The Overlapping of Regulations on Marine Resources Law Enforcement And Customary Law As An Alternative to Conflict Settlement in The Kei Islands

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Abstract

This research is socio-legal research with an ethnographic approach regarding the resolution of maritime resource conflicts in the Kei Islands and the conditions of current state laws and regulations. This article discusses how the overlapping of laws and regulations occurs in law enforcement on marine resource management and how customary law is an alternative for resolving conflicts over marine resources in the Kei Islands. This study found that so many laws and regulations besides helping to create legal order can also have an impact in the form of overlapping authorities between state agencies. On the other hand, the resolution of maritime resource conflicts in practice does not always depend on the positive law of the state alone. Another fact is often found that the community and even the state apparatus also accommodate customary law in resolving conflicts that occur. However, this form of settlement developed into a hybrid form.

I. Introduction

After the independence of the Republic of Indonesia, laws and regulations developed and became very numerous and complex. Currently, there are hundreds of acts and regulations at the national level whose contents are related to marine resources, be it in the fields of fisheries, industry, coastal and offshore mining as well as marine and coastal tourism. So many laws and regulations that have been issued, especially during the Post-Reformation period, not only provide a legal order in the management of marine resources but also often find conflicts between the contents of acts and other regulations. The condition of these acts and regulations gives impacts the complexity of overlapping law enforcement problems as the consequences. The consequences can be seen in the same law enforcement authority, given to different institutions on the same object by different regulations.

On the other hand, empirically it was found that there is also a customary law system that operates on the same object, which gives authority to its customary apparatus to enforce customary law in marine areas. This fact also adds to the complexity of law enforcement at the sea. In the local context of the people of the Kei Islands, in addition to settlement using state law, there is also a mechanism for resolving cases and conflicts using customary law. This mechanism is known as the "*Sidang Adat*". The customary court mechanism is carried out by a customary apparatus in the customary law system of "*Larvul Ngabal*", the term for customary law that applies in the Kei Islands.

The existence of customary judges in the Kei Islands is a social factor of a legal reality. Related to the existence of these social factors, Moore argues that the law can run well if the government and the people in it involve consideration of social factors to implement and enforce these rules. Judges as well as legislators in making their decisions can use customary law. A semi-autonomous social society can make the rule of law customary.[1] Moore's statement is very visible on the people of the Kei Islands.

In another view, Freeman argues that judges are part of the legal order which is part of a society where human behaviour is governed by rules. Ideally, rules allow society to function smoothly and efficiently, where society can operate without judges or the like. However, judges are

[1] Sally F Moore, *Law as process: An Anthropological Approach,* Routledge and Kegan Paul, London, 1983, p: 79

still institutionalized as a way for the community to resolve conflicts that occur.[2] Regarding how judges make decisions in the social field, Holmes stated that these decisions must emphasize the empirical and not logical aspects like as well the law itself. Decisions made must be based on the needs felt at the time, common moral and political theories, intuition to make a public policy and sometimes also knowledge gained from sharing experiences between judges, which even still take the form of conjectures. He further explained that the law embodies the history of the development of a nation for centuries and it cannot be implemented as if it only contained axioms. and the corollary of a fixed and rigid book of rules. Decisions must be made by taking into account historical aspects and existing legal theories.[3]

According to Santos, the impact of excessive centralization and uniformity can lead tolosses in people's acceptance of the new law and the growing administration of justice. Because of this, care needs to be taken in maintaining the basic unity of the government by not ignoring the traditions that are popular in society at the local and regional levels, without it, it will not be possible to create a true national identity towards a more just society.[4] Another opinion was conveyed by Roger Cotterrell. According to Cotterrell, the assumptions of positivism until now have not been a problem, because cultural unity is the object of belief in classical general law thinking. The emergence of legal positivism only diverts attention from the basis of legal culture to its political sources in legislation and obscures the issue of the consequences of cultural change.[5]

This article will discuss the overlapping of the state acts and regulations in law enforcement in marine areas. and how customary law is an alternative in resolving maritime resource conflicts in the Kei Islands amidst the overlapping laws of the state.

