is no obligation to resign from his KMHA position, so there are multiple positions.

Along with the development of state government, the Regent, Camat, the first generation was later replaced by the next generation who came from the civil service school. At the same time, it was interpreted as if the KMHA structure had been replaced by the structure of the state government. Assumptions like this occur because previously there was a dual position of king, and fetor with the position of Regent, and District Head. But after the person retired and died, the successor is no longer a double position, considered KMHA has been deleted. Specifically for the position of Village Head who had been appointed from the amaf, the next generation introduced a direct election of the Village Head, so that it was possible for people from the amaf community to be elected as Village Heads. Amaf whose position was hereditary, was replaced by the Village Head whose position was chosen from anyone who was deemed qualified or liked by the voting villagers. To this end, the last element of KMHA in Kupang City has been destroyed by the state policy scenario.

Based on this understanding and situation and conditions, the conclusion of the NTT Indigenous Peoples' Symposium in May 1972 in Kupang was produced, including the issuance of NTT Regulation No.8 / 1974 stating that former ulayat lands were controlled by the Government cq. NTT Governor. Therefore, the revocation of customary land rights claimed by the Tomboy and Saubaki Tribes in the Kota Baru Office Complex area can be done by the Kupang City Administrative Government.

In 2005-2006, residents of the Tomboy and Saubaki Tribes occupied the Kota Baru Office Complex and the remaining vacant land was planted with banana and coconut trees. They demand recognition and accountability from the City of Kupang, which has unilaterally revoked their land rights. Through a relatively long deliberation, finally the City Government of Kupang was willing to acknowledge the existence of these two tribes as KMHA in the City of Kupang, and to resolve the customary land issues as well as customary law.

The next communal land conflict, namely the eviction of the Kai'oe Tribe by PT El Nusa in the Tenau Region 1995. This communal land conflict occurred between KMHA against legal entities. The customary land conflict between KMHA and this legal entity, originated from PT El Nusa who bought the Pantai Pantai area which is inhabited by the Kai'oe Tribe from one who claimed to be the local tribal chief to build a jetty for loading and unloading fuel oil (BBM). When PT El Nusa was about to carry out the construction of the pier and asked the residents to vacate the location, the residents refused because they did not feel they had sold their settlement land.

The case then rolled to court. In court, it was revealed that the Kai'oe Tribe as a large tribe had 3 (three) tribal children, so it had 3 (three) small tribal chiefs as well. One of the only small tribal chiefs had sold the settlement's customary land on behalf of the Kai'oe Tribe as a whole. Internal divisions within the Kai'oe Tribe caused the judge to later win PT El Nusa, and the Kai'oe Tribe was forcibly evicted and moved to another location in the Bolok Pier area.

The Kai'oe themselves, according to what they believe, come from the Diu (nusak) kingdom on Rote Island. They fled to the Pantai Kelapa Tenau area Kupang ± Century XVI when a war broke out between Nusak Nusak Diu who was about to split with his mother Nusak Bilba. Incidentally their village became a battleground between the two nusak, so that those who did not

become soldiers withdrew to save themselves. Their arrival at the Coconut Coast also coincided with a war between the remnants of Raja Lai Koepan's troops and Liurai Sonbay's forces against the Dutch. They provided logistical assistance and hiding places for the troops and families of Raja Lai Koepan's troops and Liurai Sobay's forces who were against the Dutch. The Kai'oe Tribal Services, then bound them as brothers with those who opposed the Dutch. This is evident when displaced from their settlements which have been occupied for hundreds of years, they were received by KMHA Helong in the Bolok Pier area. The local KMHA Helong considered the Kai'oe Tribe to be their relatives who were in the midst of disaster and had to be helped, as the Kai'oe Tribe had once given protection to their ancestors when fighting the Dutch.

The next communal land conflict, namely the forced occupation by the Air Force of the 6 (six) tribal land in Penfui since 1945 and re-emerged in 2005-2008. The 6 (six) tribes referred to consist of: (1) Lael Tribe, (2) Banu Tribe, (3) Ome Tribe, (4) Sabaat Tribe, (5) Nifu Tribe, and (6) Takuba Tribe. It is said that, when the Dutch Colonial Government built an air base and a Penfui army dormitory, the land was bought from tribes in this region. The existing KMHA remained around the airbase and army dormitory on land not bought by the Dutch. The new community moved further away from military bases and army dormitories, when in 1942 there was a Japanese air strike and Japanese occupation in Kupang.

