

Customary Law *Selam Air* as the Final Mechanism in Resolving Disputes among the Dayak Kanayat'n Indigenous People

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ABSTRACT

Customary law *selam air* is positioned as the final step in dispute resolution within the Dayak Kanayat'n Indigenous Community in Kersik Belantian Village, especially when the customary deliberation process is no longer able to produce an effective solution. This study formulates the main question of how the customary law of *selam air* is implemented in handling disputes within the Dayak Kanayat'n indigenous community. This study aims to examine in depth and describe the implementation of the *selam air* mechanism as a means of dispute resolution. The approach used is an empirical legal method with a legal anthropology perspective, while the data collected, both primary and secondary, is then processed and interpreted through qualitative analysis. The results of the study reveal that the customary law of *selam air* is implemented through traditional ceremonies and carried out by diving into water, where the party that can survive the longest in the water is declared the winner, reflecting the values of struggle, honesty, and sincerity in interpreting justice. This *selam air* customary mechanism is one manifestation of justice that is alive and believed in by the Dayak Kanayat'n Indigenous Community. The uniqueness of this research lies in the revelation of the *selam air* customary law as a final form of living law with transcendental values, which has not been widely studied academically, so it is hoped that it can contribute to the study of legal pluralism in Indonesia.

Keywords: Conflict Resolution, Customary Law, Dayak Kanayat'n, Land Disputes, *Selam Air*.

INTRODUCTION

Indonesia is a country with diverse customs and traditions. According to data from the Indigenous Peoples Alliance of the Archipelago (AMAN) in 2022, there are around 50-70 million people who belong to Indigenous Peoples in Indonesia (Samosir, 2022). The diversity of customs in Indonesia brings new colors to all aspects of life, such as economic, political, and legal activities (Satrianegara et al., 2021). In terms of law, some Indigenous Peoples in Indonesia still apply customary legal guidelines (Permadi, Dungga, & Arshad, 2024), which are usually referred to as customary law (Yusa, 2016).

Customary law is a set of social norms that are generally not written down (Syamantha, Syahputra, &., 2025). It has grown and developed and is recognized in an Indigenous Peoples from generation to generation, which has sanctions and rules that are binding on the Indigenous Peoples (Dako et al., 2024). In West Kalimantan Province, customary law is still practiced in resolving every issue, especially in the culture of the Dayak Kanayat'n Indigenous People (Sada, Alas, & Anshari, 2019). The customary law provisions implemented by the Dayak Kanayat'n Indigenous People include marriage ceremonies (Magdalena, Kristianus, & Lodo, 2024), rice harvest thanksgiving ceremonies (*gawai*) (Rengat, Ronaldo, & Hexano, 2022), births, deaths, and the resolution of every problem are carried out based on customary law (Prasetyo, Kristianus, & Magdalena, 2023).

In Dayak Kanayat'n customary law, in general, the customary court process is conducted openly and is consultative in nature to reach an agreement between the parties (Fitriiono, Supanto, Budyatmaja, Ismunarno, & Andarsari Parwitasari, 2023). In the process of conducting customary justice, the *Timanggong* or customary chief acts as the judge who will adjudicate the parties, accompanied by other customary officials (Efriani & Agustinus, 2021). The decisions of customary officials are considered final and binding on the parties. However, in reality, in some cases, the decisions of customary officials can be appealed by the disputing parties, especially if the decision does not achieve a sense of justice for the disputing parties.

Appeals in some cases of customary rulings handed down by customary officials can be made in all cases, but the appeal is not made through a retrial of the customary court but rather through customary law as practiced by the Dayak Kanayat'n Indigenous People in Kersik Belantian Village (Satria Satria, Viktorius Siga, Bernardus Subang Hayong, & Laurensius Anselmus Wae Woda, 2024). Based on the Binua Belantian Tengah customary law document,

specifically Article 5 paragraph (1), it states that, “*Selam air* customary law is customary law that is applied to both parties to a dispute that cannot be resolved through deliberation or other customary laws. Therefore, *selam air* customary law is imposed as a last resort in resolving disputes between the parties.” Based on this, *selam air* customary law can be interpreted as meaning that the two parties to the dispute will dive into the river, and the party that lasts the longest while diving is considered the winning party in the dispute.

