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Cover Page Footnote

** Doctoral Program in Law, Universitas Indonesia. *** Professor of Anthropology of Law, Faculty of Law, Universitas Indonesia **** Associate Professor, Faculty of Law, Universitas Indonesia. In field research, researchers encounter a lot of reactions from people who are dissatisfied with court decisions or government officials' policies. the reaction is actualized by imposing hawear (customary prohibition mechanism) on the disputed location. Communal ownerships. At this time, the Southeast Maluku Regency area at the time Pannell conducted the research had been divided into five regencies/cities, namely Southeast Maluku Regency (parent), West Southeast Maluku Regency, Aru Islands Regency, Southwest Maluku Regency and Tual City. The Kei tribe inhabits Southeast Maluku Regency and Tual City. Nevertheless, Freeman argues that although the civil law system agrees in denying absolute authority to judicial precedent and giving more weight or tends to be based on written law, in today's modern civil law system there is no complete unity between theory and practice. See M.D.A. Freeman, Lloyd's Introduction to Jurisprudence, Thomson Reuters, London, 2008, page:1541. Interviews were conducted with six Rat (The King - one Rat was represented by Kapitan due to health reasons), eight Orangkai and Chief Officer of Ohoi, as well as the local community. In an interview conducted at the House of King Ohoilim Tahit, Ohoi Faan, on 6 February 2019. In an interview conducted at the House of King Rumaat, Ohoi Rumaat, on 8 February 2019. In an interview conducted at the House of Orangkai Ohoider Tutu, Ohoi Ohoider Tutu, on 21 February 2019. In an interview conducted at the House of Orangkai Kolser, Ohoi Kolser, on 21 February 2019. Soa is a form of community or village originating from a homogeneous blood relationship Kapala Soa is a person who leads Soa Ohoi Orangkai is a form of a village that is bigger than Soa and has heterogeneous blood ties to its inhabitants Orangkai is a person who leads Ohoi Orangkai In an interview conducted at his home, Perumahan Guru, Sub-District of Ohoijang, on 1 February 2019 The smallest unit is a collection of family members in one family name. Lor is the alliance of Rat In an interview conducted at the Faculty of Social and Political Sciences, Universitas Pattimura, on 10 March 2019. Ohoi is a word that the Kei people use to refer to a village (kampung) or village (desa). Ratschap is a unitary customary territory under a King Rat is the term used to refer to a king Is a communal ownership right to an area Is a term in the Kei Language for deliberation. Is an alliance of Rat. Lor Lobai is often positioned as a neutral party in resolving disputes between the Ur Siw alliance and the Lor Lim alliance because it is not part of the two alliances. Kinship is based on the blood ties of female descendants. The right to take part in enjoying natural products or other resources from an object without ownership rights. This right may come from kinship from the female descendants or certain agreements with property rights holders.

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Customary Law or State Law: The Settlement of Marine Resource Disputes in The Kei Islands Community

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Abstract

The Kei Islands natives have applied a case settlement system, known as the customary judiciary, since the olden days. This is a forum in the Larvul Ngabal customary law system with a high authority that is widely obeyed and used in resolving disputes by the community. Through a field approach, this research aimed to explain the continued use of the settlement of natural resource disputes by a "customary judge" in the Kei Islands as a reference by the community. The findings revealed that customary settlement forums are still employed in resolving natural resource disputes because they provide a sense of justice. Customary settlements are aimed at punishing the perpetrators as well as diminishing the impact of the dispute on victims, their families, and the social environment. The research also discovered that the settlements utilized in the Kei Islands developed from the dated dichotomy to produce hybrid dispute resolution models.

Keywords: customary dispute settlement, marine resources, legal pluralism, Kei Islands

Abstrak

Masyarakat di Kepulauan Kei sejak jaman dulu telah mengenal suatu sistem penyelesaian perkara yaitu Sidang Adat, suatu forum dalam sistem hukum adat Larvul Ngabal yang mempunyai otoritas tinggi, dipatuhi masyarakat dan kerap menjadi pilihan utama dalam menyelesaikan sengketa. Penelitian ini bertujuan untuk menjelaskan bagaimana proses penyelesaian sengketa sumber daya kelautan oleh "hakim adat" di Kepulauan Kei masih menjadi acuan masyarakat, dan apa alasannya? Penelitian ini menemukan bahwa forum penyelesaian adat masih digunakan untuk menyelesaikan sengketa sumber daya kelautan dan dianggap lebih memberikan rasa keadilan. Penyelesaian adat bukan hanya bertujuan untuk menghukum pelaku saja, tetapi juga memulihkan dampak sengketa terhadap para korban secara individual, keluarganya dan lingkungan sosialnya. Penelitian ini juga menemukan bahwa penyelesaian adat yang dilaksanakan di kepulauan kei telah berkembang dari dikotomi lamanya dan cenderung menghasilkan model penyelsaian yang hibrida.

Kata kunci: Sengketa, forum penyelesaian sengketa adat, keadilan, Kepulauan Kei.

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I. Introduction

The settlement of cases by state courts is a common occurrence in society that occasionally results in the dissatisfaction of victims. This dissatisfaction is due to the victim's lack of a sense of justice, where the perpetrator is released or given a light punishment because the crime failed to fulfil the formal legalistic requirements. Also, the perpetrators may be disappointed with the verdict of the court, as it may be considered very severe or excessive in comparison with the offense.

