

# The Construction of Customary Judge's Decision on Plantation Conflict Resolution from the Perspective of *Huma Betang* Philosophy: A Case Study in Seruyan Regency, Central Kalimantan

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DOI: [10.23917/jurisprudence.v14i2.6970](https://doi.org/10.23917/jurisprudence.v14i2.6970)

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Submission	ABSTRACT
Track:	<b>Purpose of the study:</b> This study examines the construction of the decision of the Basara Hai Customary Peace Assembly No. B./01/T.9.DKA.-KTG/IV/2024 which has implications for the decision of the Palangka Raya District Court Number 55/Pid.B/2024/PN Plk to resolve the plantation conflict that occurred in Seruyan Regency, Central Kalimantan Province, Indonesia which had the potential to provide a lighter sentence for the defendant.
Received: October 26, 2024	
Final Revision: December 23, 2024	<b>Methodology:</b> The study utilized a mixed research method consisting of doctrinal (normative) and non-doctrinal (socio-legal) research methods. Both methods were used to analyze legislative products or court decisions at the macro-analysis level empirical realities. They aimed to study and solve problems that were conceptualized at the micro-analysis level as symbolic realities. This study used the sociological and anthropological
Available online: December 30, 2024	

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juridical approach methods that aimed to observe written laws and the law in practice.

**Results:** The findings of this study showed that the construction of customary judges' decisions upholds the values of *belum bahadat* (customs of life regarding politeness/ethics/high morals of the Dayak indigenous community). These values must be applied in all philosophical, sociological, and legal aspects. The decision of the customary judge also has implications for the construction of the Palangka Raya Court Decision No. 55/Pid.B/2024/PN that aims to provide legal justice and certainty for the disputing parties.

**Applications of this study:** This study offers findings from the construction of customary judges in upholding customary law based on the values of *belum bahadat* which have implications for the Palangka Raya Court Decision No. 55/Pid.B/2024/PN in providing justice for defendants who have undergone customary trials and the defendant's obedience to applicable customary laws as an effort to resolve conflicts.

**Novelty/Originality of this study:** The doctrine of customary law in the form of a customary judge's decision from the Huma Betang perspective is used by state judicial institutions as the basis in providing recommendations or legal considerations for law enforcement in providing justice and legal certainty for the disputing parties.

**Keywords:** *Decision construction, Customary Judge, Philosophy, Huma Betang.*

### **ABSTRAK**

**Tujuan penelitian:** Penelitian ini mengkaji konstruksi putusan Majelis Perdamiaan Adat Basara Hai Nomor B./01/T.9.DKA.-KTG/IV/2024 yang berimplikasi pada putusan Pengadilan Negeri Palangka Raya Nomor 55/Pid.B/2024/PN Plk untuk menyelesaikan konflik perkebunan yang terjadi di Kabupaten Seruyan, Provinsi Kalimantan Tengah, Indonesia yang berpotensi memberikan hukuman yang lebih ringan bagi terdakwa.

**Metodologi:** Penelitian ini menggunakan metode penelitian campuran yang terdiri dari metode penelitian doktrinal (normatif) dan non-doktrinal (sosio-legal). Kedua metode tersebut digunakan untuk menganalisis produk perundang-undangan atau putusan pengadilan pada level analisis makro realitas empiris.

**Tujuannya** adalah untuk mengkaji dan memecahkan permasalahan yang dikonseptualisasikan pada level analisis mikro sebagai realitas simbolik. Penelitian ini menggunakan metode pendekatan yuridis sosiologis dan antropologis yang bertujuan untuk mengamati hukum tertulis dan hukum dalam praktik. Hasil: Hasil penelitian ini menunjukkan bahwa konstruksi putusan hakim adat menjunjung tinggi nilai-nilai belum bahadat

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*(adat istiadat kehidupan mengenai kesopanan/etika/moral yang tinggi dari masyarakat adat Dayak). Nilai-nilai tersebut harus diterapkan dalam segala aspek filosofis, sosiologis, dan hukum. Putusan hakim adat tersebut juga berimplikasi pada konstruksi Putusan Pengadilan Palangka Raya Nomor 55/Pid.B/2024/PN yang bertujuan untuk memberikan keadilan dan kepastian hukum bagi para pihak yang bersengketa.*

***Aplikasi penelitian ini:*** Penelitian ini menawarkan temuan dari konstruksi hakim adat dalam menegakkan hukum adat berdasarkan nilai-nilai belum bahadat yang berimplikasi pada Putusan Pengadilan Palangka Raya Nomor 55/Pid.B/2024/PN dalam memberikan keadilan bagi terdakwa yang telah menjalani persidangan adat dan ketaatan terdakwa terhadap hukum adat yang berlaku sebagai upaya penyelesaian konflik.

