

SDOV: Alternative Dispute Resolution Mechanism in Kei Community

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Abstract

Legal dispute resolution process that is blown in the community's social interaction that Settlement through other traditional and non-formal local institutions is stated as Alternative Dispute Resolution (ADR). This research aims to determine the community and government's understanding in Kei islands towards the Settlement of the dispute through the mechanism of SDOV negotiations, based on customary law, which deals with aspects of people's lives. The result was stated that the Kei community, in resolving legal issues, were used the SDOV mechanism, based on foreign customary law to the tradition of dispute resolution or indigenous and tribal peoples, which tends to use custom or in other terms it is often called as a pattern of "kinship."

Keywords: SDOV; Culture; MECHANISM; Kei Community.

Introduction

Indonesia is a legal state, and in social life, it is always regulated by written legislation. However, many indigenous and tribal peoples still maintain their customs for generations to

resolve various disputes in criminal cases. Dispute resolution is one of the important legal aspects that humans need to achieve order and order in community life; this leads to the development of various legal institutions, customs, or traditions of dispute resolution mechanisms in many societies, both in developing countries and in the country -developed countries.

The resolution of sticky problems through ADR is an effort to resolve conflicts where Settlement through public shutter to private shutter. However, this condition sometimes invites different principles from the judiciary [6]. Conflict resolution with ADR is one way that has begun to be implemented, which is one of the efforts to overcome obstacles when conflict resolution through legitimation is felt to be a bit slow due to the legacy process must go through administrative precept and others. Dispute Resolution using the Sdov Mechanism is a tradition of dispute resolution in indigenous law communities, which tend to use "customary patterns" or, in other terms, it is often called a "kinship pattern." This pattern is applied not only for customary disputes; nevertheless, it defers compensation or punishment to violate customary law. Penalties are still enforced in the form of body penalties and property compensation. The application of this sentence positively depends on the type and severity of the dispute between the parties. It is important to emphasize that the fundamental nature of dispute resolution in customary law is to realize peace comprehensively. In this case, the peace referred to is to the parties or actors and victims, and peace as a concern to the community. Therefore, the approach was used based on a persuasive approach to dispute resolution by using indigenous language and religion, so awareness from the parties insignificant in living in the world if there are disputes and actions caused by other people. The purpose of resolving disputes in customary law is the realization of permanent peace [15].

The purpose of the research is to determine the people and government's understanding in the Kei archipelago towards the Settlement of disputes through the mechanism of SDOV (Negotiations) based on customary law Larvul Ngabal (Customary law which regulates all aspects of people's lives).

Research Methodology

Type of Research and Approach

This research is classifying as the type of empirical legal research or commonly called Non-Doctrinal Legal Research. This is based on the idea that this study determines the mechanism of SDOV (negotiation) as an Alternative Dispute Resolution in the Kei Islands.

This study used a juridical-socio-cultural approach grounded by the notion that legal pluralism is defined as the co-existence between various legal systems in a particular social field study and strongly emphasized the dichotomy between state law on the one hand and various kinds of

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people's law. Also, it's identified as " moving law. " That law is inseparable from the life of the community in the form of values and attitudes/behaviors that are carried out (non-autonomous law) so that in the view of empirical science (empirical rechtswetenschap), the study of law is not only concerned with nor

Research Sample

This research was conducted in Southeast Maluku Regency and Tual City, located in the Kei Islands. The reason to select Southeast Maluku Regency and Tual City as research sample, because this sample was the conflict area, also as as the pioneer of the civilization in the Kei archipelago, the whole community was divided into two major alliances; were called the Lor Siw community, Lor Lim in addition to a small alliance was labeled Lor Lobai, but depend on the distribution system, it was exclude based on island plots, but only the Raschap territory.

Data Analysis

This research was conducted in the scope of theoretic interpretation, which underlined legal sociology. The legal, sociological approach to determine the causes of law enforcement official's indiscipline's of their duties and responsibilities in the dispute resolution process of Kei island, through criminal justice, but utmost it was completely resolved by the method of sdov (negotiations), which representative of mechanism for local larvul ngabal customary legal. As empirical legal research with a cultural, social juridical approach, the data analysis technique was analytical descriptive. Descriptive analysis techniques will be conducted after collecting the data, then organizing and categorizing based on the pattern and theme, besides the processed data. The data will analyze and interpret based on variables, symptoms, or data conditions collected through observation, interviews, and documents in the next stage. Data analysis refers to organizing data into a database in the framework of interpreting data, and the last phase was tabulated based on the research data analysis procedure.

