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Customary Mediation Practices: Practical Experiences From Indonesia

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ABSTRACT

The current view of society no longer sees that the court is the only dispute resolution institution. The existence of court institutions has been indicated by various cases of corruption, collusion, and nepotism, better known as KKN. This is given that many products of court decisions deviate from the principles of justice, are quick and inexpensive. In this context, an alternative dispute resolution model is needed in the customary law community that is more efficient, fair and accommodating in order to maintain the continuity and sustainability of the life of the customary law community, which is more humane and equitable. The tradition of dispute resolution in customary law communities is based on the value of the philosophy of togetherness (communal), sacrifice, supernatural values, and Justice. In customary law Community, common interest is a philosophy of life that permeates every member of the indigenous community. The practice of customary mediation in this paper in practice, the karo people of North Sumatra and papu is a form of local wisdom in resolving disputes or conflicts in Customary Law communities with a community mediation approach where in Community Mediation, leaders (customary leaders) have an important role and must have skills in resolving disputes using customary rules contained in Indigenous communities. The purpose of adat mediation practices in Indonesia is the existence of community adat mediation to maintain the balance and harmony of Indigenous Peoples by prioritizing deliberation rather than dispute resolution through legal channels.

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INTRODUCTION

Adat law is a law that is rooted in traditional culture, which lives, grows and develops, because adat law embodies the real legal feelings of the people. Customary law as the original law that became the identity of the Indonesian nation, has noble values that must be maintained along with the Times and civilization, among which are traditional patterns or properties, religious magic, concrete and visual, open, dynamic, communal, deliberation and consensus (umsu,2024).

Public distrust in the court to restore the practice of customary law prioritizes peaceful and peaceful settlement through deliberation and consensus in resolving disputes among Indigenous Peoples (Ariman Sitompul,2020). The parties forgive each other and are not in a hurry to bring the dispute through state courts, so that good and harmonious relations between the parties are maintained, because in essence, the balance sheet balance in a society disturbed as a result of a dispute or dispute can be restored to its original state (Wika Yudha Santi, 2016).

So that in the settlement of customary disputes that means mediation in litigation with fellow members of indigenous peoples as far as possible should be avoided. Even if it cannot be avoided, then disputes, disputes, disagreements or differences of understanding and the like should be resolved by deliberation (Sabela Gayo,2022). Justice as a litigation institution is the last option if the dispute resolution cannot be resolved by consensus. As an operational foundation in the life of the Indonesian state of law in terms of dispute resolution is realized in law No. 30 of 1999 on arbitration and Alternative Dispute Resolution, as well as Law No. 48 of 2009 on judicial power, in PERMA No. 1 of 2016 on mediation in the court of First Instance which justifies the way of dispute resolution with a compromise or deliberation approach to consensus, one of which is through mediation procedures. It can be affirmed that the approach of compromise or consensus deliberation aims to find common ground between different interests until an agreement is produced (Anti Mayastuti,tt).

Indeed, judicial mediation has been regulated in articles 130 and 131 HIR for Java and Madura and 154 and 155 RBG outside Java and Madura. Article 130 HIR and 154 RBG states that (solahudin harahap, 2011):

a) Paragraph (1) if, on the appointed day, both parties appear, then the District Court, through the mediation of its chairman, seeks to reach a settlement between the two parties.
b) Paragraph (2) if such a peace can be reached, then an act shall be made for it in the session, in which both parties shall be punished for complying with the content of the agreement reached, which act has the same force and is executed in the same manner as an ordinary verdict.
c) Paragraph (3) the stage of such a decision cannot be appealed.

Article 131 HIR and 155 Rbg paragraph (1) states that : if the parties come but they cannot be reconciled, it must be mentioned in the minutes of the trial, then the letter intended by them is read and if one of the parties does not understand the language used in the letter, then it is translated by an interpreter appointed by the chairman (presiding judge) into a language that is understood by the party who does not understand".

In Article 130 & 131 HIR and Article 154 and Article 155 RBG clearly and unequivocally ordered the judge to prioritize peace mechanisms including negotiation and mediation mechanisms. This proves that the Civil Procedure Law is basically more willing to resolve disputes through peace either through negotiation or mediation mechanisms, rather than through the formal mechanism of the court. Relying on the order implied in Article 130 & 131 HIR or 154 & 155 RBG, Yahya Harahap argues that the order and the law to the judge to prioritize the peace process in dispute resolution is imperative. This imperative nature is reflected in the provision that requires the judge to include information that the peace process has been passed in the minutes of the examination, if he does not succeed in reconciling the parties, and if it does not contain information about the judge's efforts to encourage the parties to resolve the dispute through peace, then the judge's decision contains a formal defect that results in the examination by the judge of the case is null and void. For this reason, the author will discuss the practicalities of traditional mediation in terms of practical experience in indonesia.