***Kebaruan/Keaslian penelitian ini:*** Doktrin hukum adat berupa putusan hakim adat dari perspektif Huma Betang digunakan oleh lembaga peradilan negara sebagai dasar dalam memberikan rekomendasi atau pertimbangan hukum bagi penegak hukum dalam memberikan keadilan dan kepastian hukum bagi para pihak yang bersengketa.

***Kata Kunci:*** Konstruksi putusan, Hakim Adat, Filsafat, Huma Betang.

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## INTRODUCTION

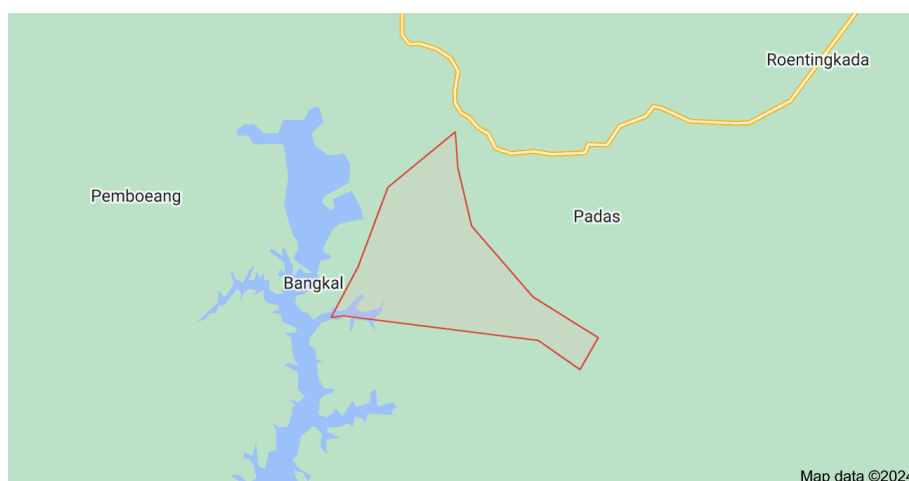
The issue of land control arises in the discussion of the legal status of customary land ownership in Indonesia. The description of the legal status refers to a juridical approach whose study inevitably begins with the applicable system that regulates the possibility of land use, conditions for land cultivation, and the period for its cultivation (Achmadi et al., 2021).

The hegemony of national law has hampered our awareness of the existing local laws that reflect the perspective of social order and ideals in society (Koskenniemi, 2004). This occurs due to the strengthening etatism in the form of legal centralism, especially after Indonesia's independence. It was marked with the stipulation of a state legal policy through Article II of the 1945 Constitution's Transitional Provisions that maintains the national law's nature and character in the form of codification and unification. This legal policy has caused regional regulations to be replaced by written legal institutions. Thus, the national law is seen as more important than local legal norms (Bernrad, 2010).

In the dynamics of Indonesian society, this situation increases the vulnerability to social conflict due to the gap in the natural resource management interests that have not provided a sense of justice (Dimiyati, 2010). This is due to various parties' interests in

building the concept of relations and interactions in everyday social places (Hall & Lamont, 2013). In many plantation land cases in Indonesia, local communities are actually the most disadvantaged parties because they not only face situations causing scarcity of natural resources or environmental damage but also result in the loss of their economic sources that still depend on the surrounding environment. Almost no plantation land case in Indonesia has ever received positive responses from the local community. Such cases usually end in the emergence of social movements (De Royer, Van Noordwijk, & Rossetko, 2018).

Various land disputes and conflicts between local communities and palm oil plantation companies often occur (Abram et al., 2017). In 2023, a conflict began when PT Hamparan Masawit Bangun Persada (PT HMBP/Hamparan Masawit Bangun Persada Limited Company) began to enter Bangkal Village, Seruyan Raya District, Seruyan Regency, Central Kalimantan Province, Indonesia in 2007. However, the community did not reach an agreement on whether to welcome or reject PT HMBP. The attitude of the villagers emerged in a very unclear situation. James, one of the Bangkal Village residents stated that PT HMBP had never introduced with the residents about their work plan, including the deforestation stage and land compensation to the community. PT HMBP promised to improve the welfare of the community, one of which was by opening up employment opportunities. However, it has never been realized. Thus, society has not enjoyed the welfare promised by the company.



