


Local Government Actions in Disputes over the Installation of Hawear in Public Facilities

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Abstract

Introduction: The diversity of the Indonesian nation is a reality, even this diversity is a wealth as a gift from God who has stated that humans were created in groups so that they can get to know each other. This article discusses the actions of the local government in resolving the problem of installing hawear, a traditional symbol of the Kei community, which often clashes with the interests of building public facilities.

Purposes of the Research: This study aims to analyze the role and actions of local governments in resolving disputes over the installation of hawear, with a focus on the mediation process and the implementation of related policies.

Methods of the Research: This study uses empirical juridical research methods with legal materials used in research are primary, secondary and tertiary with the use of literature study techniques in the form of applicable legal regulations, scientific works and several other literature.

Results Main Findings of the Research: In the Kei Islands, Maluku, hawear serves as a marker of the boundaries of sacred customary territories according to Laroul Ngabal customary law. However, along with the development of the times and the need for infrastructure development, the installation of hawear often triggers conflicts between indigenous peoples and the government. The dispute over the installation of hawear (customary boundary signs) on public facilities in the Kei Islands, Maluku, has become a complex issue related to the duality of the government system, namely between Customary Villages and Administrative Villages. This conflict was triggered by differences of opinion regarding customary authority and the authority of local governments in determining territorial boundaries and public land use. This study explores the role of local governments in handling these disputes through mediation, negotiation, and harmonization approaches between customary law and positive law.

Keywords: Local Government Action; Hawear; Laroul Ngabal.

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INTRODUCTION

The diversity of the Indonesian nation is a reality, even this diversity is wealth as a gift from God who has stated that humans were created in groups to know each other. The development of the Indonesian legal system tends to prefer *civil law* and *common law systems*.¹ Based on the Amendment to the 1945 Constitution of the Republic of Indonesia, Article 18 B states, among other things, that the state recognizes and respects the unity of customary law communities and their traditional rights. Indonesia as a country with rich cultural and ethnic diversity, has a unique constitutional system. Customary law refers to the rules and norms that develop in certain indigenous peoples or ethnic groups.² Although

¹ Bederman, David J, "Rhe Customary Law of Hal and Ruth", *Emory Law Journal*, 57 no 6 (2008): 1399-1401.

² Ernawati, Erwan Baharudin, "Dinamika Masyarakat Hukum Adat Dalam Sistem Ketatanegaraan Di Indonesia", *Jurnal Ilmiah Hukum dan Keadilan*, 6 no 2 (2019).

on the one hand Article 18 B in the 1945 Constitution of Indonesia, as amended, can be considered as an entrance to the necessity of giving birth to a law on village autonomy and/or the existence of indigenous peoples, but it turns out that in the laws and regulations under it such as Law Number 23 of 2014 concerning the new Regional Government, here it can be seen that the entrance is closed and does not have the spirit of respecting the existence of villages and/or indigenous peoples.

Villages are only recognized as a legal community unit that has the authority to regulate and manage the interests of the local community based on local origins and customs. Currently, in empirical reality, there are sometimes many problems faced by indigenous peoples in Indonesia when customary law is faced with positive law. For example, when the traditional rights of the community are confronted with the interests of investors through the legal means of the state.³ As is known, customs have generally been destroyed and only memories are left due to the entry of state intervention and capital exploitation, which in turn makes the local community (*adat*) lose ownership of self-esteem and identity of local wisdom, what remains is only traditional rituals that are completely unrelated to the authority of the government.

The term customary law was first introduced by *Snouck Hurgronje* in 1883 in his book *De Atjehnese*,⁴ in the book he introduced the term *Adatrecht* (customary law), which is the law that applies to *bumi putra* (native Indonesians) and foreign orientals during the Dutch East Indies period. Customary law only had a juridical technical meaning after *C. Van Vollenhoven* published his book entitled *Adatrecht*. He was the first to state that customary law is a law that applies to the indigenous Indonesian people and made it an object of positive legal science and used as a separate course. He is also the one who raises customary law as a law that must be applied by the *governor's judge*.⁵ The Kei Islands in Maluku is one of the regions in Indonesia that still holds traditions and customary laws in daily life. The Kei Islands in Maluku are indeed known for the strong influence of tradition and customary law in the daily lives of the community. Larvul Ngabal customary law is the main pillar in regulating various aspects of life, including land management rules, distribution of natural resources, and social relations among community members. Larvul Ngabal consists of seven basic principles that govern the rights and obligations of the Kei people, emphasizing the importance of justice, respect for customary authority, and collective responsibility. This recognition shows that customary law is recognized as part of the Indonesian legal system, but the recognition is conditional, that is, it must be in accordance with the provisions of national law and the principles of the Unitary State of the Republic of Indonesia.⁶