The uniqueness of the traditional punishment of drowning as a last resort in the customary law practices of the Dayak Kanayat'n in Kersik Belantian Village reflects the values of spirituality and collective morality embraced by the Indigenous People. The customary law of *selam air* is not only seen as a means of proof, but also as a means of belief that the spirits of the ancestors will guide the righteous, sincere, and honest to victory (Ceria, Zega, Widjaja, & Tanhidy, 2022). The customary law of *selam air* can be interpreted to mean that justice in the perspective of indigenous peoples is not solely based on rational or formalistic evidence, but rather on sincerity of heart and the belief that the truth will be revealed through methods that have been believed in for generations.

Based on a literature review of Dayak Kanayat'n customary law, it appears that the mechanisms for resolving disputes or problems among the Dayak Kanayat'n Indigenous People tend to prioritize customary law. As in a study conducted in 2022, entitled, “*Paradigma Keadilan Restoratif dalam Hukum Adat Kanayat'n Dayak terhadap Kerusakan Lingkungan yang Disebabkan oleh Ladang Berpindah*” this study focuses on the application of restorative justice in resolving environmental problems caused by the shift cultivation system of the Dayak Kanayat'n Indigenous People (Dawi, Haryono, Yuliastini, & Astono, 2022). The 2022 study differs from the current study in that the focus of the research is on the mechanism for resolving problems through *selam air* customary law as the final mechanism for resolving problems in Kersik Belantian Village.

Furthermore, in 2023, a study entitled, “*Pembangunan Pertambangan Berkelanjutan Berbasis Kearifan Lokal di Kalimantan Barat: Perspektif Hukum Progresif*” was conducted, focusing on sustainable development through customary law values in West Kalimantan Province (Astono, Alkadrie, Fitriani, Arabiyah, & Sitorus, 2023). The 2023 study differs from the current study, which focuses on customary law values, processes, and mechanisms found in *selam air* customary law. Furthermore, in 2024, a study entitled, “*Dayak Women in the Role of*

Protecting the Environment: An Ecofeminist Perspective on Environmental Law in West Kalimantan” was conducted, focusing on the role of Dayak women in preserving the environment through the implementation of customs (Astono, Muyassar, & Wagner, 2024). This 2024 study differs from the current study, which focuses on conflict resolution mechanisms within the customary court structure in *selam air* customary law. Finally, the second study conducted in 2024, entitled, “*The Progressiveness of Dayak Kanayat'n Customary Law in Preserving the Environmental Ecosystem*” focuses on the values of progressiveness in Dayak Kanayat'n customary law (Satria, Yuliastini, Fitriani, & Astono, 2024). This study differs from the current study, which focuses on *selam air* customary law as a final dispute resolution mechanism.

The novelty in the study entitled, “**Customary Law *Selam Air* as the Final Mechanism in Resolving Disputes among the Dayak Kanayat'n Indigenous People**” is to reveal the practice of customary law *selam air* as a final dispute resolution mechanism in the Dayak Kanayat'n indigenous people. The customary law of *selam air* is a customary practice that has never been academically studied in previous studies of customary law. The novelty in this study lies in its focus on the implementation of the practice of *selam air* as an instrument of proof based on spiritual beliefs, rather than merely conventional deliberation or customary sanctions. This study shows that the *selam air* customary law mechanism represents a form of justice unique to indigenous people, rooted in mystical, spiritual, and collective moral values, making it different from other paradigms of customary dispute resolution that have been studied previously. Based on the introduction and literature review above, the title of this study is **Customary Law *Selam Air* as the Final Mechanism in Resolving Disputes among the Dayak Kanayat'n Indigenous People**.

This study focuses on the formulation of issues regarding the implementation of the customary law of *selam air* in dispute resolution among the Dayak Kanayat'n indigenous people in Kersik Belantian Village. The main focus of this study is to analyze and describe the implementation of the customary law of *selam air* in dispute resolution among the Dayak Kanayat'n indigenous people in Kersik Belantian Village.