**Figure 1.** Map of Bangkal Village, Seruyan Regency, Central Kalimantan Province

This problem was then resolved with an agreement signed on October 26<sup>th</sup>, 2013 (Thanos & Berto, 2024). The agreement between PT HMBP and the Bangkal Village community contained three points: First, the company stated that it would contribute to the

development of the village infrastructure, such as providing clean water and electricity networks to residents' homes, establishing schools, providing educational scholarships, and building fish ponds. This first point also stipulates that PT HMBP would resolve the issue of community land within the boundaries of their business use rights.

Second, PT HMBP promised to build a plasma garden for the Bangkal Village residents. Each head of the family would receive two hectares of garden. The second point states that PT HMBP would realize the provision of the plasma garden no later than early January 2014.

Third, the company had never carried out the joint agreement until finally, the residents organized another demonstration. The agreement was signed by three officials from PT Best Agro Internasional (Best Agro Internasional Limited Company), the parent company of PT HMBP. This agreement was the basis for the conflict triggering a wave of demonstrations in the following years, including the bloody events of October 7 (“Bentrokan Mematikan Di Kalimantan Tengah: Mengapa Warga Bangkal Seruyan Melawan PT HMBP?,” 2023). A civil society coalition consisting of *Sawit Watch* (Oil Palm Watch), Save Our Borneo (SOB), and *Satya Bumi* (Earth Warrior) urged security forces to avoid the use of violence and prioritize fair and equal dialogue.



**Figure 2.** The Conflict of Bangkal Village

Based on the chronology of the problem, the conflict between norms, values, and behaviors that live in society and the company is caused by the existence of regulations that specifically regulate forests and plantations that conflict with the existing values in customary law communities. Law No. 19 of 2004 Amendment to Law No. 41 of 1999 on Forestry and Law No. 39 of 2014 on Plantations do not fully side with customary communities. This situation can be seen in their implementation. Horizontally, these laws have violated the

values of agrarian law related to land ownership control. They have reduced the rights of customary law community units from the customary land area that they live in and that is inseparable from their lives.

In reality, the legal regulations governing plantations in Indonesia are often contradictory to the applicable material legal sources such as the management of natural resources as stated in Article 33 clause 3 of the 1945 Constitution. This Article states that, "The earth, water, and natural resources contained therein are controlled by the state and are used as much as possible for the prosperity of the people." The management of oil palm plantations is one of the largest revenues of the Indonesian state which aims to support the prosperity of the people. The state has a very important function and role in wisely managing oil palm plantations (Rokhim, Januari, Atik, Shara, & Rusdayanti, 2020).

Article 32 clause (1) of the 1945 Constitution can be used as a legal basis and a fundamental root in guaranteeing the community's freedom in maintaining and developing cultural values. Then, the hierarchy of Law No. 5 of 2017 on the Advancement of Culture can be used as an official legal basis that was ratified to strengthen the foundation of culture. It aimed to realize an Indonesian society that is in line with the principle of "*Trisakti*" (politically sovereign, economically independent, and culturally distinctive). This is in line with the thoughts of Achmadi et al. (2020) who explained that, "Cultural polarization in social spaces reflects the mental foundation of society which is crucial to maintain the existence of law for the local community".

The culture of indigenous peoples on social behavior is influenced by rational elements represented by feelings, and emotions, as well as political and religious fanaticism. The content of the law not only reviews the principles of legality. However, according to Achmadi et al. (2020), it must also contain good ideas that explore relativity values that are highly useful and relevant to local indigenous peoples.

Culture produces the rules and values of normative structures in the form of "design for living". It means that culture is also a "blueprint of behavior" that provides guidelines and/or benchmarks for community behavior. So, behavioral guidelines are manifested in the legal culture terminology that can be used to understand community behavior at the level of rule makers, application of sanctions, and role holders (Achmadi & Hangabei, 2021).

The interpretation of legal culture from the perspective of local wisdom is found in the legal values that are alive and well-maintained in society (Nugroho, 2021). The existing legal

values are the values of religious teachings; well-maintained values of customs and culture; the community's level of intelligence; and their social life (Karim, Hadisi, Ramli, Lubis, & Anhusadar, 2024). The exploration of customary values in achieving justice can also be interpreted in the form of dispute resolution for indigenous peoples (Saptomo, 2010).