One of the most important symbols in the context of Kei customary law is *hawear*, which serves as a customary boundary sign. This *hawear* shows customary ownership of a territory or land, both individually and communally. The installation of *hawear* is usually carried out by traditional elders or community leaders with sacred traditional processions, showing the importance of land for the Kei people. *Hawear* is not only a physical marker, but also has symbolic value as part of cultural identity, as well as a tool to affirm customary sovereignty in the midst of modern life that is increasingly influenced by government administrative rules. The use of *hawear* as a symbol of customary boundaries with local

³ M. Syamsudin, "Beban Masyarakat Adat Menghadapi Hukum Negara", *Jurnal Hukum*, 15 no 3 (2008): 338-351.

⁴ Djuned T, *Asas-asas Hukum Adat*, Fakultas Hukum Unsyiah, 1992, p.8

⁵ Kusumadi Pudjosewojo, *Pedoman Pelajaran Tata Hukum Indonesia*, (Jakarta: Aksara Baru, 1976), p. 64.

⁶ Abdurrahman, *Draft Laporan Pengkajian Hukum Tentang Mekanisme Pengakuan Masyarakat Hukum Adat*, (Jakarta, 2015).

government regulations often triggers potential conflicts, especially in the context of the duality of the land management system between the customary and the state. In the Kei Islands, where the community still has great respect for Larvul Ngabal customary law, hawear is often the basis for land ownership claims by indigenous communities. However, on the other hand, local governments, through national laws and regulations, regulate spatial planning, land management, and public development based on administrative maps and formal policies.

The Kei Islands, which are included in Maluku Province, have two local government organizations, namely the Tual City government and the Southeast Maluku Regency government until now. The Kei Islands, which are an autonomous region that is still relatively new and has a lot of customary problems, which until now often occur in the social groups of indigenous peoples whose customary laws are very thick. Therefore, there are many social groups of people who are better known as indigenous peoples. Indigenous groups that usually exist in society are based on a kinship. This is common in a social group structure that still upholds the values of customary law in an area as is the case in the area in the Kei Islands. The social groups that now exist in the life of the Kei Islands community are very diverse, this is related to the diversity of island-based regions such as those in Southeast Maluku Regency. Indigenous peoples usually uphold the value of customary values in the Kei Islands known as the Larvul Ngabal law.

The law of Larvul Ngabal is a law that lives and develops in the society of the Kei Islands of Maluku, this law is the basic principle that underlies the customs in the Kei Islands. The law of larvul ngabal consists of three main principles, namely *Nevnet* (criminal law), *Hanilit* (family law) and *Hawear Balwirin* (property law). This customary law is a social contract that historically aims to shelter and unite the social groups of the people who exist and live in the Kei Islands which until now are still preserved and firmly held by social community groups or communities in the Kei Islands. In the Tual City Regional Regulation Number 4 of 2013 concerning Guidelines for the Implementation of Hawear or Other Names in the Tual City Area, it is explained in Article 1 paragraph (25) which reads "Hawear or other names are prohibition signs taken from yellow coconut leaves and woven in the form of janur tied to a num wood pole or other wood determined by the king to be planted in a certain place". Indigenous peoples in such a group often act to prohibit sealing, which certain places are called Hawear or commonly called sasi. The installation of hawear that has gone out of the values of the purity of customary law. Customary rules in their progress are influenced by the legal politics embraced by a forum and the method of approach used to find customary law.⁷

Hawear is a culture that grows and occurs in the lives of the people of the Kei Islands in Southeast Maluku which is downstream,⁸ In the issue of hawear customary disputes in the Kei Maluku Islands, there is often the installation of hawear or sasi in public facilities including schools, government agency offices, connecting bridges and there are also places of worship for local communities. This has actually come out of the noble values contained in the customary law there, thus disrupting and inhibiting community life activities in the area. Even with the existence of Tual City Regional Regulation Number 4 of 2013 concerning