The public's response to this dissatisfaction is varied, as it either becomes a suppressed and unexpressed feeling of revenge or may trigger the rise of new conflicts, which may be reciprocated.[1] The rise of such conflicts often occurs in three successive stages. According to Nader and Todd, conflict begins from complaints or dissatisfaction, also known as the pre-conflict stage. This develops into the conflict stage, which will result in disputes without implementing effective resolution (Nader and Todd, 1978). The stages are correlated, and the presence of resolution in the middle of the first or second stage prevents further occurrence. However, conflict may arise as a spontaneous reaction shortly after the verdict is made.

Meanwhile, various research has been conducted on marine resource conflicts and their resolution as well as mechanisms for protecting natural resources in the Kei Islands. In 2003, Adhuri found that the reason for conflicts was that the function of communal ownership of the sea as a means of managing marine natural resources seemed to lose out on its social function. Elites in several villages offered marine *petuanan*[2] to businessmen, who made destructive arrests to win the contestation of village leaders through economic and political support (Adhuri, 2003). Adhuri also conducted a series of follow-up research related to the conflict of marine natural resources in the Kei Islands.

Pannell also explored the absence of divisions in Southeast Maluku Regency, where several different sub-ethnic regions were considered a part of the Kei sub-ethnic area.[3] In the research on Luang Island, Pannell concluded that sasi has a different meaning for different interest groups and was enjoyed by traders as an opportunity to monopolize

[1] In field research, researchers encounter a lot of reactions from people who are dissatisfied with court decisions or government officials' policies. the reaction is actualized by imposing *hawear* (customary prohibition mechanism) on the disputed location.
[2] Communal ownerships.
[3] At this time, the Southeast Maluku Regency area at the time Pannell conducted the research had been divided into five regencies/cities, namely Southeast Maluku Regency (parent), West Southeast Maluku Regency, Aru Islands Regency, Southwest Maluku Regency and Tual City. The Kei tribe inhabits Southeast Maluku Regency and Tual City.

seafood (Pannell, 1997). Prior to Pannell, Zerner (1994) also examined sasi in a wider area, namely Maluku Province as a whole.

More specific research by Craig Thorburn showed that many external factors impact social and economic changes in the Kei community, including marine resource management. One influential factor was the arrival of the Dutch colonials at the end of the nineteenth century (Thorburn, 2000). In another research, Thorburn stated that the gift of natural wealth and high economic value in the marine sector provides benefits as well as conflict and environmental destruction. The novelty of this research is the use of a scientific approach, as this legal research employed other sciences to understand the law from the perspective of legal pluralism (Thorburn, 2001).

For years, legal experts have sought the best format for resolving cases that will satisfy all parties, including the use of the available legal options. However, countries that utilize judicial or civil law systems where the state court is the only place to settle cases may experience challenges. In these civil law systems, the community must accept the verdict of the state court based on written law, regardless of the satisfaction of the involved parties.[4] Ehrlich also argued that similar to the past, the center of gravity of the development of law is in the community, not in official rules, the science of law, nor in the verdict of judges. The law can only be fully understood from the beginning when it functions in a community (Ehrlich in L.B. Curson, 1979). Ehrlich's argument described the condition of people who seek a dynamic sense of justice, which cannot be achieved through sole reliance on the laws or static legal science, while society continues to develop in a complex manner.

The idea of a centralized law often creates a gap between legal actors in a pluralistic social field. According to Moore, the law in the sense of a nation is one of the factors that influence people's decisions or actions. This necessitates examining the aspects of the relationship between the national law and the social life of the community. Moore also explained that many laws can function properly, providing the government and the people within consider social factors in applying and enforcing these rules. Judges and legislators may involve the customary law in making their verdicts. In addition, a semi-autonomous

[4] Nevertheless, Freeman argues that although the civil law system agrees in denying absolute authority to judicial precedent and giving more weight or tends to be based on written law, in today's modern civil law system there is no complete unity between theory and practice. See: M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence*, Thomson Reuters, London, 2008, page:1541.

social community can transform the rule of law into customary (Moore, 1983), as people take an action based on their perception of the law.

Anne Griffiths also stated the perception of law depends on the model or paradigm applied to its recognition and may vary according to the supporting methodological and epistemological approaches. Griffiths argued that paradigms play a significant role in formulating jurisdictional issues, suggesting that authority and legitimacy influence the success or failure of claims pursued by society and institutions. The research further explained that the fate of this claim at any level depends on the extent of its agreement or accordance with the dominant legal model applied. The failure to meet the standards promoted by this model or paradigm will lead to the disregard or exclusion of such claims from the domain they seek to operate (Griffiths, 2011). From a sociological point of view, Roger Cotterrell explained that empirical questions on the degree and form of its cohesion, distinctiveness, or specificity always exist. Law enforcers operating between different legal systems may experience different realities and occasionally encounter difficulty building a common discourse. Further explanation showed that even within the same system, almost all views on legal issues may vary radically between different actors (Cotterrell, 2006). This is a fact that may be experienced in daily interactions with the law.