Indigenous communities have implemented a form of peaceful dispute resolution system (justice of the peace) which is called customary justice (Achmadi, 2024). Customary justice has a very important position in making decisions regarding problems that occur in customary law communities (Haq, Achmadi, Hangabei, & Budiono, 2022). It can be seen that decisions originated from customary justice organized by tribal chiefs/customary elders provide decisions that are obeyed by their communities. Customary institutions or customary justice in Central Kalimantan Province has a legal basis that is explicitly regulated in the Regional Regulation of Central Kalimantan Province No. 16 of 2008 on Dayak Ethnic Group Customary Institutions in Central Kalimantan Province. *Damang* is responsible for the supervision/prosecution of justice and environmental preservation assisted by the *Mantir*, *Para Let*, and Customary Leaders (PERDA Provinsnsi Kalimantan Tengah No 16 Tahun 2008 Tentang Kelembagaan Adat Dayak).

From the aforementioned description, the important point of discussion concerns customary judges' decisions in resolving plantation conflicts. In this article, the authors profoundly analyzed the results of customary court decisions and their impacts on plantation conflict resolution. To strengthen the foundation of this research, Table 1 shows several previous studies and their differences compared to the authors' study.

**Table 1.** Previous Research on the Same Topic

No	Title of Previous Studies	Findings
1.	Culture-Based Land Right Conflict Resolution Model: A Case Study of the Dayak Tomun Indigenous People (A. Achmadi et al., 2021)	This research found cultural values in resolving plantation land conflicts based on the local wisdom of the Dayak Tomun community in Central Kalimantan.
2.	Management of National Judicial System Control Based on Local Laws: A Case Study at the	The author found that the Bale Mediation Center in Lombok has an important role in the midst of the COVID-19 outbreak in helping indigenous

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Mediation Center in Lombok, Indonesia (Haq, Achmadi, Budiono, & Hangabei, 2021)	communities resolve conflicts. There is a need for legal culture-based community mediation in the efforts to resolve social conflicts. It can be carried out by preparing alternative means of conflict resolution through the use of the Bale Mediation Center so that existing conflicts can immediately be handled. This is so that such conflicts do not become a burden that can worsen social conditions during the pandemic.
3. Community Mediation-Based Legal Culture in Resolving Social Conflicts of Communities Affected by the COVID-19 Pandemic in West Nusa Tenggara, Indonesia (Haq et al., 2022)	The author found that diverse local wisdom values became the main basis for resolving disputes in each community. It functions to reduce the number of conflicts with immediate handling to prevent worsening social conditions during the pandemic.

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This research is different from the previous studies. This paper aims to analyze (1) the customary judge's decision in providing justice for disputing parties and (2) the construction of the Basara Hai customary judge's considerations in Decision Number B./01/T.9.DKA.-KTG/IV/2024 and the Palangka Raya District Court's Decision Number 55/Pid.B/2024/PN Plk after the parties previously held a customary trial.

## RESEARCH METHOD

This study utilized a mixed research method consisting of doctrinal (normative) and non-doctrinal (socio-legal) research methods. Doctrinal research methods were used to investigate problems in the form of legislative products or court decisions at the macro analysis level as empirical realities (Shaffer & Ginsburg, 2012). Meanwhile, non-doctrinal research methods were used to study and solve problems that were conceptualized at the micro-analysis level as symbolic realities (Kilpatrick & Scott, 2021).

The law is not only viewed from the rules and regulations. However, it is also a form of actual and potential human behavior, actions, and interactions that can be inserted by controlling the customary justice system. The use of this method allows the establishment



similarities, analogies, and differences in enforcing applicable laws (Haq et al., 2021). In doctrinal and non-doctrinal (socio-legal) research, researchers used a sociological juridical research approach as the working principles are applied simultaneously, namely written law and the legal practice (Ngwoke, Mbanjo, & Helynn, 2023). In addition, this study also implemented a legal anthropology research analysis approach aiming to find the symbolic meaning behind the analyzed subjects and objects (Achmadi et al, 2020) .

## RESULTS & DISCUSSION

### *Customary Judge's Decision in Providing Justice for Conflicting Parties*

Based on the decision of the *kerapatan mantir/let perdamaian mantir Basara Hai* Number B./01/T.9.DKA.-KTG/IV/2024 consisting of a team of nine (consisting of traditional leaders or *damang*, customary chiefs or customary judges), this team accepted, examined, and decided on the customary case of the injured victim that occurred in Bangkal Village, Seruyan Regency. According to an interview with Kardinal Tarung (traditional leader of *kerapatan mantir/let perdamaian*, personal communication, May 5, 2024), the decision emphasized that Dayak customary law is directed toward the goal of orderliness aiming for justice and the goal of *manantilang sial kawe* (neutralizing aspects of bad luck) and *mampatende mampataduh karidu kala it* (creating magical peace). This means that in living on the island of Kalimantan there is the principle of *Bagawan Bawi Lewu Telo* (whoever and wherever people come from are required to live with the completeness of customary life regarding politeness/ethics/high morals/*belom bahadat*). The *belom bahadat* expression is dominant in every Dayak person's life.