I. Research methods

This research is socio-legal research conducted through field research in the Kei Islands, Maluku Province, Indonesia. This field research is also supported by library research.The data in this article were obtained

[2] M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence*, Thomson Reuters, London, 2008, p: 1533
[3] Oliver Wendell Holmes. Jr, *The Common Law*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts and London, 2009., p: 3
[4] Boaventura de Sousa Santos, *From Customary Law to Popular Justice*, Journal of African Law, Vol. 28, No. 1/2, *The Construction and Transformation of African Customary Law* (1984), p: 98.
[5] Roger Cotterrell, *Law, Culture and Society, Legal Ideas in the Mirror of Social Theory*, Ashgate Publishing Company, Burlington, 2006, p: 101.

from the author's dissertation research data at the Universitas Indonesia. Data collection using field research is carried out by direct observationin the Kei Islands, Maluku Province, and conducting interviews with parties who have information and knowledge production related to the topic to be studied as well as digging up facts in the field to study social attitudes and behaviour. from time to time.

Field research was conducted in the Kei Islands between June 2018 and April 2019. Most of the time was spent observing Kei Kecil Island and Dullah Island to gather information and produce knowledge through direct observations at the research site. Interviews were conducted with traditional leaders, community leaders and also the local community. Literature research is needed to find written materials derived from previous studies, documents and other materials that can support the analysis process of data findings in the field.

II. Results and Discussion

A. Regulation of Marine Resources Management in National Law and Overlapping of Authority

The government's role in the management and utilization of marine resources has been carried out for a long time, even since the Dutch East Indies government. The development of state regulations regarding the management and utilization of marine resources can be divided into four phases, namely: the pre-independence phase, the post- Independence Old Order phase, the New Order phase and the Post-Reformation phase.

In the early period, departmental-level official institutions had been established in the early 19th century by the Dutch East Indies government. According to Djajaatmadja, in 1905 the affairs related to fisheries were transferred from the Ministry of Home Affairs to the Department of Agriculture of the Dutch East Indies (*Departemen van Landbouw, Nijverbeid en Handel* which later changed to *Departemen van Ekonomische Zaken*). In the same year, under the Ministry of Agriculture, *Het Visscherij Station* was established, a fishing station in Batavia. This was because fishery activities at that time were classified as agricultural activities, although in 1915 a Fisheries Service was established as a special organization dealing with marine fisheries activities under the *van Ekonomische Zaken* Department, namely *Onderafdeling Zee Visserij* which was part of *Afdefing Cooperatie en Binnenlandsche Handel*. Meanwhile, for the research and development of marine fisheries, a colonial government research institute called the Institut voor de Zee visserij was formed. Subsequently, in 1931, the Dutch East

Indies government structure was reorganized, among others, by expanding the scope of authority of the Ministry of Agriculture to become the Ministry of Agriculture and Fisheries.

During this period of the Dutch East Indies, there were at least five legal products aimed at regulating marine affairs and marine resources, namely: Pearl and Coral Fishery Ordinance (*Algemene Regelen voor het Visschen naar Parelschelpen, Parelmoerschelpen, teripang en spongeen binnen de afstand van neet meer dan drie engelschezeenijlen van dekusten van Nederlandsch Indie*) Stbl. 1916 – 157, Fisheries Ordinance to Protect Fish (*Visserij Bepaling ter Bescherming van de Visschestand*) Stbl. 1920 – 396. Regulations prohibiting fishing using poison or explosives, except for scientific purposes, Coastal Fishing Ordinance (*Kustvisserij Ordonnantie*) Stbl. 1927 – 144, Regulations for the Registration of Foreign Sea Fishing Vessels, Stbl. 1938 – 201, and the Territoriale Sea and Maritime Environment Ordinance (*Territoriale Zee en Maritieme Kringen Ordonantie*) Stbl. 1939 – 442.

After the independence of the Republic of Indonesia, relatively few laws and regulations related to the management and utilization of marine resources were issued during the Old Order government. The regulations relating to the management and utilization of marine resources that were applied during the pre-independence period in accordance with the claims of the Juanda Declaration are still in effect in the marine territory of the Republic of Indonesia.

In 1960 the government issued Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which also regulates marine areas. However, regulations that specifically regulate the management and utilization of marine resources only existed in 1964 with the issuance of Act Number 16 of 1964 concerning Fishery Revenue Sharing. Previously, through Law Number 19 of 1961, Indonesia ratified three Geneva conventions in 1958. The 1958 Geneva Conventions which were ratified were: The Convention on the High Seas, The Convention on Fishing and Conservation of the Living Resources of the High Seas, and The Convention on the Continental shells.

