

REVITALIZING TRADITION: THE ROLE OF *PAKAT PERKARA* IN RESOLVING LAND DISPUTES WITHIN THE DAYAK TOBAG COMMUNITY

Salfius Seko*, Alfonsus Hendri Soa

Faculty of Law, Universitas Tanjungpura, Pontianak, Indonesia

*salfius.seko@hukum.untan.ac.id

Abstract

Land disputes are a significant issue, especially for Indigenous communities, where traditional customs play a central role in resolving conflicts. In Tebang Benua Village, Tayan Hilir District, Sanggau Regency, the Dayak Tobag community utilizes a unique dispute resolution mechanism known as *Pakat Perkara*, which focuses on negotiation and consensus-building to resolve land disputes. This study examines the effectiveness of the *Pakat Perkara* mechanism, which integrates local wisdom and customary law to foster harmony and social cohesion. While the mechanism promotes fairness and inclusivity, challenges arise in reaching agreements, especially when there are significant differences in interests. This research highlights the need for further development and strengthening of this approach to ensure it functions effectively in addressing disputes. It also emphasizes the importance of integrating customary law into the formal legal system, creating a more responsive and equitable framework for resolving land disputes. The study concludes by recommending the revitalization of customary courts and legal procedures to enhance Indigenous peoples' autonomy and justice, promoting sustainable land management and community empowerment.

Keywords: Land Disputes; *Pakat Perkara*; Indigenous Law; Dispute Resolution; Local Wisdom.

A. Introduction

Land is a source of life for living things, including humans, animals, and plants (Daffa et al., 2022). Every individual needs land, not only for his life but even after death, humans still need land. The area of land that humans can control is minimal, while the number of humans who need land continues to increase. This imbalance between the availability of land and its need has triggered various problems and disputes that require proper and appropriate resolution, as well as providing protection, legal certainty, and justice (Resmini & Andradi, 2016). It is because the person who owns the land will defend his land in any way if his rights are violated (Hartini & Pabassing, 2021).

Disputes are the scariest thing and are one of the things that can arise at any time in human life (Aziz, 2022) and every year it is increasing (Nazia et al., 2023). One of these disputes is related to land. A land dispute is land whose ownership is contested by two parties (Hartana, 2019) or a problem happens when two or more parties claim ownership of the same land. This dispute begins with a complaint from one party, which contains objections, and claims for land rights including the right to status, ownership, and priority of land. These disputes are expected to be resolved administratively using applicable regulations (Siahaan et al., 2016). Unfortunately, the current regulations have not been able to solve all the problems that occurred.

Dispute settlement is one of the essential aspects of people's lives, especially in the context of Indigenous peoples who have rich traditions and local wisdom (Diab et al., 2022). Disputes, both individual and collective, often arise due to differences of view, conflict of interest, or conflict of rights (Berger, 2018; Hu, 2020; Rhode, 1982). For Indigenous people, disputes are not only seen as legal problems but also as social phenomena that can affect community harmony and stability. *Adat* or tradition has an important meaning and role for the Dayak Tribe in realizing the order and balance of the cosmos and communal life (Seko et al., 2023). Therefore, it is important to find a settlement mechanism that is not only fair but also in accordance with the values and norms applied in society.

In Tebang Benua Village, Tayan Hilir District, Sanggau Regency, the Dayak Tobag community has a unique way of resolving land disputes through a mechanism known as "*Pakat Perkara*." This mechanism prioritizes negotiations and deliberations to reach an agreement so that it is expected to minimize conflict and maintain harmony in the community. This study aims to examine the mechanism for resolving land disputes based on local wisdom, as well as to identify the advantages and disadvantages of this approach.

In the legal context, the settlement of land disputes often involves a long and complex litigation process (Buscaglia & Stephan, 2005; Derevyanko et al., 2023; Mequanent, 2016). In addition, the Indonesian legal system recognizes dispute resolution outside the court (Ihyamuis et al., 2022). One of the so-called non-litigation approaches is mediation, which is the process of resolving conflicts between two parties or more through agreement or negotiation assisted by neutral parties (Muhamad et al., 2023). One alternative settlement of land dispute cases outside the court is through a mediation mechanism (Nazia et al., 2023).

Nowadays customary law has an increasingly significant role in the Indonesian legal system. This is reflected in various laws and regulations, even in the constitution, which affirm that the state recognizes and respects the existence of Indigenous communities (Soa & Ismawati, 2023). One approach based on local wisdom in West Kalimantan is the *Pakat Perkara*. It is a non-litigation mechanism that offers alternative land dispute resolution that is in line with indigenous values, such as kinship and harmony. This process not only aims to uphold justice but also creates harmony between the parties to the dispute. This approach provides a sense of equality between the parties involved and results in a win-win solution (Hartana & Darmika, 2022).