**Figure 3.** The *Basara Hai* Trial Process to Achieve Peace

The families of the harmed victims have made a written statement to hand over the case to be resolved based on the customary law through a *kerapatan mantir/let perdamaian/a* meeting of peace whose members consist of the *Damang Kepala Adat* (*Damang* Customary Chief) who are members of the Central Kalimantan *Damang* Customary Chief forum. During a protest against PT HMBP, the harmed victims received security from the Central Kalimantan Regional Police Force. In this case, the following sanctions were imposed:

Article 17, which regulates *Singer Banguhan, Penyau Sangguh, Penyau Penyang* (the imposition of fines for killing by washing the spear). The *banguhan* (murderer) is fined. Then, the weapon used to kill is washed/purified. The perpetrator is threatened with a fine of 30-75 *kati ramu*/unit of measurement of customary fines. If the act of killing is carried out based on the perpetrator's own free will, the person concerned is threatened with a fine of 60-135 *kati ramu* for more than one person.

Article 23, which regulates *Singer Biat Himang* (customary fines for bleeding wounds). This article is imposed on someone who intends to kill, but the victim does not die but bleeds (*bahimang*). In such a case, the victim's wounds are examined, whether they are severe (deep) or not. This is because a severe wound has a greater *singer* (fines) than a minor wound. According to customary law, a murder that causes the victim to die is called *Sahiring*. However, if the victim is only injured, it is called *biat*. There are divisions of fines based on the condition of the wound, for example, minor or severe wounds. Besides, shallow or deep wounds are determined by the statements of the traditional *mantir* or witnesses and the existing evidence. Likewise, there is the arrangement of *singer* and animal blood, which starts from chicken eggs, chicken coops, chicken blood, cows, and buffaloes. Likewise, in arranging this article, traditional leaders consider the arrangement of the *singer's* material value. The customary sanctions for minor injuries that are not intentional, the *singer's* order is a major wound of 5-50 *kati ramu*. For minor injuries that are intentional, the order is a major wound of 15-150 *kati ramu*. The activity ended with the *Salem Bunu* ritual in the form of a small but simple traditional party.

Article 20, which regulates *Singer Selem Balai* (fines for entering the hall). One of the murderers appears as the accused. Further investigation has the role of the initiator to avoid revenge killing (*habunu* or *asang* from the heirs of the murdered victim). In this case, there is a guarantor who offers a peace invitation called *salem balai* to the claimant who may be from a distant country. The *singer* sanction in this matter is the basic customary law in this article

in the amount of *batun singer* (customary sanction that must be paid), namely 30-60 *kati ramu* (a unit of measurement of the value of the customary fine, namely the value attached to its form and type) *ije kungan hadangan* (one buffalo), *due lamiang panyinggau* (two marjan stones, *lilis lamiang* as customary equipment), *sanakan tampajat* and other accessories with an amount of 75 *kati ramu* (this basic fine is ultimately paid by the person who actually killed the person who has been investigated).

Article 22, which regulates *Singer Tipuk Danum* (water spray fine). This *singer* is a ritual based on the customary law which aims to remove bad luck. It is carried out on the heirs of the murderer. The goal is to neutralize the curse caused by the murderer's sin, which has the potential to cause illnesses for the murderer's family. This ritual is carried out by having the murderer's family and the murderer splash/wash the feet of the murdered victim's heirs. In addition to rejecting the curse, the goal is to apologize to each other, and at the same time neutralize the grudge or potential *hakayau-habunu* from the victim's family due to the murderer's faults. In addition, there is a *singer* that must be issued by the murderer in the form of *batun singer* of 75 *kati ramu* (*jipen lime*) plus *bawui saki*, *lilis peteng*, *sanaman pangkit*. The murderer's family covers the cost of a traditional party where the people eat and drink together as a closing. The proceeds of the singer are shared by all community members who became victims.

One *kati ramu* is equal to Rp. 250,000,- (two hundred and fifty thousand rupiahs). In this case, the victim has received attention from the Central Kalimantan Provincial Government, the Seruyan Regency government, and other parties in the form of sympathy. The Bangkal tragedy on October 7<sup>th</sup>, 2023, which caused the victim to die and be injured has been brought to the State Court.