⁷ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju, 1992), p.15

⁸ Soeleman Djaiz Baranyanan, I Gusti Ayu Ketut Rahmi Handayani, Isharyanto, Implementation of The Values Sasi Customary Law in the Formation of Regional Regulations on Environmental Sector, *Proceeding, Atlantis Press: Advances In Social Science, Education and Humanities Research*, 358 (2019). <https://www.atlantis-press.com/article/125920824>.

Guidelines for the Implementation of Hawear or Other Names in the Tual City Area and Southeast Maluku Regency Regional Regulation Number 3 of 2009 concerning Ratskap and Ohoi, in matters that regulate the problem of hawear cannot function effectively in resolving the problem of customary disputes that have occurred to date. Dispute resolution through deliberation always involves the head of the people (the customary king), both in preventing violations of the law (*preventieve rechtszorg*) and restoring the law (*rechtsherstel*).⁹

Conflict arises when land considered customary territory by the Kei people, with clear hawear signs, is turned into public facilities by the government without customary consent. Public facilities such as roads, schools, or other infrastructure are often built on land claimed by indigenous peoples, so hawear is installed by communities to assert their rights. This can trigger disputes between local governments that adhere to formal administrative rules and indigenous peoples who maintain their traditional rights. The role of local governments in resolving this dispute is very important. They are expected to be neutral mediators, who are able to bridge indigenous interests with development needs. The process of dialogue, customary mediation, and the formulation of policies that accommodate local wisdom are important steps in resolving conflicts. Customary mediation, involving indigenous leaders and the government, is an effective way to resolve conflicts, but the challenge is how to create synergy between customary law and state law so that the two can run harmoniously. Dispute resolution through deliberation always involves the head of the people (the customary king), both in preventing violations of the law (*preventieve rechtszorg*) and restoring the law (*rechtsherstel*).¹⁰

However, the installation of hawear often triggers conflicts when it intersects with the construction of public facilities that are considered important for the benefit of the community at large. The installation of hawear on land to be used for development such as roads, schools, or government buildings often causes disputes between indigenous peoples and the government. These disputes usually arise due to differences in views between indigenous peoples who adhere to customary law and local governments that use positive laws in decision-making. This study aims to review the actions of local governments in dealing with hawear installation disputes that occur in the Kei Islands, as well as assess the effectiveness of the measures taken to align the interests of indigenous peoples with the benefits of public space development.

LITERATURE REVIEW

Larvul Ngabal customary law is a system of norms that governs social and economic relations in the Kei community. There are seven main principles on which this law is based, including the prohibition of killing, stealing, and immoral acts. One of the important rules in Larvul Ngabal is the determination of customary territory boundaries through the installation of hawear. The installation of hawear is a manifestation of customary land rights inherited from generation to generation in the Kei community. Larvul Ngabal is a customary legal system embraced by the Kei people, and has strong historical roots. Literally, Larvul means "red blood" and Ngabal means "spear", reflecting the origins of this law in the traditions of war and community life in Kei. This law consists of seven basic principles that aim to maintain harmony, justice, and balance in the life of the Kei people. The seven basic rules of Larvul Ngabal include: 1) The Law of "Hira Ni Ngat" (Law of Truth):

⁹ Soepomo, *Bab Bab Tentang Hukum Adat*, (Jakarta: Pradnya Paramita, 2003). p. 70.

¹⁰ *Ibid.*

Rules that emphasize honesty, truthfulness, and moral integrity in daily life. Violation of this law will damage social harmony; 2) Hanilit Law (Law of Justice): This principle emphasizes the importance of justice in conflict resolution and resource allocation. Every member of society must be treated fairly regardless of social status; 3) The Law of *Hiyat Ni Hanit* (Law of Respect): Teaches the importance of mutual respect between fellow members of society and respect for customary authorities and traditions; 4) Law of *Lar Nakmas* (Innocent Blood): The prohibition of killing or shedding blood without a valid reason according to customary law. It also reflects the values of peace within the community; 5) Law of *Fau Ini Rahan* (Prohibition of Cheating): Emphasizing fidelity in the marriage relationship, with severe punishment for violators; 6) Law of *Kel Ngat Ngain* (Law of Fulfilling Promises): The principle that every promise or agreement must be fulfilled, especially with regard to customary commitments; 7) Law of *Balwarin* (Spear Back): A rule that reminds that all forms of violence or excessive actions are not reciprocated with similar violence, in this context, the Kei community is expected to seek conflict resolution through deliberation and dialogue.

