



Theory and Practice of Mediation in Enggano Customary Law Community

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ABSTRACT

This study aims to examine the theory and practice of mediation in Enggano customary law community as a form of non-litigation dispute resolution mechanism rooted in local cultural values. The Enggano customary law community, which inhabits Enggano Island in Bengkulu province, has a unique social and legal system and is passed down through generations through oral traditions and communal practices. Adat mediation in Enggano is an integral part of the customary law system run by adat elders or community leaders who have moral authority in resolving various social issues, such as family conflicts, land disputes, to violations of customary norms. This study uses a normative legal approach with the support of qualitative data from literature studies and relevant anthropological documents, as well as analyzing how the adat mediation process takes place and what are its basic principles. In Enggano society, customary mediation prioritizes the value of deliberation, peace, and social rapprochement rather than formal condemnation. Thus, adat mediation is not only a dispute resolution tool, but also a mechanism for maintaining social cohesion and preserving local culture. However, in practice, Adat Enggano mediation is often faced with obstacles, especially when it comes to interacting with a more legalistic and formal national legal system. This study also explores the form of intersection between customary law and Indonesian national law, as well as how the two can complement each other in an effort to create a dispute resolution system that is contextual and responsive to the reality of Indigenous Peoples. The findings in this study indicate that, despite modernization and external pressures, adat mediation in Enggano still exists and has important value in the plural legal system in Indonesia.

INTRODUCTION

Indonesian society is known as a multicultural nation, with a diversity of cultures, languages, and legal systems inherited by various indigenous communities spread throughout the archipelago. One form of legal existence that lives and develops in society is customary law. Customary law is not only a social instrument, but also serves as a conflict resolution mechanism in accordance with local values and traditional wisdom. In customary law communities, dispute resolution is mostly done through deliberation and kinship, one of which is through customary mediation mechanisms.

Enggano island, located in Bengkulu province, is one of the areas that still maintains an intact customary law system. Enggano society has a distinctive social structure and value system, different from the tribes in mainland Sumatra and other regions in Indonesia. They form a strong community, with family ties (saow) as the main basis of social life. In this community, indigenous leaders have a central role, not only as leaders in cultural and religious activities, but also as mediators in resolving internal community conflicts.

One of the important aspects in the life of the Enggano customary law community is how they resolve disputes internally without involving the state apparatus or the formal legal system. Adat mediation is the main means of overcoming various problems such as inter-family conflicts, land boundary disputes, and violations of customary norms. This mechanism is carried out through a deliberation process involving the parties to the dispute, Indigenous leaders, and other community members. Values such as honesty, restorative justice, harmony, and shame are the basis for consideration in the decision-making process.

However, as national legal intervention and the modernization of the justice system increased, the position of Indigenous mediation began to experience challenges. Although the Constitution and several laws and regulations in Indonesia have recognized the existence of indigenous peoples, the reality shows that customary law is still often marginalized in conflict resolution involving state law enforcement officials. This raises major questions as to how Indigenous mediation can survive and be recognized as a legitimate mechanism in Indonesia's pluralistic legal system.

On the other hand, the need for a dispute resolution mechanism that is faster, cheaper, and based on local values is becoming increasingly urgent, especially in communities that still hold fast to traditions such as in Enggano. Indigenous

mediation has the advantage of maintaining social relations and avoiding the escalation of conflicts, which often cannot be achieved through formal justice systems that tend to be adversarial and retributive.

Research is important in this context. By examining the theory and practice of mediation in the Enggano customary law community, it is hoped to provide a comprehensive overview of how local values work within the framework of dispute resolution. In addition, this study also aims to evaluate the position of adat mediation in the Indonesian national legal system, as well as explore the possibility of integration and stronger legal recognition of legal practices that live in the community.

Using normative and socio-legal approaches, this paper will not only outline the structure of Enggano customary law, but also describe in detail the mediation process carried out and its interaction with the state legal system. Finally, this study is expected to contribute to the discourse of strengthening customary law in the Indonesian national legal system and making customary mediation a relevant alternative solution, especially in the context of indigenous peoples in remote areas such as Enggano.