A new chapter in the regulation of marine resource management began when the New Order government under President Suharto issued the Announcement of the Government of the Republic of Indonesia on 17 February 1969 concerning the Indonesian Continental Shell. Prior to that, there was already a law that was issued although it did not specifically regulate the management of marine resources, namely Act Number 11 of 1967 concerning the Basic Provisions of Mining, in which the law already regulates the management of natural resources, including the Indonesian

sea area.

It was only in 1983 that the government of the Republic of Indonesia issued an act which regulates the management and utilization of marine resources, namely Act Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone. This act affirms the claim of the Republic of Indonesia to the Exclusive Economic Zone of its 200 nautical miles as recognized by UNCLOS. Only after that, was issued Government Ordinance Number 15 of 1984 concerning Management of Biological Natural Resources in the Exclusive Economic Zone, which contains regulations that facilitate the exploitation and conservation of living natural resources within the marine area of the Indonesian Exclusive Economic Zone.

After the issuance of Act Number 9 of 1985 concerning Fisheries, which at the same time stated that the relevant ordinances which had been in effect since the Dutch East Indies era were revoked and ceased. Only after that, there are several acts relating to the management and utilization of marine resources have been issued in the New Order Era. In addition, during the New Order Era, several Government Ordinance and Presidential Decrees were issued as derivative rules of the Law.

After the Indonesian reform era in 1999, many laws and regulations were issued. There are at least 19 Acts and 12 Government Ordinance that regulate or relate to the utilization and management of marine resources. In addition, there are many derivative regulations at the level below the Act and Government Ordinance issued as derivative regulations. The consequences of this many laws and regulations can not only have a positive impact in the form of order and security but can also be a trigger for conflict if there is a conflict between one regulation and another.

One of the overlaps in the settlement of marine resource management is in the authority of law enforcement. There are several institutions that have the authority to enforce the law based on different acts and regulations. Some of these institutions include:

1. National Police of the Republic of Indonesia. In Act Number 2 of 2002, it is stated in article 2 that the function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, shelter and service to the community. and in Article 4 point (1) it is stated that its working area covers the entire territory of the Republic of Indonesia. These specific authorities in law enforcement by the State Police of the Republic of Indonesia are generally regulated in Act Number

8 of 1981 concerning the Criminal Procedure Code and specifically regulated in Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries Article 73.

2. Attorney of the Republic of Indonesia. In Act Number 16 of 2004, it is stated in Article 4 point (1) that it is stated that its legal area covers the entire territory of the Republic of Indonesia, and is generally regulated in Act Number 8 of 1981 concerning Criminal Procedure Code, and specifically regulated in Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries Article 75.
3. Indonesia Navy Officer Investigator. Article 13 of the Maritime Territorial and Maritime Environment Ordinance (*Teritorialle Zee en Maritieme Kringen Ordonatie*), states that the Navy is one of the agencies that have the authority to carry out investigations. Then it is also regulated in Act Number 5 of 1983 concerning Exclusive Economic Zones, Article 14. This authority is confirmed in Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries in Article 73. n general, the law enforcement authority exercised by Investigators of Navy Officers is obtained based on Law Number 34 of 2004 concerning the Indonesian National Army.
4. Fisheries Civil Officers Investigator. In Article 6 letter b, Act Number 8 of 1981 concerning the Criminal Procedure Code, it is stated that investigators are certain civil officers who are given special authority by law. Then it is clarified in Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries, Article 73.
5. Marine Security Agency. In Act Number 32 of 2014 concerning Marine Affairs, Article 62 letter c explains that in carrying out its duties the Maritime Security Agency carries out the functions of carrying out safeguards, supervision, prevention and prosecution of law violations in Indonesian waters and Indonesian jurisdictions. Then it was clarified in Presidential Regulation Number 178 of 2014 concerning the Maritime Security Agency.
6. Investigators of the Customs Directorate of the Ministry of

Finance based on Act Number 10 of 1995 concerning Customs which was later amended by Act Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs. This authority is specifically regulated in Government Ordinance No. 21 of 1996 concerning Enforcement in the Customs Sector, as well as Government Ordinance No. 55 of 1996 concerning Investigation of Criminal Acts in the Customs and Excise Sector.

7. Illegal Fishing Eradication Task Force (Satgas 155) based on Government Ordinance Number 115 of 2015 concerning Illegal Fishing Eradication Task Force.

