STRENGTHENING TRADITIONAL INSTITUTIONS AS AN ALTERNATIVE FOR RESOLUTION OF LAND DISPUTES IN MALINAU DISTRICT

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ABSTRACT

Resolving disputes in society sometimes requires alternative solutions, one of which is through traditional institutions as part of a balance of justice. There are two formulations of the problem in this study, namely first; how is the legal force binding on the decisions of customary institutions against the parties in Malinau Regency, second, how are efforts to strengthen customary institutions as alternative institutions for resolving land disputes in Malinau Regency. This research uses a normative legal research method, with a conceptual approach and a legislative approach. Based on the results of the study, it is concluded that: that; The decision of the Customary Institution in Malinau Regency has binding legal force against the parties and the customary law community as long as the Customary Community still exists and recognizes customary law as a norm that regulates legal relations between community members in everyday life, recognizes the customary institution as an institution that enforces customary law, and the existence of the customary law community itself has been recognized by the Malinau Regency regional government through regional regulations. And second. Efforts to strengthen the Customary Institution as an alternative dispute resolution in Malinau Regency are through the formation of Regional Regulation Number 10 of 2012 concerning the Recognition and Protection of Customary Law Communities in Malinau Regency. In addition, other efforts are to provide grant funds sourced from the APBD to the Customary Institution. Efforts to strengthen the Customary Institution as an alternative dispute resolution that contains justice can be implemented by starting from a change in the mindset of the post-colonial mindset towards the nomenclature of "customary communities" which are no longer only positioned as "self-management authority" but become a community unit as collective human rights with the responsibility of assigning the state to implement the truth of restorative justice.

Keywords: Customary Institutions, Land, Alternative Dispute Resolution

ABSTRAK

Penyelesaian sengketa di masyarakat terkadang memerlukan alternatif penyelesaian, salah satunya melalui lembaga adat sebagai bagian dari keseimbangan keadilan Ada dua rumusan masalah dalam penelitian ini yaitu pertama; bagaimna kekuatan hukum mengikat putusan lembaga adat terhadap para pihak di Kabupaten Malinau, kedua bagaimana upaya penguatan lembaga adat sebagai lembaga alternatif penyelesaian sengketa tanah di Kabupaten Malinau. Dalam penelitian ini menggunakan metode penelitian yuridis normatif, dengan pendekatan koseptual dan pendekatan perundang-undangan. Berdasarkan hasil penelitian disimpulkan: bahwa; Putusan lembaga Adat di Kabupaten Malinau memiliki kekuatan hukum mengikat terhadap para pihak dan masyarakat hukum adat sepanjang masyarakat Adat masih ada dan mengakui hukum adat sebagai norma yanga mengatur hubungan hukum antara anggota masyarakat dalam kehidupan sehari hari, mengakui lembaga adat sebagai lembaga penegak hukum adat, dan keberadaan masyarakat hukum adat itu sendiri telah diakui oleh pemerintah daerah Kabupaten malinau melalui peraturan daerah.Dan kedua . Upaya memperkeuat Lembaga Adat menjadi alternatif penyelesaian sengketa di Kabupaten Malinau adalah melalui pembentukan Peraturan Daerah nomor 10 tahun 2012 Tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat di Kabupaten Malinau. Selain itu upaya lainnya adalah dengan memberikan dana hibah yang bersumber dari APBD kepada Lembaga Adat. Upaya penguatan Lembaga Adat sebagai alternatif penyelesaian sengketa yang mengandung keadilan, bisa diterapkan dengan memulai dari perubahan mindset pola pikir di sekitar pasca-kolonial terhadap nomenklatur "masyarakat adat" yang tidak lagi hanya diposisikan sebagai "wewenang urus sendiri" tetapi menjadi kesatuan masyarakat sebagai HAM kolektif dengan tanggungjawab penugasan negara menerapkan kebenaran keadilan yang restoratif.

Kata Kunci : Lembaga Adat, Tanah, Alternatif Penyelesaian Sengketa

A. INTRODUCTION

Article 18B Paragraph (2) of the 1945 Constitution, 4th Amendment, states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the principles of the Unitary State of the Republic of Indonesia. Moving on from the issue of agrarian law, the legal basis in Indonesia has regulated it in the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

The development of customary institutions still raises issues, among others, that customary institutions are based on customary law. In Indonesia, nationally, in Van Vollenhoven's view, there are 19 (nineteen) customary law environments.4 The grouping of communities based on the regional environment has changed as stated by Hilman Hadikusuma: That for the present, similar divisions are no longer appropriate due to changes and developments in society. With the movement from village to city,

from one region to another, due to the implementation of large-scale development, the mixing of people from ethnic groups and so on, the customary law environment and customary law communities have experienced many changes.

In contrast to the socio-cultural background of the implementation of a Customary Institution which is almost certainly present in an environment that is in principle exclusive or closed in various rules, in essence it is related to the purpose of isolating people or outside communities who are not within the customs themselves. The culture of such customary communities is now directly confronted with the context of the situation of a community that has become an urban migrant in the era of *open society* and rapid mutation multi-variation. This situation has positioned the customary institution community to be threatened on the verge of extinction in 2-3 generations from now.

