



Justice, Mediation, and *Kalosara* Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law

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Abstract: The existence of customary law has been less of a concern as a source in the law enforcement process for law enforcers. The Tolaki community in Southeast Sulawesi has a custom capable of resolving legal disputes called *kalosara*. This study aims to examine the customary role of the *Kalosara* in resolving land disputes to create justice and social order in society. This empirical legal study used the sociological theory of law and benefits in Islamic law. Data were collected by means of in-depth interviews and a literature review. The results of the study revealed that the *Kalosara* which has become a customary law or living law in society has played a role in resolving cases through mediation. The *Kalosara* customarily carried out through a mediation process has been able to mitigate internal cases of the indigenous people. Dispute resolution resolved in terms of land cases has also succeeded in creating social order in society. The philosophical principles in the *Kalosara* consist of *ate pute penao moroha* (chastity and justice), the values that are able to bind the parties to the disputes in a customary way to create justice. Theoretically, the social function of customary law in society is to realize social harmonization so that disputes and conflicts can be avoided. In the context of Islamic law, creating harmony and social order in society is one of the main goals.

Keywords: Justice, mediation, customary law, *Kalosara*, mediation, social order, Islamic law

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Abstrak: Keberadaan hukum adat sebagian besar tidak menjadi perhatian sebagai salah satu sumber dalam proses penegakan hukum bagi penegak hukum. Masyarakat Tolaki di Sulawesi Tenggara memiliki adat yang mampu menyelesaikan sengketa hukum yang disebut kalosara. Penelitian ini bertujuan untuk mengkaji tentang peran adat kalosara dalam menyelesaikan sengketa tanah sehingga mampu menciptakan keadilan dan keteraturan sosial dalam masyarakat. Kajian tersebut merupakan studi hukum empiris dengan menggunakan teori sosiologi hukum dan masalah dalam hukum Islam. Data dikumpulkan dengan menggunakan wawancara mendalam dan studi literatur. Hasil penelitian menunjukkan bahwa kalosara yang telah menjadi hukum adat atau hukum yang hidup (*living law*) memiliki peranan dalam penyelesaian kasus melalui langkah-langkah mediasi. Adat kalosara dilakukan melalui proses mediasi dapat dilakukan perkara internal masyarakat adat dengan masyarakat adat. Penyelesaian sengketa yang mampu diselesaikan adalah perkara tanah terbukti mampu menciptakan keteraturan sosial dalam masyarakat. Prinsip filosofis yang terkandung dalam adat kalosara yaitu *ate pute penao moroha* (kesucian dan keadilan), nilai ini yang mampu mengikat secara adat para pihak yang bersengketa sehingga mereka dapat menemukan keadilan. Secara teoritis, fungsi sosial hukum adat dalam masyarakat adalah mewujudkan harmonisasi sosial sehingga sengketa dan konflik dapat dihindari. Dalam konteks hukum Islam menciptakan harmonisasi dan keteraturan sosial dalam masyarakat merupakan salah satu tujuan utama.

Kata Kunci: Keadilan, mediasi, hukum adat, kalosara, mediasi, keteraturan sosial, hukum Islam

Introduction

One of the uniqueness and richness of the Indonesian people not shared by people in other parts of the world, such as in Europe, Africa, Australia, and America, is pluralism. Pluralism is evident in the diversity of cultures, customs, languages, ethnicities, and even religions that make a difference in global community entities. Such richness has yielded customary practices, which have become living laws for a long time. The living laws turn into customary laws and become an asset in building a national legal framework in Indonesia.¹

¹Tody Sasmitha Jiwa Utama, "Between Adat Law And Living Law: An Illusion Of Customary Law Incorporation Into Indonesia Penal System," *The Journal of Legal Pluralism and Unofficial* 53, No. 2 (2021). Muhammad Mutawali, "Customary Law of Dou Donggo Bima from the Perspective of Islamic and Indonesian Positive Law," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 1 (2022). Rosdalina Bukido, et al., "Harmonization of

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The existence of customary law is generally manifested as a purely conditional theoretical consequence. Nasrun states that the majority of law enforcement is dominated by normative principles, which ignores the reality of society.² Abdibar Isnaini Wijaya, Iwan Permadi, and Imam Rahmat Safi'i also describe that customary law is not an alternative to resolving problems even though there is a legal void made by law enforcers.³ Mia Permata Sari and Suteki consider that customary law can provide justice,⁴ especially after observing how the current law approaches a downturn, setback, and disappointment, making the law less than ideal.⁵

Previous studies have shown the research tendencies of scholars regarding customary law. Almeida found that the application of the law was mostly carried out using a pure legal approach and ignored the multidisciplinary approach.⁶ Aditia pointed out that assessing customary law could have a positive impact on problem solving⁷ and create a harmonious social order.⁸ In addition, Ubin and Duda reported that contemporary customary law was used as a tool for political power, and it tended towards autocratic movements through mobilization by alliances.⁹ These studies have indicated the debate about the existence of customary law; hence, this study

Customary and Islamic Law in The Gama Tradition of The Muslim Mongondow Community of North Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, No. 2 (2022).