Every agency that by law is given the authority to enforce the law in the marine area, carries out its duties and functions based on the laws and regulations that are the source from which the authority is obtained. Often in carrying out the duties, functions and authorities there is overlap between an agency that has its authority based on regulation with another agency that has its authority based on another regulation.

To overcome the overlapping implementation of law enforcement from various institutions originating from these various laws and regulations, the government seeks to coordinate the state apparatus in an integrated task force based on laws and regulations called the Illegal Fishing Task Force through Government Ordinance Number 115 of 2015 concerning the Task Force. Eradication of Illegal Fishing. It is stated in the preamble that the eradication of illegal fish requires extraordinary law enforcement efforts that integrate the power between related government agencies with the right strategy by utilizing the latest technology so that it can run effectively and efficiently.

However, the enactment of this Government Ordinance does not necessarily eliminate the overlapping authority and implementation of law enforcement in the territorial waters. Government Ordinance Number 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing does not actually annul the rules regarding law enforcement procedures in territorial waters that have been in effect previously.

There are at least more than ten laws and regulations that also regulate or contain procedural laws that are used as the basis for implementing law enforcement in territorial waters. These laws and regulations include; the Maritime Territorial and Maritime Environmental Ordinance, *Teritorialle Zee en Maritieme Kringen Ordonatie*; Act Number 8 of 1981 concerning Criminal Procedure Law; Act Number 5 of 1983 concerning

Exclusive Economic Zones; Act Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems; Act Number 2 of 2002 concerning the Indonesian National Police; Act Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia; Act Number 34 of 2004 concerning the Indonesian National Army; Act Number 17 of 2008 concerning Shipping; Act Number 32 of 2009 concerning Environmental Protection and Management; Act Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, and; Act Number 32 of 2014 concerning Marine Affairs.

The rules that contain the procedural law used as the basis for implementing law enforcement in the territorial waters, there are rules that regulate law enforcement in general meaning that they can be used at any locus, such as Act Number 8 of 1981 concerning Criminal Procedure Law or those that regulate law enforcement specifically only on the locus of territorial waters, such as Act Number 32 of 2014 concerning Marine Affairs.

There are so many laws and regulations concerning law enforcement in marine and water areas as well as regulations that contain procedural law in enforcing the law, resulting in many subjects or agencies having the authority over the same task in the same territory. This situation of one task with many officers can trigger conflicts between agencies.

There are government efforts to prevent conflicts between these agencies, the government's efforts can be seen in the formation of the Illegal Fishing Eradication Task Force. However, this effort also encountered obstacles. The many laws and regulations, in the legal hierarchy, are in the Act class, while Government Ordinance Number 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing is at a level below the Act, namely the Government Ordinance class so that it does not automatically cancel the rules regarding law enforcement procedures in the territorial waters that have been in effect previously. Although this Government Ordinance is specialist in nature, the application of the principle of *lex specialis derogat legi generali* can automatically only be applied to an equal class of laws and regulations. Meanwhile, regulations that are not equal are automatically invalidated based on the principle of *lex superior derogat legi inferiori*.

The use of *the lex specialis derogat legi generali* principle is actually possible based on Article 284 of Act Number 8 of 1981 concerning the Criminal Procedure Code which states that the criminal procedure law applies to all cases based on law, except for special provisions regulated in certain laws. The challenge in applying the rules for managing marine resources does not include *lex generalis* rules that deal with *lex specialis* rules

but is also complicated by the many *lex specialis* rules. The number of regulations that are *lex specialis* will have the potential to confront regulations that are both *lex specialis*. For example, in addition to the Criminal Procedure Code, there are at least ten laws and regulations at the level of the Law that regulate law enforcement in territorial waters. If there is a conflict between laws that are equal and also *lex specialis*, this certainly cannot or is difficult to resolve using the principle of *lex specialis derogat legi generali*.

In the settlement of cases involving more than one equal regulation governing it, Hiariej is of the opinion that if there is an act that is threatened with more than one law which is qualified as a *bijzonder delic* or special offence, the systematic *lex specialis* is used as a derivative of the principle of *lex specialis derogat legi generali*.[6] Furthermore, citing Remmelink and Enschede, it is explained that in the Netherlands this principle is known as juridical speciality or systematic speciality[7], in addition to the *logische specialiteit*[8]. Regarding the criteria for systematic specialization and *logische specialiteit*, Hiariej explained that the criteria for systematic specialization are that the object of the general definition is more fully regulated within the framework of special provisions. Meanwhile, the *logische specialiteit* has criteria for a detailed definition of crime within the limits of the general definition[9].