Another practical problem is also reflected in the many complaints that APS itself has not been culturally internalized by legal practitioners. In fact, all *Lawyers should* try to internalize the ease and simplicity of this event, to then socialize the good aspects to clients and the general public.

Law should be a bridge (instrument) in realizing what is aspired to. This means that there must be legal regulations that protect the state and its citizens. However, in its development, law has been used as a tool of political legitimacy (power) for certain interests that are sometimes far from the meaning of realizing what is aspired to by the Indonesian people. Law is essentially a culture of society, namely the result of the creation, feelings and works of society. Therefore, it has characteristics that are always social, localistic, meaning that it applies to local communities and belongs to the public. With its validity like that, the law actually does not experience a crisis from itself, meaning that it is always in accordance with the needs of the local community as users of the law which is a product of society itself.

Every society or every group needs a certain way to resolve disputes and enforce norms that grow in the community, it is likely that every society needs a mechanism to change norms and apply them to new situations. The construction of values in customary law should be realized in harmony with the values and principles of national law, so that in the implementation of dispute resolution through customary institutions there is no gap or difference in the application of legal principles. In the Malinau Regency community, various terms are known regarding dispute resolution institutions. The community can manage conflicts that occur with the customs they have to find solutions that benefit both parties. So a study is needed regarding the institutionalization of principles and legal principles in customary institutions in Malinau Regency as non-litigation dispute resolution institutions

Based on the background, it is intended to conduct a study entitled Strengthening Customary Institutions as Alternative Institutions for Resolving Land Disputes in Malinau Regency. Based on the background above, the formulation of the problem in this study is;

1. The legal force of customary institution decisions is binding on the parties in Malinau Regency.
2. Efforts to strengthen customary institutions as alternative institutions for resolving land disputes in Malinau Regency

B. RESEARCH METHODS

This thesis research uses a normative juridical research type. The problem approach used in writing this thesis is the statute approach method *and* the conceptual approach. The statute approach *is* carried out by examining all laws with other laws, especially those that are related to the legal issue being studied. In the conceptual approach, starting from the views and doctrines that develop in legal science. By studying the views and doctrines that develop in legal science, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues faced. Understanding this approach is a basis for researchers in building an argument to solve the issues faced.

C. RESULTS AND DISCUSSION

1. Binding Legal Force of Customary Institution Decisions Against Parties in Malinau Regency

The settlement mechanism through customary institutions always prioritizes harmony and social harmony. Maintaining social harmony is highly valued in rural life, and informal actors prioritize restoring social relations when problems occur. Settlement through customary institutions has a flexible character. Structures and norms are loose to adapt to social change. Dispute resolution through customary institutions relies on local authority and legitimacy. Communities prefer non-state justice primarily because of the authority of the actors in the rural environment to solve problems and implement decisions. In the institutional system of Aceh's customary society, there are requirements such as the periodization of management, decisions of customary institutions cannot be negotiated. However, settlement through customary institutions has several major weaknesses, namely arbitrariness and lack of supervision. Although social authority is the core strength of non-state justice, its uncontrolled implementation is a major weakness. The lack of clear procedures and norms and the absence of accountability will leave the weak and marginalized parties underserved, with no other alternatives.

Basic principles of dispute resolution through customary institutions:

a. Pay attention to ideal and productive customary norms and culture.
b. Low cost/no cost, simple and quick to complete.
c. Social justice is prioritized which leads to the benefits of the law.

Settlement of legal disputes through general procedures is carried out in 3 (three) stages, namely the preliminary stage, the determination stage and the implementation stage. The preliminary stage begins from the filing of the lawsuit until the trial of the case. Furthermore, the determination stage begins from the answers to the verdict by the judge. After the verdict has permanent legal force *(in kracht van gewijsde)* unless it is decided with provisions that it can be implemented first even though a legal action is filed against the verdict (*uitvoerbaar bij vooraad*).

In the decision stage, a civil dispute is submitted by the relevant party to the court to obtain a solution or settlement. The examination of the case is indeed ended with a decision, but with the issuance of a decision alone, it is not certain that the problem will be resolved just like that, but the decision must be able to be implemented or carried out. A court decision is meaningless if it is not implemented, therefore the judge's decision has executory legal force, namely the power to implement what is stipulated in the decision by force with the help of state apparatus. What gives executory power to the judge's decision is the head of the decision which reads "For the Sake of Justice Based on the Almighty God".

In principle, only a judge's decision has permanent legal force and can be executed. A decision can be said to have permanent legal force if the decision contains the meaning of a form of permanent and definite legal relationship between the parties to the case because the legal relationship must be obeyed and must be fulfilled by the defendant.

Muhammad Abdul Kadir is of the opinion that a decision that has permanent legal force is a decision that according to the provisions of the Law there is no longer an opportunity to use ordinary legal remedies to challenge the decision, while a decision that does not yet have permanent legal force is a decision that according to the provisions of the Law still has an opportunity to use legal remedies to challenge the decision, for example, objection, appeal and cassation.