²Nasrun Hipan, et al, "Problematika Penyelesaian Sengketa Tanah Di Lokasi Tanjung Sari Kabupaten Banggai," *Law Reform* 14, No. 2 (2018), p. 205.

³Abdibar Isnaini Wijaya, et al., "Penyelesaian Sengketa Tanah Ulayat Pada Proyek Pembangunan Jalan Di Papua Barat (Studi Kasus Di Kabupaten Sorong Papua Barat)," *Jurnal Jatiswara* 33, No. 3 (2018), p. 310.

⁴Mia Permata Sari and Suteki Suteki, "Penyelesaian Sengketa Pengadaan Tanah Guna Pembangunan Bandar Udara Internasional Berbasis Nilai Keadilan Sosial," *Notarius* 12, No. 1 (2019), p. 83.

⁵M. Zulfā Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat, Urgensi, Dan Relevansi," *Undang: Jurnal Hukum* 1, No. 1 (2018), pp. 159–185.

⁶Bernardo Almeida, "The Law and Its Limits: Land Grievances, Wicked Problems, and Transitional Justice in Timor-Leste," *International Journal of Transitional Justice* 15, No. 1 (2021), pp.128–147.

⁷Aditya Ramesh, "Custom as Natural: Land, Water and Law in Colonial Madras," *Studies in History* 34, No. 1 (2018), pp. 29–47.

⁸Alicia Dibbets et al., "Social Workers as Local Human Rights Actors? Their Response to Barriers in Access to Care and Support in the Netherlands," *Journal of Human Rights Practice* 13, No. 1 (2021), pp. 105–123.

⁹Janine Ubink and Thiyane Duda, "Traditional Authority in South Africa: Reconstruction and Resistance in the Eastern Cape," *Journal of Southern African Studies* 47, No. 2 (2021), pp. 191–208.

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attempted to fill the gap of the studies in terms of the elaboration of customary law as a problem-solving tool.

To build a harmonious and integrative legal order, this study aimed to examine the role of customary law as an alternative to law enforcement in Indonesia. Therefore, the problem posed in this study concerned with the dispute resolution process through the *Kalosara* custom and the function of the *Kalosara* customary law in manifesting justice. These problems were analyzed from the legal sociology view to explore the contribution of customary law as a supporting component to justice enforcement in building the legal order in Indonesia.

In relation to how the *Kalosara* customary law system builds a harmonious law, it is argued that the *Kalosara* customary law has a vital role in society in resolving disputes. Dispute resolution based on the customary values of the *Kalosara* is carried out through a mediation process, involving deliberation and consensus between the parties to disputes to find the best way for them. These mediation steps occur because the *Kalosara* customary law system (principle) has an orientation that the form of achievement is the establishment of unity and justice so that the rights of indigenous peoples and immigrants are still given according to applicable law.

The symbol of the *Kalosara*, as the basis for understanding the Tolaki people, is known as a system or concept that can unite the Tolaki people. *Kalosara* itself is interpreted as a conceptual side that can unite social and cultural conflicts, and thus *Kalosara* is deeply-rooted in the life of the Tolaki ethnic group since it is the source of all sources in Tolaki customary law.¹⁰ The implementation of the *Kalosara* teachings in general can be used as a basis (instrument) for resolving cases related to disputes, marriages, and social problems. The Tolaki people believe that the *Kalosara* is a sacred symbol, suggesting that any problems can be solved by prioritizing the *Kalosara* customary law.

The meaning of the *Kalosara* has an intimate role in social, political, and economic institutions, and is entwined in the *Kalosara* custom of the Tolaki community. In social institutions, the *Kalosara* custom of the Tolaki promotes the values of unity of belief, purity, and justice in acting various aspects, as well as the welfare and prosperity of the indigenous people in

¹⁰Shinta Arjunita Saputri, et al., "Tradisi Kalosara Dalam Penyelesaian Sengketa Tanah Di Kecamatan Baito Kabupaten Konawe Selatan," *LISANI: Jurnal Kelisanan Sastra dan Budaya* 3, No. 2 (2020), p. 7.

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living their lives.¹¹ These values become the principles of a pluralistic social life.

These values are bound to a cultural framework and/or outlook on life which is embodied in the *Kalosara* cultural concept, namely *medulo mbenao* (one soul), *medulu mbonaa* (one stance), and *medulu mboehe* (one will in ideal).¹² The philosophy as well as the principle of the Tolaki tradition is the union of souls among fellow human beings who have the same will and aspiration within the framework of unity and oneness to achieve justice and prosperity. Therefore, this *Kalosara* custom is a fundamental principle in addressing social issues and in unifying social elements.