The explanation of the systematic *lex specialis* principle can be interpreted in an example where there is a conflict caused by marine resource management activities that have an impact on the destruction of marine ecosystems, which on the side hand violates the Environmental Law and on the other side violates the Marine Law. When examined more deeply, the law used is the Marine Law because it regulates in more detail the object, subject and procedural law.

This overlapping of laws and regulations becomes more complicated when marine resource utilization activities take place in water areas that involve the *adat* law communities. It is often found that the laws and regulations at the national, provincial and district/city levels are inconsistent with activities in the territory of customary law communities.

[6] Eddy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana*, Edisi Revisi, Cahaya Atma Pustaka, Yogyakarta, 2015, p: 416.
[7] Jan Remmelink, *Hukum Pidana: Komentar atas Pasal-pasal Terpenting dalam Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Gramedia Pustakan Utama, Jakarta, 2003, p: 578.
[8] Ch. J. Enschede, *Beginselen van Strafrecht*, Kluwer, Deventer, 2002, p: 186.

[9] Eddy O S. Hiariej, *op cit.*

In field research, many local fishermen complained about the theft of fish eggs by *andon*[10] fishermen. According to local people, some *andon* fishermen reasoned that they had received permission from the provincial government to catch fish and fish eggs in the area. Conflicts often occur between local communities and *andon* fishermen.

For example, in the case of exploitation of flying fish eggs, there are frequent disputes between fishermen and the people of the Kei Islands and andon fishermen from Sulawesi. People term it with the term "fish egg theft". This case has been going on for years and keeps repeating itself every year. This case is very complicated because it involves not only the complexity of the legal aspect but also the social and cultural aspects of the community. There are various interpretations and legal actions between officials at the provincial level and at the district and city levels regarding whether or not andon fishermen can take fish eggs in the Kei Islands region. Likewise, between local communities and government officials.

Theoretically, this complexity can be solved by existing theories and doctrines. However, in practice, many obstacles are found. These obstacles are caused by the fact that law enforcers in the field have different interpretations based on different interests. Legal breakthroughs are needed in overcoming complex cases like this.

B. Customary Law as an Alternative Legal Settlement

Law enforcement in marine areas often does not provide satisfaction for local communities. In observations and interviews in the field, various reasons were found for the dissatisfaction of the public with state law enforcement and its apparatus. The most dominant focus encountered was on the theft of fish by foreign fishermen and the use of dangerous tools. Some dissatisfaction relates to the prevention and prosecution of state apparatus as well as verdicts which are considered not to have a deterrent effect on perpetrators of crimes. In addition, other reasons were found related to the court's decision which was deemed not to have a direct impact on the restoration of the environment damaged by the perpetrators of the crime.

From information obtained from the community, it is explained that damage is often found in fishing areas around the Kei Islands due to the use of fish bombs. Local fishermen often encounter many *andon* fishermen who use fish bombs, but these *andon* fishermen are difficult to catch because they use boats with larger engines with higher speeds. However, there are also *andon* fishermen who have been arrested for using dangerous fishing gear.

[10] a word used to describe fishermen who come from other regions within the same country.

An example of a case is what happened in 2005. Andon fishermen were found using fish bombs around Pulau Sepuluh Islands in the *Ohoi*[11] Debut area, Southeast Maluku Regency. The arrest was made by the police on a report from a security company operating in the vicinity of the waters who happened to see it. However, based on the community's narrative, after the arrest, there were still andon fishermen who caught fish using fish bombs in that area.

There is also another case, which occurred in the waters of *Ohoi* Kolser, Southeast Maluku Regency. Around 2018 the *ohoi* people managed to catch a fisherman who used a bomb to catch fish in the *Ohoi* Kolser waters area. There was resistance but the community was able to catch the person and then hand him over to the officers. Ironically, a few months later in July 2019, the person was again arrested in the jurisdiction of the Kaimana Police, West Papua for trying to smuggle 12 cases of explosive devices using a commercial motorized transport ship. It was later revealed that the explosive device was a mortar from World War II and would be smuggled into Tual City to be used for fishing. After the occurrence of this case, andon fishermen were still found looking for fish using fish bombs.