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METHOD

This research, using normative research using library approach, legal approach (statue approach), fact-based approach and analytical approach to legal concepts (analytical and conceptual approach). The journal is descriptive research. Normative legal research emphasis on secondary data research is literature and interviews used in research reinforcement. The Data used in this journal consists of two types of data, namely primary data and secondary data.

RESULTS AND DISCUSSION

A. Customary Mediation Practices : Land Inheritance Dispute Settlement In Karo Community Of North Sumatra

In the Karo Indigenous people in general, there is a categorization of land, namely: First, taneh kuta (village land), Taneh kuta is land owned by a particular village as a distinction from other villages, including open land, graves, and vacant land. Second, taneh kesain (ward land), the concept of taneh kesain refers to the area of the village, for example, (taneh rumah berneh) indicates that the land belongs to kesain rumah berneh. Third, taneh nini (grandfather's land), the concept of taneh nini is used for land that has been planted first by the Father (Father/Father), Nini (grandfather), nini nai (ancestor). These lands were owned by members of the patrilineal line of kinship. Patrilineal groups and their members have Sacred Ties to their ancestral lands that must be maintained by not releasing them to others. This kind of land is generally inherited from the father to his sons, and to then will always be in the family or patrilineal kinship group. Fourth, taneh kalimbubu (land of the kalimbubu), the concept of taneh kalimbubu is used for the land given by kalimbubu to anak beru. In taneh kalimbubu, kalimbubu should be involved in every decision related to taneh kalimbubu (Maria Kaba,2016).

The system of inheritance in the indigenous Karo people is based on the paternal lineage (patriarchaat). Karo people who draw lineage from paternity have characteristics: (1) Stelsel marriage in Karo is exogamous, marriage between different clans or outside the clan. This is why empirically it can be explained that one clan is considered one descendant or one clan, so the marriage of one clan is not allowed. From another point of view, the result of marriage is that the married woman has entered her husband's clan and is separated from her family's clan. So strictly speaking, the marriage resulted in the release of the woman from her father's clan/clan and into her husband's family/clan. And what comes off is actually the woman with her rights and obligations from her parents ' clan/clan. (2)Community Law. Almost all clans in Karo have a legal alliance headed by "bangsa taneh" / "anak taneh" of the clan that is" simatek" / establish "kuta"/village in the beginning (Rimenda,2018).

Settlement of customary land inheritance disputes karo community using customary settlement that has been practiced in civilized life in the land of karo, namely:

a. Runggun in Karo society has a broad meaning not only used to solve problems, therefore it is unethical to define runggun as a dispute resolution institution between karo Indigenous Peoples. Runggun both in its usefulness as a problem-solving institution and in its other uses still have the same arrangement, namely the existence of kalimbubu, anak beru, and senina which are embodied in the concept of sangkep si telu. The process of holding runggun is generally the same is started with the intention/desire of the parties to bring the problem to runggun, this intention is then discussed with the nearest new child to determine the time and place of holding runggun and what problems will be submitted in runggun later. After the discussion with anak beru is finished, the child then calls another child to inform Beru Beru plan for the holding of runggun and share the task of preparing the things needed for the holding of runggun. After the preparation is complete, the child will invite kalimbubu beru and senina to come to runggun.
b. Perumah Begu is a dispute resolution effort where the begu will be called through certain rituals to resolve disputes that occur. Generally, the spirit of the person who has died is considered a wise person and has a close relationship with the parties to the dispute so as to know the location of the parties ' problems. Begu housekeeping for the deceased person is carried out on the first night after the body has been buried. The mediator between the spirits of the dead and the disputants was Master Sibaso. Sibaso teachers generally consist of a woman or several women who have the ability to get in touch with the spirits of the deceased. At the time of performing the begu House ritual, the spirit of the Dead will enter the body of Guru Sibasi (for karo people, this condition is called selok (possessed)), at this stage Guru Sibaso will lend his body to enter the spirit of the dead, in this case Guru Sibaso will become a spirit medium/shaman between spirits and living

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people. So the spirits of the dead would speak to the disputants through master Sibaso to resolve their disputes. During the ritual procession, Guru Sibaso will play two important roles, namely as the ' master of ceremony' or the main leader of the ritual and also acts as a 'story teller in dramatical ritual' Guru Sibaso as a reteller of the life story of a recently deceased person. Sibaso teachers in Indigenous communities are seen as consultants (biak penungkunen) where residents will ask for an explanation of the advice on their problems. Advice is especially needed in case of conflicts between citizens or relatives of citizens or between relatives. If the case occurs within the scope of a close relative, Master Sibaso will suggest the holding of a dibata House and followed by a begu house at night with only close relatives involved in the dispute.27 with the completion of the ritual of the begu house, the teacher Sibaso must be delivered to his house.