The unification of social elements cannot be separated from the principle of morality as the absolute foundation. Likewise, a legal system prioritizes the will of justice by legitimizing the values of morality, knowledge, actions, feelings, and justice so that a responsive legal concept is created and is able to accept the aspirations of the people according to their true will.¹³ These elements become fundamental and can be used as a benchmark for legal developments in the future by exploring the values of the teachings of the ethnic group itself and integrating other local teachings to become a sub-system.

This empirical legal study utilized a legal sociology approach.¹⁴ Empirical legal studies examine the reality of law in society, while the sociological approach emphasizes the function and role of law, which is capable of creating social order to achieve justice. Data were collected by means of in-depth interview and literature review. The respondents interviewed included traditional figures, academics, and the indigenous people of the Tolaki in Southeast Sulawesi. Additional data were derived from literature or documents in the form of scientific articles, books, legal regulations, and various literatures related to the focus of the study.

¹¹Shinta Arjunita Saputri, et al., *Tradisi Kalosara Dalam Penyelesaian Sengketa...*, p. 7.

¹²Hapid Anwar, "Falsafah Kalosara Dalam Masyarakat Tolaki," *Education*, last modified 2017, <http://anwarhapide.blogspot.com/2017/01/falsafah-kalosara-dalam-masyarakat.html>.

¹³Rispan Rispan and Ajat Sudrajat, "Integrasi Nilai-Nilai Kearifan Lokal Kalosara Dalam Pembelajaran Sejarah Di SMA Sebagai Penguatan Karakter Siswa," *Jurnal Pendidikan Sejarah* 8, No. 2 (2019), pp. 148–169.

¹⁴Munir Fuady, *Teori-Teori dalam Sosiologi Hukum*, (Jakarta: Kencana, 2015). Satjipto Rahardjo, *Hukum dan Masyarakat*, (Bandung: Angkasa, 1980).

Customary Law as a Dispute Resolution Media

The role of customary law contributes significantly to solving problems that occur in the social environment, including resolving land disputes without going through a legal process (law). However, the existence of customary law does not explicitly provide binding decisions that are general in nature and only to certain circles. Under certain conditions, the legitimacy of customary law also has a positive impact on social inequality. Kinasih argues that when resolving disputes or problems in the community, the resolution of customary law has an important role as an instrument in a mediation of any individual and group conflicts.¹⁵ Therefore, customary law under certain conditions and on a certain scale can solve social problems and create harmony.

In the settlement of community problems (mediation), the orientation of customary law aims to achieve justice and provide community rights according to their respective positions. The right in question is the right for violators to get customary sanctions and the right of the innocent to be free from customary sanctions.¹⁶ However, in the provision of sanctions under the *Kalosara* system for land disputes in customary land areas, the sanction system is to divide the land into two parts from the ownership of the transmigration community. The sanction is only a form of division of the total amount of ownership and without eliminating rights.

Problems often arise due to the recognition of individual ownership of indigenous peoples' land without involving indigenous peoples, thus resulting in conflict.¹⁷ The conflict occurs since a third party acts as guarantor or sells the land without communicating (deliberating) with the customary law community. The existence of customary law has been regulated in the Law No. 12 of 2012, stipulating that everything related to customary community areas shall go through an agreement and be properly discussed. This is because customary land is a land tenure right regulated by indigenous chiefs to create long-term utilization order.¹⁸

¹⁵Sri Endah Kinasih, "Penyelesaian Konflik Dalam Pemanfaatan Hutan Konservasi Pada Masyarakat Adat Di Jawa Timur," *BioKultur* V, No. 1 (2016), pp. 75–96.

¹⁶Günther Schlee, "Customary Law and the Joys of Statelessness: Idealised Traditions versus Somali Realities," *Journal of Eastern African Studies* 7, No. 2 (2013), pp. 258–271.

¹⁷Miranda Nissa Hilal Liani and Atik Winanti, "Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum," *SALAM: Jurnal Sosial dan Budaya Syar-i* 8, No. 1 (2021), pp. 159–172.

¹⁸Ahmad Redi et al., "Konstitusionalitas Hak Masyarakat Hukum Adat Atas Hak Ulayat Rumpon Di Provinsi Lampung," *Jurnal Konstitusi* 14, No. 3 (2018), p. 463.