Research on the topic of land dispute resolution based on local wisdom has been carried out in several previous studies. The first is research conducted by Harahap & Hasibuan (2018). The main purpose of this study was to find a model of social conflict management based on the local wisdom of the Dalihan na Tolu indigenous people. The problems raised in this study include a multidimensional social conflict management model based on Indonesian local wisdom, deliberation in social conflict management, and social conflict resolution strategies pursued with local wisdom.

The next research is a research conducted by Diab et al. (2022). This study focused on uncovering three stages in dispute resolution. First, it began with a peaceful settlement between parties mediated by local officials. Second, industrial disputes were resolved through the use of *Sara Wanua*, local wisdom, to facilitate the local community. Third, the final settlement was done through legal proceedings in the district court. The use of local wisdom in dispute resolution had a significant impact because of the similarity of cultural values and ethnic relations.

The third research was conducted by Siregar et al. (2023). This research focused on discussing the role of local wisdom in alternative dispute resolution in the land sector in North Sumatra. The last is research conducted by Sukirno & Wibawa (2024). This study aimed to compare customary and formal legal systems, evaluate customary court procedures for justice, and examine their impact on sustainable land management and community empowerment.

Differing from the four studies above, this study aims to explain the mechanism of resolving land disputes by examining local wisdom, especially in the context of *Pakat Perkara*. The expected outcome is to contribute to the development of a more inclusive and responsive law to the needs of Indigenous people, especially in terms of resolving land disputes.

B. Method

The non-doctrinal legal research method relies on facts obtained in the field through a participatory approach and in-depth interviews with informants from the Dayak Tobag tribe. This approach allows researchers to obtain valid and accurate data on dispute resolution practices carried out in the community. In addition, this interview also provides an opportunity to understand Indigenous peoples' perspectives on justice and dispute resolution, which often differ from formal legal views. The results of the study showed that deliberation and consensus are key elements in dispute resolution in the Dayak Tobag community. Each party sought to reach an agreement for the common good, which reflects the values of collectivity and solidarity within the community. This approach not only prioritizes problem-solving but also strengthens social relationships between community members.

Although the *Pakat Perkara* mechanism has many advantages, this study also revealed some weaknesses that need to be considered. For example, in some cases, there were challenges in reaching an agreement that satisfied all parties, especially when there was a significant difference in interests. Therefore, it is crucial to develop and strengthen this mechanism, so it can function optimally in resolving disputes. This study uses an empirical research methodology that focuses on the substance of the law: the current applied law (*ius constitutum*) and the desired law (*ius constituendum*). This study utilizes a conceptual approach as well as a critical approach. Empirical studies were done through primary legal materials, namely information obtained from the field and respondents, which in this case were related to the implementation of customary justice and alternative dispute resolution methods applied by Indigenous peoples. Meanwhile, the secondary legal materials, data sourced from literature research, were obtained from data documented in the form of legal materials, and can contribute to the analysis as well as understand the primary legal materials.

C. Results and Discussions

1. The Functions and Roles of the Court

Artificial When discussing the *Pakat Perkara* and the dispute resolution mechanism in Indigenous communities, it is indeed related to the roles and challenges it faces in carrying out its function as a conflict resolution institution in the community. In practice, *Pakat Perkara* aims to deal with issues that threaten the order and harmony of indigenous peoples, such as land boundary disputes, adultery, inheritance, marriage, and other violations involving members of the communities. The mechanism uses a sociological approach, emphasizing negotiation and deliberation over the formal legal process known in the modern legal system. This is reflected in the term “kinship-based settlement,” which signifies that each member of the community is regarded as one large family. Therefore, problems related to the family must be resolved within the community. Customary institutions and customary leaders play a role in facilitating the deliberation and reconciliation of the parties to the dispute to reach a fair and harmonious agreement.

The most important element in kinship-based settlement” is the ability to limit the scope of the case (Sherman & Momani, 2024), so that it does not involve unnecessary parties, and prioritizes the element of “sorry” as a medium to reconcile the parties to the dispute. If this way is unsuccessful or does not reach an agreement, the indigenous people in West Kalimantan will usually continue the settlement process through customary courts. This process is generally

carried out in stages, starting from the lowest level of customary court to reaching the highest level of court, by involving customary leaders and customary elders in each stage to ensure justice and harmony in dispute resolution.