Diverse objectives have underpinned the diverse reasons of actors in making decisions during interactions in society. Basing the idea of achieving justice, expediency, and legal certainty on distinct reasons would cause a stark contrast. This is because a norm would receive a different response supposing the legal process performed by the actors is based on distinctive characteristics. Concerning this issue, Banakar expressed the belief that normativity is used to explore the reasons an individual feels obligated to act in a specific way in various circumstances. The idea of an obligation to act in a particular way where several alternatives to performing an activity exist requires a conscious commitment to the norm and is related to the internal or non-empirical aspects of the norm. Banakar also argued that the efficacy of a norm depends on the social function and the authority of its source, which requires acting in a specific way. Society may follow some rules because they fulfill certain social functions or uphold some values. This means norms generally remain valid, but the internal aspects may provide reasons for people to act in certain ways (Banakar, 2015). Banakar argued that these internal aspects underlie the typical actions of society without disregard or remain based on generally accepted norms.

The typical actions of the community can be examined without ignoring or remaining dependent on the norms that apply to the actions of the Kei community in solving their problems. There is great legitimacy from the community to customary authorities and law in resolving disputes that occur. Customary law often determines people's actions and perceptions of the law.

The indigenous people of the Kei Islands, Maluku Province, Indonesia, are heterogeneous in terms of religious composition but practice a customary law system known as the *Larvul Ngabal Law*. Since the olden days, this community has applied the *customary judiciary* as a highly authoritative and respected mechanism for resolving cases. This form of settlement is legitimized by customary law to accept cases, investigate, judge, and ensure that the verdict is obeyed by the parties involved. As stated by Laksono, the Maluku people believe the Kei people are still very adamant about maintaining their customs (Laksono, 2016).

Consequently, this research explained the existence of the Kei people with the law, the regulation and resolution of natural resource disputes using the customary law, and the process used by "customary judges" that serves as a reference for the community. The reason for selecting customary settlement and the development of this hybrid mechanism from the old dichotomous dispute resolution mechanisms were also examined.

II. Research Methodology

This socio-legal research was conducted through field observations in the Kei Islands, Maluku Province, Indonesia, supported by the literature. Data collection was conducted using direct observation of facts, social attitudes, and behaviors, as well as interviews with parties who possessed information and knowledge about the topic.

The field research was conducted in the Kei Islands, particularly Kei Kecil and Dullah Islands, between June 2018 and April 2019 to gather information and knowledge through direct observations. Many problems and disputes regarding natural resources and other issues that occurred during the observation period were resolved through customary mechanisms. However, some courts cannot be accessed easily by outsiders without connections to a case, while certain settlements that can be observed cannot be disclosed. This is because the principle of the customary court in Kei prohibits the public disclosure of case settlements, particularly those related to the disgrace and dignity of a person. The reason is to maintain the dignity of all parties, including the perpetrators of crimes, except for cases involving the public interest. One of the cases observed was regarding the theft

of fish from fishermen outside the area, which garnered complaints from the public but was yet to be resolved by the state apparatus.

Interviews were conducted with the elders, leaders, and members of the community. Six kings, of which one was represented by *Kapitan* due to old age and an illness, eight *Orangkai* and village head officials, government officials, police, academics, cultural practitioners, and advocates. Some parties who had been involved in resolving disputes through customary courts were also interviewed. Since the opinions of the community members and traditional leaders were similar, accounts from cultural observers were used to represent statements from community members.

Generally, literature exploration is needed to acquire data from previous research, documents, and other materials that can support the analysis process. The research findings of Laksono, Zerner, Thorburn, and Adhuri were used to assist in understanding and analyzing the discoveries in the field.

III. Findings

A. The People of Kei and Their Life with the Law

The Kei Islands are an area consisting of islands within the administrative area of the Southeast Maluku Regency and Tual City in Maluku Province. The inhabitants are a sub-ethnic group in Maluku known as the Kei Tribe or Kei people.

According to community narratives and historical records, the ancestors of the Kei Islands were migrants from various regions and cultures who united through interactions over centuries to form a tribe. According to Geurtjens, these immigrants have cohesively practiced the same language and customs (Geurtjens, 1921), which are still highly regarded in the community.

The customary law of these people is known as the *Larvul Ngabal Law*. According to Craig Thorburn, this law functions to mediate and regulate all kinds of community relations and interactions. It aims to realize, preserve, enforce, and restore harmony or balance (Thorburn, 2000).

The *Larvul Ngabal* Law has three thematic sections, which contain three main ideas. They are the *Navnev* Law, *Hanilit* Law, and *Hawear Balwirin* Law, which regulates human life, morality, as well as property and social justice, respectively. The three main ideas were initially separated before extraction into seven dictums or articles. The contents of the seven main dictums of the *Larvul Ngabal* Law are:

1. *U'ud entauk atvunad*
2. *Lelad ain fo mahiling*
3. *Ul nit envil atumud*
4. *Lar nakmut ivud*
5. *Rek fo mahiling*
6. *Moryain fo kelmutun*
7. *Hira ni en'tub fo i ni, it did fo it did*

During the field observations and interviews[5], the people admitted to being governed by many laws and legal settlement options. There are at least three laws and options for legal settlement, namely customary law, also known as "*hu'kum*", or distinguished from other laws named as "*Adat*", religious law or "*Aigam*", and state law, which is called "*Kubni.*"

Similar explanations from the informants signified that the existence of the three laws was not a choice, as they were obliged to observe them simultaneously. The only option is the specific law to be used in resolving the cases or conflicts. In practice, some people use one, two, or three laws to solve their issues.

