

# HAWEARADAT LAW ENFORCEMENT (SASI LAW) IN SOUTHEAST MALUKU KEI SOCIETY

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## ABSTRACT

***Aims:** The study, entitled HawearAdat Law Enforcement (Sasi Law) in Southeast Maluku Kei Society, aims to identify and analyze Hawear (Sasi) customary law enforcement carried out by the Kei people of Southeast Maluku. This research is normative juridical research, that is research conducted on legal principles, in the sense of concrete legal values (norms) and legal systems. The approach used in research, is the statute approach and conceptual approach. This study found the answer that Hawear (Sasi) was carried out by the Kei people, which means a ban which is generally known in almost all of Maluku, especially on the island of Kei. The Kei Islands are known as Yot and Yutut is a kind of prohibition sign that has supernatural powers and binding/coercive powers that are used to protect one's own property as well as public property. Yutut in the context of LarvulNgabal customary law, namely Hawear. Yot or Yutut is a sign of prohibition to maintain the property of a certain person or party for a certain period of time. When the prohibition period ends or the settlement of the ban has been handled according to Adat, the prohibition is declared Mahair or released. Yutut is generally stated for two main purposes, namely maintaining property rights or preventing the management of an object that belongs to another person who is not the owner. According to the customary law, Yutut has supernatural powers where if someone commits an offense, that person will receive sanctions in the form of illness, accident or failure.*

**Keywords:** Law Enforcement, AdatHawear, Sasi Law, Kei Society Order

## INTRODUCTION

Customary law as positive law has a unique characteristic, namely customary law is a law that is mostly unwritten, but its values exist and apply in the lives of indigenous peoples who enforce these customary laws. Customary law applies in a limited scope, which only applies to customary communities where the customary law lives or exists, and this situation allows that each customary community can have customary laws that differ from one another (Soekanto, 1987). We can find customary law in the opinion expressed by Soekanto as a legal expert, in which he defines customary law as “a complex of customary traditions which are mostly uncertified, uncodified and coercive in nature, have sanctions, and have legal consequences. The existence of customary law as a form of law that is recognized by its existence in the life and legal culture of Indonesian society as stated in the 1945 Constitution of the Republic of Indonesia, namely in Article 18B paragraph (2) reads:

"The state recognizes and respects the units of the Customary Law Community 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 in law". Likewise, Article 28 I paragraph (3) states that the cultural identity and rights of traditional communities are respected in accordance with the times and civilizations. From the explanation of the Article, we can define customary law as a complex of norms that originates from the feeling of justice in society which is always developing and includes the rules of human

behavior in everyday life in society, most of which are unwritten, always obeyed and respected by the people because has legal consequences (sanctions) (Soekanto, 1987).

One of the areas that still upholds customary law is the people of Southeast Maluku Regency, to be precise, Debut Village, Manyeuw District. According to the community, customary law is a set of values and norms aimed at providing an understanding of the rights and obligations of the Kei people in order to achieve a safer and more peaceful life. One of them is the customary law of LarvulNgabal which is the guide for the life of the kei community. The law of LarvulNgabal which means red blood of the spear from the island of Bali, which has a meaning and meaning, namely Lar means blood, Vul means red, Nga means spear, and Bal means Bali (Young.Ohoitimur, 2001).

In the Larvul Ngabal law there are (7) Articles which read:

1. UudEntaukAtvunan, meaning the head is united, resting on the shoulders
2. Lelad Ain FoMahiling, which means that ancestors are noble, holy, and pure.
3. Ui Nit EnvirRumud, meaning that the skin wraps around our skin.
4. LaarNakmutNaalIvud, meaning that blood is circulating or confined in the body.
5. Reek FoKelmutan, meaning that the threshold of the room or the sanctity of women is celebrated.
6. MoryaianFoMahiling, which means the bed of a person who is married and is also a single (girl) is great and noble.
7. HiraniIntubFoIh Ni, It Did EntubFo Di, meaning that other people's property remains hers and ours remains ours (Renyaan, 1981).