Conceptually, dispute resolution through customary law and customary courts is considered a step toward Indigenous peoples' autonomy (Nurtjahyo, 2011). This opportunity arises along with the enactment of regional autonomy and the increasing public distrust of the state courts, which are considered incapable of providing justice. As a result, people prefer to trust customary courts which are believed more capable of fulfilling justice and providing satisfaction. Therefore, reviving the customary court is seen as a fundamental step in strengthening the legal "sovereignty" of Indigenous peoples, which reflects the values and norms prevailing in the community.

At the ideological level, the customary law system deals with mental and spiritual aspects that include the value system held by indigenous communities. These values are influenced by existing social, political, and economic dynamics. In West Kalimantan, beliefs about the origins of the Dayak people, the youngest of three siblings, namely the spirit realm, the surrounding environment including animals and plants, and humans, greatly influence the way they interact with the environment and with other community groups. In this context, it is fundamental to place the customary court system and Indigenous communities proportionately. Therefore, it can function effectively for other communities and the state, which acts as a legal basis for all community groups.

Based on these facts, the role and function of the customary court have great significance in resolving disputes among indigenous peoples. People tend to choose informal dispute resolution because of easier access, faster processes, and lower costs. In addition, the non-formal court is also more flexible, with a flexible structure and norms, it can adapt to changing social dynamics. This kind of institution is essential in resolving minor disputes among villagers, in line with a judicial system that focuses on achieving restorative justice.

Thumbun Anyang, in a seminar on Customary Law in Sanggau, explained that among the Dayak community, disputes are usually not brought directly to the customary court in public to seek settlement from the local customary leaders and elders. Instead, the settlement process is carried out through several stages. Direct requests for settlement to *Temanggung* (customary leaders) are very rare, except in cases of severe persecution or murder. In the first stage, the dispute is resolved through the kinship principle. If the dispute cannot be resolved in this stage, then in the second stage, the settlement is submitted to the village customary leaders and the local customary elders through the customary court. If the dispute is still unresolved at the previous stage, then in the third stage, a settlement will be requested from the *Temanggung* along with the traditional elders from the village and usually involves several well-known traditional elders from other villages who are not involved in the dispute.

Dispute resolution based on customary law through customary court is a very significant need for the Dayak people. Thambun Anyang from the Faculty of Law, Universitas Tanjungpura, stated that this need arises because of the strong religious thought and sense of togetherness among the Dayak ethnic group. Customary courts are the best option to solve problems, especially because of the location of their villages far from the capital city. To file a case in the state courts, they have to go through difficult roads. Therefore, customary courts still exist today. Thambun Anyang added that customary court is considered fast, cheap, simple, and effective. The feeling of shame is still very strong among the Dayak people, so they feel reluctant to dispute or even bring problems to the public. Disputes are usually avoided by the Dayak people. The dispute resolution process is not carried out directly through customary courts; Usually, the problem is solved first through kinship-based deliberation while still paying attention to customary law. Thambun Anyang emphasized that the customary court will only be carried out if the settlement through communal consensus (kinship) is unsuccessful. In the

settlement process, the traditional leaders and traditional elders consider the principles of harmony, propriety, and harmony, with the hope that the problem can be solved thoroughly without leaving a sense of resentment. Both the perpetrators and the victims are expected to forgive each other and continue their lives peacefully. Competent customary elders over the customary court hearings are very important to achieve the best solution in accordance with these principles. Customary sanctions or fines determined and agreed upon by both parties must be paid. However, sometimes the parties involved are dissatisfied with the customary court decision. If the sanctions imposed are considered unfair, they can file a lawsuit through formal law.

The role of the customary courts is to apply customary law through law enforcement agencies, which includes prosecuting, adjudicating, and sanctioning violators of applicable norms in society. These norms are interrelated forming a comprehensive system of norms. Therefore, this system of norms is known as “customary experts.” These customary experts function as customary functionaries or customary officers, and they have the position of Customary Figures, *Temanggung*, Customary Leaders, Village Heads, or *Kabayan*.

Customary officers or customary functionaries have various critical duties in maintaining social and cultural life in the community. First, they provide direction to community members on how to behave correctly in daily life, which is based on customary norms and applicable customary laws. Second, they are responsible for ensuring that community unity is maintained by supervising behavior that is not under customs so that community harmony is maintained.

Customary functionaries also provide guidelines for implementing a social control system, which focuses on supervising community behavior so that community life continues to run well and in an orderly manner. Any decision taken under customary law is under their supervision, so the decision has the force of law that binds all members of the community and provides legal certainty.