METHOD

This study uses the normative legal research method, which aims to examine the legal norms, both written and unwritten, in force in Enggano Customary Law Society. This approach is used to understand how the theory and practice of mediation is carried out by the Enggano Indigenous people based on the values of living customary law (living law) and how the position of customary mediation in the national legal system. In addition, the socio-legal approach is also used as a complement, to understand the real practice of mediation in the social context of Enggano society. Sources of legal materials consist of:

1. Primary legal materials: legislation such as Law No. 6 of 2014 on villages, Supreme Court Regulation No. 1 of 2016, and relevant court rulings.
2. Secondary legal materials: books, scientific journal articles, and current research results relevant to the topic of mediation and Enggano customary law.
3. Tertiary legal materials: legal dictionaries, legal encyclopedias and other supporting documents.

Data collection was carried out through library research studies, as well as empirical and

ethnographic literature studies that have been documented by previous researchers about the Enggano people. Data analysis was carried out qualitatively by interpreting the norms of customary law and national regulations to see the meeting points and differences in the context of dispute resolution through mediation.

RESULTS AND DISCUSSION

A. History Of The Indigenous People Of Enggano

Enggano island is a small island located in the southwest of Bengkulu province, Indian Ocean. Although administratively included in the North Bengkulu Regency, Enggano keeps a long history as home to one of the oldest indigenous communities in Indonesia, the Enggano Indigenous people. This community has a very distinctive social and cultural identity, different from both the coastal communities of Sumatra and other tribes in the archipelago.

The origins of the Enggano people are still the subject of anthropological studies to this day. Some studies suggest that the Enggano people are the result of ancient migration from the Indo-Malay region or even have genetic and cultural proximity to the Islanders in the Pacific Ocean. Enggano language itself is unique because it is considered an isolated language-it does not have a direct linguistic relationship with other languages in the archipelago. This reinforces the assumption that the Enggano people have inhabited the island since thousands of years ago, and developed independently in geographical isolation.

Historically, Enggano people lived communally on the basis of a large family social structure called *saow*. Each *saow* is led by an Indigenous elder who has a role as spiritual, social, and legal leader. This system has been going on since prehistoric times until now, and is the basis for the formation of social norms that are internalized by all members of the community.

Early records of the existence of the Enggano people can be found in reports of European voyages in the 17th and 18th centuries. Some Portuguese and Dutch sailors noted Enggano Island as a territory inhabited by a closed tribe, but possessing good sailing and farming skills. During the Dutch colonial period, the Enggano region was used as a place of escape and quarantine, but there was not much interference with the customary order of the local community because it was remote and difficult to reach.

Different from other Indigenous Peoples affected by Islamization or Christianization, the Enggano

people maintain a highly spiritualistic form of traditional beliefs. Their belief system is based on the relationship between humans, ancestors, and nature. Traditional rituals are performed to maintain a balance between the real world and the spirit world, which is believed to affect the harmony of everyday life. This value system later formed the basis for their customary law, including in dispute resolution.

Since the era of Indonesian Independence, the existence of Enggano people has been increasingly marginalized. Centralistic development and modernization led to the reduction of the role of Customs in public life. However, until now, the Enggano Indigenous people have maintained their social structure and Indigenous values in their internal living space. In recent decades, there has emerged a movement for the preservation of local culture and identity led by Enggano youth and Indigenous leaders to defend their ancestral heritage from the threat of globalization.