Japan, expanding its military base area, not only includes air bases and army dormitories, but also covers most of the Penfui region, the Liliba region and the Oesapa Region. Expansion of military bases in the additional area, by building bunkers and underground passageways connecting the bunkers. As a bunker that serves as a support for air defense, the building is still standing strong today.

In 1945, when Japan surrendered to the allies and then Indonesia became independent, Japan left the Penfui military base. When the Air Force was formed, it later took over the Penfui military base. At this time, KMHA residents who wanted to return to their settlements from their place of retreat during the war, were rejected by the Air Force. Especially after the issuance of the command to nationalize the assets of foreign control by the President/Great Leader of the Revolutionary Bung Karno, the Air Force seemed to have obtained a legal basis for occupying the Penfui military base.

The following customary land conflicts, namely the Saubaki and Victor Lerik conflicts related to the Saubaki tribal land in front of the Sasando Hotel in 2008. The story of the case, originated from the plan of the Kupang Administrative City Government to build a state guesthouse in front of the Sasando Hotel. This state guesthouse is intended for lodging for state guests who come to Kupang City. For this purpose, the Kupang City Administration through a customary law approach obtained land grants in front of the Sasando Hotel from the Saubaki Tribe. The land in front of the Sasando Hotel was chosen as a place for the establishment of a state guesthouse, because besides being close to the Kota Baru Office Complex, it is also close to the City Hall and a number of NTT Regional Government Offices, Kupang Regency and the Kupang Administrative City, making it easier to coordinate.

At the time of the replacement of the Mayor of Kupang following the upgrading of the status of the Administrative City to the City of Madya, it turned out that the plan to build a state guesthouse on land that had been granted by the Saubaki Tribe was not implemented. The land, by the Government of the City of Kupang, was made into lots and given to a number of officials with land ownership status. One of the lots belongs to the Mayor of Kupang, which is then given to his son Victor Lerik.

In 2008, when Victor Lerik carried out the construction on the land, there was a rejection by the Saubaki Tribe. The Saubaki tribe feel cheated or deceived by the City of Kupang. According to the Saubaki Tribe, if the grant land given in accordance with the letter of grant is not used according to its provisions, then the grant letter is null and void and the land must be returned. Meanwhile, from Victor Lerik's side that he has no legal relationship with the Saubaki, so the rejection of the Saubaki is unacceptable.

This triangular conflict between the Saubaki Tribe, Kupang City Government and Victor Lerik after the three parties were initiated by the Mayor of Kupang sat together and held a family discussion. In the meeting, the Kupang City Government acknowledged their mistake and was willing to fulfill the customary obligations demanded by the Saubaki Tribe as a condition for conflict resolution. After the customary requirements put forward by the Saubaki Tribe in the form of *okomama* (betel-areca nut) as a sign of reestablishing fraternity between the Saubaki Tribe, Kupang City Government, and Victor Lerik were fulfilled, then this communal land conflict ended in peace. The disputed communal land is still owned by Victor Lerik, but the award of the Saubaki tribe as the owner of the origin of the land is still carried out.

#### **Cover**

The transfer of customary rights to land for development in Kupang City began with Raja Helong surrendering part of his land for the construction of the VOC Fort Office. This continues with the determination of the boundaries of the City of Kupang. Until now, the position of the Customary Law Community has been completed after Kupang City was formed since the construction of the City of Kupang.

The polemic over the existence of customary rights after the development of public interests in the Kupang City area is a series of activities that seek to uphold the existence of indigenous peoples who were originally recognized as community members based on the origin of the existence of a customary law community. Nevertheless, this matter was questioned through the court institution, but not yet measured all activities of customary rights that should have been carried out from generation to generation.

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21. Government Regulation No. 40 of 1996 concerning Land Use Rights, Building Use Rights and Land Use Rights.
22. Supreme Court Regulation No. 3 of 2016 concerning Procedures for Filing Objection and Custody of Compensation to the District Court in Land Procurement for Development in the Public Interest

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