RESEARCH METHOD

In this study, an empirical legal method was used based on a legal anthropology approach (Ibrahim, 2024). This study used two types of data, namely primary data and

secondary data (Hamzani, Widyastuti, Khasanah, & Rusli, 2023). Primary data is information obtained directly through interviews or statements from informants, respondents, and sources. Meanwhile, secondary data consists of legal documents, in this case legislation, books, journals, and Dayak Kanayat'n customary law documents. The research was conducted in Kersik Belantian Village, Jelimpo District, Landak Regency. The sampling procedure was applied through non-random sampling. Data analysis was conducted using descriptive-qualitative methods. The conclusions of the study were drawn deductively, or by referring to general principles or issues to explain specific and contextual cases or problems (Barroga et al., 2023).

RESULTS & DISCUSSION

Based on its origins, the term customary law derives from Arabic, namely the word “*Huk'm*,” which means command or provision, while “*Adah*” means behavior that is repeated consistently or commonly referred to as a custom (Siregar, 2018). Based on the definitions of “*Huk'm*” and “*Adah*,” customary law can be interpreted as customary law. The term customary law, or *Adat Rechts*, was first coined by Snouck Hurgronje in his work entitled *De Atjehers* (Armayanto, Suntoro, Basyari, & Zain, 2023), as part of Dutch colonialism's efforts to map the laws under its colonial rule. Furthermore, according to Cornelis van Vollenhoven in his work entitled “*Het Adat -Recht van Nederlandsch Indie*,” argues that *Adat Rechts* is a legal system that exists within the interaction of customs (Tohari, Rohmah, & As-Suvi, 2023), of a society that is generally unwritten and has legitimacy and sanctions that have been collectively agreed upon (Zainurohmah, Mahmudi, & Alfarisi, 2024).

In line with Van Vollenhoven, while criticizing Hurgronje's opinion which combines *Adat Rechts* and customary law into one entity (Yoserwan, 2024), Van Dijk argues that customary law focuses more on legal rules that arise from continuous and consistent activities (Imamulhadi, Nuriyah Hidayat, Surya, & Rusli, 2025), whereas customary law cannot be viewed solely from the perspective of the customs of Indigenous Peoples (Nainggolan, Sinambela, Simbolon, & Rahman, 2023), but is influenced by various factors such as the way the legal system has been passed down from generation to generation, spirituality, certain cultural dimensions, and institutions recognized by Indigenous Peoples (Nugroho, 2016). Based on the opinions of the above experts regarding customary law, customary law can be interpreted

as living law that encompasses a particular culture bound by customs, norms, and habits inherent in the social order of indigenous peoples in a particular region (Lestarini, 2023).

According to Eugen Ehrlich, living law is law that reflects social values, thereby possessing an “inner order” or natural order that exists within the conscience of society (Ehrlich & Ziegert, 2017), which is influenced by the customs, norms, and spirituality of that society (Hopman, 2022). The concept of living law is actually rooted in the concept of *volkgeist* or national spirit pioneered by Von Savigny, who argued that law is created through the national spirit and historical sensitivity of a nation (Rai, 2010). If the concept of *volkgeist* is adapted to customary law in Indonesia, then the customary laws that have existed in Indonesia for hundreds of years are a manifestation of the national laws that are currently in force, even though in reality they are often different (Achmadi, Dimiyati, Absori, Hangabei, & Usop, 2019).

The legitimacy for the existence of customary law at the national level is stated in Article 18B of the Constitution (Fidaus, 2024), which states that the Indonesian government affirms or, in this case, recognizes customary law and all its rights as long as it is in line with the applicable national legal system. This legitimacy then opens up opportunities for indigenous peoples to implement traditional legal systems and customary justice processes in their respective regions (Febrianty, Ghapa, & Ahmad, 2024). Furthermore, as an implication of the recognition of customary law, customary justice also has a place in the legal system in Indonesia. with reference to Article 5 paragraph (1) of the Judicial Authority Law, which implicitly means that in making a decision, judges do not only focus on formal legal aspects, but are also obliged to seek and internalize the culture that still exists in society (Buana & Djanggih, 2018).

The legitimacy of the existence of customary law in Indonesia is contained in the Village Law, which gives indigenous peoples the right to independently implement their customary legal and judicial systems (Rahmasari, Umami, & Gautama, 2023). Based on several provisions related to the legitimacy of customary law, it can be interpreted that customary law runs in harmony with national law, while customary law is included in the legal structure that applies in Indonesia as a reflection of the values of indigenous peoples. Based on this, recognition of customary law can be interpreted as recognition of the *volkgeist* that exists throughout the customary territories in Indonesia.