Thus, the history of the Enggano Indigenous people not only reflects the chronology of the journey of a particular community on a remote island, but also represents the strength of local identity in maintaining traditional values in the midst of growing external pressure. The existence of those who still maintain customary law mechanisms, including in the form of mediation, shows the vitality of customary law as a living system in a pluralistic Indonesian society

B. The Enggano Customary Law Society

Enggano customary law society is formed on the basis of a social structure that regulates the rights and obligations between community members. Enggano customary law is unwritten law that is inherited orally and is morally and socially binding. The legality of the Enggano customary law community is recognized in several laws and regulations such as in Law Number 6 of 2014 concerning villages, which provides legal space for the existence of Indigenous Peoples. The formation of the Enggano customary law community cannot be separated from the long process of social, cultural, and spiritual interaction that takes place from generation to generation within the community. As a community living in geographic remoteness and having a *saow*-based social structure (extended family or clan), Enggano society forms its social system with a strong foundation of communal values, collectivity, and spirituality. From this social system, customary norms emerged that developed into customary law, and then formed the Enggano customary law community as referred to in Indonesian legal doctrine.

According to national law, a customary law society is a group of people who live for generations in a particular geographical area, have a distinctive cultural identity, and govern themselves based on customary law. Enggano Society meets all these elements. They inhabit a clear geographical area (Enggano Island), have their own system of values and customary norms, and carry out a deliberative decision-making mechanism within the saow structure and customary institutions.

The Enggano customary law system was born from daily living practices that were later institutionalized through symbols, language and rituals. There is no codification of laws in written form; all customary norms live through oral narratives guarded by Indigenous elders. The process of internalizing Indigenous values begins at an early age through informal education in large families, and is strengthened by traditional rituals and community involvement in dispute resolution forums. Thus, Enggano customary law is a living legal system, formed from collective experience and the need to maintain social harmony.

The main characteristic of the formation of the Enggano customary law community is the existence of customary structures and institutions that carry out social, legal and religious functions simultaneously. Traditional leaders or saow heads are not only leaders of large families, but also act as traditional judges, mediators of conflicts, and protectors of ancestral values. These functions are reinforced by the belief that elders have a spiritual affinity with ancestral spirits, so that their decisions contain moral and sacred legitimacy.

Meanwhile, formal recognition of Enggano indigenous peoples in the national legal system is still limited. Although Law No. 6 of 2014 on villages recognizes the existence of indigenous villages and indigenous peoples, until now not all Indigenous communities in Indonesia, including Enggano, have received full administrative recognition from the state. However, sociological and anthropological recognition of the existence of the Enggano customary law community continues to be strengthened through various academic studies, NGO assistance work, and local cultural documentation.

With a well-established value system, active indigenous institutions, and a socially recognized territory, the Enggano people have fulfilled the characteristics of a customary law society. In this context, customary law not only regulates relations between individuals, but also includes the management of Natural Resources, Environmental Protection, distribution of power, and peaceful settlement of disputes. This is what then makes

mediation as one of the important instruments in the Enggano customary law system.

Historically and functionally, the formation of the Enggano customary law community was not carried out formally but developed organically through a continuous cultural mechanism. Until now, the Enggano people still maintain a communal lifestyle governed by customary norms as a form of resistance to the penetration of formal legal systems that are considered not fully contextual to their local lives.

C. Mediation Theory In Enggano Customary Law Society

Mediation in the Enggano customary law community cannot be separated from local cultural values, including the principles of kinship, deliberation, and reconciliation. Indigenous leaders (saow elders) have a central role as mediators who have moral legitimacy in resolving conflicts. In practice, adat mediation emphasizes social rapprochement rather than sanctions, in line with restorative theory in dispute resolution.

Mediation is a form of Alternative Dispute Resolution (ADR) that emphasizes the process of deliberation and dialogue between the parties to the dispute, with the help of a neutral third party (mediator) to reach a mutual agreement peacefully. In the context of the Enggano Customary Law Community, Mediation is not a foreign or new concept introduced from outside, but rather an integral part of the customary law structure that has been deeply rooted in their social life since time immemorial.

In theory, Adat Enggano mediation can be understood through a restorative justice approach that aims not only to resolve conflicts, but also to restore disturbed social relations. Basic values such as Harmony (nganga), communal Justice, shame, and a sense of social responsibility are the cornerstones of the entire adat mediation process in Enggano. The adat mediation process not only aims to resolve problems between individuals, but also to restore balance in the community so that sustainable social cracks are not created.