Considering the willingness of the Petitioner and the Respondent for the Settlement of Customary Peace, *Kerapatan Mantir Basara, Let Perdamaian* adat (customary peace assembly) Decides:

**Stipulated:**

**First: Respondent I (First) and Respondent II (Second)** must pay a criminal fine to the **Applicant (Second)** who was injured, namely Mr. Taufik Nurahman, with:

*Singer Biat Himang* 100 *kati ramu* x Rp. 250.000 =Rp 25.000.000,-  
*Singer Banguhan, Penyau Sangguh, Penyau Penyang* 130 *kati ramu* X Rp. 250.000=Rp 32.500.000,-  
*Singer Selem Balai* 125 *kati ramu* x Rp. 250.000 =Rp 31.250.000,-

<i>Singer Tipuk Danum 75 kati ramu</i> x Rp. 250.000	=Rp 18.750.000,-
<i>Singer Kasukup Belom Bahadat</i>	=Rp 228.000.000,-
<b>Total</b>	<b>=Rp 335.500.000,-</b>

**Second:** *Singer Penyau Lewu Panyuali Bunu* is included in the cost of the traditional party covered by **Respondent I (First)** and **Respondent II (Second)**.

**Third:** The criminal fine in the form of goods has been cashed and included in the first, second, and third nominal amounts of money.

**Fourth:** Starting from the date of the stipulation of this Customary Peace Decision, *Hinting* (customary ritual of the Dayak ethnic group to defend their rights) is released by the Grand Council of Hindu Kaharingan Religion of Central Kalimantan Province and/or the local Grand Council of Hindu Kaharingan Religion.

**Fifth:** This decision, starting from the date it is read and stipulated, is final and binding.

The national legal system can apply to all citizens after going through a long process by considering some elements. For instance, this system must be in line with the existing laws and it must create a sense of justice for all elements of society (Achmadi et al., 2020).

The discovery of law in the decisions of customary judges (*Rechtvinding*) in applying customary law to deal with concrete events must provide justice for the disputing parties. Customary law as a rule protects human interests. This is in line with the view of Soejono Koesoemo Sisworo, who stated that the essence of legal discovery is always related to the situation and conditions of society and remains within its legal system's environment (Salman, 2010). Alkostar (2009) states that a decision must contain the following points:

- 1) The decision must contain an authoritative solution, namely a way out for the parties to resolve their legal problems. No institution other than the judicial body has the authority to cancel a court decision.
- 2) The decision must be efficient. It means that it must be fast, easy, and affordable because delayed justice is a form of injustice (delayed justice means denied justice).
- 3) The decision must be in line with the legal objectives that are used as the basis for the court decision.
- 4) The decision must contain elements of stability, such as public order and public tranquility, as stipulated in the court decision.
- 5) The decision must be fair. It means the court decision must provide equal opportunities to the disputing parties in the case.

***Considerations of the Decision of the Basara Hai Customary Judge No. B./01/T.9.DKA.-KTG/IV/2024 and the Palangka Raya District Court Judges No. 55/Pid.B/2024/PN Plk After the Customary Trial***

Article 18B clause (2) and Article 28I clause (3) recognize and respect the existence of customary law community units along with their traditional rights as well as cultural identities. Traditional community rights are part of the human rights that must receive protection, advancement, enforcement, and fulfillment from the state. This recognition and respect constitutes an appreciation from the state for the values of humanity and human rights based on Pancasila (“The Five Principles” that make Indonesia’s state ideals). This provision provides a constitutional basis for the direction of legal policy in recognizing customary law community units’ traditional rights.

The Regional Regulation of Central Kalimantan Province No. 16 of 2008 regulates Dayak Customary Institutions in Central Kalimantan. Article 27 clauses (1) and (2) on Dispute Resolution states:

- (1). Customary disputes submitted to the customary *mantir/Let Perdamaian adat* (customary peace assembly), both at the village level and the sub-district level, must be accepted, processed, and decided.
- (2). Every dispute/problem related to the scope and violation of customary law is principally resolved through customary peace deliberation by the customary *mantir/let perdamaian adat* at the village level and the sub-district level.