The legitimacy of customary law as explained above also applies to the customary law of the Dayak Kanayat'n in Kersik Belantian Village, Jelimpo Subdistrict, Landak Regency. Based on the provisions of Dayak Kanayat'n customary law in Kersik Belantian Village, hereinafter

referred to as Dayak Kanayat'n customary law, customary violations are divided into four categories, namely *adat badarah merah / calah*, *adat badarah putih*, *adat manjahana*, and other customary violations. *Adat badarah merah / calah* are violations that are committed either consciously or unconsciously, through visible or invisible means, which can result in the loss of life or pose a threat to someone's life. *Adat badarah merah / calah* is found in Articles 1 to 15 of the Dayak Kanayat'n customary law provisions. *Adat badarah putih* refers to violations related to breaches of moral norms and violations of marriage customs as determined by Dayak Kanayat'n customary law. *Adat badarah putih* is found in Articles 16 to 69 of the Dayak Kanayat'n customary law provisions. *Adat manjahana* is an offense committed by disturbing order and peace in the community. *Adat manjahana* is found in Articles 70 to 102 of the Dayak Kanayat'n customary law provisions. Other customary violations are violations that are new (due to the changing times) and are not covered by *adat badarah merah*, *adat badarah putih* or *adat manjahana*. Other customary violations are covered in Articles 103 to 237 of the Dayak Kanayat'n customary law provisions.

In general, the authority to adjudicate in Dayak Kanayat'n customary law disputes is based on the hierarchical structure of customary officials. The hierarchy begins with the *Pangaraga*, followed by the *Pasirah*, and finally the *Timanggong*. The *Pangaraga* is the executor or supervisor of customary decisions at the small community level. In this role, the *Pangaraga* can also assist in resolving issues within their community, such as in the neighborhood association. The *Pasirah* is the customary leader at the village or hamlet level, tasked with resolving all issues within the village or hamlet. Meanwhile, *Timanggong* is the highest traditional leader at a broader level, which can cover sub-districts and several villages. *Timanggong* is also tasked with resolving any issues that arise in the *Pangaraga* and *Pasirah* areas if the traditional officials are unable to resolve the issues. In addition, *Timanggong* is often appointed as a traditional judge who presides over trials accompanied by other traditional officials.

Customary decisions in Dayak Kanayat'n customary courts are generally handed down by the *Timanggong* as the customary judge. A customary decision in Dayak Kanayat'n customary courts is a ruling by a customary official that is carried out after a public customary hearing (*baragup/barukupm*), resulting in a customary decision. Customary decisions are final and binding, so the parties are obliged to implement them, as stated in Article 167 paragraph 6 of

Dayak Kanayat'n customary law, which states that parties who reject customary decisions will receive much heavier customary sanctions, namely *adat siam pahar*, *adat kampongk 3 tahlitangah* and *jalu 2 real*.

Although customary decisions are final and binding, there are still obstacles to their implementation, particularly in the resolution of customary law issues in the area of customary inheritance disputes. Protracted problems after customary decisions are ignored will not only involve customary officials, but also institutions such as the police and local government in the resolution of such disputes. One solution to resolve these issues quickly is to implement customary law *selam air*, as was done in 2019 in Sekendal Village, Air Besar Subdistrict, Landak Regency.

Figure 1. Customary Law of Selam Air in Sekendal Village



Source: Pontianak Post, 2019

For example, the customary law of *selam air* practiced in Sekendal Village is related to the settlement of family rice field disputes. The dispute was settled through the customary law of *selam air* in Sekendal Village because the parties involved were still related and there were efforts to reconcile them so that the dispute would not escalate into further conflict in the future. In line with the *selam air* customary law in Sekendal Village, the *selam air* customary law is also the *ultimum remedium* in the Dayak Kanayat'n Indigenous People in Kersik Belantian Village.

The legal status of *selam air* in the Dayak Kanayat'n Indigenous People in Kersik Belantian Village is regulated by different customary laws. These customary laws are contained in the *binua belantian tangah* customary law of 2000. The customary law of *selam air* in Article 5 paragraph (1) of the customary law of *binua belantian tangah* is defined as customary law

that is applied to both parties to a dispute that cannot be resolved through deliberation or other customary laws. Based on this, the custom of *selam air* is imposed as a last resort in resolving disputes between the parties.