In the theory of customary law, as proposed by van Vollenhoven and Ter Haar, dispute resolution in Indigenous Peoples is conciliative and informal, emphasizing the reunification of social relations, not separation as is often the case in formal legal systems. Customary mediation in Enggano runs in a similar line. Conflict is perceived as a "social imbalance" that must be resolved collectively, not as a legalistic question that must be punished or decided strictly win-lose.

Within the framework of functional legal theory, Adat Enggano mediation also reflects the form of "law as a mechanism of social control" (law as a means of social control). Enggano society does not need a formal court institution because conflicts are resolved by internal social structures, namely through saow and customary institutions that rely on moral legitimacy rather than state power. In this context, the function of mediation is not only to find solutions, but also to carry out social reintegration of the parties involved in the dispute.

Mediators in the Enggano customary law community are usually customary elders or saow leaders who are seen as having authority, wisdom, and experience in solving problems. They not only act as mediators, but also as Guardians of customary values. A mediator's success is not measured by how many disputes are resolved, but by their ability to create long-term peace and prevent future conflicts from recurring.

In the theory of sociology of law, the approach used by the Enggano community can be categorized as a form of local law or local wisdom-based law, which relies on cultural and emotional approaches in solving social problems. This is in contrast to the more rational and procedural legal system of the state. This difference makes the mediation of Adat Enggano as a concrete example of legal pluralism in Indonesia, namely the existence of customary law that runs side by side with the national legal system.

Theoretically, the existence of adat mediation in Enggano proves that the concept of justice is not universal or singular, but plural and contextual. Justice according to the Enggano Indigenous people is not merely determined by black and white formal laws, but rather by achieving harmony, mutual agreement, and recognition of mistakes in the collective space. In this sense, the theory of communal justice becomes relevant to understand how Indigenous Peoples perceive truth and conflict resolution.

Thus, the theory of mediation in the Enggano customary law community is firmly rooted in customary principles that prioritize social balance and reconciliation, not retaliation or punishment. This traditional mediation runs informally but has high legitimacy in the eyes of the community, and is proven to be able to maintain stability and social harmony in the long term.

D. Mediation Practices Within The Enggano Customary Law Community

The mediation process in the Enggano Indigenous people usually begins with a complaint to the indigenous elders, followed by deliberations

involving the parties to the dispute, extended families, and Indigenous leaders. This process takes place informally but is governed by strict customary norms. Examples of cases that are often mediated include land boundary conflicts, family disputes, to violations of social norms. The decisions taken are socially final and are expected to be adhered to in order to maintain mutual harmony.

The practice of mediation in the Enggano customary law community is one of the oldest forms of dispute resolution and has survived to this day. This process is carried out informally, but it is full of customary norms and unwritten rules that are passed down from generation to generation. Mediation aims not only to resolve disputes, but also to restore social relations damaged by conflict, maintain community harmony, and maintain the authority of customary law.

Stages in the practice of Indigenous mediation

The mediation process of Adat Enggano in general goes through several important stages that have been rooted in community habits, including:

A) the initial complaint of a dispute is usually reported by one of the parties to the customary elder or the head of the saow (clan). Reports can include personal conflicts, land disputes, debts, moral violations, to conflicts between families. There are no written letters; reports are delivered orally in small family or community forums.

B) identification and initial examination, adat elders together with community leaders will conduct initial clarification to both parties. The aim is to ensure that the case can still be resolved in the customary realm and does not concern violations of the serious criminal law under the authority of the state.

C) Adat mediation Forum, if feasible, then an adat deliberation (called *bau bawu* in the local language) is held, which is an open meeting that is usually held in a traditional house, village hall, or an agreed open place. Present at this forum were both parties to the dispute, representatives of their respective families, traditional leaders, and communities that are considered neutral.