The Larvul Ngabal Law is the moral and ethical basis for the Kei people, which governs all aspects of social life, including marriage, inheritance, land distribution, and dispute resolution. Hawear Balwirin is a physical symbol used by the Kei people to mark the boundaries of customarily owned land, in Kei customary law, land is not only considered an economic resource, but also has sacred value and is part of the identity and heritage of the family or indigenous community. The functions of hawear are as follows: 1) Regional Boundary Marker: Hawear is installed to indicate the boundaries of customary land ownership, both owned by individuals, families, and communities. The installation of hawear is usually done with a traditional ceremony, led by a traditional elder or tribal chief; 2) Legitimate Ownership: The installation of hawear indicates a legitimate claim to a land or territory, and can only be installed with the consent of the indigenous community. It is a traditional way to prevent land disputes in the past and protect land rights from outsiders; 3) Sacred Symbols: In addition to being a physical marker, hawear has a strong spiritual meaning, in many cases, if the hawear is damaged or moved without permission, it is considered a serious violation of customary law, which can result in customary sanctions, both socially and spiritually; 4) Dispute Prevention: Hawear serves as a dispute prevention system, because with clear boundary marks, rights and responsibilities to land become easier to identify and respect by the community.

Hawear installation is often carried out on land that is considered to belong to custom, including in locations that have been planned for the construction of public facilities. The construction of roads, government offices, or other public facilities often requires the tenure of land recognized by indigenous peoples as joint or private property under customary law, in this situation, local governments face a dilemma between respecting indigenous rights and meeting urgent development needs. Local governments have an important role to play in resolving land disputes between indigenous peoples and public development projects. The government can act as a facilitator and provide legal support if needed. In general, alternative dispute resolution institutions can be classified into Mediation, Conciliation, Arbitration.¹¹ As a regional development manager, the government must ensure that the public interest does not sacrifice customary rights recognized by local communities. The

¹¹ Gunawan Widjaja, *Alternatif Penyelesaian Sengketa*, (Jakarta: Rajawali Pers, 2002): p. 2

resolution of these disputes can be done through various mechanisms, including mediation, negotiation, and consultation with related parties.

METHODS OF THE RESEARCH

This study uses an empirical juridical method, which combines a normative juridical approach with empirical data from the field. Data was collected through interviews with indigenous leaders, local governments, and parties involved in hawear installation disputes at several public facility construction sites in the Kei Islands. The study also analyzed legal documents, including local government regulations and rulings related to customary land disputes. If needed, the results of observations and/or interviews in the field will be carried out and used as supporting data, while secondary data will be obtained from libraries and other books.¹² The research approach used is an approach that is based on legal principles, such as for example to written positive laws or legal and customary law rules that live in society, which is commonly called the statute *approach*, in this study it is also carried out with an approach from the history of laws and regulations (*historical approach*), and a conceptual approach (*conceptual approach*),¹³ in this study the author conducted interviews in the field with several respondents including the Head of the Southeast Maluku Regency National and Political Unity Agency Office, the Head of the Southeast Maluku Praja Pamong Police Unit, the Chairman of the Tual City Regional People's Representative Council and several traditional leaders (Raja) and indigenous peoples in the Kei islands.

RESULTS AND DISCUSSION

A. Hawear Installation Dispute

In various areas of the Kei Islands, the installation of hawear is carried out by indigenous peoples to mark the boundaries of customary lands. However, as the need for infrastructure development increases, land marked hawear is often located in areas planned for public projects. For example, the construction of roads and other public facilities is often hit by the installation of hawear which indigenous peoples consider to be territorial boundaries that should not be disturbed. One real example is a dispute that occurred when the local government wanted to build a connecting road between villages, which passed through an area that was fenced by one of the clans. The indigenous peoples involved opposed the development on the grounds that the land was a sacred heritage of their ancestors, while the local government considered that the construction of the road was important for the accessibility and economic growth of the area.