In connection with the description above regarding the seven laws of the LarvulNgabal Article, there is one of the Articles that are closely related to Hawear's customary law, namely the seventh Article which reads HiraniIntubFoIh Ni, It Did EntubFo Di with the meaning that other people's property remains hers and ours remains. So it belongs to us, so that the existence of the customary law of hawear (sasi), the community can limit matters relating to one's ownership and also those of others (Renyaan, 1981).

In this case Hawear Law (sasi) is a prohibition that protects a certain result within a certain time limit, and has properties or strengths that apply to the public and individuals. Seeing this definition, there are many practices of implementing Hawear law (sasi) in the land of Kei, Therefore, based on the facts seen, one of the problems that occurred in Debut village has not been going well according to the rules of customary law, because this has led to misunderstandings regarding land. Land ownership is also a problem among community members, namely between 1 clan and another clan and 1 family with another family, causing problems that attract the attention of the general public, so a decision is made by the customary government to make sasi on the land, where the school is located. it was founded. In addition, there was a road sasi installation which was caused by a dispute over island ownership, which led to a fight between Debut village and Dian Darat village. Due to this problem, the customary government took an action by paving the road, so that residents from Dian Darat village were not allowed to pass the road that crosses Debut village.

Based on these facts, the customary law of hawear (sasi) in the order of the kei community is a law that is still valid in social life to this day. All of the behavior, actions and activities carried out are still rooted in customary law. Hawear's law (Sasi) becomes a sanction as well as a reminder and regulator of all community actions and activities. If there are people who violate Hawear's Law (sasi) then that community will get sanctions. The sanctions given must go through the density session of adat (adat council) together with all the kerapatanadat staff. The trial will determine sanctions, for the offender according to the severity of the offense he committed (Rahail, 1995).

The enforcement of customary law Hawear (Sasi) was first made by 2 rats, namely kay and soa people in the kei islands, namely by MADIVUN Kwas Siw Ifak Lim Itel (Meeting of the

lorsiwlim kings) number X/KS-SL/1997 Wednesday 22 October 1997, in WomaLodar El which was signed by 16 rats (Raja) in ratscap -ratscap in Southeast Maluku and Tual city, so there were several points that resulted in decisions, namely in points 5 and 6 which read:

1. That the installation of hawear is not in any place such as in DedLongai (Jalan) but must be placed in a disputed place or protected and preserved.
2. If the person who grows hawear cannot prove ownership or plants hawear not in accordance with the applicable customary law, that person will be subject to customary sanctions in the form of paying 1 piece of Portuguese cannon and 1 piece of gold tail (Gelang Mas) as a substitute for yellow coconut leaves.

Thus it can be seen that the installation of hawear customary law has its basis. Hawear customary law in its implementation is based on something that is appropriate or should be, not the other way around a matter of will or interest. The purpose of upholding hawear customary law plays an important role in the life of the kei community, because it can shape the attitudes and behavior of the community which is an effort to maintain social manners including efforts to equalize and share income from natural resources to the entire community. Based on these points Hawear customary law has procedures and provisions in its implementation. From the legal issues above, the problem formulation that will be examined in this research is how is the Hawear (Sasi) customary law enforcement carried out by the Kei people of Southeast Maluku?

## LITERATURE REVIEW

### Theoretical Framework

In writing this article, two theories are used as an analysis knife to answer the problem formulation in this article. Namely the theory of the welfare state law and the theory of law effectiveness.

### The Welfare Law State Theory

Theoretically, W. Friedmann (Jimly Asshiddiqie, 2006), suggests four functions of the state in the economic field, namely: a. The state functions as a provider (guarantor). This function relates to the welfare state, namely the state which is responsible for and guarantees a minimum standard of life as a whole as well as other forms of social security (Muh.Guntur, 2002). The function of the state as a regulator. The power of the state to regulate is a manifestation of its function as a regulator. There are many forms, some are in the form of statutory regulations, but also in the form of policy regulations. By sector, for example, regulations concerning investment in the mining industry sector, export-import, supervision and others. c. The function of the state as entrepreneur (doing economic business) (Marilan, 2012).