D) the role of Adat elders as mediators, adat elders or saow heads act as mediators. It does not take sides, but advises, mediates, and keeps the atmosphere conducive. Mediation is carried out with a restorative approach that emphasizes recognition of mistakes, mutual understanding, and consensus-based settlement. The settlement is not based on who is absolutely right or wrong, but on a mutual desire to make peace.

E) joint decision, after a long discussion, a decision is made by consensus. No voting or

coercion. Decisions can be apologies, compensation in kind or social work, and rituals of rapprochement between families. These decisions are usually publicly agreed upon and witnessed by the community as a form of social legitimacy.

F) symbolic ceremonies and social recovery, in some cases, traditional ceremonies are carried out as a symbolic form of reunification of the two disputing parties. For example by eating together, giving each other betel-nut, or traditional rituals of rapprochement. This is a sign that the conflict has been resolved and social relations have returned to normal.

The values underlying the practice of mediation

Enggano customary mediation practices are based on a number of core values of the community:

- * Collectivity: the dispute is not considered a private matter, but as a community problem that must be solved together.

- * Restoration, not retribution: completion is oriented towards recovery, not punishment.

- * Deliberation: decisions are made through open discussion, taking into account the suggestions of all parties.

- * Relational Justice: Justice is understood in the context of relationships between individuals, not just based on rigid rules.

Strengths and weaknesses of customary mediation practices

The main strengths of this practice are high moral and social legitimacy, time and cost efficiency, as well as the ability to maintain social stability. However, the disadvantage lies in the dependence on Indigenous elder figures who sometimes lack regeneration, as well as the lack of an adequate written documentation system.

Even so, Enggano customary mediation practices have proven to be able to resolve various types of conflicts peacefully and sustainably. In fact, the community has more confidence in the results of customary deliberations than in bringing cases to state institutions, which are considered remote, bureaucratic, and do not understand the local context.

E. Intersection Of Enggano Customary Dispute Settlement And Indonesian National Law

The interaction between Enggano customary dispute settlement and the national legal system does not always run smoothly. One of the main challenges is the difference in paradigm between formal law that is legalistic and customary law that is restorative. Some cases show that the results of customary mediation are sometimes ignored by the

formal legal system, especially when it comes to criminal acts provided for in the Criminal Code. However, there are also harmonization efforts as reflected in the Supreme Court Regulation (PERMA) No. 1 of 2016 on mediation procedures in court.

The intersection between the settlement of customary disputes in the Enggano customary law community and the Indonesian national legal system is a real reflection of the legal pluralism prevailing in the country. Indonesia, as a country with diverse ethnicities, cultures, and belief systems, cannot ignore the existence of customary law that lives and develops in society. In this context, the Enggano Indigenous community is a unique representation of the Indigenous legal community that maintains a dispute resolution mechanism based on local wisdom, but still within the national legal framework.

National legal framework against customary law

Normatively, the existence of customary law is recognized in various Indonesian laws and regulations. Article 18b paragraph (2) of the Indonesian constitution of 1945 explicitly states that:

"The state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia."

In addition, Law No. 6 of 2014 on villages recognizes customary villages or customary law villages as part of the village government structure that is authorized to regulate and take care of the interests of the community based on the origin and prevailing customs. This became the legal basis for the Enggano Indigenous people to manage the settlement of internal disputes independently.

Forms of intersection: coexistence and overlap

In practice, there are two main forms of contact between Enggano customary mediation and national law, namely:

- * Coexistence: in mild cases such as family disputes, customary land, or violations of customary norms, dispute resolution is carried out entirely through customary mechanisms. State law does not interfere, often even village officials or police respect the results of customary deliberations as a form of socially legitimate settlement.

Overlap: however, in certain cases—such as domestic violence, sexual harassment, or land disputes involving outside parties (investors or governments) - there is overlap between customary law and national law. In this case, people are often confused about which forum to join, as the two systems have different settlement logics: customary law is restorative, while state law is more repressive and legalistic.