The punished party (defendant) is required to obey and fulfill its obligations as stated in the verdict that has permanent legal force voluntarily. A voluntary verdict is when the losing party voluntarily fulfills it by perfectly carrying out the contents of the verdict. However, it is possible that the verdict will not be implemented by one of the parties, because in the future one of the parties is dissatisfied with the verdict, then what will happen is denial or denying the verdict. Denial is a form of an act that does not want to do what should be done or what is an obligation.

Based on Article 18 of Law Number 48 of 2009 concerning Judicial Power ("UUKK"), it is stated that:

> Judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial system, religious judicial system, military judicial system, state administrative judicial system, and by a Constitutional Court.

Based on the provisions above, it can be seen that customary institutions/customary courts and customary judges are not recognized in positive law in Indonesia. However, this does not mean that the validity of customary law decided by the customary law community does not exist at all. As expressed by Van Vollenhoven as quoted in the book "Customary Law and Legal Modernization" (Published by FH UII, 1998; p. 169) that customary law is the original law of a group of people in Indonesia who are bound by genealogical (tribal) or territorial relationships.

The existence of customary law has been officially recognized by the State, but its use is limited. Referring to Article 18B paragraph (2) of the 1945 Constitution which states "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law" which means that the state recognizes the existence of customary law and its constitutional rights in the Indonesian legal system.

Apart from that, it is also regulated in Article 3 of the UUPA "The implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, must be in such a way that it is in accordance with national and State interests, based on national unity and must not conflict with laws and other higher regulations".

In current national law, customary law communities are recognized by the Indonesian constitution as regulated in Article 18B paragraph (2) of the 1945 NRI Constitution which reads:

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Recognition of customary law communities is also found in the explanation of Article 67 paragraph (1) of Law No. 41 of 1999 concerning Forestry **.** Specifically related to agrarian law in Indonesia, Article 5 of Law No. 5 of 1960 concerning Basic Agrarian Principles ("UUPA") stipulates that: The agrarian law applicable to the earth, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in this Law and with other laws and regulations, all things with due regard to elements based on religious law.

Based on the explanation above, it is related to the existence of customary institutions in the Sungai Boh District area indicating the existence of customary law communities that regulate the area. Then it is also supported by the recognition of the Regional Government, both the Regency government and the Provincial government recognizing the existence of Customary Institutions in Malinau Regency and North Kalimantan Province as a whole. This is evidenced by the existence of Malinau Regency Regulation No. 10 of 2012 concerning Recognition and Protection of Customary Law Communities in Malinau Regency and North Kalimantan Provincial Regulation No. 1 of 2019 concerning Empowerment of Indigenous Communities.

With the recognition of the existence of customary law communities in Malinau Regency in the Regional Regulations (Perda) both Regency and Province, this can strengthen the legal standing for a customary law community including Customary Institutions, because Customary Institutions are an integral part of customary law communities. to carry out their role, namely resolving disputes that occur in society. In this, the position of Customary Institutions in Malinau Regency even down to the Sub-district and Village levels is strengthened by the recognition through the Perda.

Regarding the legal force of the Customary Institution Decision, H. Hilman Hadikusuma, in his book "Customary Law in Juris Prudence" provides an example of a case that can be said to be not much different from your case which we summarize as follows: The case is a dispute between RA Darmosewojo as the plaintiff against RM Brotodirdjo as the defendant. Both live in Plawikan Village, Jogonalan District, Gondang Winangun District, Klaten Regency. The plaintiff argued that the plaintiff's father,

RM Ng.Djojosasmito, had donated a plot of yard land before he died, but the Plawikan Village Meeting decided that the land was RM Ng.Djojosasmito's inheritance so it had to be divided into two between his two biological children, namely the plaintiff and the defendant.

The plaintiff then brought the case to the Klaten District Court and demanded the ratification of the grant and the annulment of the Village Decision dated August 25, 1955. The Klaten District Court in its decision No. 1/1956/Pdt dated July 30, 1956 rejected the demand to ratify the grant. Because they were dissatisfied, the plaintiff appealed to the Surabaya High Court which in Decision No. 510/1957/Pdt dated July 8, 1958 annulled the Klaten District Court decision.

The Surabaya High Court then decided to order the confiscation of the goods contained in the minutes. Finally, the Supreme Court in its decision No. 340 K/Sip/1958 dated November 19, 1958 decided to reject all claims of the plaintiff (RA Darmosewojo). In one of its considerations, the Supreme Court stated:

> The District Court inappropriately considered, among other things, the possibility of canceling the village decision, because it has become a permanent jurisprudence of the Supreme Court that it does not include the attribution of the District Judge to review the correctness or incorrectness of a village decision.

Based on the case example above, it can be seen that disputes can be resolved through customary institutions using customary law as the legal basis for their resolution. However, when a dispute still arises against a decision of a customary institution, the dispute can be brought to the district court to be resolved legally (in this case, national/state law).