This function is very important and its development is very dynamic. The state in this position, runs certain sectors in the economic sector through state owned corporations. This dynamic character is related to the continuous efforts made to create a balance and co-existence between the roles of the private sector and the public sector. d. State function as umpire (referee, supervisor) (La Ode Angga, Barzah Latupono, Hamid Labetubun Muchtar Anshary & Fataruba Sabri 2020) In this position, the state is required to formulate fair standards regarding the performance of different sectors in the economic sector, including regarding state enterprises. This last function is admittedly very difficult, because on the one hand the state through state companies as entrepreneurs, but on the other hand it is determined to fairly assess its own performance compared to other private sectors.

According to W. Friedmann that if we trace carefully the evolution of the development of the concept of the state, it will be found that the welfare of society contains the meaning of social justice which is the basis for the legitimacy of the existence of the state. Social justice has become a principle, because political and legal realities throughout the history of the ups and downs of the nations in the world teach that the most powerful force that can destroy the building of society as a nation is social injustice.<sup>48</sup> The position of the government in economic development bears responsibility major in realizing the role of law in the management of economic resources. Mineral resources (goods (Marilan, 2012).

The ideology of the Welfare State Constitution: The State's Right to Control over Mining Goods (Constitution Journal, Volume 9, Number 2, June 2012<sup>279</sup>) is one of the national economic resources that is required to be managed and utilized in order to spur economic growth, as well as create socio-economic justice for all Indonesian people. Thus, before discussing the state's function in the mining business, it is necessary to first examine the state's function in the economic field. The Constitution of the Republic of Indonesia (UUD NRI 1945) through Article 33 is constitutional for the state to interfere in the economic field, especially through state administrative decisions. In a market economy system, economic activities are not completely left to the market mechanism (free trade), but are also left to the government to regulate and supervise the course of economic activities carried out by its citizens. State intervention in the economic field actually plays a very important role in encouraging the economic development of the country and its citizens. The basic philosophy of state interference in the economic field of its citizens is that law cannot carry out its own function and role (La Ode Angga, Dyah Ridhul Airin Datie, Popi Tuhulele, Sabri Fataruba & Iqbal Taufiq, 2021)

Thus, law as a normative order must be guaranteed in a legal structure itself referred to as *HawearAdat* (Sasi Law), namely through state apparatus, judges, prosecutors, police and others. The state interferes in the economic activities of its people to act as a regulator (*struurende*) or a referee by using general and specific state administrative law instruments, namely in the form of government actions to provide information, prognoses and decisions that are either regulatory or prohibited in nature. State duties in the economic sector since the Proclamation 1945 has been clearly formulated in the fourth paragraph of the preamble to the 1945 Constitution, namely: "The state protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life and participate in implementing world order based on eternal peace and social justice".

The formulation implies the objective of the formation of the Republic of Indonesia, namely a struggle to build an economic structure and uphold the foundations of the national economy. The state's obligation to create public welfare, a state government is formed with the aim of carrying out state functions (government) based on the philosophy of social justice. two categories of rights, namely: (1) rights that must be given equally by the state, namely the equality of absolute basic rights or very basic rights such as the right to life and the right to express an opinion; (2) socio-economic rights that can be treated unequally to every individual for the sake of the interests and advancement and general welfare, including for each individual, (La Ode Angga & Saptanno 2020) those who defend the state's function in the name of law in the economy and other parties who disagree if the state functions in the economic field. The synthesis of groups of defenders and opponents of the role of the state in the economy is a controversial interpretation of the national economic system based on Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Amendment IV), which states that the national economy is organized based on economic democracy, faced with a situation of dilemma of a liberal economy versus a people's economy. The Indonesian people are increasingly demanding liberal rights, extensive property rights, freedom of business and demands for economic autonomy that is free from interference by the state, June 2012<sup>280</sup>).