Patrisius Renwarin, the King of *Ratcshap* Ohoilim Tahit[6], stated that customary settlements are preferred by the people and apply in almost every case, except in serious cases, such as murder or severe abuse, which will be handed over to the police. He also stated that some parties involved in conflicts ruled as criminal cases sought customary settlements. This is performed to remove the moral burdens on the community and ancestors.

A similar statement was conveyed by Antonius Setitit, the King of *Ratschap* Rumaat[7], who asserted that the people seek recourse in court for serious criminal cases such as murder. Besides such issues, other forms of conflict are resolved through customary law, thereby easing the burden of the state. The opinion of this king aligned with other Rats, namely Sodri Renhoran, the King of *Ratschap* Lor Tel Varat, Haji Muhamad Hanubun, the King of *Ratschap* Danar, Abdul Hamid Rahayaan, the King of *Ratschap* Tubav Yam Lim, and Abu Salam Renuvat, the Kapitan of *Ratschap* Ibra representing the King of *Ratschap* Ibra.

[5] Interviews were conducted with six Rat (The King - one Rat was represented by Kapitan due to health reasons), eight Orangkai and Chief Officer of Ohoi, as well as the local community.
[6] In an interview conducted at the House of King Ohoilim Tahit, Ohoi Faan, on 6 February 2019.
[7] In an interview conducted at the House of King Rumaat, Ohoi Rumaat, on 8 February 2019.

Mr. Adolf Marcus Teniwut, the *Orangkai Ohoi* Ohoider Tutu[8], held a different opinion, asserting that all cases or issues can be solved by customary law, as the ancestors formulated excellent and detailed laws that cover all aspects of social life. Although serious criminal cases involve the police, they are usually returned for resolution through customary law. This figure further explained that one customary settlement was recently completed for a murder case, which was being handled simultaneously by the police. The reason for selecting customary law for settlement, despite being decided in a state court, was strongly influenced by religious factors that had become public beliefs. Customary settlements are considered to provide moral certainty and relief from the actions committed, and disobedience of this verdict is believed to be punished by invisible judges.

Joseph Maturbongs, the Chief of Ohoi Kolser[9], attested that almost all civil and criminal cases were brought for customary law settlement. Although some issues may be taken to court, particularly in serious criminal cases, the opinions of the elders were usually considered, specifically for civil disputes. He further explained that some civil cases resolved in court only serve as court decisions but are not executed in the community. This is because the locals have lived within their mechanism and order since the time of their ancestors, and the system is highly revered. This statement was also supported by the accounts of several *Ohoi* Chiefs and Chief Officers and illustrates the high legitimacy and trust in the customary settlement, thereby resulting in its great authority in solving cases. The supporters were Mr. Lutfi Renwarin and Lambertus Songbes, the Chiefs of *Ohoi* Ibra and *Ohoi* Evu, respectively, Johanes Ohoiwutun, Former Chief of *Ohoi* Danar Lumefar, Sugi Leisubun and Ferdinand Labetubun, the Chief Officers of *Ohoi* Wain Baru and *Ohoi* Elaar Lamagorang, respectively, alongside community leaders Gregorius Rahawarin and Liberatus Wokanubun.

These findings signify the continued practice of customary settlements in the Kei Islands as the community's choice of dispute resolution. Kei's custom also requires the community to obey religious and state laws. Although the people are free to select their preferred law for resolving their cases and conflicts, this freedom is interpreted narrowly because the community is still bound by customary law. The freedom to select a mechanism for legal settlement is granted to residents who are genealogically native to the Kei Islands or known as "*Tomat Evav*", as well as immigrants or "*Tomat Mav*". In

[8] In an interview conducted at the House of Orangkai Ohoider Tutu, Ohoi Ohoider Tutu, on 21 February 2019.
[9] In an interview conducted at the House of Orangkai Kolser, Ohoi Kolser, on 21 February 2019.

practice, this customary settlement process also involves elements and regulations of religion and the government or state. This process of engagement and adoption often tends to produce a hybrid process.

B. Settlement of Marine Resource Disputes in the *Larvul Ngabal* Customary Law

In principle, the settlement of marine resource disputes through customary law in the Kei Islands is similar to the resolution of other forms of conflicts. This settlement is based on the seventh dictum of the *Larvul Ngabal* customary law, which reads *Hira ni en'tub fo i ni, it did fo it did* in the Kei Language. It is the third thematic part of the *Larvul Ngabal* law, namely Hawear Balwirin, which regulates ownership.

Compared to the other dictums, which are narrated using symbols, the seventh dictum reads, "*Hira ni en'tub fo i ni, it did fo it did"*, meaning "others' possession remains theirs, ours becomes ours". It is a direct narrative devoid of certain items or objects as symbols. The meaning of the word "possession" is extensive and may be attached to a physical or metaphysical object. The interpretation of this dictum requires everyone to respect personal and public possessions, to which rights and obligations are attached.

In the course of a dispute settlement, the pre-conflict phase is marked by the implementation of *Hawear*, which is a customary law mechanism to regulate the management and conservation of natural resources. This term is generally known as *sasi* and defined as a prohibition issued by an authorized customary institution to anyone without the right to take, use, and/or enjoy certain resources. *Sasi* is called *Hawear* in the sense of a statement of prohibition in Kei society and *yutut* in Kei Kecil society or *yot* in Kei Besar in reference to a sign of prohibition.

