

The Urgency of Formalizing Customary Meetings in Kedang Indigenous Communities into Notary Official Deeds

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Abstract. *This research examines the urgency of recording the results of traditional meetings of the Kedang community in Lembata, East Nusa Tenggara, into notarial deeds to strengthen legal legitimacy and protect the rights of indigenous communities. The method used is qualitative research with a literature review and field observation on implementing customary law and the procedure for making notarial deeds. The research results show that Kedang customary law, rich in tradition and cultural values, is important in regulating social norms and resolving internal conflicts. However, there are significant challenges in integrating customary law with the formal national legal system. The discussion emphasizes the role of Notary officials as mediators who formalize the results of customary meetings, thereby giving them legitimate legal force while respecting customary values. This study recommends the need for regulatory strengthening to accommodate the harmonization of both legal systems to create adequate justice and legal protection for indigenous communities.*

Keywords: Customary Law; Customary Meeting; Deed; Notary.

1. INTRODUCTION

With a coastline and ocean that stretches widely, Indonesia has a plurality of national characteristics. (Muhammad Nuha Maulana Pasya & Fina Akmalia, 2022). One example of this plurality can be found in Lomblen District, which changed its name on March 7, 1999, and formed its own autonomous region, which is then familiar to our ears and is known as Lembata Regency (Muhammad Nuha Maulana Pasya, 2023). There are Kedang indigenous communities that are spread across the majority of Omesure and Buyasuri Districts. Lembata Regency, East Nusa Tenggara Province, is a customary law community that was formed today from five ethnicities or tribes, namely the Bajaher Arab, Chinese, Binongko, Flobamora, and Kedang tribes, which is also the main tribe that started a traditional custom in the Kedang customary law society today (Muhammad Nuha Maulana Pasya, 2023).

The Kedang customary law community has a marriage tradition called *ku' we'*. *Ku' we'* is carried out in seven to eight stages. For a brief comparison, in the Javanese marriage tradition, the stages begin with proposing or *nantoni*, followed by *ngunduh*, or the bride visiting the groom after the wedding (Bayu Ady Pratama & Novita Wahyuningsih, 2018). The difference between *ku' we'* and Javanese traditional marriage is that in *ku' we'*, there is a traditional meeting called *tabeq lipu mutung baraq mapaq* and *biheq naku*,

which discusses *uang bele'* or *honesty* in traditional marriage, which essentially involves the transfer of money or goods to change the clan of one of the parties in the marriage. *Uang bele'* is represented by elephant tusks (*bala*) and gongs (*kong*), and the customary meeting discussing *uang bele'* can be held within a single timeframe or at different times. *Ku' we'* is different because marriage generally only has a correlation between private relationships, and public relationships typically represent the state. In contrast, *ku' we'* simultaneously has strong public and private relationships (Muhammad Nuha Maulana Pasya, 2023) .

The customary meetings of the Kedang indigenous community are not recorded in such a manner, as they are conducted according to custom, which is typically not documented by nature. Due to this lack of documentation, a bridge is needed to accommodate the legal-formal relationships that arise from these customary meetings. In addition, recording in a formal manner (notarial deed) is important because it fills in the socio-historical aspects with a more guaranteed form. *Bala*, as an object in traditional meetings, is limited in supply, and in practice, it creates debt relationships between clans. The non-payment of *uang bele'* becomes a legal relationship with far-reaching consequences. If this is not formalized in a notarial deed, the legal consequences can spread to the social aspect.

This is because the marriage event that triggered the customary meeting was actually the *levering* of ownership of objects (*zaak*) in the form of *kong* and *bala* to *the de nieuwe eigenaar*. At the same time, this *leveraging* raises questions about the applicability of Article 1332 of the Civil Code (KUHPer), which states that "an object in an agreement is an object that is commonly traded." Not only that, according to Presidential Decree No. 43 of 1978 concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora in conjunction with Article III of CITES, it is stated that transactions, whether domestic or international, involving elephant tusks are not permitted or are considered illegal as long as they do not meet the licensing requirements and are contrary to the laws of a country.