Data analysis is an activity that conducts a study or review of the results of data processing, which are underlying theories that have been obtained previously based on the facts that occur in the community, which referred to the process of determining horizontal conflicts in the Kei Islands. The stages of data analysis as follows:

- Stages of data reduction, in this stage, the researcher was examined the data collected through observation, interviews, and documents of the study, that in purpose to be selected and sorted in conscience with the sub-topics following the purpose of writing stages of data presentation.
- In this stage, the researcher was presented or analyzed based on the data obtained writing.

- In the conclusion stage, this step interprets the writing results predetermined to conclude the data that acquired the writing process.

Result and Discussion

Sdov as an Alternative Dispute Resolution (ADR) by the Community

The results of the study showed that the dispute resolution or conflict that occurred in the Kei community, whether the dispute of civil or customary law, using the Sdov mechanism, it can mean that the custom is the perimeter of disputing community so that the dispute resolution process will certainly use such a mechanism. Sdov as a customary system Larvul Ngabal has been growing as unique manifest characteristics, such as in the mechanism of conflict resolution decision-making, consistently uninvolved of consensus meetings. Still, the parties are only visited or invited to obey custom leaders' customary doctrines when conflicts occurred among the people. They will prevent the conflict from arising in the future so that Sdov is an alternative to clutch the dispute rather than forceful by the formal court. [4] states that SDOV (commonly known as ADR or "Alternative Dispute Resolution," is generally used in the context of civil cases, not for criminal cases, based on legislation in force in Indonesia when this (positive law) in principle criminal offenses cannot be resolved outside the court. However, in certain cases, it is possible to settle a criminal offense outside the court. In customary law communities, mediation can be used to resolve criminal cases. For example, horizontal conflict in the Kei archipelago, persecution or murder, is inevitable, but traditional leaders in the initiative to resolve this case used an approaching SDOV mechanism to the victims, victims' families, and with the perpetrators and also the families of the perpetrators. The family's involvement has been standing paramount because, in the customary community, the family is the foundation of elevating blood relations among family members. The Settlement of disputes or conflicts as carried out by the Kei community's customs system produced a process of conflict resolution. The results of [9] research also show that the value of local wisdom, namely pela gandong in Maluku, is local wisdom that plays an important role in reconciliation to reunite communities' solidarity, which separated by conflict. Next is [11]; [17]; [10]; [16]; [12] stated that the adapt system/value of local wisdom in the local community was one of the processes of conflict resolution.

Meanwhile, [14] stated that a settlement process from "lower level to top" actors and approaches to resolve the conflicts or creating peace originated from a community leader by custom leaders and also the leaders among groups of grassroots communities to reach mutual agreement and later negotiations between conflicting groups are conducted on. This shows that resolving conflicts originated from the lower classes of society because these lower classes of society are active and directly involved in a conflict. Also, the use of customary institutions or institutions is an approach that acceptable in society and culture. Furthermore, [7] stated that peace in the form

of a triangle, as follows direct positive peace, consisting of verbal and physical kindness; those things were intended to all basic needs, which concerned survival, prosperity, freedom, and identity. Love is a symbol of the union of body, mind, and soul.

Also, the customary doctrine of Larvul Ngabal was prominent in terms of sacred and binding by the people of Kei because to establish the status of the conflicting parties, and there were also moral sanctions and traditional oaths. Such a mechanism is often found in resolving civil conflicts. The structures and forms of decision making are different from other customary systems and those contained in ADR. The structure of decision making on each case can be structured from (top-down) or (bottom-up) from the local customary institution (according to the object of the dispute and its context). In case of dispute resolution forum, if the dispute is occur feared to recalculate and co-opt to many people whether civil law and civil code or political conflicts and racial intolerance, then the forum is executing to represent all the traditional elements in the RAJA or Ratshap area. This act intends to gain the public's legitimacy towards decisions taken by traditional leaders and as anticipatory steps or early warnings on the possibility of a conflict that will be crucial and involves many parties. The purpose of this mechanism and process of customary decisions is to overcome an atmosphere of conflict into the condition of a society that lives peacefully and kinship. Sdov's substance in resolving the conflict with the Larvul Ngabal custom system above is in line with the objectives of mediation and negotiations developed by peacebuilding practitioners as in the analysis of Nelson et al., referred to by Paul. Three main elements are related to mediation and negotiation processes:

- Creating an open relationship between the conflicting parties.
- The process is carried out through communication with one another, in terms of constructive dialogue.
- Under the mutual agreement that can restore a damaged or disturbed relationship.

Thus, it can be said by Sdov in the process of resolving the conflict with the traditional system Larvul Ngabal rather different from the alternative process of conflict resolution using mediation, arbitration, and litigation. As a comparison material is made in the following table: Following the comparison of the conflict resolution process above, it can be concluded that there is a similarity significant in terms of solving the conflict or problem between the mediation process and Sdov because the mechanism was used in resolving the conflict is informal. Mediation is focusing on concern about a goal in the process. Sdov uses Larvul Ngabal customary law beside the process, and the main goal is to settle and reconcile. On the other side, litigation and arbitration are rather formalistic in resolving conflicts by obtaining legal certainty as a goal.