The impact of the continued use of fish bombs in the marine area around the Kei Islands is causing dissatisfaction with law enforcement against violations of law in the marine area by state apparatus and state law. This reaction of dissatisfaction with law enforcement has caused people to prefer to resolve conflicts in marine areas within their customary areas by using customary law.

In the settlement of cases of fishing theft or marine destruction through customary law, the perpetrators are not only sentenced to pay a number of customary fines for stealing and destroying the environment but are also burdened with the obligation to restore the environment. In the view of the Kei people, this restoration of the environment has not only restored the people in the area as victims but has further restored the perpetrators as part of the cosmic unity of the world.

In the Kei Islands, there is a mechanism for resolving cases and conflicts using customary law. This mechanism is known as the "*Sidang Adat*". The customary court mechanism is carried out by a customary apparatus in the customary law system of "*Larvul Ngabal*". These customary instruments are legitimized by customary law to accept cases, examine, hear and ensure that the decision is carried out by the parties. This court is formed on an ad-hoc basis by customary authorities based on a case. In

[11] is a term for a village in the Kei community.

reality, the people of the Kei Islands really give high authority and legitimacy to the judges at this customary court to examine and adjudicate cases and conflicts that occur and the decisions of these customary judges are always respected and carried out with full responsibility by the litigants.

In resolving maritime resource conflicts using customary law, matters relating to the ownership, utilization, management and conservation of marine resources are regulated in the *Hawear Balwirin* law which is part of the *Larvul Ngabal* customary law system. Conflict resolution can be resolved through the *sdov* mechanism, their terms for deliberation or through the customary court. From several interviews, it is known that *Larvul Ngabal* customary law has two types of enforceability, the first is a territorial type where *the Larvul Ngaba*l law applies to all objects including humans residing in the Kei customary area which is the entire the territory of the Kei Islands, and the second is genealogical enforceability, where the customary law of *Larvul Ngabal* applies to all people who are genealogically derived from Kei wherever that person is.

From the interviews, it was found that the main reason for the community's choice to resolve conflicts at sea using customary law was because customary law not only provided a deterrent effect to the perpetrators by punishing the perpetrators but also provided restoration to the damaged areas. In addition, the settlement with customary law is felt to be cheaper and faster and the impact can be felt directly.

In practice, the mechanism for resolving maritime resource conflicts in the Kei Islandshas developed. There is the involvement of state apparatus in customary settlements, both asfacilitators, and also involved in resolving cases. Legal solutions are constructed far from the old dichotomies. The legal settlement which was originally the hegemony of a particular system has moved to become seamless. The settlement of customary law which was originally closed becomes open to the presence of state law and religious law. Vice versa, these legal encounters tend to produce new and hybrid settlement models. This condition shows a real condition of legal pluralism.

The condition of the community's choice in resolving cases in the Kei Islands is in line with what von Benda-Beckmann stated, that the law actually connects the present with the past and the future, either implicitly or explicitly in various ways. Often the temporal and spatial scope of what is done in the social field of law goes far beyond claims of validity and anticipatory action can be taken against a law that has not yet been enacted[12]

[12] Keebet. von Benda-Beckmann, *Trust and The Temporalities of Law*, The Journal of Legal Pluralism and Unofficial Law, Vol. 46, No. 1, 1–17, 2014, p: 5

In line with that, Leopold Pospisil made an assertion that challenged the feasibility of seeing the relationship between law and society as an interaction between the individual and the state. Pospisil argues that society consists of a collection of "sub-groups" with their own legal system so that law does not only belong to society or the nation as a whole[13]. Law should not be seen as an interaction between an individual and the state alone, but on the contrary, they also live with their sub-systems in groups smaller than the state.

Sally Engle Merry explains that state law, in its composition, is shaped and enforced by a normative order outside the state law itself which gives it power and legitimacy[14]. By agreeing with Fitzpatrick's argument, Merry explained that we cannot view law simply as domination, but also as an institutionalization of social life. Both state law and semi- autonomous fields, customary law and others, are institutionalized as part of the relationship between these institutions with one another. Both state law and semi-autonomy, institutionalize each other[15].