In addition, customary officers serve as the main party for community members seeking dispute resolution, protection, and peace guarantees. They are also the main sources of information related to customs and customary law, considering that not all members of the community have a deep understanding of it. Thus, customary officers become the main party of consultation for the community.

In their role, customary officers help solve various problems faced by the community, both related to life and death, because not all members can solve problems without help. As respected leaders, they also act as figures in social interaction and become role models for the community in maintaining social harmony.

Customary leaders play a strategic role in the settlement of disputes among indigenous peoples. One of its main roles is to impose sanctions on community members who violate customary law. These sanctions are not limited to one type of violation but include all actions that disrupt the balance of applicable customary norms. As the enforcers of customary law in daily life, the customary leaders are tasked with maintaining the integrity of the customary system by resolving all forms of violations. By resolving disputes arising in the community, the customary leaders not only enforce customary law but also act as a medium for disseminating information on applicable customary norms. This is very crucial considering that not all members of the community understand the customary rules in depth. Therefore, the customary leaders function as effective liaisons in conveying and explaining customary law to the entire community, so that customary law is still obeyed and respected.

2. The Binding Force of Court Decisions

As Talking about customary judges' decisions is inseparable from the vital issue of what is called law or (customary) legal definition. Customary judges' decisions are decisions with legal

consequences made by the authority or binding power so that the community obeys decisions made by authoritative decisions.

Every action or non-action (refusal to act) of the community's head (customary judge) against something, either in preventing the violation of the Law (*rechtsherstel*) is a decision, a stipulation on the application of customary law with that decision. The customary judge applies it concretely (*gestaltung*) to all that lives in his indigenous society as a sense of justice (*rechtsbesef*). Thus, the entire rules stated by the customary judge are completely binding.

The fact mentioned above does not mean that before the establishment, the rule was not yet legal. However, at the time of the establishment, the customary rules of behavior firmly become positive laws. The time of determination can be called the "existential moment" of the law. The violation of customary law (customary rules) results in a customary reaction, either a violation of a prohibition or negligence of a decree. The customary reaction is to restore the balance that has been ruined in the mental and the physical worlds because the world is seen as a totality for the indigenous peoples.

The determinations (decisions) of the customary judges formally contain legal regulations, but the material power of the legal regulations is different. If the community obeys the decision, it has full material power. On the other hand, if a determination is not obeyed by the people, even though it formally contains legal regulations, has no material power. The material strength of customary law depends on four factors, including more or less *Frequentie* of similar decisions, which stabilizes the legal regulations realized by the decisions; how far the social situation in the society concerned has changed; how far the regulations are in line with the prevailing customary law system; and how far the regulation is in line with the conditions of humanity.

In reality, the punishment for a violation is not limited to a decision by the customary judge but may also take the form of reproach, being excluded from the communities, ignored, and so on. All of these punishments are forms of social sanctions imposed by Indigenous people for antisocial behavior. Thus, sanctions or determinations (decisions) made by customary law or society have a moral dimension intended to correct behavior that is not in accordance with customary law. Hopefully, in the future it may become in accordance with customary law. Meanwhile, the dimension of religiosity is a form of restoring the balance of the world. Legal sanctions aim for order and social sanctions are imposed to give shame so that it has sharpened the conscience of a person who violates the rules of customary law.

3. The Mechanism and Types of Cases resolved by Dayak Customary Court

Not all dispute that occurs in the Tobak Dayak Indigenous community is resolved by using mechanisms outside the customary court, namely through deliberation. Referring to the existing model, the settlement that occurs in indigenous communities is settled through two mechanisms, namely: the *colap* (cold) method and the *angat* (hot) method.

The *colap* (cold) mechanism is that all customary cases are resolved through the communal consensus (deliberation-consensus) based on customary law that applies in the local community. Settlement through this mechanism only involves parties in disputes and customary administrators, without involving other people in the community. If one of the parties is found guilty, then he will be imposed customary sanctions based on the violation he has committed. This mechanism is taken because for the Indigenous people, if a person is found guilty or commits an act that is contrary to customary law, it can bring shame not only for him as a person but also for his family. If the *Colap* (cold) mechanism cannot resolve the case/dispute, the case is continued with the *angat* (hot) mechanism or resolved through customary court. However, in general, cases that are resolved through this mechanism are rarely investigated by the customary court (through a hot mechanism) because each party highly upholds the traditions that apply in the community.