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The form of order in customary law of indigenous peoples is creating a concrete goal of peace. Yowa Abardani Lauta states that the concept of Gayo customary law prioritizes peace as a problem solving. The essence of peace in the customary law system is not to interfere with one another's activities for one's survival.¹⁹ In addition, other issues are the development and acceleration of tourism in customary land areas and the people fighting over the lands as the heirs because of the economy.²⁰ As a result, the role of customary law cannot provide certainty regarding these problems related to the exploitation of their ancestral heritage.²¹

Between Positive Law and Customary Law

The customary law in the community has a weak point as a legal instrument in settling problems, as every decision of the customary institution is not fully binding on the litigants and has the potential to cause further issues. These continued issues trigger legal dualism that can be carried out by every community group in a case so that the legal certainty does not apply absolutely to a case settled according to the custom.

Kwarkey describes that customary law has an important role to complete a system, and customary law is a supporting actor for the legal order. Customary law besides being able to provide a sense of justice is also able to strengthen the social structure of society.²² Likewise, according to Radbruch, the existence of customary law has a positive image or contribution, such as creating order and obedience to the system and creating a good legal order since the orientation of customary law is to prioritize human values.²³

Joereman mentions that the dependence on public law can lead to inconsistency and incompatibility with the facts of settlements based on a sense of justice. Therefore, the enforcement and integration of customary law with law enforcement institutions is necessary so that they can assist the law enforcement process as mutually expected. This integration step can make it

¹⁹ Yowa Abardani Lauta et al., "Perlindungan Hak Atas Tanah Ulayat Masyarakat Adat Gayo Di Kabupaten Bener Merah," *USU Law Journal* 4, No. 3 (2016), p. 20.

²⁰ Yowa Abardani Lauta et al., "Perlindungan Hak Atas Tanah Ulayat...", p. 20.

²¹ I Dewa Ayu Widyani and L. Elly AM Pandiangan, "Eksistensi Hak Ulayat Pada Masyarakat Hukum Adat Rantepao Toraja Utara," *Jurnal Hukum to-ra* 5, No. 3 (2019), pp. 1–18.

²² Thompson Gyedu Kwarkye, "Between Tradition and Modernity: Customary Structures as Agents in Local Governance in Ghana," *Africa Spectrum* 56, No. 1 (2021), pp. 100–118.

²³ Gustav Radbruch, "Law's Image of the Human," *Oxford Journal of Legal Studies* 40, No. 4 (2020), pp. 667–681.

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easier to achieve a good problem solving. However, an alignment is needed between the customary law and national law as a form of legal certainty.²⁴

In dispute resolution, law is highly significant as a basis for ensuring that the social structure remains stable. Hence, from legal policies, law enforcers are required to provide final legal certainty and not deviate from justice. Still, the reality is that relying solely on customary law decisions cannot bind migrant communities and only bind the internal community itself. Such decisions do not ultimately bind transmigration communities because there are still legal steps that can be taken through law enforcement agencies. Thus, the sense of justice and partisanship of the real rights owners is in fact marginalized.

To materialize the certainty of law enforcement requires integration between the customary law and national law. However, accommodation, as a basis or legal standing for the recognition of indigenous peoples, is only limited to expectations due to the absence of a specific legal umbrella as the main foundation for the integration process. Therefore, there is a high potential for legal uncertainty to occur in the future. Several issues should be considered in building a legal order in a progressive and decisive manner including: a) Availability of legal standing at the level of a law as concrete recognition of customary law, b) Adoption of customary law as a support in the process of solving social problems, c) Customary decisions serve as proof of settlement of certain cases, and d) Integration of law (customary and public) for a faster and more practical law enforcement institutionally.²⁵

Strengthening the customary law as one of the legal instruments is essential. In various colonial countries, the existence of the majority customary law has been marginalized and ignored which increase violations.²⁶ Thus, the recognition and/or the availability of a legal umbrella for customary law communities are crucial, in terms of decisions or policies in resolving special environmental problems in customary areas. In addition, this measure is not only limited to internal customary law communities. The

²⁴Sandra F. Joireman, "Aiming for Certainty: The Kanun, Blood Feuds and the Ascertainment of Customary Law," *The Journal of Legal Pluralism and Unofficial Law* 46, No. 2 (2014), pp. 235–248..

²⁵ Erica Harper, "The Enduring Utility of Customary Justice in Fragile and Post-Conflict States: Why Development Actors Need to Stop Searching for Magic Bullets and Solve the Political Economy and Human Rights Challenges Associated with Justice Programming," *Journal of Legal Pluralism and Unofficial Law* 53, No. 3 (2021), pp. 342–355.

²⁶Muhammad Dahlan, "Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi," *Undang: Jurnal Hukum* 1, No. 2 (2019), pp. 187–217.

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customary law can have a role in the law enforcement process by integrating the results of customary decisions with those of law enforcement agencies.

The comprehensive recognition and the process of integration of the customary law can only be enforced if there is an issue within the territory of the customary law community. However, this must include recognition of the law as evidence or legality. This aims to avoid political anomalies in certain interests and even utilize the customary law as an alternative.