## Theory of Law Effectiveness in Society

According to SoerjonoSoekanto, one of the functions of law (SoerjonoSoekanto, 2007), both as a rule and as an attitude or behavior, is to guide human behavior. The problem of legal influence is not only limited to the emergence of obedience or compliance with the law, but includes the total effect of the law on attitudes or behavior, both positive and negative. The effectiveness of law enforcement is closely related to the effectiveness of the law. For the law to be effective, law enforcement officials are needed to enforce these sanctions. A sanction can be actualized to the community in the form of compliance, with these conditions showing an indicator that the law is effective.

The factors that influence the effectiveness of the law according to SoerjonoSoekanto are as follows. Legal Law Factors contain elements of justice, certainty and benefit. In practice, there are often conflicts between legal certainty and justice. Legal certainty is concrete, tangible, whereas justice is abstract so that when someone decides a case by applying laws only, then there are times when the value of justice is not achieved. So, when looking at a problem regarding law, at least justice is a top priority. Because law is not only seen from the point of view of written law, but also takes into account other factors that develop in society. Meanwhile, from the other side, justice is still a debate because justice contains a subjective element that is highly dependent on the subjective intrinsic values of each person. 2. Law Enforcement Factors Law enforcement is related to the parties forming and implementing law (law enforcement). The parts of law enforcement are law enforcement officers capable of providing proportional certainty, justice and legal benefits. Law enforcement apparatus covers the definition of law enforcement institutions and law enforcement officers, while law enforcement officials in a narrow sense start from the police, prosecutors, judiciary, legal advisors and prison guards. Each apparatus and apparatus is given the authority to carry out their respective duties which include the activities of receiving reports, investigating, investigating, prosecuting, proving, imposing verdicts and imposing sanctions as well as efforts to rebuild the convict (Adonia Ivone Laturette, Rory Jeff Akyuwen & Barzah Latupono, 2021).

There are three important elements that affect the working mechanism of the law enforcement apparatus and apparatus, including: (a) law enforcement institutions and various supporting facilities and infrastructure and institutional working mechanisms; (b) work culture related to the apparatus, including regarding the welfare of the apparatus; and (c) a set of regulations that support both the performance of the institution and that regulate the legal materials used as work standards, both the material law and the procedural law. Efforts to enforce law systematically must pay attention to these three aspects simultaneously, so that the process of law enforcement and justice internally can be realized in a real way. 3. Factors of Legal Facilities or Facilities Supporting facilities can simply be formulated as a means to achieve goals. Its scope is mainly physical facilities that function as supporting factors. Supporting facilities include educated and skilled human resources, good organization, adequate equipment, adequate finance, and so on. Apart from the availability of facilities, maintenance is also very important in order to maintain sustainability. It often happens that a regulation has been implemented, even though the facilities are not yet fully available. This kind of condition will only cause counter-productivity which should expedite the process, instead it will cause congestion.

## Community Factors

Law enforcement aims to achieve peace in society. The public has certain opinions regarding the law. This means that the effectiveness of the law also depends on the willingness and legal awareness of the community. The low awareness of the public will make it difficult to enforce the

law, while the steps that can be taken are socialization by involving social layers, power holders and law enforcers themselves. The formulation of the law must also pay attention to the relationship between social changes and the law which in the end the law can be effective as a means of regulating community behavior. values that are at the core of spiritual or nonmaterial culture. It is distinguished because as a system (or subsystem of the social system), the law includes structure, substance, and culture. The structure covers the container or form of the system, for example, covers the structure of formal legal institutions, the law between these institutions, their rights and obligations, and so on.<sup>2</sup> Law has a direct or indirect influence in driving the occurrence social changes (digilib.uinsby.ac.id digilib.uinsby.ac.id digilib.uinsby.ac.id digilib.uinsby.ac.id digilib.uinsby.ac.id digilib.uinsby.ac.id digilib.uinsby.ac.id .id accessed on August 8, 2020)

## **RESEARCH METHODS**

This research is normative juridical research, that is research conducted on legal principles, in the sense of concrete legal values (norms) and legal systems (Soekanto & Mamudji, 1985). The approach used in research (La Ode Angga, Barzah Latupono, Muchtar Anshary Hamid Labetubun & Sabri Fataruba, 2020), is the statute approach and conceptual approach (Marzuki, 2009).