In conclusion, although in the hierarchy of judicial power the decisions of Customary Institutions are not explicitly recognized, in practice the existence of decisions of Customary Institutions is still recognized as long as the customary law community has also been recognized and regulated in the local Regional Regulation. Thus, every decision issued by a customary institution is binding on the customary law community concerned. Although, according to legal logic, court decisions have more legal force than decisions of customary institutions because they are based on statutory law.

2. Efforts to Strengthen Customary Institutions as Alternative Institutions for Resolving Land Disputes in Malinau Regency

The local government has an important role related to efforts to protect and respect MHA. As previously explained, the authority given to manage certain areas within the scope of local government will directly or indirectly intersect with the interests and existence of MHA. The problem that has occurred so far in the MHA of Malinau Regency is that there are often conflicts and friction between development interests and the existence of MHA, which is the result of minimal communication and good coordination. In addition, in the governance system, the position of MHA which is divided into customary groups is still not on par with religious and government institutions. Meanwhile, in terms of human resources, MHA is still relatively behind in maintaining the traditional noble values that it believes in.

The authority of the regional government in recognizing and protecting MHA was first regulated through the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for the Settlement of Customary Law Community Customary Rights Problems. This was then followed by various subsequent laws and regulations that required that recognition of the existence and rights of MHA be stipulated in Regional Regulations or decisions of the Regional Head, such as Law No. 41 of 1999 concerning Forestry, Law No. 6 of 2014 concerning Villages up to Law No. 23 of 2014 concerning Regional Government and a number of operational regulations at the ministerial regulation level.

Nevertheless, the practice of recognizing MHA rights through regional legal products has been going on for a long time, even before the issuance of the Minister of Agrarian Affairs Regulation, for example what happened in Kerinci Regency since 1992 in the form of a Regent's Decree regarding the determination of customary forests. This indicates that the regional government plays an important role in realizing the constitutional mandate for the recognition and advancement of indigenous peoples' rights. Since the issuance of the Constitutional Court Decision No. 35/PUU-X/2012, the need for recognition of the existence and rights of MHA has become stronger. The role of local governments is increasingly significant because several operational regulations to implement the Constitutional Court Decision require regional legal products in the form of Regional Regulations or Regional Head Decrees, such as:

a. Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities

b. Minister of Environment and Forestry Regulation No. P.32/Menlhk-Setjen/2015 concerning Forest Rights

c. ATR Regulation 10 of 2016 concerning Procedures for Determining Land Rights

Related to the protection of MHA rights, the Malinau Regency Government has issued a regional legal product, namely Regional Regulation Number 10 of 2012 concerning the Recognition and Protection of the Rights of Indigenous Peoples in Malinau Regency. The presence of this Regional Regulation is in order to fulfill the constitutional mandate and the fulfillment of human rights. This can be illustrated in the first paragraph of the Consideration of Regional Regulation No. 10 of 2012 that the recognition and protection of the rights of indigenous peoples in Malinau Regency is one of the important legal political steps that must be taken in order to implement the mandate of the 1945 Constitution and in order to fulfill Human Rights and obligations that must be carried out by the State as stated in Paragraph IV of the Preamble to the Law;

Regional Regulation Number 10 of 2012 is a legal umbrella for the Malinau Regency Government to think about a comprehensive and responsive human rights development planning concept. The concept must be able to solve the problem, namely eliminating the barriers that separate the regional government's development programs and activities from the best interests of MHA. The concept as intended must consider all aspects including accommodating responses and input from MHA or customary institutions. International and national instruments have given responsibility to the regional government to implement efforts to

protect and respect MHA rights. Protection efforts can be implemented in various ways, the word "protection" in the Big Indonesian Dictionary (KBBI) means a place of shelter; things (actions and so on) to protect;.

One of the efforts to protect MHA is that the regional government is required to recognize the existence or position of MHA. This form of recognition is important so that it can be a guide for each regional apparatus in making a decision to be able to consider the existence of MHA as part of the existing community group and living and developing with its traditional rights. The consequences of the recognition of MHA by the regional government also confirm that MHA is a legal subject that has equal rights and obligations with other people and legal entities. Another role of the regional government towards MHA is to make efforts to respect the implementation of the values that grow and develop in MHA itself. The meaning of respect itself can be interpreted that the regional government provides space and situations that allow MHA to implement and practice cultural values without interference or intervention. Even the regional government is also required to facilitate all activities related to MHA activities both in society and in institutions within the regional government itself in the context of respect itself.

The policy direction outlined for the regional government as referred to above, one of which can be implemented through the formation of a regional legal product that is responsive to human rights, especially the traditional rights of MHA. The policy through a regional legal product will be the stepping stone of every joint of regional government in paying attention to efforts to protect and respect MHA in every concept of programs and activities. In addition, the function of the regulation is to accommodate and strengthen the views and positions of MHA into a framework of norms that must be implemented and must be implemented

In fact, law and customary law have the same meaning, namely as a series of norms that regulate behavior and actions in community life with the aim of creating order in society. The difference is that customary law applies to Indonesians, is unwritten and is not made by the legislature. Two concepts of legal thought that very sharply oppose the position of customary law in the legal system are the concept of legalism (including the positivism school) and the historical school in relation to the implementation of customary law as positive law. The legalism school requires that law-making can simply be done with legislation, while the historical school opposes the equating of law with legislation because law cannot be made but must grow from the legal awareness of society.