The urgency of a notarial deed is required to translate the results of the Kedang customary meeting into a legal-juridical form (authentic deed) in accordance with Article 21 paragraph (2) letter c of Law Number 32 of 2024 concerning amendments to Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Their Ecosystems (KSDAHE Law), does not allow anyone to possess or own parts of the body of protected animals/wildlife, with the exception of Article 22 of the *a quo* law, which does not mention the existence of customs in it. In this case, researchers can say that there is a legal antinomy, where the existence of customs has a deeper historical significance than the positive significance in the law mentioned above (Burhan Albar, S.H., M.Kn., 2024) . For this reason, an in-depth scientific discourse is needed regarding the urgency of the aforementioned act, as well as examining the legal validity of its implementation.

This research, based on the above description, has several issues that can be raised to limit the discussion in this study in order to obtain in-depth research and draw a conclusion. There are two issues that can be raised and elaborated upon in the discussion, namely, the urgency of incorporating the Kedang customary meeting with the object of *uang bele'* into the Notary's deed, and the legal validity of the Kedang customary meeting with the object of *uang bele'* for the Notary in the Notary's deed. The purpose of these two issues is to add to the literature in the field of law, specifically

customary law and notarial science.

2. RESEARCH METHODS

This type of research uses a socio-legal approach by observing the Kedang customary law community anthropologically, which is then combined with secondary data, with the nature of exploratory research (Fachrizal Afandi, 2022). This research used three approaches to answer the research objectives by combining to be able to embody a subject matter in this research, as for the approaches used, including the statutory approach, historical approach, and conceptual approach. Data analysis conducted in this research is a qualitative analysis by combining anthropological, logical, systematic, and juridical methods to see a legal antinomy which can then be solved with an exploratory, analytical, and perspective conclusion (Soerjono Soekanto, 1985) .

3. RESULTS AND DISCUSSION

3.1. The urgency of notarial deeds in Kedang customary meetings related to the object of *uang bele'*

The Kedang customary community today is a customary law community with a territorial genealogical basis. This can be seen from the hierarchical form of the customary law community, with the most dominant tribe or ethnicity being the Edang tribe, with minority ethnicities such as Bajeher, Binongko, Flobamora, and Chinese. Because the basis of the Kedang customary law community is a genealogical territorial customary law community, and as it should be, customary law applies in this *case* to the Kedang indigenous community itself (Soerjono Soekanto, 2010)

Customary law, epistemologically speaking, can be described as the accumulation of norms from the social activities of the indigenous community itself. Customary law has ethical, magical, and religious dimensions, which are consciously implemented so that they have legal force. The validity of customary law is essentially a framework for indigenous communities to implement social rules based on mutual agreement. Continuing on from this, because customary law is a process of sedimentation, referring to what the researcher has explained above, it is clear that this process of sedimentation does not happen quickly or in a short period of time, but rather requires a considerable amount of time and is subject to change, meaning that it is dynamic in nature.

The historical application of *bala* as *uang bele'*, which today is regulated in Kedang customary law, is not a recent development. *Bala* is an object that was traded with the Portuguese/British in the 16th to 18th centuries AD, where *bala* was exchanged for agricultural products from most of the indigenous communities on the island of Lembata at that time. Today, *bala* from these exchanges has esoteric value for the Kedang indigenous community, meaning that in addition to its economic value, it also has magical and philosophical value. Because of this esoteric value, today in the *ku' we'* tradition, *bala* is applied in *uang bele'* as a requirement for the *ku' we'* tradition to be carried out within the Kedang indigenous community.

The practice of giving goods or money from the man to the woman in the Kedang indigenous community is a form of appreciation from the man to the woman, as well as a symbol of appreciation from the man's clan to the woman's clan. This is because the marriage pattern of the Kedang indigenous community is patrilineal (descent follows the male line), which automatically means that the wife of the man who is married is brought from her clan of origin to her husband's clan, where in general there is a change of name following the clan name of the man or husband. Based on the transfer of clan name,

respect for women, and the establishment of harmonious clan relations, *bala* is manifested as a symbol of these things.