According to Haar and Poesponoto (1979) who are famous for their *Beslissingenleer* theory (decision theory), it is stated that customary law includes all regulations that are embodied in the decisions of authorized and influential legal officials. Furthermore, the law’s implementation is immediately applied and wholeheartedly obeyed by those who are regulated by the decision. The decision can be in the form of a dispute resolution that may be decided based on the values of harmony and deliberation. In his writing, Ter Haar also stated that customary law can arise from the decisions of community members. In addition, every behavior of community members always shows legal awareness. However, it has not become customary law because only judicial decisions can become customary law.

Therefore, the applicable customary law can only be known from the decisions of officials in power in a community, such as community leaders, judges, public deliberations, land guardians (*ulayat* leaders), religious officials, and village officials. These officials may

be directly or indirectly involved in the dispute. Such decisions directly depend on the ties and values in a society (Sekaquaptewa, 2007). The decision that becomes a basis for understanding customary law as taught by Ter Haar has consequences in the efforts to understand it (Syamsudin, 1996).

All the things relating to customary decisions are final. They are used as a settlement of cases or considerations for decisions as stated in the Regional Regulation of Central Kalimantan Province No. 16 of 2008 on Dayak Customary Institutions in Central Kalimantan. Article 29 of this law states, "Customary decisions that have been imposed on parties in dispute or who violate customary law can be used as considerations for law enforcement officers in resolving a case."

The philosophy of *Huma Betang* for the Dayak indigenous community means prioritizing deliberation and consensus on the values of equality between humans, togetherness, family/brotherhood, local wisdom, unity, cultural center, and obedience to the law (Rico, Hayat, Khuzaini, Sanusi, & Susanto, 2022). So, this philosophy becomes the basis for the Dayak community to uphold a sense of mutual cooperation and tolerance as a symbol of harmony in the Central Kalimantan society (Haridison, 2024).

Based on the construction of the decision of the *kerapatan mantir/let perdamaian mantir Basara Hai* No. B./01/T.9.DKA.-KTG/IV/2024, a team of nine consists of traditional leaders or *damang*, customary chiefs, or customary judges who accepted, examined, and decided on the customary case of the harmed victim that occurred in Bangkal Village, Seruyan Regency. Customary law's values, principles, and norms are used to maintain social cohesion, i.e., strengthening unity and togetherness in kinship, family, and togetherness.



**Figure 4.** Strengths in the Construction of Customary Judges' Decisions

The construction of the judge's decision in resolving the conflict was based on the philosophy of *Huma Betang*, which can be seen in the close relationship between the application of customary law called *Belom Bahadat* (the obligation to apply the customary principles regarding politeness/ethics/high morals in life). The contents of the judge's decision construction can be interpreted in a sociological, juridical, and philosophical manner. They are described as follows:

- 1) The philosophical power means that the customary judge's decision reflects everything related to the Dayak people's outlook on life as well as their awareness and ideals to live side-by-side in peace.
- 2) Sociological power means that everything related to the needs of the Dayak people has been considered in various aspects as well as empirical facts regarding the events/problems. They aim to protect all common interests of both the community and the state.
- 3) Juridical power means that everything related to the rules of values, principles, and norms of customary law has been considered as the basis for enforcing customary law that has been decided.

The decision of the *mantir*/customary judge reflects the customary judges' freedom as a mouthpiece of justice for indigenous peoples. The factor of freedom of judges is a requirement for the creation of a fair and impartial court decision (Rumadan, 2017). The judicial institution has an important role in implementing the concept of a legal state during the democratization process, especially in the transition from an authoritarian political system to a democratic, transparent society. This is seen from the judicial institution's role in the use of the judicial process for the benefit of the community. This is because the judiciary is an institution that implements the constitution, protects human rights, as well as guarantees fair and democratic procedures to ensure every seeker of justice legal certainty and justice (Soekanto, 1982; Hanisa & Firdaus, 2023).

The goal of justice in law enforcement cannot be separated from assumptions that have dimensions of subjectivity, egocentrism, primordialism, etc. to establish a law (court decision) for the community seeking justice. This is to achieve progress, happiness, and legal certainty for the community (Bottoms & Tankebe, 2012). Related to the independence of the judicial institution, efforts are made to realize quality judicial decisions as a representation of the judicial institution that reflects a sense of justice, which in turn also becomes one of the

components to realize a quality judicial body to achieve judicial excellence (court excellence) (Manan, 2005; Ferejohn & Kramer, 2002).