The role of the state in addressing traditional mediation

Countries have shown efforts to accommodate custom-based dispute resolution through more flexible regulations. For Example, The Supreme Court Regulation (Perma) No. 1 of 2016 on mediation procedures in courts adopted the ADR (Alternative Dispute Resolution) approach and opened up opportunities for the integration of non-litigation settlements into the judicial process. However, implementation in the field is often not yet synchronized, because state law has not fully recognized customary decisions as a form of settlement with permanent legal force.

On the other hand, law enforcement officials often face dilemmas in handling cases that have been resolved in the customary realm. Some authorities respect the results of adat mediation, but often ignore them because they are not formally documented or do not meet the formal requirements of the criminal or Civil Procedure Law.

Substantive justice vs. Formal Justice

One of the crucial points in this intersection is the difference in approaches to justice. Enggano society emphasizes substantive justice, namely the restoration of social relations and mutual recognition of mistakes. Meanwhile, state law prioritizes procedural and formal justice, which is sometimes considered incompatible with the socio-cultural context of local communities.

In several field studies, it was found that the Enggano people feel more equitable if the issue is resolved in a customary manner because the results can be directly felt by both parties, without having to undergo a complicated and lengthy court process. This suggests the need to bridge these two legal systems in a functional, rather than merely normative, manner.

Potential harmonization and challenges ahead

To achieve synergy between the settlement of Indigenous Enggano disputes and the national legal system, it is necessary to take concrete steps:

- * Recording and documentation of customary rulings: in order for customary rulings to be recognized by the national legal system, they need to be documented in writing and endorsed by village institutions or authorities.

- * Training for law enforcement: police, prosecutors, and judges need to be trained on customary law, in order to have a sociological perspective in dealing with cases that intersect with Indigenous communities.

- * Special regulation on Adat mediation: there needs to be a national regulation that provides legal space for adat mediation, especially in mild cases that

do not require the intervention of the state apparatus.

If this harmonization is successful, it will create a legal system that is pluralist, fair, and responsive to the local cultural context as in Enggano. This not only preserves the dignity of customary law, but also strengthens the sense of community justice within the framework of the Unitary State of the Republic of Indonesia.

CONCLUSION

Studies on the theory and practice of mediation in Enggano customary law communities show that the customary-based dispute resolution system still has a very vital role in maintaining social harmony and the continuity of local cultural values. In Enggano society, mediation is not only seen as a conflict resolution mechanism, but also as a social ritual to re-knit relationships damaged by disputes. This practice shows the characteristics of restorative, participatory mediation, and is deeply rooted in the values of kinship, collectivity, and respect for Indigenous leaders. Theoretically, mediation in the context of Enggano customary law presents a different approach from the formal or institutional mediation models adopted in the country's legal system. The theory of mediation in Enggano society rests on communal-moral values and local belief systems, which make settlement not only legal, but also spiritual and symbolic. In practice, Adat Enggano mediation goes through a series of informal but structured stages, starting from initial complaints, clarifications, deliberative forums, to decision-making and social recovery. The resulting verdict is not only a settlement, but also contains elements of moral education and strengthening of social values in the community. The intersection between the customary mediation system and Indonesia's national law is both a challenge and an opportunity. On the one hand, there are still gaps in recognition and institutions that make the results of adat mediation do not have equal formal legal force. On the other hand, the existence of national legal recognition of Indigenous Peoples paves the way for the harmonization of these two legal systems. With the right integration strategies - such as documentation of the results of adat mediation, involvement of state institutions in strengthening adat law, and training for law enforcement officers-adat mediation systems can be an important part of developing pluralist and contextual laws. Therefore, it is important for the state to not only normatively recognize the existence of indigenous peoples such as in Enggano, but also provide concrete space and legal protection for

conflict resolution mechanisms that have proven effective in maintaining the social cohesion of local communities. An integrative approach between customary law and state law will not only strengthen the justice system at the grassroots level, but also become a model for inclusive and sustainable legal development in Indonesia.

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