The Kedang indigenous community is a genealogical-territorial indigenous community, meaning that it has a territorial scope and marriage ties in terms of the applicability of its customary law. The territorial scope of the Kedang indigenous community covers two subdistricts, namely Omesuri Subdistrict and Buyasuri Subdistrict in Lembata Regency, East Nusa Tenggara Province. The territorial scope does not limit the application of customary law, because there is a genealogical basis, namely marriage ties or *kawin-mawin* in the Kedang language, which form the basis of the Kedang indigenous community (Konradus, 2018) making it one of the elements used in Kedang customary law for the Kedang indigenous community in terms of blood ties that are not limited to the territory alone. The basis for the formation of the Kedang indigenous community makes the Kedang indigenous community dynamic.

The application of customary law based on genealogy-territoriality makes the relationship between the community and customary law intense. The intensity of the relationship between the Kedang indigenous community and its laws correlates with the scarcity of *bala* as *uang bele'*, which is a requirement for the implementation of *ku' we'*. For this reason, *bala*, as an object that has an intensive relationship with customary law, is becoming increasingly scarce. The concentration of *bala* in clans with more female members has made *bala* even scarcer, and because of this, in Kedang tradition, a customary meeting is held to discuss the issue of *uang bele'*, especially in the context of *bala*.

The customary meeting that discusses *money bele'* in this discussion is specific to *bala*, namely at the customary meeting of the Kedang indigenous people regarding marriage (*bineng maing kawin mawin*). *Bineng maing kawin mawin* is held at the *tabeq lipu mutung baraq mapaq* and *biheq naku* stages. The difference between *bineng maing kawin mawin* in *tabeq lipu mutung baraq mapaq* is that at this stage, the process of determining the type, quality, and quantity of *uang bele'* is carried out according to an agreement between the *kalan* who carry out the *ku' we'*. Then, *bineng maing kawin mawin* in the *biheq naku* stage occurs because the *money bele'* has not been paid in full by the man to the woman. At this stage, it often involves multilateral relations between clans over debt relationships involving *bala* objects. These debt relationships are not recorded as such and can have a strong social impact.

Biheq naku is a customary meeting that can stand alone or be separate from *bineng maing kawin mawin tabeq lipu mutung baraq mapaq*, because this customary meeting only occurs due to the payment of *uang bele'* in debt. *Biheq naku* contrasts with *bineng maing kawin mawin tabeq lipu mutung baraq mapaq* because *biheq naku* correlates with strong social relations between clans due to debt relationships resulting from unpaid *uang bele'*. Seeing this, researchers can say that *bineng maing kawin mawin tabeq lipu mutung baraq mapaq* has a correlation with a two-sided reciprocal agreement (legal relationship) between the parties only (Subekti, 2005). *Biheq naku*, if it can be equated, is similar to what is called a *derden beding* agreement, which is to grant rights included in the clause to a third party who is not involved in the agreement (*bineng maing kawin mawin tabeq lipu mutung baraq mapaq*), and is often a tripartite agreement (R. Setiawan, 1979) .

In general, legal relationships in Kedang customary meetings are not recorded in such a form, therefore it is very possible that verbal agreements in discussions of *uang bele'*, whether they are legal relationships or unilateral legal actions, become uncertain. *Biheq*

naku and *bineng maing kawin mawin tabeq lipu mutung baraq mapaq*, as explained by the researcher above, have both private and public dimensions at the same time. With the emergence of both private and public dimensions, it is only natural that private problems will also attract public problems, and if this is consciously ignored, it will certainly lead to legal regression in terms of legal certainty.