In cases settlement with the *colap* (cold) mechanism, usually the guilty party will make a *nyorok-nyembah* (admit the mistake and apologize) accompanied by *ngansor sirak* (a series of traditional equipment) with the intention that the wrong party admits his mistake and apologizes by worshipping (worshipping in the Dayak Tobak tradition is a form of respect, emptying oneself (feeling unworthy, inappropriate as well as asking for forgiveness from the party who has been lost).

This mechanism is a form of settlement that also aims to restore balance because the parties to the dispute have forgiven each other not only between families but also towards their ancestors. Therefore, this model has a magical, psychological, and social religious dimension. It is said to have a magical religio dimension because, with the *nyorok -nyembah* and the *ngansor-sirak*, there has been a vertical peace and restoration (involving ancestors). It has a psychological dimension because there is no longer a feeling of revenge against each other between the parties to the dispute. It has a social dimension because there is peace between the families of the parties, even the community.

Meanwhile, the mechanism of the hot method is taken if the process of the cold method is deadlocked because one of the parties refuses to settle the dispute through communal consensus or kinship based on customary law (dissatisfied, unfair), seeks to achieve justice, and so on. If there is an impasse, then one of the parties who feels aggrieved will ask the customary administrator at the lowest level and the customary administrator/customary judge who has the authority to handle the case (based on his authority) to take action or resolve the dispute. The competence possessed by the customary administrator/customary judge at the first level is possessed by the *lawang Agong*. The *Lawang Agong* has the authority to adjudicate customary cases whose customary sanctions are 2 (two) *reals*. Real is a term for customary fines that apply in the Tobak Dayak sub-tribe) and its jurisdiction is at the Neighborhood Group (*Rukun Tetangga/RT*) level. If the customary case cannot be resolved at the first level due to dissatisfaction, feeling unfair, and so on) or the *Lawang Agong* rejects the case because it is the authority of the customary leaders above him, then one of the parties to the lawsuit or *pesirah* suggests that the case be delegated to the *pesirah* level. *Pesirah* is a customary judge/customary administrator who has the authority to handle customary cases with a fine of 4 (four) *reals*, the jurisdiction is at the level of Neighborhood Community or *RW (Rukun Warga)*. If the case cannot also be resolved, because one of the parties resists the decision of the customary judge at that level, the case is continued to the customary judge above it, namely *Jaya*. *Jaya* will handle cases where the sanction is 6 (six) *reals* and the working area is at the hamlet level. If the case cannot also be resolved at the level of *Jaya*, then one of the parties can submit the settlement of the case to a higher customary judge, namely *Temenggung*. The authority owned by *Temenggung* is to handle customary cases with a fine of 8 (eight) *reals* and the jurisdiction covers the village. If at this level, the case is not also completed or one of the parties appeals, then the case is handled by a higher customary judge called *Pati Adat* (can be two or three villages incorporated in one or more customary *Pati*). This *Pati Adat* handles cases with the customary sanction of 12 (twelve) *reals*. At the last level (mechanism through customary courts), if the case or parties to the dispute reach an *impasse*, then one of the parties can submit the case to the court of the *Pati Adat*. This customary court handles customary cases with a fine of 24 (twenty-four) *reals*. This trial was conducted by one of the oldest of the 7 (seven) *Pati Adat* present in the court. In the end, if the mechanism through this customary court also reaches an impasse, then the case is handed over to the state court to adjudicate or in other words, the case is delegated to the state court.

D. Conclusion

This research highlights the importance of dispute resolution mechanisms based on customary law, especially in the context of the Dayak Tobag community. Through a deliberation

and consensus approach, indigenous peoples seek to reach an agreement that reflects the values of collectivity and solidarity. This process focuses not only on the enforcement of justice but also on the creation of harmony between the parties to the dispute. Although the *Pakat Pekara* mechanism has many advantages, such as strengthening social relations and creating just solutions, the study also identifies several challenges, especially in reaching an agreement that satisfies all parties when there is a significant difference in interests. Therefore, it is crucial to continue to develop and strengthen this mechanism so that it can function optimally in resolving disputes. In conclusion, this study recommends the need for the integration of customary law into the formal legal system to create a more responsive and fair dispute resolution system, which will ultimately support the stability and welfare of indigenous peoples.

To create a progressive judicial institution, the state court needs to integrate law and legal corporations, and for cases that have an equivalent in the Criminal Code, judges must decide cases based on the sense of justice of the community by including customary law decisions in the additional punishment. Judges as the last party in the law enforcement process are not spokespersons of the law, but judges made laws to create laws for pro-people justice. There is a need for revitalization and repositioning of customary law and customary court to restore the function of these two institutions in Indigenous peoples

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