Sdov's function in Larvul Ngabal's customary system as a system of conflict resolution in the Kei Islands has been standing on legitimacy in the community as a means of a complaint and a

"justice" non-formal institution in resolving any problems that occurred in the community. The public's expectation of the implementation Larvul Ngabal customary system after the social conflict in Southeast Maluku has a high enough intensity. The phenomenon is indicating that their appraisal in conducting peacebuilding-peacekeeping-and peace-making for all communities in Southeast Maluku. All of the components are standing in line with the customs system as an indigenous society. Because the motto of their custom is "adat imtaha fabatang, the rule of law which is nuhu tanat anti nahar suen," it means that every child of an indigenous society must hold and maintain the customary law (Larvul Ngabal) in all consideration (Renuat, interview). As a traditional society, they prerequisite all of the tradition to develop morality's foundation to bound their lives in harmony.

The customary jargon at least gives a signal to every indigenous individual of Kei, who is in a state system in all system of executive, legislative and judicial to be able to abolish customary values into the area of service, especially in the aspects of determining people's rights and resolving conflicts. At the empirical-realistic level, the Larvul Ngabal custom system as an ADR, through its customary institution Ursiw-Lorlim (Patawiwa-Patalima), has made a positive contribution to the development of the Southeast Maluku community as a respected, safe, and peaceful social community in pluralism. The level of customary participation as an alternative system of resolving the conflict's political nuances, which is standing as a part and social responsibility that at the end has given its color in the average national life. All social segmentation systems have limited space and time dimensions, and Larvul Ngabal developed in the genuine heterogeneous and multi-ideological community. Nevertheless, the fragmentation of the larvul Ngabal custom system towards the complexity of the conflicts that have occurred has shown an alternative media and social capital and national cultural repertoire that must be preserved and maintained for eternity. This is in line with [1] research. It stated that traditional dispute settlement is the ultimate goal of achieving community peace without seeing the perspective of right or wrong or losing or winning by each party in which dispute. Continuously, based on the same perspective in the study [2], orderliness and concord in the community can be maintained by preserving our customs. Furthermore, in [8], he stated that each region's existing local culture is the proper media or tool to overcome and control social conflicts that occur.

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Local Wisdom (Larvul Ngabal) As Conflict Resolution

The life of a pluralistic society throughout Indonesia illustrates the sharing of tribes and customs in which each region has customary laws that are followed, relationships based on culture and religion are culture and characterize the local wisdom of the local community. In Maluku, the culture of Pela gandong and Larvul Ngabal is local wisdom, which is still maintained as a medium for conflict resolution. Larvul Ngabal, the Kei community's culture and the philosophy of Ain ni ain and vuut ain mehe ni manut eggs ain mehe ni ngun, is local wisdom that is still preserved until now by the Kei community.

Customary law is part of customary law and rules that are inseparable from customs. Larvul Ngabal Law is a customary law that regulates the life of all Kei community arrangements that have lasted until now, and the customary Larvul Ngabal law is not only implemented in the life of the Kei people residing in Kei, but this law still applies even though the Kei community is outside the Kei archipelago. This shows that the Kei community has a high awareness of the values of their local wisdom. Local wisdom is a cultural superiority that ignores various cultural advantages possessed by the people in a region. This means that each region has local wisdom based on its culture, so a comprehensive understanding and knowledge of cultural values that characterize local cultural wisdom in the region is needed. This is in line with the opinion [3] states that local wisdom is a source of culture as an embryo in people's lives, an important social cohesion element between communities. Conflict resolution in Indonesian society, especially in rural areas, prefers local institutions as local wisdom in resolving conflicts [13] states that local wisdom is a source of culture as an embryo in people's lives an important element as social cohesion between people. In Indonesian society, conflict resolution, especially in rural areas, prefers local institutions as local wisdom in resolving conflicts. Conflict resolution that occurs in Indonesian society especially in rural areas prefers local institutions as local wisdom in resolving conflicts