Article 1 paragraph (1) of Law Number 02 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Amendment to the Law on the Position of Notary) states, more or less, that a Notary is a public official who has the authority to draw up authentic deeds and other authorities granted by law. The term "public official" in this article is a translation of *Openbare Ambtenaren*, and in this case, it means that a Notary is a public official authorized to draw up deeds concerning all acts, agreements, and decisions for legal certainty as long as they do not conflict with the law (Wibowo, Najwan, & Bakar, 2022).

Given its nature, which is referred to as an authentic deed, referring to Article 1868 of the Civil Code, there are three elements that make a deed authentic, namely its form is determined by law, it is made before an authorized official, and it is made where the deed is made. With the fulfillment of the elements of an authentic deed, it can be said that there is perfect evidence attached to it, which is explained in Article 1870 of the Civil Code. Perfect evidence means that the legal actions taken by the parties in the Kedang customary meeting, when recorded in an authentic deed, also have perfect burden of proof, meaning that legal certainty is realized.

Customary law recognizes what is known as the principle of cash payment, however, the Kedang indigenous community in its customary legal culture recognizes exceptions to this principle. If we want to compare it with continental legal culture, the Kedang indigenous community also recognizes the legal culture of agreements that result in the transfer of rights, which requires separate delivery rather than as a single entity, where agreements and transfers or *levering* in Dutch are separate legal acts, and for agreements that result in transfers, the object has not yet been transferred if there has been no delivery. This can be found in customary agreements made orally at customary meetings at the *biheq naku* stage. With the complexity of Kedang customary law and its dynamic nature, it is only natural that the recording of Kedang customary meetings in authentic deeds is a certainty in law.

There are two types of notarial deeds, namely *ambtelijk akte* and *partij akte*. The difference between the two types is that *ambtelijk akte* or *relaas akta* or akta pejabat s depend on what the Notary sees, hears, and witnesses directly. (I. Made Ari Nurjaya, I. Nyoman Sumardhika, & Ida Ayu Putu Widiati, 2020) , while a *partij akte* or party deed is based on the information provided to the Notary by the parties involved (Rosdiana, 2021) . Looking at the current Kedang customary meeting, it has similarities with a general meeting of shareholders (GMS) where those who have the right to attend are people who have a direct or indirect interest in the company holding the GMS. In the Kedang customary meeting, those who are allowed to participate are people who have a direct or indirect interest in the discussion of *uang bele'*, and the meeting is led by a meeting leader with certain categorizations. The meeting leader in a Kedang customary meeting must be someone who understands customary law, is respected, capable, and not *awar buyaq* (unsuitable). Due to several similarities with a GMS, the researcher believes that the most ideal type of deed to use in recording a Kedang customary meeting in a notarial deed is *an abmtelijk akte*.

Ambtelijk akte is ideal for recording Kedang customary meetings, where the formal burden of the deed rests with the Notary as a public official who records events that he sees, hears, and witnesses directly. Therefore, there is little room to deny the authenticity of the deed, especially since *the ambtelijk akte* has witnesses who are directly involved in the process of recording the traditional meeting in the deed. The recording of the Kedang customary meeting in the Notary deed provides certainty regarding the storage of documents, where Article 1 paragraph (8) in conjunction with Article 15 paragraph (1) of the Notary Position Law states that deeds made by Notaries (deed minutes) must be stored by Notaries as part of the Notary protocol. The storage and maintenance of deeds as part of the Notary's protocol is the responsibility of the Notary, because these documents are actually the property of the state, and the Notary, as a public official, is obliged to store and maintain them until the time specified by law (25 years) according to Article 63 paragraph (5) of the Amended Notary Law.

The nature of unwritten customary law, in this case, is then confirmed in the Notary's official deed (*ambtelijk akte*), which is automatically preserved in form, meaning that it provides certainty for the parties. Current global developments, with the shift from Industry 4.0 to 5.0, have brought about a reality in which the form of deeds has also shifted from analog to digital, meaning that there are "destructive things" at certain points of content (Ali & Solekha, 2024). On the other hand, the recording of Kedang customary meetings in the form of *official deeds*, coupled with the current industrial movement, brings us to the reality of engraving socio-historical values (Kedang customary law) as a tool for communicating the history of the existence of customary law, which is generally unwritten.