The process related to the customary law of *selam air* in Kersik Belantian Village is based on the disagreement of the disputing parties with the customary decision that has been handed down by customary officials. Subsequently, the customary officials held a meeting to consider whether the customary law of *selam air* could be applied as a means of resolving the dispute. If the customary officials agreed to apply the customary law of *selam air* to the two parties involved in the dispute, both parties would then be required to pay a customary penalty known as *tiga tahl tengah berkepala pahar* and one pig. The details of these customary sanctions include *satu pahar, dua patahilar biasa, buat tengah, tiga singkap pingatn* and *tiga singkap mangkok tutup patahilar*, one pig, and one free-range chicken. These customary details, when interpreted, consist of a customary payment to the *timanggong* worth one million five hundred thousand rupiah, a payment related to a light customary sanction (*dua patahilar biasa*) worth six hundred thousand rupiah, four white customary plates and one chicken (*buat tengah*) or can be replaced with a value of one hundred and fifty thousand rupiah, three traditional plates and three traditional bowls along with the penalty cover (*tutup patahilar*) or can be replaced with a value of two hundred twenty-five thousand rupiah, one pig weighing twenty kilograms or can be replaced with a value of three million rupiah, and finally, one free-range chicken or can be replaced with a value of one hundred fifty thousand rupiah.

In the customary law process of *selam air*, the customary sanctions imposed on each party in the customary case are intended for consumption by the indigenous peoples attending the *selam air* customary law proceedings. Then the customary officials perform *remah tayo* or the ritual process of opening the *selam air* customary law by calling and asking for the blessing of the ancestral spirits so that the *selam air* customary law procession can proceed smoothly and peacefully. After the opening ceremony or *remah tayo*, the disputing parties are asked to prepare to dive into the water. Once they begin diving, the party that lasts the longest will be declared the winner of the dispute. After a party is declared the winner in the *selam air* customary law, a closing ceremony or *remah tayo* is held so that the ancestral spirits that were summoned to provide guidance are returned to their place of origin, and the customary officials then issue a ruling on the dispute.

The customary law of *selam air* practiced by the Dayak Kanayat'n Indigenous Peoples in Kersik Belantian Village symbolizes justice in the community. This justice is not only based on written provisions, but also extends into the spiritual dimension, where the disputing parties believe that the spirits of their ancestors will guide them in undergoing the *selam air* customary law process (Absori & Nugroho, 2019). The determination of the winning party in *selam air* customary law is based on values that place honesty, sincerity, and inner integrity as the main foundations in the dispute resolution process (Garrido Martín, 2018). In the context of *selam air* customary law, it is not merely physical strength or breath endurance that is the measure of victory (Astono, Absori, Wardiono, Budiono, & Achmadi, 2025), but rather there is a belief that the party who is morally right and sincere in their intentions will be given the strength by their ancestors to survive longer in the water (Absori, 2018).

Thus, the customary law of *selam air* is not only an *ultimum remedium* for resolving conflicts that cannot be settled through deliberation, but also an embodiment of a spiritually based system of evidence that affirms the belief in the presence of transcendental justice (Ridwan, Dimiyati, & Azhari, 2017). The mechanism of the *selam air* customary law shows that Dayak Kanayat'n customary law, particularly in Kersik Belantian Village, integrates social, moral, and religious aspects into the framework of conflict resolution, making customary law not only relevant in the local sphere but also important to understand in the context of legal pluralism in Indonesia.

CONCLUSION

The customary law of *selam air* in Kersik Belantian Village is a dispute resolution mechanism that is considered the *ultimum remedium* in the Dayak Kanayat'n customary law tradition. The customary law of *selam air* is enforced when customary deliberations are no longer able to resolve conflicts, especially in disputes between families. The implementation of *selam air* customary law involves spiritual processes and customary sanctions, as well as diving as a form of proof that is believed to reflect the truth based on the honesty and sincerity of the parties involved. Thus, *selam air* customary law is a manifestation of spirituality-based justice and reflects the values of law that are alive and trusted by the community.

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