Meanwhile, the historical school of thought pioneered by *Von Savigny* had a significant influence in forming schools of thought on legal development in Indonesia, which was initially also divided into schools that wanted codification and unification and schools that wanted to maintain customary law that was not codified and not unified. The historical school of thought wanted customary law, which reflected the values of native Indonesian culture, to be maintained to prevent westernization in law. On the other hand, maintaining customary law also had negative implications, namely the isolation of the Indonesian nation in the development of modern law, resulting in backwardness and causing problems, especially in competing with other nations.

The above contradictions do not need to be maintained but must be met in a balance between law as a tool and law as a reflection of the culture of society. Also between law as a tool to enforce order that is conservative (maintaining) and law as a tool to build (direct) society to be more advanced. This concept is very much in accordance with the thoughts conveyed by *Eugen Ehrlich* who is known for the sociological jurisprudence school which talks about living law or law that lives in society. According to Ehrlich, good and effective positive law is law that is in accordance with *living law,* namely that which reflects the values that live in society.

The concept of legism/positivism thought greatly influenced European and Dutch legal scholars. According to this concept, there is no law except statutes. Unwritten law (including customary law in Indonesia) is considered not law. This concept equates law with statutes. On the other hand, the historical school opposes legislation as a way to create law because law cannot be created but grows on its own from the legal awareness of society.

Muchtar Kusumaatmadja, this historical school is very influential in Indonesia, both in education and in government. This influence continues through leading customary law experts to the current generation of legal scholars. The thoughts and attitudes of this school towards law have played an important role in maintaining customary law as a reflection of the values of the lives of the indigenous population.

On the other hand, legal literature also notes that law in a broad sense can be grouped into two parts, namely written law and unwritten law. Customary law is included in the second group. However, the problem is that there is not a single article in the body of the 1945 Constitution that regulates the position of unwritten law. In fact, many articles in the body of the 1945 Constitution order the provisions of the articles to be further regulated by law (organic law). The order to further regulate the provisions of the articles in the 1945 Constitution into law contains the meaning that the State of Indonesia prioritizes written law.

Article 18B paragraph (2) of the 1945 Constitution Amendment states "The State recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". According to this article, the customary law that is recognized is customary law that is still clearly alive, with clear material and scope of the customary community.

The provisions of Article 18b paragraph (2) above can be understood to mean that the 1945 Constitution prioritizes written law over unwritten law. This means that recognition of customary law that is still alive in a society in a region must be done through regulations in (written) legislation. To analyze the position of customary law in the legal system, it is necessary to pay attention to one of the schools of law, namely, *Sociological Jurisprudence,* which was conveyed by *Eugen Ehrlich* . The basic concept of *Ehrlich's thinking* about law is what is called *living law* . Good and effective positive law is law that is in accordance with *the living law* of society which reflects the values that live in it.

Regarding the position of customary institutions, their existence is still recognized on the condition that the customary law community group truly exists and lives, not forced to exist, not even kept alive. Even the position of Customary Institutions in Malinau Regency is stated in the 1945 Constitution of the Republic of Indonesia in Article 18 B paragraph (2), namely: "(2) The State recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

Customary Institutions are recognized and stipulated in Article 95 of Law No. 6 of 2014 concerning Villages. Customary institutions that have been formed have government regulations and implementation based on the original structure.

As a legal system that lives and develops in society, customary institutions or in other areas called customary justice actually play an important role for the civilization of customary communities in Indonesia. Especially because of its function as a pillar that maintains the balance of social relations and local wisdom behavior of indigenous communities such as maintaining the harmony of relations between society and nature. Thus, customary institutions no longer only function as balancing pillars but have transformed into cultural entities of indigenous communities. The essence of customary institutions remains on the mission to resolve existing problems. The purpose of resolving these problems is prioritized to achieve the ideals and goals of the community, namely tranquility and peace through the creation of harmony with others, with nature and with the creator. Thus the purpose of the dispute resolution process is not only aimed at upholding justice, but much more than that.

Institutionally, the structure of the Customary institution is very dependent on the social system of the indigenous community concerned. In Malinau Regency, which is a residential area for various Dayak tribes, the Customary institution starts from the Village level to the Sub-district level. So that the work mechanism of the customary institution is carried out in stages. Starting from the Village Customary Institution and the Regency Customary Institution is the Appeal Customary Institution. Therefore it is called the Great Customary Institution.

Problems that occur (either between Balai or with outsiders) and other customary violations become the business of the customary elders, to resolve them within the Balai through deliberation, to find an agreement on the mistakes and the form of punishment. This deliberation itself is attended by customary figures and administrators of customary institutions. In practice, the form of punishment includes fines,

Sociologically, customary institutions are recognized by the community and are a priority in regulating and resolving all problems in the community. Resolution through customary institutions is more effective, because a customary institution grows based on values that live in the community and have been recognized and adopted from generation to generation. However, to ensure legal certainty, regulations as recognition by the community through legislation are still needed, especially regarding matters related to neutral areas of life such as administration, education and others.