The mechanism of *Hawear* implementation is arranged in a sequence based on tradition, which is normatively considered the formal customary law. The order is adjusted to the level of the jurisdiction and applied from the lowest level, namely *Soaschap,* to *Orangkaischap* and *Ratschap*. Generally, the process begins with *sdov* or deliberation, followed by the decision, announcement, and implementation stages.

Subsequently, the conflict phase begins with filing a complaint to the customary apparatus. In an interview, *Rat Ratcshap* Ohoilim Tahit stated that the customary settlement mechanism always starts in the community, as the *Rat* only accepts reports or complaints. The sequence begins with a legal circumstance in the community, which could be a fight, bickering, the violation of a person's rights, or other cases that cause conflict. The conflict may be between individuals, families, groups, or villages. Following

a report by the disputing parties to the customary law authorities, a judiciary will be formed.

A similar statement was conveyed by *Orangkai* Kolser, who explained that the processes of the customary judiciary must commence with receiving a report. For example, a case brought by a Kolser resident to *Orangkai* will be settled through a customary judiciary. Some other disputes may be immediately handled without any complaints, such as the violation of *Ohoi*'s communal right limits or *Hawear*. However, reports or complaints are usually submitted in order to process a settlement.

The explanation above shows that a dispute settlement process by the customary apparatus depends on the filing of reports or complaints from the community. Some exceptions occur, mostly in cases or actions related to the public interest, where the settlement initiative is presented by the customary apparatus.

The succeeding dispute phase is marked by the establishment of the customary judiciary institution. According to the informants, the reception of a report or complaint is followed by setting a date and summoning the parties involved, who must be present before a customary judiciary can begin. The statement of both parties must be heard, after which the judiciary decides on the resolution, magnitude of sanctions, etc. The form of the settlement must also be agreed upon by both parties.

From the observations and explanations, several differences were discovered between the flow of settlement of crimes or violations and conflict or dispute settlement. Figure 1 illustrates the process of resolving a crime or violation, while Figure 2 describes the flow of the conflict and dispute settlement.

Figure 1

Flow of Settlement of Crime or Violation Cases

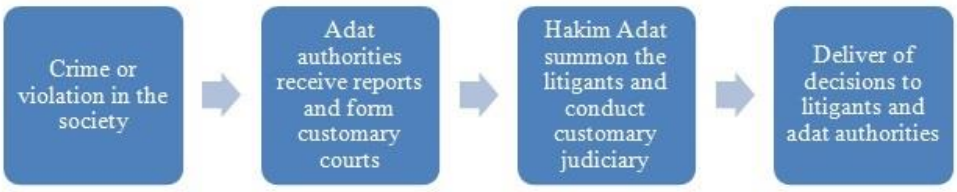

Figure 1 above shows the process of resolving cases of crimes or violations using the customary law in the Kei Islands. It begins with a legal circumstance, which is reported to the customary authorities.

There are three levels of customary authorities in the Kei Islands. The lowest level is *Kapala Soa*, the leader of the customary unitary institution at the sub-village or small village level. The second level is the *Orangkai*, who is the leader of the customary unitary institution in a large village that oversees several sub-villages. Lastly, the highest level is the *Rat* or *Raja*, the leader of a customary unitary institution in a territory of small kingdoms called *Ratschap*. After a report is received by the *Kapala Soa*, *Orangkai*, or *Rat*, a customary judiciary institution is immediately established and directly led by the recipient. The process begins with the summons of the litigants and is followed by a trial. The judiciary closes with the verdict of the judge, which must be conveyed to the perpetrators of the crime or violation as well as the victims and their families. This verdict shall also be submitted to the customary unit in the jurisdiction of the case to ensure its enforcement.

Figure 2

Flow of Settlement of Dispute and Conflict Cases

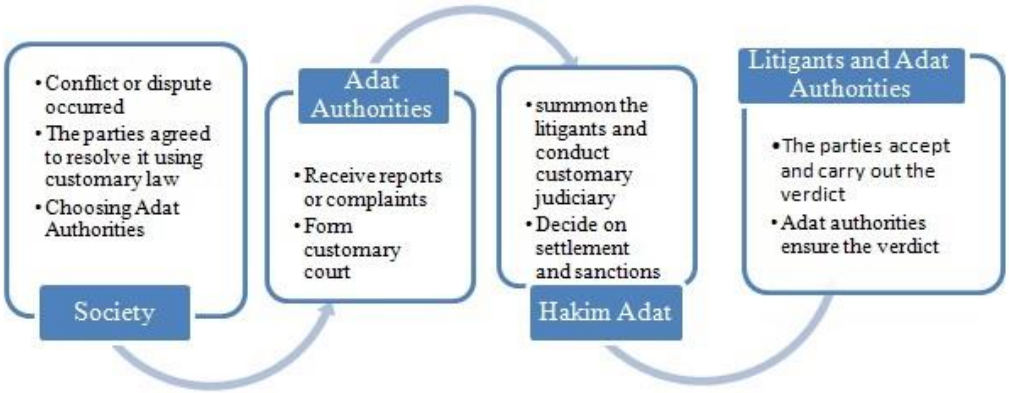

Figure 2 explains the process of resolving conflict and dispute cases, which slightly differs from crimes or violations. It begins with an agreement by the involved to select a judge to resolve the case, rather than from the authority of the customary unitary institution. They may agree to select a wiser, older person, known as the "*Tua-tua Adat*", to become a customary judge or directly seek the authority of the customary institution. For settlements achieved outside the authority of the institution, a notification will be sent for the organization of a customary judiciary and the judge shall be obliged to report his decision to the customary institution, where the object and subject of the case will be ruled. However, cases settled directly by the authority of the customary unitary institution follow the process in Figure 2.