The authors believe that it is interesting to analyze the Palangka Raya District Court Decision No. 55/Pid.B/2024/PN Plk. In the decision, the panel of judges, among other things, applied considerations to mitigate circumstances on the basis that the defendant had undergone a customary trial and provided compensation to the victim/his family. The community had obedience to the customary law in an effort to resolve the conflict in Seruyan Regency. In the decision of the District Court, the panel of judges also made a decision that was in line with the applicable regulations, namely sentencing the defendant to 10 (ten) months in prison. After the decision of the Palangka Raya District Court was stipulated, both parties accepted it and did not file objections or appeals to the High Court.

Judges have the freedom to provide legal justice and certainty to uphold the rule of law that is the core of truth (Kant, 2021). The argument proposed is that the rule of law, as a mere legal/institutional construction, has no transcendence for development (Fonseca, 2015). To maintain and create a fair judicial decision and to receive a peaceful response from justice seekers, two important aspects must be implemented, i.e., the procedure for enforcing the law (procedural justice) and the results of law enforcement itself (substantive justice) (Cohen, 2015).

Procedurally, the goal of to realize justice can only be achieved in a fair manner. The methods in question include certainty of the institutional roles and the certainty of mechanisms. This is called legal certainty (*rechtszekerheid*). In principle, certainty is not the same as justice. Moreover, certainty and justice may be the opposite of each other. However, without certainty, there is no justice (Buijze, 2013). Justice in uncertainty is highly subjective as it entirely depends on the judge who has control over that certainty.

In substance, there are many views on the content of justice. Some perceive it from the level of satisfaction achieved (Rescoe Pound) (As-Suvi & Zainullah, 2022). Meanwhile, some perceive it from the perspective of benefits (Bentham). The rest perceive it from the perspective of justice measured solely from the implementation of the law itself (Hans Kelsen). To find the exact substance of justice, a distinction must be made between individual justice and social justice (Sadurski, 1984). It is ideal for individual justice to be reflected in social justice; or vice versa, social justice becomes nothing other than a sublimation of individual justice. Thus, in every individual justice, there is social justice (Manan, 2005).



A theory of justice known as restorative justice emphasizes the importance of repairing the losses caused by criminal activity. All parties are involved in the cooperative procedure to restore the condition. There are guiding principles in restorative justice that control how the process is carried out. First, restorative justice states that for justice to be upheld, victims, perpetrators of crimes, and communities that were affected by the crime must be repaired and healed. Second, the community, perpetrators of crimes, and victims must be allowed to actively participate in the legal system whenever and to the extent they deem appropriate. Third, to advance justice, the respective roles and duties of the community and government must be examined. The government is tasked with enforcing law and order to foster peace (Subroto, Sari, Anggraini, & Muhammadi, 2024).

In making a decision, judges do not only consider the provisions of the law. However, they must also consider the facts presented to them. In addition, court decisions cannot be separated from the basis of the judge's behavioral capacity known as the code of ethical behavior. This code contains a commitment to moral integrity based on 3 (three) principles of inner attitude (character), namely accuracy, innovation, and persistence. These principles are crucial in determining three reasons, namely the rational, practical, and actual reasons. Such reasons are the basis for the judge's "mental process" in the trial process (Mertokusumo, 1996). The alignment between social and individual justice or the behavioral capacity of judges that are applied through court decisions will certainly create an atmosphere of peace for the people who seek justice.

## CONCLUSION

The construction of customary judges' decisions in resolving conflicts in Seruyan Regency has implications and influences on the existing positive legal order (*ius constitutum*). Likewise, the results of judges' decision at the Palangka Raya District Court expanded the object and scope of consideration of their decision, one of which was based on mitigating circumstances for the defendant who had provided compensation for the victim's family and obedience to customary law that applies as an effort to reconcile and resolve conflicts in Seruyan Regency.

In analyzing the construction of the considerations of the decision of the Basara Hai customary judge number B./01/T.9.DKA.-KTG/IV/2024 and the Palangka Raya district court judge number 55/Pid.B/2024/PN Plk after the parties previously held an internalized

customary trial, it was found that the customary judges' decision was based on the perspective of the Huma Betang philosophy. The decision was within the framework of Belom Bahadat values (the obligation to live a customary life with its completeness regarding politeness/ethics/noble morals), which is stated in the decision of the Basara Hai *mantir/let Perdamaian mantir* No. B./01/T.9.DKA.-KTG/IV/2024. This decision contains aspects of philosophical, sociological, and legal strength. The progressive efforts of customary judges' decisions in providing legal justice and certainty are a new legal discovery that must be implemented. This is because the customary law doctrine that creates a decision of peace must be used as a basic foundation in providing recommendations or legal considerations regarding law enforcement in state judicial institutions that provide legal justice and certainty for the disputing parties.

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