3.2. Legal validity against the pouring of Kedang customary meetings with the object of *uang bele'* for Notaries into Notary official deeds

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that Indonesia is a country based on the rule of law, meaning that there are rules for living in society and governing the country (Iswari, Adzania, Novilawati, & Samosir, 2024). Article 1 paragraph (3) of the 1945 Constitution brings us to the principle of *the rule of law*, which is based on the supremacy of law and the constitution, meaning that there is no discrimination in the law and that everyone is guaranteed access to the law in order to create order in society (Setiadi, 2012).

Article 1 paragraph (1) of the Amended Notary Law states that a notary is a public official who has the authority to draw up authentic deeds and other powers granted by law. In addition to drawing up authentic deeds, as discussed in Article 1 paragraph (1) of the Amended Notary Law, other authorities are then granted in Article 15 of the Amended Notary Law, which in this case focuses on Article 15 paragraph (2) letter e of the Notary Law. Article 15 paragraph (2) letter e of the Notary Profession Law mentions one of the powers of a Notary, namely to provide legal advice on the deeds they draw up, meaning on the inclusion of the Kedang customary meeting in the deed. As a public official, a Notary must first provide legal advice so that the inclusion of the Kedang customary meeting in *the ambtelijk akte* does not violate the law.

Civil law recognizes the principle of freedom of contract, especially in agreements (Raisa Fatnisary & Akhmad Budi Cahyono, 2021). Freedom of contract is regulated in Article 1338 (1) of the Civil Code, which essentially also contains the principle of *pacta sunt servanda*, but this interpretation does not apply automatically. In the principle of freedom of contract, in the initial stages there are (legal) restrictions and not every agreement is free (violating the law) and applies like a law to the parties.

Fundamentally, every agreement that is to be made cannot be separated from the valid requirements of an agreement, and this also applies to deeds made by a Notary (Dandy Aditya Qasthari, Huala Adolf, & Etty Djukardi, 2019) . Article 1320 of the Indonesian Civil Code (KUHPer) stipulates four requirements for an agreement to be considered valid and enforceable, namely agreement, capacity, a specific object or subject matter, and a lawful cause. In this discussion, considering also column 51 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.20/Menlhk/Setjen/Kum.1/6/2018 concerning Protected Plant and Animal Species, which stipulates that elephants and every part of their bodies are protected, and in Article 40a paragraph (1) letter f of the KSDAHE Law, if a person possesses an elephant in the form of an act or legal event, that person can be interpreted as violating the law and is therefore subject to fines and imprisonment.

Based on Articles 1332, 1320, and 1338 of the Civil Code, it can be interpreted that the object of the agreement must be an object that is commonly traded, as this is a valid requirement for the agreement to be legally binding on the parties. It is not appropriate to categorize *wildlife* as a conservation object by including all articles regulating the ownership of specimens that are prohibited from being owned in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.20/Menlhk/Setjen/Kum.1/6/2018 concerning Protected Plant and Animal Species. This categorization, when compared with Article 1332 of the Civil Code, automatically closes the space for customary meetings to be recorded in a Notary deed.

Article 3 of Lembata Regency Regulation Number 6 of 2014 concerning the Preservation of Ancestral Cultural Heritage states that objects of regional cultural preservation also include the products of human civilization, and thus *bala* as an object *of bele*'is, in terms of history, such an object. The categorization *of bala* as an object outside the scope of objects or specimens of conservation in this case is appropriate. This is because Law No. 5 of 1990 is not retroactive, especially *since bala* is a product of culture obtained through barter from the 16th to the 18th century AD. and if the tradition is to be simply abolished, especially since there are already regulations according to customary law, such a legal product (in the sense of positive law) does not have sociological and philosophical validity.