Regarding the integration of the customary law and national law, Oliver Springate-Baginski and Mi Kamoon highlight that the existence of the customary law should have a clear legal standing, as this is directly related to the marginalization of society towards justice. Likewise, the legal position can be a force as the most complex national defense because indigenous peoples have abundant resources. However, wars between ethnic groups designed by certain groups have a negative impact on the unity and integrity of indigenous peoples. Such problems certainly have implications for state sovereignty and state chaos in terms of territorial politics and the social and government environment.²⁷

The implementation of this legal process requires legal clarity (umbrella) to legitimize the existence of the customary law as a support system for legal sovereignty so that it can take place as a protection for indigenous peoples and maintain the preservation of the customary law itself.²⁸ The underlying aspect is that it can be a supporting component of the law enforcement process in certain cases and/or general cases. The legitimacy of customary law can act as a concept of legal development as a step towards creating capacity, justice, and benefits of law.

***Kalosara* and Social Order**

The conception of the *Kalosara* is a series of fundamental systems of the Tolaki community. The system known as a symbol of peace and unity as well as justice is called *Kalosara*. It is known that the level of decency is higher than that of the public legal system in deciding problems by prioritizing the customary law. The customary law system in its implementation puts emphasis on moral values, meaning that the application

²⁷Oliver Springate-Baginski and Mi Kamoon, "Defending Shan State's Customary Tenure Systems from below through Collective Action Research," *Journal of Peasant Studies* 48, No. 3 (2021), pp. 541–559.

²⁸Kwabena Obeng Asiama et al., "Land Valuation in Support of Responsible Land Consolidation on Ghana's Rural Customary Lands," *Survey Review* 50, no. 361 (2018), pp. 288–300.

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of customary law sanctions can take place without injuring the litigants and still granting their rights.

In terms of the empowerment of customary law on knowledge and law in mediating problems, Hiwazaki describes that local knowledge and local identity play an important role in increasing the community resilience, the ability to defend traditional teachings as a legal consensus for resolving problems in certain cases.²⁹

Maintaining social order by prioritizing customary law is a concrete step. Amiruddin, Ketut Suardika, and Anwar found that settlements with the customary law in the Tolaki community mostly ended by forgiving those who were in litigation. The existence of *Kalosara* has instilled public confidence that the *Kalosara* symbol can resolve cases. This is not only a matter of the internal culture of Tolaki, but also a cross-cultural issue because *Kalosara* upholds the value of integration between cultures and unity within the framework of nationalism.³⁰

The cultural integration reported by Amiruddin, Ketut Suardika, and Anwar shows that the cases occurred between not only the people of the Tolaki, but also between the migrant (immigrant) and the Tolaki communities. One form of solution includes performing mediation on parties to disputes to find the best way for any problem without harming the parties involved.³¹

On the other hand, the existence of a judge's customary law is not a consideration for legitimacy or a basis for legal considerations in deciding a case. Tody points out that the existence of customary law in court is only presented as a form of decency and does not contribute more as a legal norm as a consideration for law enforcement. The presence of customary law is clearly mapped and marginalized by the public legal system.³² In other words, the existence of customary law is only seen as a rule that binds a certain group and is not substantial when there is a legal void and is used as the basis for settling problems in court.

²⁹L Hiwasaki, "Local and Indigenous Knowledge on Climate-Related Hazards of Coastal and Small Island Communities in Southeast Asia," *Climatic Change* 128, no. 1 (2015), pp. 35–56..

³⁰Amiruddin, et al., "Kalosara Di Kalangan Masyarakat Tolaki Di Sulawesi Tenggara," *Mudra Jurnal Seni Budaya* 32, no. 2 (2017), pp. 209–219.

³¹Amiruddin, et al., *Kalosara Di Kalangan Masyarakat Tolaki...*, pp. 209-219.

³²Tody Sasmitha Jiwa Utama, *Between Adat Law and Living Law...*, pp. 269–289.

Dispute Resolution in the Kalosara Customary Law

Kalosara as the customary law is a manifestation of justice. *Kalosara* as a social instrument is believed to be a conflict resolution tool at the internal level of indigenous peoples and across ethnic groups, wherein the steps to resolving problems are carried out by mediating two parties to reconcile and imposing sanctions on one of the parties who violates the applicable provisions.³³

In a personal interview, Abdul Hamid revealed that, “*Kalosara* has a role in resolving conflicts. The process of resolving a problem is firstly carried out by mediation and then at the end of the process a traditional ceremony is performed as a sign or confirmation that the problem has ended peacefully.”³⁴