This research also discovered that disputes could be resolved in *Soa*[10], *Kapala Soa*[11], *Ohoi Orangkai*[12] by *Orangkai*[13], or the *Ratschap*, depending on the severity of the case. In situations where the parties are dissatisfied, they may approach a higher customary authority through a process similar to appeals in state courts. The figure below is the flow of an appeal in the settlement of cases through customary law in the Kei Islands.

Figure 3

Appeal Flow for Settlement of Cases

Figure 3 shows that settlements ruled by the *Kapala Soa* or *Tua-tua Adat* may be appealed to the *Orangkai*, which may further flow to *Rat*, whose verdict is final and binding. However, appeals are uncommon because the community has an agreement at the first stage of the trial. This process usually begins with the *Orangkai* or *Rat* rather than the *Kapala Soa* or *Tua-tua Adat*. An appeal against the verdict of *Kapala Soa* or *Tua-tua Adat* may also be directly appealed to *Rat* without going through the *Orangkai*.

Gregorius Rahawarin, a cultural practitioner of Kei[14], stated that though the community could bring a case to the *Tua-tua Adat* for resolution, the existing customary institution is usually approached directly. This means a problem in *Rahan*[15] or *Ohoi* should be resolved within the institution involved, while more serious should be transferred to the *Ratschap*. According to Rahawarin, the people should not be "dissatisfied" with the customary settlement, as they select the institution where the case will be resolved.

[10] *Soa* is a form of community or village originating from a homogeneous blood relationship
[11] *Kapala Soa* is a person who leads Soa
[12] *Ohoi Orangkai* is a form of village that is bigger than *Soa* and has heterogeneous blood ties to its inhabitants
[13] *Orangkai* is a person who leads *Ohoi Orangkai*
[14] In an interview conducted at his home, Perumahan Guru, Sub-District of Ohoijang, on 1 February 2019
[15] The smallest unit is a collection of family members in one family name.

In addition, this research found that a *Rat* can rule cases outside his legal jurisdiction at the request of the *Rat* ruling in that area**.** This is based on the consideration that the other *Rat* possesses more knowledge of the case, there is a connection in the object of the dispute, or to maintain the neutrality of the decision. Several *Rat* may also rule at once in extreme cases, providing they are in the same alliance. There are two alliances in the Kei Islands, namely *Ur Siw*, comprising nine *Rat*, and *Lor Lim*, consisting of eleven *Rat*, and an unallied group called *Lor Lobai*, which is separate from the two alliances and consists of two *Rat*.

Rahawarin further explained that although a case settlement by a *Rat* outside his jurisdiction is allowed, it must be at the request of the *Rat* in charge of the area where the case occurs. The exception is ordinary family matters, which do not require permission, providing the settlement was requested by the litigants. For matters related to the region or serious disputes, the *Rat* with legal jurisdiction must be responsible for the case. Also, settlements led by a *Rat* of another *Ratschap* are usually only in the same *Lor*[16], Ur Siw, or Lor Lim.

Meanwhile, Stanley Kotska Ohoiwutun, a Kei Academic and Cultural Figure[17] stated that each *Rat* is autonomous, though they may rule cases in other *Ratschap* areas. This could be at the request of the *Rat* in charge of the territory, based on the consideration that the other *Rat* possesses more knowledge of the object of the case, the presence of a connection in the object of the dispute, and/or to maintain the neutrality of the decision.

C. Marine Resource Disputes and Their Settlement Process

There are several examples of marine resource disputes in Kei Islands and the settlement process, including the case in *Ohoi*[18] Wain in 2013. This conflict was triggered by a *fishing ground* competition in the waters between the *Ohoi* Wain and the *Ohoi* Ibra communities.

Ohoi Wain and *Ohoi* Ibra are two neighboring *ohoi* existing in the same administrative district, namely West Kei Kecil District, Southeast Maluku Regency, but located in two different customary law units. *Ohoi* Wain is customarily located within

[16] Lor is the alliance of Rat
[17] In an interview conducted at the Faculty of Social and Political Sciences, Universitas Pattimura, on 10 March 2019.
[18] *Ohoi* is a word that the Kei people use to refer to a village (kampung) or village (desa).

Ratschap[19] Wain led by *Rat*[20] Nen Dit Sakmas, while *Ohoi* Ibra is within the *Ratschap* Ibra Ivit jurisdiction, which is headed by *Rat* Kirkes.