The settlement mechanism through customary institutions always prioritizes harmony and social harmony. Maintaining social harmony is highly valued in rural life, and informal actors prioritize restoring social relations when problems occur. Settlement through customary institutions has a flexible character. Structures and norms are loose to adapt to social change. Dispute resolution through customary institutions relies on local authority and legitimacy. Communities prefer non-state justice primarily because of the authority of the actors in the rural environment to solve problems and implement decisions. In the institutional system of Aceh's customary society, there are requirements such as the periodization of management, decisions of customary institutions cannot be negotiated.

It must be admitted that the resilience of customary justice has proven extraordinary in withstanding the onslaught of the conquest processes described above. This is evident from the ongoing practice of dispute resolution using customary justice forums. The resilience of customary justice is very impressive considering the efforts and strategies to eradicate it are so systemic. Systemic, because its space is not only at the policy level, but also at other levels, namely real actions in the field by state law enforcement, negative stigmatization, and the dismantling of the trust of its community leaders. When looking at the experience of several communities that are still practicing it to this day, the acceptance and trust of community members are the basic energy for the continued existence of this process in their environment.

Although sporadically there are still dispute resolution practices through customary institutions, the legal policy to eliminate the role of these customary institutions remains strong in the legal perspective through general, vague, even floating and sectoral regulations. Article 18B paragraph (2) of the 1945 Constitution states that the State recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law. The formulation regarding recognition in Article 2 of the 1945 Constitution is very clear. However, the question is what is meant by what is regulated by law?

The floating formulation regarding this customary institution is also contained in the MPR Decree No. IX/MPR/2001 Concerning Agrarian Reform and Natural Resource Management. Article 5 of the MPR Decree No. IX/MPR/2001 formulates that agrarian reform and natural resource management must be implemented in accordance with the principles of recognizing and respecting the rights of customary law communities and the nation's cultural diversity over agrarian resources and natural resources.

The sectoral regulation then emerged in several Constitutional Court decisions that recognized the rights of indigenous legal communities, namely Decision No. 35/PUU-X/2012 concerning the Judicial Review of Law No. 41 of 1999 concerning Forestry.

In terms of hierarchy, the weakness of the legal aspect of the regulation of customary institutions is that there are no general implementing regulations that serve as a reference for each region. These general regulations are important as an umbrella for regions to strengthen customary institutions. General regulations must be able to accommodate the heterogeneity of Indonesian society. Sociologically, legislation is basically expected to be an integrative factor, but in the midst of a heterogeneous society like Indonesia, this goal is difficult to achieve. The diversity of values, cultures, and customs held by society often contradict each other, making it difficult to regulate uniformly. This diversity makes it difficult to formulate the degree of abstraction of a law, because in regulating something diverse it is certainly very difficult to be able to gather this diversity in a uniform regulation.
In addition, there are legal weaknesses in the development of customary institutions, namely:

1) There are no implementing regulations in the hierarchy of legislation, only ministerial regulations. For example, Permendagri No. 3 of 1997 concerning Empowerment, Preservation and Development of Customs and Traditions. While on the other hand, the customs of the community and customary institutions in the regions are not included in Article 7 of Law No. 12 of 2012 concerning the Formation of Legislation.
2) It is difficult to unite the ideal and procedural norms of the diversity of customary institutions that are authoritatively owned by every customary community in Indonesia, especially Papua, which are not accommodated in the Organic Law and Regional Regulations.

3) The inability of legal drafters to create implementing regulations from a philosophical, sociological and legal perspective without starting from research.

The settlement mechanism through customary institutions always prioritizes social harmony and harmony. Maintaining social harmony is highly valued in rural life, and informal actors prioritize restoring social relations when problems occur. Settlement through customary institutions has a flexible character. Structures and norms are loose to adapt to social change. Dispute resolution through customary institutions relies on local authority and legitimacy. Communities prefer non-state justice primarily because of the authority of the actors in the rural environment to solve problems and implement decisions. In the institutional system of customary communities there are requirements such as the periodization of management, decisions of customary institutions cannot be negotiated.

However, settlement through customary institutions has several major weaknesses, namely arbitrariness and lack of supervision. Although social authority is the core power of non-state justice, its uncontrolled implementation is a major weakness. The lack of clear procedures and norms and the absence of accountability will leave the weak and marginalized parties underserved, with no other alternatives.

Basic principles of dispute resolution through customary institutions:

a) Pay attention to ideal and productive customary norms and culture.

b) Low cost/no cost, simple and quick to complete.

c) Social justice is prioritized which leads to the benefits of the law.

Deliberation is a common and primary model in the trial process in customary courts. This means that customary court institutions do not come with the primary mission of being a means of coercion. The role of the mediator for reconciliation and consolidation of the parties, through the process of finding a decision that relieves all parties, including the general public from their community who are not directly related to the case is an important characteristic of the dispute resolution mechanism through customary institutions.