## **RESULTS AND DISCUSSION**

### **Understanding Hawear Customary Law (Sasi) according to the Kei Indigenous People Hawear's Customary Law (Sasi)**

According to the Kei Hawear (Sasi) community, it contains a protective prohibition on things such as land boundaries and natural products within a predetermined time. Hawear (sasi) in the Kei Islands According to Rahail Hawear (Sasi), it is divided into 2 regions, namely the Greater Kei called (Yot), while the Little Kei is called (Yutut). Hawear (Sasi) has the force of law that applies to the public as well as to individuals. The hawear mark (Sasi) is marked with woven young coconut leaves (Janur) (La Ode Latupono, B, Muchtar Anshary Hamid Labetubun & Sabri Fataruba, 2020).

### **Hawear (Sasi) Customary Law Philosophy**

Hawear (Sasi) in Kei is basically a rule of law based on the principle of maintaining and balancing the relationship between nature and humans. This principle is rooted in the first stanza of the philosophical narrative that underlies the Larvul Ngabal customary law, namely Itdok Fo Ohoi It mian Fo Nuhu which means we inhabit or occupy a village/country where we live and eat from nature and its land. This hawear (sasi) is contained in the customary law of Larvul Ngabal, namely Article 7 which reads that Hira is Foni, do it for that, which means that their property remains theirs, ours remains ours. What is contained in this article is basically a basic principle that maintains and guarantees the recognition of the property rights of others in the life of the kei community (Renyaaan, 2012).

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The foundation of this philosophy emphasizes the relationship between human life and nature. Nature is an integral part of humans (in this case indigenous peoples). The destruction of nature also means the destruction of human life. Therefore, the management of nature for human survival and the balance of nature itself is very important to overcome evil intentions, greed and selfishness and this conservation principle is one of the main bases of community life in the Kei Islands. Hawear (Sasi) means property belonging to people and anyone is prohibited from disturbing or taking examples such as taking other people's plants.

Hawear (Sasi) is a sign of prohibition that is commonly known by almost all Maluku people, especially on Kei Island. The Kei Islands known as Yot and Yutut are a kind of prohibition sign that has supernatural powers and binding/coercive powers that are used to protect private property and public property. Yutut in the context of Larvul Ngabal customary law is Hawear. Yot or Yutut is a sign of prohibition to maintain the property of a certain person or party for a certain period of time. When the prohibition period ends or the completion of the prohibition has been handled according to custom, the prohibition is declared Mahair or released. Yutut is generally stated for two main purposes, namely maintaining property rights or preventing the management of an object belonging to someone who is not the owner. According to customary law, Yutut has supernatural powers where if someone commits a violation, that person will receive sanctions in the form of illness, accident or failure.

## CONCLUSION

The enforcement of the customary law of Hawear (Sasi) carried out by the Kei Indigenous people of Southeast Maluku that Hawear (Sasi) in Kei is basically a rule of law based on the principle of sustainability and the balance of nature's relationship with humans. This principle is rooted in the first stanza of the philosophical utterance that underlies the customary law of Larvul Ngabal, namely Itdok Fo Ohoi It mian Fo Nuhu, which means we inhabit or occupy a village/country where we live and a place to find food from nature and its land. This hawear (sasi) is contained in the customary law of Larvul Ngabal, namely Article 7 which reads Hira this is Foni, do it for that, which means their property remains theirs, ours remains ours. What is contained in this article is basically a basic principle that maintains and guarantees the recognition of the property rights of others in the life of the kei community.

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