The interpretation of Article 1332 of the Civil Code is based on the KSDHAE Law, which essentially states that an object in an agreement is something that is commonly traded. The interpretation of Article 1332 of the Civil Code, which refers to the KSDHAE Law, should not apply generally in a broad sense, but rather as an exception to the customary law that exists in a society, considering that in addition to positive law in general, there are other laws in Indonesia (customary law). The interpretation of Article 1332 of the Civil Code regarding *bele* in the context of incorporating customary meetings into notarial deeds must be understood as objects or goods or items that are commonly traded within the territory where such items are traded or commonly become the subject of agreements, which in this case is located in Lembata Regency and is subject to the customary interests of the indigenous community. Article 1337 of the Civil Code states that prohibited causes or unlawful causes are based on law, morality, or public order.

The relative applicability of the principle of freedom of contract, in this case, is influenced by the applicability of Article 1337 in conjunction with Article 1332 of the Civil Code, and in the above embodiment, there is an illustration that, in the realm of fulfilling the objective requirements in Article 1320 of the Civil Code, namely a lawful object and cause, and in the context of formalization into a notarial deed, it does not legally violate

the provisions of Article 1337 in conjunction with Article 1332 of the Civil Code (Anand, 2011) . The validity of a legal product produced by a Notary, in this case in the form of an official deed (*ambtelijk akte*), has a formal burden that is directly linked to the Notary. Therefore, in recording the Kedang customary meeting in a deed, the formal aspects must first be taken into account.

The Kedang customary meeting, or other forms with similar content, in this case, require special attention, especially since customary law has its own dimension in the Indonesian legal system and is even considered organic law. It is not appropriate to simply disregard customary law. Notaries, as public officials, who currently only produce legal products in the form of *official deeds* containing economic and industrial matters, should also have a place in the socio-historical realm, because after all, legal acts in the form of *levering* in any way, especially when recorded in *an ambtelijk akte*, do not only occur in dimensions that are economic and industrial in nature.

The formalities of the Kedang customary meeting are not legally contradictory. Therefore, fulfilling the elements in the application of the principle of freedom of contract, which is the starting point for other elements and principles to enter, as is the case with agreements in general. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects customary law communities and their traditional rights. With reference to the above discussion, referring to the constitution, the recording of the Kedang customary meeting in a notarial deed is not something that violates the law.

4. CONCLUSION

Kedang customary law is a set of primary rules that regulate the manner in which individuals interact with one another, perform rituals, and resolve disputes in the Lembata community. In addition to safeguarding the identity and social unity of the Kedang indigenous community, these customary laws also reflect cultural values. This is a critical component of the national legal system, which is diverse and necessitates the respect and protection of customary law as a strategic necessity to maintain social stability and the preservation of tradition. The significance of formalizing the outcomes of customary meetings into notarial deeds in order to enhance the legal status of indigenous communities in relation to national positive law. This formalization process has the potential to mitigate regulatory conflicts and enhance the certainty of the law. An inclusive and adaptable legal process is crucial for the integration of customary law, which is rooted in culture, with state law, which is founded on regulations. Therefore, it is crucial to establish legislation that enhances the functioning of the legal system and equips Notary officials with additional resources to comprehend local customs. This is essential for a legal system that is democratic and equitable, and that values social diversity. This study is far from perfect, so it is recommended that further research be conducted on the aspect of future legal harmonization, specifically between customary law and national law. In addition, the government and stakeholders should pay more attention to more inclusive regulations to facilitate the integration of customary law into the national legal system, including in this case the drafting of notarial deeds based on the results of customary meetings, which can automatically strengthen the legitimacy of customary law communities while also preventing conflicts of interest in the future. In the realm of legal practitioners, especially Notaries, more attention is needed regarding customary law in terms of supporting the process of drafting deeds in the future, because

in addition to considering national law in the drafting process, aspects of customary law are important to consider for the sake of legal certainty and legal harmony.

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