Following the conflict, the *Ohoi* Ibra community applied and enforced *Hawear* in the waters in front of *Ohoi* Wain based on their claim of ownership of the marine rights[21]. The *Ohoi* Wain community was prohibited from taking marine products from the "*sasi*-ed" area. The ownership claim was based on the customary inheritance system from *Hawear* in *Ohoi* Ibra, which was respected by the *Ohoi* Wain people, who refrained from performing fishing activities in the water area. In the end, the *Ohoi* Ibra people conducted a customary settlement to reopen the *Hawear* and allow the *Ohoi* Wain community to access the waters. The settlement involved the traditional O*hoi* and *Ratschap* leaders through *sdov*[22]. Although of different *Ratschap*, there is a kinship based on marriage between the two *Ohoi*, which facilitated the settlement process.

Another case was between *Ohoi* Debut and *Ohoi* Dian of Southeast Maluku Regency in 2005. *Ohoi* Debut is administratively located in Manyeuw and traditionally under the *Ratschap* Ohoilim Nangan customary law unit. Conversely, *Ohoi* Dian is administratively located in Hoat Sorbay District and a part of the *Ratschap* Lor Tel Varat territory, which is led by *Rat* Yarbadang.

This conflict began when the committee executing a church construction in *Ohoi* Debut had a shortage of funds. As a result, the committee contacted the *Ohoi* government to seek a solution to this problem. The government subsequently created a revenue-sharing cooperation contract with several *andon* fishermen from Buton Island, Southeast Sulawesi, to allow their exploitation of the Sepuluh Island waters, which is under communal rights of *Ohoi* Debut, for sea cucumbers. Although the proceeds from the revenue were purported for the construction of the church building, several *Ohoi* Dian inhabitants intercepted the fishermen. This resulted in a dispute because some *Ohoi* Dian citizens claimed Sepuluh Island as theirs, and developed into a physical conflict between the villages.

Following the intervention of personnel from the Southeast Maluku Police, the physical conflict subsided. The police and the district government sought a peaceful settlement of cases through customary law mechanisms. Previously, the local government

[19] *Ratschap* is a unitary customary territory under a King
[20] *Rat* is the term used to refer to a king
[21] Is a communal ownership right to an area
[22] Is a term in the Kei language for deliberation.

had formed a team chaired by the Deputy Regent to investigate the facts and help resolve the conflict between the two *Ohoi*.

This issue was resolved by *Rat* Manyeuw, the Head of *Ratschap* Ohoilim Nangan, and *Rat* Yarbadang, the Head of *Ratschap* Lor Tel Varat, as the rulers of the *Ohoi* involved. Besides their existence as heads, the two *Rat* are under different alliances or *Lor*[23]. *Ratschap* Ohoilim Nangan is in the Lor Lim alliance, while *Ratschap* Lor Tel Varat is in the Ur Siw alliance. In the end, the customary settlement was resolved by *Rat* Werka, the Head of *Ratschap* Werka, who was not a member of either alliance but belonged to Lor Lobai[24].

The settlement of the conflict between *Ohoi* Debut and *Ohoi* Dian resulted in seven decisions. These include the recognition of *Ohoi* Debut as the owner of Sepuluh Island and the acknowledgment of the *Ohoi* Debut people that all blood flowing from *vat yan'ur*[25] had the right to eat from Sepuluh Island, including the *Ohoi* Dian people. Also, *Ohoi* Dian parties in disagreement were to file a civil lawsuit through the state law, with the rule that the persons adversely affected by the state court shall lose their right to eat[26] from Sepuluh Island, and the absence of a party filing a claim within one year will render the decision final.

After the decision taken by *Rat* Werka in 2007 was witnessed by the Southeast Maluku Regional Government and Resort Police, the conflict was declared over. The decision dissolved further conflict between *Ohoi* Debut and *Ohoi* Dian over the ownership of Sepuluh Island, and until the grace period ended, neither party filed a lawsuit through state law.

Another dispute settlement occurred between *Ohoi* Letvuan and *Ohoi* Dian Darat occurred in 2012. These two *Ohoi* are administratively located in Hoat Sorbay District, Southeast Maluku Regency, and are part of the customary law unit of *Ratschap* Lor Tel Varat led by *Rat* Yarbadang. The conflict was triggered by the plan of the local government to establish a seaweed processing company. The factory was intended to process basic dried seaweed ingredients from the Southeast Maluku area for use as *agar*-

[23] Is an alliance of *Rat*.
[24] Lor Lobai is often positioned as a neutral party in resolving disputes between the Ur Siw alliance and the Lor Lim alliance because it is not part of the two alliances.
[25] Kinship based on blood ties of female descendants.
[26] The right to take part in enjoying natural products or other resources from an object without ownership rights. This right may come from kinship from the female descendants or certain agreements with property rights holders.

agar kertas or *alkali-treated cottoni chips* in the *Ohoi* Letvuan area. The inauguration and declaration of the construction of the factory were executed with the laying of the first stone on 31 October 2011 by the Deputy Minister of Industry of Indonesia, the Regent of Southeast Maluku, and the Director General of Industrial Regional Development of the Ministry of Industry of Indonesia.

The dispute began when both parties claimed ownership of the land where the factory construction was proposed. This conflict later developed into a physical clash between the two *Ohoi* communities in January 2012, leading to several injuries. As involved parties, the Southeast Maluku Regency Government and Police sought a peaceful settlement of the rights to use and ownership of the disputed object. The settlement proceeded using the Kei customary law mechanism by involving the relevant *Ohoi* chiefs and *Rat* Yarbadang as the Chief of *Ratschap* Lor Tel Varat. After the settlement was concluded, the factory construction was permitted.