Larvul Ngabal law is a law that still exists and is maintained, which is a pearl of local wisdom made to strengthen the relationship between one another in terms of brotherhood; the legal value of larvul ngabal custom is social-cultural capital as social integrity [5]. Larvul Ngabal's Manuscript: Original published in: Productivity management, (1), GITO Verlag, P. 910-918, ISSN 1868-8519, 2020

customary Processes and decisions in conflict resolution have been effective because they were accepted by the Kei community, in both of the problems were resolved by customary mechanisms and as a verse, because in making decisions, preceding a traditional leader carrying out traditional oaths were binding parties in conflict and who decide the case. This is in line with the research of [10], stating that customary institutions' role in solving problems is strongly significant. Furthermore, [17] states that conflict resolution using adat is more efficient, effective, and fair. The resolution of conflicts has taken into account the community's interests, individuals, and parties to the conflict. The same thing was conveyed by [13], that the resolution of conflicts using customary law further prioritized the relationship of brotherhood, harmonization, and peace between the warring parties. The legal role of larvul ngabal in conflict resolution is the basis of the entire Kei community, and this has proven to be the main choice in conflict resolution.

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Conclusion

The conclusions from this research are Settlement of disputes or conflicts that occur in the Kei community regardless of the form of dispute, whether civil or customary law using the Sdov mechanism, Sdov as a Larvul Ngabal customary system. Larvul Ngabal's traditional doctrine is extraordinarily adhered to and feared by the Kei people because it is determining the status of the conflicting parties also moral sanctions and oaths

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References

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- [1]. Abdurrahman. Penyelesaian Sengketa melalui Pendekatan Adat. *Kanun: Jurnal Ilmu Hukum*, 12(1), 127–136, 2010.
- [2]. Amalia, N., Mukhlis, M., & Yusrizal, Y. Model Penyelesaian Sengketa Dan Peradilan Adat Di Aceh. *Jurnal Hukum Ius Quia Iustum*, 25(1), 159–179, 2018.
- [3]. Bakri, H. Resolusi Konflik melalui Pendekatan Kearifan Lokal Pela Gandong di Kota Ambon. *The POLITICS : Jurnal Magister Ilmu Politik Universitas Hasanuddin*, 1(1), 51–60, 2015.
- [4]. Brown, Miller, Cote, L. *Nationalism, and Ethnic Conflict (Revised Ed)*. Retrieved from Books.google.co.id, 2001.
- [5]. Bukido R, Rumkel N, Wekke IS, P. E. Customary Law of Larwul Ngabal in The Implementation of Regional Autonomy in North Moluccas. *Rev. Hukum Hasanuddin*, 4(2), 2017.
- [6]. Diah, M, M. Prinsip dan Bentuk-Bentuk Aternatif Penyelesaian Sengketa di Luar Pengadilan. *Hukum Dan Dinamika Masyarakat*, 5(2), 2008.
- [7]. Galtung, J. *Pioneer of peace research*, 2013.
- [8]. Ismail, N. *Perubahan Sosial-Budaya Komunitas: Agana Dam (1st ed.)*. Retrieved from books.google.co.id, 2016.
- [9]. Jati, W. R. Kearifan Lokal Sebagai Resolusi Konflik Keagamaan. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 21(2), 393, 2013.
- [10]. Kamaruddin, K. Model Penyelesaian Konflik Di Lembaga Adat. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 21(1), 39, 2013.
- [11]. Kumolohadi, R., & Andrianto, S. Resolusi Konflik dalam perspektif Psikologi Lintas Budaya. *Psikologika : Jurnal Pemikiran Dan Penelitian Psikologi*, 7(13), 2002.
- [12]. Ode, S. Budaya Lokal Sebagai Media Resolusi Dan Pengendalian Konflik Di Provinsi Maluku (Kajian, Tantangan Dan Revitalisasi Budaya Pela). *Budaya Lokal Sebagai Media Resolusi Dan Pengendalian Konflik Di Provinsi Maluku (Kajian, Tantangan Dan Revitalisasi Budaya Pela)*, 6(2), 93–100, 2015.
- [13]. Rahayu SR, Mulyanto, M. A. Penguatan Fungsi Kepala Desa sebagai Mediator Perselisihan Masyarakat Di Desa. 5(2), 2016.
- [14]. Ramsbotham, Woodhouse, M. H. *Contemporary Conflict Resolution: The Prevention, Management and Changing Political, Social, Religious, and Racial Sources of Conflict*, 2005.
- [15]. Sande, K. *The Peacemaker: A Biblical Guide to Resolving Personal Conflict (third edition)*. Retrieved from www.Bakerbook.com, 2004.
- [16]. Surya, F. A. Tinjauan Mediasi Penal Dalam perspektif Hukum Adat dan Hukum Islam. *Jurnal Jurisprudence*, Vol. 5 No. 2 September, 5(2), hlm. 118, 2015.
- [17]. Tamarasari, D. Pendekatan Hukum Adat dalam Menyelesaikan Konflik Masyarakat pada Daerah Otonom - Neliti. *Jurnal Kriminologi Indonesia*, 2(I), 37–47, 2002.