Kalosara is seen to provide benefits in building interpersonal and multipersonal harmony. The community believes that problems can be overcome by communicating with traditional leaders or customary stakeholders.³⁵ Communication media is made through prioritizing customary law instruments, and thus, problems can be resolved in a peaceful way³⁶ without harming either party. This step is taken by mediating between the parties to the disputes by prioritizing the *Kalosara* as the basic law.³⁷ This mediation (non-litigation) orientation has the goal and intention to reconcile communities in the best way and creates social harmonization, as the characteristics of customary law itself. Law enforcement based on the *Kalosara* customary law of Tolaki has two important aspects, the mediation process and the object of the dispute being reconciled, as described in the following:

a. Mediation Process in the Kalosara

Law enforcements in the *Kalosara* customary law system are performed by way of mediation (non-litigation) to form harmony and unity and of sanctions against individuals who commit violations.³⁸ Mediation carried out by the community usually involves deliberation between the

³³Ma'ruf Akib, “Revitalisasi Prinsip Hukum Adat Suku Tolaki Dalam Penyelesaian Sengketa Diluar Pengadilan Berbasis Nilai Keadilan” (Universitas Islam Sultan Agung Semarang, 2019), p. 45.

³⁴Interview with Abdul Hamid, Traditional Figure of Tolaki, September 2020.

³⁵Asrul Jaya and Harnina Ridwan, “‘Kalosara’ Sebagai Alat Komunikasi Dalam Sistem Kepemimpinan Tradisional Suku Tolaki (Studi Di Kabupaten Konawe Sulawesi Tenggara,)” *Enoreflika* 2, no. 3 (2013), pp. 204–311.

³⁶Interview with Syahrul Marham, Academician in Southeast Sulawesi, September 2020.

³⁷Interview with Muslimin Su’ud, Community Figure of Tolaki, October 2020.

³⁸Interview with Abdul Hamid, Traditional Figure of Tolaki, September 2020.

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parties under the supervision of traditional and religious leaders. Deliberation will result in peace without any grudges. Therefore, it is different from litigation (through the court system); when the court decides a case, there are parties who lose and win without having any peace.³⁹

In mediation, sanctions for an individual through the *Kalosara* customary law can be considered from various aspects and from the violations committed in accordance with the customary law principles. Muslimin Su'ud mentions that problems often mediated occur not only within the internal circles of the Tolaki community, but also between the Tolaki indigenous people and the immigrant community. An example of resolving problems through mediation by the *Kalosara* customary law is related to land disputes controlled by the immigrant community. When the injustice occurred against the indigenous people (the Tolaki), the mediation resulted in the land tenure being divided into two so that it did not eliminate the ownership rights of the immigrant community, nor those of the indigenous people.⁴⁰

The *Kalosara* mediation has brought disputants together to make peace and harmony. Peace occurs as there is an agreement that the land managed or purchased by the immigrant community is divided into two based on the results of a mutual agreement. In addition, the land managed by the immigrants is the customary land. Saiful also revealed that the land was divided according to the results of the *Kalosara* mediation so as not to cause prolonged conflict, and an agreement had been reached according to the results of the negotiations.⁴¹ Based on a mutual agreement, under the *Kalosara* customary law, a series of traditional ceremonies are then carried out as a form of gratitude, and the permanent stipulation in accordance with the customary law applies.

However, exceptions to this enforcement present if the *Kalosara* mediation process does not reach an agreement between the two parties. Hence, law enforcement to achieve legal certainty and position of ownership can be carried out in accordance with the civil law in court. On the other

³⁹Lego Karjoko, et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, No. 2 (2021). Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020).

⁴⁰Interview with Muslimin Su'ud, Community Figure of Tolaki, October 2020.

⁴¹Syaiful Arpin, "Efektifitas Adat Suku Tolaki (Kalosara), Sebagai Mediasi Penal Terhadap Pelanggaran Lalu Lintas Di Wilayah Hukum Konawe Provinsi Sulawesi Tenggara," *Jurnal Ilmu Sosial dan Ilmu Humaniora* 2, no. 2019 (2019), pp. 379–395.

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hand, when referring to state law, there is a polemic between the customary law and civil law systems because each has the power of local law and state law. Therefore, this process will likely lead to conflict, unless the customary law can provide certainty and guarantee.

b. The Object of the Dispute being Reconciled

The object of the dispute being reconciled is the land between the Tolaki people and the transmigration people. Part of the area is the customary land, used for generations as a source of income. Hence, the community's customary land is guarded and protected as an asset through customary stakeholders. The customary land in the Tolaki custom is classified into four main components: *Waworaha* (land once managed by the community and then abandoned), *Wakala* (a location used to herd animals), *Anasepu* and *Anohoma* (cutover forest or new land still being managed), and *O sepu* (land abandoned for about six years and reused).⁴²

Ownership rights on customary land are the main basis used for claiming the rights as the customary law community. However, individual recognition by transmigration community in customary areas has triggered conflict. Transfer of ownership by immigrants has been carried out without the approval of customary leaders. The ownership rights of the land according to the customary rules take place in two factors: First, ownership belongs to local community groups that inhabit the area. Second, special gifts are made from the transmigration community under supervision of customary stakeholders in accordance with the deliberation to reach a consensus. Ownership rights to customary land areas must be based on the considerations of customary stakeholders and cannot be acquired without a decision from the customary leaders.