The three cases above can be compared to observe differences in the settlement models employed. In the case between *Ohoi* Wain and *Ohoi* Ibra, the settlement was conducted amicably through customary law without involving the government. Despite existing as bordering villages in the territory of two different *Ratschaps*, the settlement process surprisingly did not reach the stage of a customary judiciary presided over by kings.

Another model was witnessed in the case between *Ohoi* Debut and *Ohoi* Dian. Although the government was not a party to the dispute, the local government and the police were involved as facilitators in resolving the conflict, and the settlement was conducted using the customary law mechanism. The unique circumstance in this settlement was that the settlement was led by a neutral King even though the conflicting parties were in two different *Ratschaps*.

The involvement of local governments as litigants can be seen in the case between *Ohoi* Letvuan and *Ohoi* Dian Darat. Regardless of this involvement, the settlement was executed through the customary judiciary mechanism led by the King overseeing the two territories. The local government also accepted and implemented the decisions of customary authorities.

The three case settlement models above show that the customary settlement mechanism has developed differently from the old dichotomy. The involvement of government institutions as facilitators and litigants demonstrates the adaptive nature of customary law. This involvement has also influenced the development of a hybrid

settlement model. The acceptance of the mechanisms offered by the government for customary settlements and vice versa has shown that the plurality of legal systems operating in the Kei Islands compete, negotiate, and adopt each other. This process has led to the creation of new legal settlement models.

D. Reasons for Selecting Customary Law to Resolve Marine Resource Disputes

This research found that the Kei Islands residents mostly prefer to resolve issues and conflicts using customary law rather than other available legal options. Besides rational reasons, there is also a strong influence of magical religious factors from customary law due to the faith and beliefs of the people.

The reasons for selecting customary law to resolve issues and conflicts are common knowledge among the locals. Some of those reasons include:

1. The customary law is considered cheaper than resolution through the state law because the litigants are not burdened with any costs besides the sanctions given in the verdict of the judges.
2. It provides a sense of justice for the litigants because both parties must be heard and agree to the decision of the judge. The amount of the sanction decided in the customary judiciary can be negotiated during the trial by heeding "*fangnanan*", namely compassion and forgiveness from the victim to reduce the perpetrator's punishment. The request for *fangnanan* must be submitted directly by the perpetrators, and the judge is obliged to make a decision by considering this document.
3. The customary law is regarded more suitable as a means of peace and an end to the grudges of the conflicting litigants or parties because decisions are made after a mutual agreement is reached and become binding on the perpetrator as well as the victim.
4. The customary law is more likely to provide comprehensive remedies to the victims and their extended families, the perpetrators and their families, as well as the environments. This is unobtainable in the resolution of conflicts using state law.
5. It is more likely to restore cosmic balances that were disturbed due to crimes, violations, or conflicts.
6. The customary law can better protect and improve the dignity of the parties, where the disgrace revealed in the trial room is not publicized because the

number of attendees is limited. The only publicly disclosed information is the content of the sanctions.

7. The customary law can provide more moral certainty, where parties of a resolved dispute that have enforced the decision would obtain freedom from the burdens of their actions. This reason is influenced by the magical religious factor, which is the belief in the punishment of persons that fail to obey the verdict by invisible judges.

The reasons detailed above demonstrate that the role of the judiciary is to enforce regulations, but more importantly to provide a sense of justice, alongside rehabilitating victims and their environment, including the perpetrators. The judiciary is also expected to restore the cosmic balance disturbed by the occurrence of crimes, violations, or conflicts.

Consequently, the people's choices and reasons are facts that challenge the idea of legal centralization. The idea of a centralized method of legal settlement that only refers to a particular system and is uniform in all areas is irrelevant in a pluralistic society. Since the law requires society to exist and be legitimized, it must cater to the hopes and aspirations of the community regarding justice, order, and harmony. For the Kei Islands residents, the law is an extraction from their moral ideas about justice, order, balance, and peace. They believe legitimized law must execute that moral idea and this is the reason people select the customary law for dispute settlement.

The findings in this research indicated that the ideas of legal centralism cannot be applied to society in the Kei Islands. The acceptance of the mechanisms offered by the government for customary settlements and vice versa shows that the different operating legal systems compete, negotiate, and adopt each other to produce new and hybrid legal settlement models.

Conclusion

This research showed that the Kei Islands inhabitants still believe and harbor high esteem in the legitimacy of marine resource dispute settlement through the customary judiciary mechanism. The community's choice to choose customary law to resolve cases, conflicts, and disputes are based on the assumption that the settlement system provides a sense of justice as well as remedies and restores the disturbed cosmic balance in society. These remedies are important because they can break the chain of conflicts brought on

by victims' existing feelings of revenge, which is difficult to obtain from the current state justice system.

The existence of this marine resources dispute settlement forum through customary law has developed to create new models of resolution by involving other parties and legal systems outside customary law. Finally, their involvement greatly assists the state in realizing justice and order, particularly law enforcement officers, such as the police, prosecutors, and judges, because part of the obligations to uphold law and justice are performed by customary law apparatus. Therefore, the involvement of the customary settlement system for marine resource disputes in the Kei Islands has helped provide a means of resolving conflicts in the region.

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