B. Government Actions in Dispute Resolution

Facing the dispute over the installation of *hawear*, the local government uses several strategic steps, including: 1) Mediation: The local government facilitates meetings between indigenous peoples and the government to find a middle way. Mediation was carried out by involving the traditional elders and the King, who had authority in the customary law of Larvul Ngabal. In some cases, mediation has been successful in reducing tensions by providing compensation or land replacement; 2) Negotiation: Through negotiations, local governments often offer solutions in the form of land compensation or financial compensation to indigenous peoples whose territories will be used for development. In

¹² Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta: Rajawali Pres, 2011), p. 94.

¹³ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2011). p. 93.

some cases, negotiations have also resulted in agreements to build alternative facilities that still respect indigenous rights; 3) Harmonization of Customary Law and Positive Law: Local governments try to find a balance between the application of customary law and positive law. By involving indigenous institutions in the development planning process, governments can minimize conflicts that arise and ensure that the rights of indigenous peoples are respected.

C. Obstacles and Challenges

Despite various efforts have been made, the local government faces a number of challenges in resolving hawear installation disputes. One of the main obstacles is the difference in perceptions between indigenous peoples and the government regarding land ownership and development priorities. Indigenous peoples often feel that their land is protected by customary law and should not be taken for any purpose without their consent.

According to *the Cochrane* theory, it is said that it is society itself that controls social relations, meaning that it is basically society itself that actively finds, chooses, and determines its own laws.¹⁴ In addition, the government's lack of understanding of the cultural and spiritual values inherent in indigenous lands often fuels dissatisfaction among indigenous peoples. Harmonization efforts also take a long time, as the mediation and negotiation process must go through various stages of consultation with indigenous stakeholders.

D. Long-Term Solution Efforts

To resolve the issue of hawear disputes in the long term, local governments need to adopt a more comprehensive approach, including: 1) Conducting a systematic inventory of customary lands, so that every area that is considered customary property can be registered and respected in the development planning process; 2) Involving indigenous peoples from the early stages of development planning, so that development decisions do not trigger conflicts; 3) Establish a consultative institution consisting of government representatives and indigenous leaders, to discuss any development plan that intersects with customary territories. Regional heads have the authority to regulate customary law issues, including the installation of hawear on public buildings. However, this authority must be exercised while taking into account the public interest, national law, and respect for the rights of indigenous peoples, through appropriate mediation and regulatory mechanisms. Therefore, regional heads play the role of facilitators and mediators who bridge the gap between customary interests and public interests, so that every decision taken takes into account the interests of indigenous peoples and public interests. Local governments need to draft Regional Regulations that are responsive to the needs of indigenous peoples. This Regional Regulation must expressly regulate the mechanism for resolving customary conflicts and recognizing customary law in the context of regional development, especially related to land use and public facilities that may intersect with customary territories.

CONCLUSION

The dispute over the installation of hawear in public facilities in the Kei Islands, Maluku, shows the challenge of reconciling public development and respect for indigenous rights. Local governments have a key role in mediating and resolving these conflicts, by

¹⁴ Ade Saptomo, *Penyelesaian Sengketa di Luar Pengadilan Sebuah Kajian Alternative Dispute Resolution*, (Padang: Fakultas Hukum Universitas Andalas, 2001). p. 5.

prioritizing dialogue, negotiation, and enforcement of customary sanctions in line with positive laws. To avoid future disputes, there needs to be a more inclusive and participatory approach to development planning, as well as an increased understanding of customary law values in regional development in the Kei Islands. Capacity building and empowerment of customary institutions by local governments needs to strengthen the role of customary institutions such as customary councils in conflict resolution, including the installation of hawear, by providing training on mediation, conflict resolution, and understanding of national law. Therefore, customary institutions can play a more active role as partners of local governments in resolving customary law disputes. The balance between customary law and regional development, local governments must be able to balance respect for customary law and regional development. Any development project that intersects with indigenous territories must go through an inclusive dialogue process with indigenous peoples, so that a just solution can be achieved without damaging local cultural values

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