Land tenure rights occur because a third party acts as a seller of the customary land, resulting in friction between indigenous peoples and immigrant communities. Third parties act as sellers and/or provide stimulus so that ownership transactions occur without customary agreements. In addition, there has been a violation of the agreement between the indigenous community and customary stakeholders, namely gifts based on custom cannot be traded and can only be managed and used as a source of income for welfare.⁴³

Saputri indicates that the position of the customary land and ownership rights based on direct gifts by customary stakeholders shall be maintained as

⁴²Interview with Abdul Hamid, Traditional Figure of Tolaki, September 2020.

⁴³Saputri, et al., "Tradisi Kalosara Dalam Penyelesaian Sengketa Tanah."

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life support, both for native Tolaki and outsiders. However, the gifts have certain conditions, in which the land gifted cannot be traded.⁴⁴ Therefore, the gifts must be used as a support for needs or as individual ownership. This ownership is also bound by applicable customary law, meaning that the ownership in question is not a full ownership to be controlled freely, such as by selling and giving the gifts to other people.⁴⁵

In principle, the use of land as a gift based on the customary law of the Tolaki people contains a philosophical value and/or purpose of *Mombeka pia-piarako* (caring for and protecting one another); in other words, giving the land to be maintained and cared for. Maintaining the land is to make the land support life and to not be used negatively. Taking care of the land is to treat the land according to the level of needs so that it can be useful in the long term to support family relationships. Therefore, taking use of the land according to the level of needs is a form of maintenance and care of the land.

The *Kalosara* Custom in the Perspective of Islamic Law

The *Kalosara* customary law of the Tolaki people generally has a fundamental principle, known as *ate pute penao moroha* (chastity and justice). The principle of justice has various aspects, especially those related to social values by prioritizing human values (human rights) and imposing sanctions on Tolaki people who do not obey the law enforcement of the *Kalosara* law. According to Amiruddin, the legal principle of the *Kalosara* is positioned as a third party as a step in settling cases between people who are in dispute and/or even for an individual who does not comply with customary law decisions. The *Kalosara* legal principle, comprehensively, has provided an affirmation of sanctions by removing the identity of a person from the Tolaki community.⁴⁶

The principle of the *Kalosara* customary law has the purpose to bring about harmonization between the Tolaki ethnic group and between those outside the Tolaki. In principle, in *Kalosara* peace is more fundamental than the legal process carried out in accordance with the provisions of the applicable law (criminal law). Hamid states that unity and oneness are the essential teachings of the *Kalosara* customary law and so the determination of the law is performed by deliberation for peace. This position creates harmonization in the community; thus, in the *Kalosara* Law, by prioritizing

⁴⁴Saputri, et al., "Tradisi Kalosara Dalam Penyelesaian Sengketa Tanah."

⁴⁵Saputri, et al., "Tradisi Kalosara Dalam Penyelesaian Sengketa Tanah."

⁴⁶Interview with Amiruddin, Traditional Figure of Tolaki, October 2020.

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the *Kalosara* customary law an element of justice exists without eliminating one's rights.⁴⁷

The principle of justice (*ate pute penao moroha*) is an objective of the *Kalosara* customary law. The aspect of justice gives rights to the community to obtain welfare and determines sanctions against Tolaki people who violate existing provisions in force. The *Kalosara* symbol is a priority as the basic law of the Tolaki community. This principle of justice is the consequence of the customary law for offenders and those who comply with the *Kalosara* customary law. Therefore, the existence of the *Kalosara* customary law of the Tolaki people is still welcomed with acceptance without exception.

Acceptance of cultural components is a characteristic of justice taught by the *Kalosara* law. This aspect also cannot be separated from the orientation of the form of harmonization as the main goal. In various literatures, the symbol of the *Kalosara* customary law, justice and harmonization, is the essence of the meaning of the *Kalosara*, symbolized by a circular rattan twist. This symbol sends a message that harmonization between cultural groups is the essence of *Kalosara* and also a form of justice by giving the status of people's rights as long as they do not violate the legal position predetermined in the *Kalosara*.

Jiwa Utama describes that accelerating customary law, as the basis for criminal sanctions for perpetrators of mistakes or violations, is an important value for responding to phenomena that develop in society. Customary law instruments can be a guide in resolving a criminal or civil case. The integration of customary law as a guideline for justice is an approach to living legal value.⁴⁸ This means that a decision is not only based on the principle of legality because sometimes it does not give rise to justice in a case. Moreover, existing law can be oriented towards filling legal voids so that judges in court can easily decide problems with customary law instruments in certain cases.