The model of dispute resolution using the deliberation method, allows customary courts to escape the trap of decisions that cannot be implemented. Because in principle, decisions are taken voluntarily by the parties. There is no suspicion and prejudice against the decisions taken. Because all the processes are carried out openly which allows all parties to convey all information freely, without having to think about formal aspects. However, from some of these practices it can also be seen that indigenous peoples - at least as reflected in customary court decisions - also do not make final decisions. There are even those who submit to formal courts if there are parties who are not satisfied with their decisions. There is a suspicion that this kind of practice is caused by the weakening of the confidence of customary functionaries so that they hope for other legal systems.

In practice, customary institutions can only examine disputes that arise between customary communities in one community. Customary institutions are very difficult to apply to land disputes that bring together customary communities with other parties such as the government and companies. Therefore, the solution taken by communities so far is usually through negotiation. This method is chosen because customary communities realize that the weakness of the legal status (formal) of customary communities over their customary territories will make it difficult for them to achieve justice if the resolution is carried out through state courts. While on the other hand, it is impossible to force the government and companies to submit to customary law, therefore dispute resolution can be carried out through customary courts. This method is usually used by customary communities to fight for the legal status (formal) of their ownership of customary territories.

The attitude of the district court towards the decision of the customary institution shows the importance of exploring the customary values that have been mandated by law. The decision of the customary institution has not been taken into consideration in the decision of the district court if one of the parties continues the case to the district court. If the problem is not resolved in the customary institution, it is usually done cross-culturally for the validity of the problem being resolved, or brought to the police but the settlement material uses customary law. Even if one of the parties is not satisfied, it can be continued to the District Court.
The main factor that influences dispute resolution through customary culture is the culture of shame because customary communities prioritize life in social solidarity by maintaining the balance of social life in customary communities (Cosmic). The efforts needed to strengthen the position and role of customary institutions in dispute resolution are to clarify the position and role of customary institutions in the formation of customary institutions as village community institutions and also as partners of village governments and local governments in the form of policies (regulations) in each region.

The decision of the customary institution is usually carried out voluntarily by each party and does not require an execution process as in a court decision. No objections are made to the decision of the customary institution, because usually the decision is made based on an agreement between the parties, if there are still parties who have not agreed then the decision will not be taken. The sanctions determined by the customary institution are more in the form of social sanctions, for example the dispute that occurs becomes the "talk of the town" of the community, so that the parties feel ashamed and this is one of the deterrent effects that can be caused by these social sanctions. In general, the implementation or execution of the termination of the customary institution is announced openly to its citizens verbally through the shops involved in resolving the case/dispute. and other customary shops that have a relationship with the Clan or their respective citizens.

The attention of local governments that raise and revive customary institutions through regional regulations is an example of efforts made by each region to strengthen the role of customary institutions. In Indonesia, not many regions have formed Regional Regulations to strengthen the existence of customary institutions. Malinau Regency Regional Regulation Number 10 of 2012 concerning Recognition and Protection of Customary Law Communities in Malinau Regency.

Efforts that can be made to strengthen the position and role of customary institutions in resolving disputes can be done by, among other things: (1) customary leaders must first have the ability and in-depth understanding of customs and traditions, as well as the values adopted in society, (2) customary leaders must understand the background of each dispute well, so that they can

provide the resolution expected by the parties, (3) continuing to provide socialization to the community about the existence of customary institutions as an alternative that can be used by the community in resolving disputes, (4) improving the institutional structure internally, and (5) providing the community with an understanding that not all disputes must be brought to court, but can be resolved through various alternative resolutions.

Malinau Regency has carried out legal strengthening of the existence of customary institutions through Regional Regulation No. 10 of 2012 concerning the Recognition and Protection of Customary Law Communities. The regulation was formed based on several considerations, namely:

First, as an effort to preserve customs and acknowledge the existence of customary law communities, it is deemed necessary to take steps to empower, preserve and develop the customs of Malinau Regency. Second, to empower customs which are regional cultural assets, there needs to be a forum for fostering and developing customs and customary law communities in the form of the Marga Customary Institution.

In the Regional Regulation, it is formulated that what is meant by. Customary law is a set of norms and rules, both written and unwritten, that live and apply to regulate the communal life of indigenous peoples. Meanwhile, indigenous peoples in Malinau Regency are groups of people who have lived in certain geographical areas in Malinau Regency for generations who have ties to ancestral origins, a strong relationship with the land, territory and natural resources in their customary areas, and a value system that determines different economic, political, social and legal institutions, either in part or in whole, from society in general. Customs are values or norms, rules and beliefs of society that are lived in society. Customary law is values, norms and customs that live, apply and develop as regulations that are obeyed by the community in the clan area which if violated are subject to sanctions. Customary institutions are organizational devices that grow and develop along with the history of an indigenous community to regulate and resolve various life problems in accordance with applicable customary laws.

The purpose and objective of establishing a Customary Institution is as a forum for fostering, preserving and developing customs and customary law in order to enrich the regional cultural heritage in order to support national culture to create solid stability in the region in the social, cultural and religious fields for the smooth implementation of development.