c. The District Court / Religious Court is the formal institution closest to the community in the formal legal structure to establish justice. This situation puts the District Court / Religious Court in a position that must respond to the values that develop in the Karo community. Justice promised by the court is open to all groups of society (equality of justice). Karo people generally treat the court as the last institution to resolve their disputes, especially in matters of inheritance. According to the Karo community, it is a shame when the issue of inheritance is brought to court. This is because by submitting their dispute to the court, they will submit the settlement to a third party who, according to them, will not know the root cause of their dispute, but because runggun is considered no longer able to provide a solution to the problem, the dispute will be submitted to the court. With the entry of the case to the court, both senina, kalimbubu, anak beru, and penetua adat can no longer intervene in solving the problem. According To Perma No. 1 of 2008 which has been amended by Perma No. 1 of 2016 Article 1 Item (2) and (3), which can be a mediator in dispute resolution in court are career judges and non-career judges. This non-career judge must meet the requirements of having a mediator certificate issued by the Supreme Court, therefore, both senina, kalimbubu, anak beru, and Indigenous penetua can no longer have a hand in solving the problem. However, with the inclusion of mediation to the court, the opportunity to reconcile the parties to the dispute is open again even though the form of peace offered by the court does not include runggun in it.

B. Adat Mediation Practices : Dispute Resolution For Indigenous Papuans

Lembaga Adat Marga is an institution that is formed and is a container in order to foster, empower, preserve, develop customs as norms, rules with social beliefs that grow and develop in society. Marga customary stakeholders are community leaders who are members of the Marga customary institution to represent the unity of members of the customary law community from each village and / or kelurahan (Inosensius Samsul,2014).

The parties that can become Indigenous stakeholders in Papua and their conditions are (Kasim Abdul Hamid,2016):

a. Receive recognition from the clans or Klen-Klen of the indigenous people concerned based on the leadership structure of the indigenous people in Papua. For example: Ondoafi (Jayapura), mixed (Cenderawasih Bay), Raja Ampat (onim Fak-fak Peninsula), Big Man (Wamena Jayawijaya – central mountains).
b. Terms are highly dependent on the 4 types of leadership of indigenous institutions, for example: for an Ondoafi the terms are based on the seniority of the eldest son based on genealogy. Mixed system the conditions are highly dependent on the Ondoafi system. The king and the Big Man. The King's system of conditions was based on the ability to expand the territory of trade power. While Big Man is based on the requirement of being able to compete among the surrounding tribes in his customary territorial area to appear as a bitter melon as a federal tribal chief and also based on the ability to speak can be heard by others. able to fight and have a strong Indigenous capitalist economic power.

Periodization of the management of customary institutions known in Papua is the regeneration of leadership based on 4 leadership structures of each customary institution spread in 7 customary territories. There is no structural and functional relationship between government positions and Indigenous stakeholders. Facilities prepared by the government is very relative because it depends on the Local Government of each. For example, the Jayapura city government and the Jayapura regency government facilitate the drafting of the kampong medium pace development plan for each customary institution with its citizens. So far, the role of Indigenous Peoples is still limited, which is only seen

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in the annual Musrenbang process (Village Musrenbang, District Musrenbang, and Regency/City Musrenbang).

The granting of special autonomy to the Papua province is intended to realize justice, enforcement of the rule of law, respect for Human Rights, acceleration of economic development, improvement of welfare and progress of the Papuan people, in the framework of equality and balance with the progress of other provinces. One of the specificities of autonomy for Papua province is the implementation of customary courts as stated in Article 50 paragraph (2) and Article 51 paragraph (1) to Paragraph (8) of Law No. 21 of 2001 on special autonomy for Papua province. In fact, the lives of Indigenous Peoples in Papua still continue to enforce, maintain and submit to their respective customary courts, especially in the settlement of customary cases that occur among fellow citizens of customary law communities.

Special regional regulation of Papua Province Number 20 of 2008 on customary Justice in Papua contains:

a. General Terms
b. Principle and purpose
c. Position and place of position
d. Duties, functions, and authority of the Customary Court
e. Structure, mechanism, and decision of the Customary Court
f. Relations of Customary Courts with government and law enforcement agencies
g. prohibitions and sanctions.
h. Closing Provisions.

Existing local regulations are not sufficient basis because each local regulation does not pay attention to the existence of customary institutions even though they are only included in certain chapters/ articles of the relevant local regulation in the form of "community participation". However, a new legal umbrella is not needed, because juridically it already exists in the formulation of Article 18b of the 1945 Constitution along with Article 21i of law no. 32 of 2004 on Local Government and Article 89 PP No. 72 of 2005 about the village. The various laws and regulations mentioned Lembaga adat as "Lembaga Kemasyarakatan". Specifically in Papua, the strengthening of the legal basis is strengthened by law No. 21 of 2001 on special autonomy for Papua province.

CONCLUSION

Based on the above description of the practice of customary mediation in karo North Sumatra and papua shows that the settlement of customary disputes began with public confidence in the culture and diversity in Indonesia in the practice of dispute resolution resolved by custom is much better than the settlement by litigation because the local wisdom of the Indonesian nation is reflected in, however, although the settlement of customary disputes can be resolved with the customary arena There are also some disputes in the forward to the court as a final settlement that binds even to make acta peace (Acta Van Dading).

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