Conflicts in the sense of justice fought for by the indigenous people occur due to legal decisions in court that do not represent the aspect of justice as well as disagreements between the court policies and the customary law of the people.⁴⁹ As a legal instrument of the Tolaki people, Arpin states that the *Kalosara* customary law is able to overcome social problems and people's habits. The solution to the problems is none other than manifesting the harmonization of society, both within the local community

⁴⁷Interview with Abdul Hamid, Traditional Figure of Tolaki, September 2020.

⁴⁸Tody Sasmitha Jiwa Utama, *Between Adat Law and Living Law*...., pp. 269–289,

⁴⁹Ubink and Duda, "Traditional Authority in South Africa: Reconstruction and Resistance in the Eastern Cape."

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and between the local and transmigration communities, without eliminating their rights and human status. However, resolving problems with the law certainly cannot be avoided, such as by giving sanctions to those who commit violations without exception.⁵⁰

The principle of the Tolaki indigenous people contains important indicators in achieving harmonization in the teachings of *Kalosara* customary law and becomes a symbol of the life of the indigenous people as social beings. The indicators include first, *Mombeka tulu-tulungi ako* (helping each other), second, *Mombeka powe-powehi ako* (giving and receiving), third, *Mombekapona-pona ako* (respecting each other's opinion), and fourth, *Mombe kamei meiri ako* (loving each other). This principle is the legal basis for the *Kalosara* harmonization of society and is applied by the Tolaki ethnic community as the foundation of life.

In line with that, in the context of Islamic law, realizing justice and social harmony is one of the main goals. Disputants and litigants must be reconciled by way of deliberation and mediation carried out by a judge or a peacemaker. The peacemaker, mentioned in the Qur'an Surah al-Nisa verse 35, serves as a mediator between two parties to disputes.⁵¹ All Muslims are brothers, one to another. Allah says in the Qur'an, "Surely the believers are one but brotherhood, so make peace between your two brothers. And be mindful of Allah so that you may be shown mercy" (Surah Al-Hujurat: 10). In another verse, Allah commands to do justice and do good and forbids doing evil and creating enmity. Allah says, "Indeed, Allah commands justice, grace, as well as courtesy to close relatives. He forbids indecency, wickedness, and aggression. He instructs you so perhaps you will be mindful" (Surah al-Nahl: 90).

The two verses above emphasize that in the context of the Islamic law, peace is a right path, while enmity is an evil path. Communities that are in social conflict or prolonged war will be prone to suffering and disaster. The *Kalosara* custom in the Tolaki community is able to create justice and social harmonization, and this customary law acts in accordance with Islamic law. Therefore, such customs need to be maintained and preserved in society.

⁵⁰Arpin, "Efektifitas Adat Suku Tolaki (*Kalosara*), Sebagai Mediasi Penal Terhadap Pelanggaran Lalu Lintas Di Wilayah Hukum Konawe Provinsi Sulawesi Tenggara."

⁵¹Armiadi and Muhammad Al-Fattah Bin Abu Bakar, "Peran Hakam (Juru Damai) dalam Mengatasi Perceraian (Studi Di Jabatan Kehakiman Syari'ah Pulau Pinang, Malaysia)," *El-Usrah: Jurnal Hukum Keluarga* 1, No. 1 (2018). Septiyan Hudan Fuadi, "Resolusi Konflik Sosial Perspektif Hukum Islam Dan Hukum Adat Pada Pemilihan Kepala Desa Bajang Mlarak Ponorogo," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 2, No. 1 (2020).

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Conclusion

The Tolaki ethnic group in Southeast Sulawesi believes that the *Kalosara* customary law is a unifying symbol that is able to create harmony and justice in society. The role of the *Kalosara* as customary law has a broad scope as a legal sub-system in society, as the *Kalosara* is known to prioritize unity and peace through mediation by means of deliberation and consensus. One of the aspects of the *Kalosara* law is that it not only regulates the internalization of the Tolaki people, but it also manages cases related to the transmigration community (migrant residents) related to issues of customary lands and customary territories. Therefore, the existence of such law in the Tolaki community can contribute to the national law, becoming a supporting instrument in the law enforcement process in certain cases. The philosophical values contained in the *Kalosara* custom include *ate pute penao moroha* (chastity and justice). These values are able to unite and reconcile the parties to disputes in a customary manner so that justice and social order can be manifested in the community. The process and customary values of the *Kalosara* are in harmony with the principles of the Islamic law, namely justice, peace, social order, mediation, and deliberation conducted by a peacemaker or traditional figure in the Tolaki community.

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