For the empowerment of customary law and customs communities, a Customary Institution is formed as a means of communication and coordination. The formation of a Customary Institution is regulated and stipulated by the Regent's Regulation. The Customary Institution is domiciled in the Capital of Malinau Regency. The administrators of the Customary Institution are called Customary Leaders who are community leaders who come from representatives of village communities in the work area of the Customary Institution.

In line with the ideals of using Customary Institutions, there is also a *dading event* that is commonly applied in every civil case, which is still ongoing today. The peace settlement event in the civil court can always be taken until the verdict of the case has permanent legal force (*inkracht*). The civil court judge even always tells the Plaintiffs and Defendants that this case should be taken with peace and that the contents of the peace agreement are made into the Court Judge's decision. With the *dading event* , the Panel of Judges generally feels more appreciated and respected, besides of course their duties are lighter, because the Judge's decision will read: to punish the Plaintiff and Defendant to obey all the contents of the peace decision in this case . *With that, the decision on the dading* solution becomes immediately *inkracht* and can be executed by the parties themselves.

The integrative combination of the use of Customary Institutions with several forms of APS according to Law No. 30 of 1999, is now even strengthened by the enactment of PERMA RI No. 2 of 2003 in conjunction with PERMA No. 1 of 2008 concerning Mediation Procedures in Court, as APS, for civil and public cases (limited), also regulates the use of the Medias event Article 1 point 6 formulates: Mediation is the settlement of disputes through a negotiation process between the parties assisted by a mediator .

Article 1 point 9 also regulates: Public disputes are disputes in the fields of environment, human rights, consumer protection, land and labor that involve the interests of many workers . Article 2: *(* 1) All civil cases submitted to the first instance court must first be resolved through peace with the assistance of a mediator. (2) In carrying out their functions, mediators must comply with the mediator's code of ethics . Article 23 determines the conditions for a peace agreement, namely: (a) in accordance with the wishes of the Parties; (b) not contrary to the law; (c) not detrimental to third parties; (d) can be executed; and (e) in good faith.

In practice, customary institutions can only examine land disputes that arise between members of the customary community in one community. In practice, customary institutions are very difficult to apply to land disputes that bring together customary communities with other parties such as the government and companies. Therefore, the solution taken by customary communities so far is usually through negotiation. This method is chosen because customary communities realize that the weakness of the legal status (formal) of customary communities over their customary territories will make it difficult for them to achieve justice if the settlement is carried out through state courts. While on the other hand, it is impossible to force the government and companies to submit to customary law, therefore dispute resolution can be carried out through customary courts. This method is usually used by customary communities to fight for the legal status (formal) of their ownership of customary territories.

The Customary Institution officially invites both parties to be heard before the customary institution meeting which takes place at the Customary Hall. At this stage, each party is given the opportunity by the Head of the Customary Institution to convey their complaints and reports, and after listening to both parties, the Head of the Customary Institution and members ask for the willingness of the parties to mediate.

The next stage is the stage of proof and deepening of the ongoing dispute. At this stage, as in the previous stages, the Chairperson and members of the Customary Institution at the customary institution appeal to each party to make peace and not drag out this problem, especially considering that the dispute occurred between two parties. In this customary settlement process, in addition to considering the evidence that emerged during the process, The parties are encouraged to reach a peaceful resolution, however if it turns out that one or both parties object then the dispute will be resolved in the district court.

The existence of the administrators of the customary institution as stated above has several responsibilities, namely first, organizing the dispute resolution process in every stage, starting from receiving reports, examining the facts of the matter to the decision-making stage. Second, making a fair decision based on accountable evidence and fulfilling the sense of justice of the parties. Third, protecting the rights of the disputing parties in every stage of the process, including listening in a balanced manner.

Fourth, recording the process and decisions of the customary institution accurately and fulfilling the principles of documentation and administration. Finally, fifth - the responsibility of the customary leaders is to archive case files properly and safely. The function of this archiving is as supporting data in the event of a repeat of the dispute or disagreement, so that the customary leaders have evidence and references in conducting trials and making decisions.

When the dispute and dispute between the two parties have reached a meeting point, then according to the customary practices in Malinau Regency, the parties will be reconciled. This process is known as the term making peace or making peace or peace between two individuals who are in conflict

D. CONCLUSION

The decision of the Customary Institution in Malinau Regency has binding legal force against the parties and the customary law community as long as the Customary Community of Malinau Regency still exists and recognizes customary law as a norm that regulates legal relations between members of the community in everyday life, recognizes the customary institution as an institution enforcing customary law, and the existence of the customary law community itself has been recognized by the Malinau Regency regional government through regional regulations. Efforts to strengthen Customary Institutions as an alternative dispute resolution in Malinau Regency are through the formation of Regional Regulation Number 10 of 2012 concerning the Recognition and Protection of Customary Law Communities in Malinau Regency. In addition, other efforts are to provide grant funds sourced from the APBD to Customary Institutions. Efforts to strengthen Customary Institutions as an alternative dispute resolution that contains justice can be implemented by starting from a change in the mindset of post-colonial thinking towards the nomenclature of "customary communities" which are no longer only positioned as "self-management authority" but become a community unit as collective human rights with the responsibility of assigning the state to implement the truth of restorative justice.

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