The importance of this acceptance of other laws is part of providing access to justice in a society that is partially diverse in certain areas of law. Colleen Sheppard, explains that the lens of legal pluralism is very instructive because it teaches us to pay attention to how formal anti-discrimination protections must operate in an institutional context governed by a complex set of rules, norms, and customs, traditions and practices[16]. Sheppard agrees with Teubner's statement about the "policy of proceduralization" in which the legal system treats itself by providing structural openness to its self-regulation of other social sub-systems. Furthermore, it is explained that the more recognition of the hybridity of legal systems, which embrace state and non-state legal regimes, the more useful it is to stop the exclusive reproduction and inequalities embedded in the law of non-state institutions that exist in structures, relationships, traditions and social and institutional life practices. To do so, we need to analyze how formal law affects or fails to influence social life, decision-making, policies and institutional practices[17].

In connection with the problems that occur in law enforcement at sea

[13] Leopold Pospisil, *Anthropology of Law, A Comparative Study*, Harper & Rown Publishers, New York, 1971. Ch: 4
[14] Sally Engle Merry, *Legal Pluralism*, Law and Society Review, Vol. 22 No.5, 1988, p: 883.
[15] *ibid*.
[16] Colleen Sheppard, *Equality Trough the Prism of Legal Pluralism*, Book Chapter dalam *Dialogues on Human Rights and Legal Pluralism*, Editor: René Provost dan Colleen Shepard. Springer Dordrecht Heidelberg, New York dan London, 2013, p: 133.
[17] *ibid*.

and coast and the resolution of conflicts over marine resources, where there are many overlapping state regulations and the fact that there are many legal systems that also operate within the same territory, hybridization of law can be considered as an alternative solution. The state can create space for productive interactions among various overlapping legal systems by developing procedural mechanisms, institutions, and law enforcement practices, without eliminating existing legal pluralism. According to Paul Schiff Berman, such mechanisms, institutions and practices can help mediate conflict by recognizing that many communities, who may in an official way wish to assert their norms for certain actions or actors, seek ways to reconcile competing norms. According to him, a mechanism like this must be a later mechanism, if other mechanisms cannot be implemented [18].

Berman, explains that although the very difficult questions on a case-by-case basis about how much a community should submit to another normative community and how much they can impose their own community norms, may not be definitively answered. However, the important antecedent point here is that although people may never reach an agreement on norms, they can at least agree on procedural mechanisms, institutions, or law enforcement practices that take the existing conditions of pluralism seriously, rather than ignoring them through territorial or territorial-based assertions of power. dissolve it through universalist imperatives. According to him, the process of managing legal pluralism seeks to preserve the space of opportunity for local contestation and variation. Thus, a focus on hybridity may sometimes be normatively preferable and more practical precisely because agreement on substantive norms is so difficult[19].

In the practice of law enforcement and maritime resource conflict resolution, a hybrid settlement model can be considered to be applied. Partial hybridization of the system in resolving maritime resource conflicts can be an ideal effort in resolving cases that are difficult to resolve, or which cannot be resolved through separate customary and state law mechanisms. The settlement mechanism with this hybrid model can be done with several alternatives, including:

1. Involve the customary law apparatus together with the state apparatus in the process of safeguarding and supervising marine

[18] Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*, Cambridge University Press, New York, 2012, p: 10
[19] *ibid*.

and coastal areas under one roof of the supervisory agency, and/or;

2. Involving customary law apparatus together with state apparatus in the process of investigating cases in marine and coastal areas as assistant investigators for state investigators, and/or;
3. Establish ad hoc state courts involving customary judges together with state judges in deciding cases or resolving conflicts that only specifically resolve cases and conflicts over marine resources.

III. Conclusion

To overcome the problem of overlapping regulations in law enforcement in the marine area, a new order in law enforcement in the marine area is needed. One solution is to make a *Lex Omnibus* which becomes a single integrated regulation, which is the one and only integrated legislation that regulates law enforcement at sea and coast. As the only and only statutory regulations, these laws must be prepared carefully by taking into account all aspects, in a systematic and comprehensive manner.

Recognition and involvement of customary law in the management and utilization of marine resources can provide opportunities for the government to be assisted in efforts to resolve maritime resource conflicts that occur, using customary law applicable in the local area. In addition, the settlement can be carried out with a hybrid model. This hybrid settlement model can be an alternative settlement and function as the *optimum remedium*, which is the ideal solution in which the settlement efforts through customary law as the *primum remedium* and state law as the *ultimum remedium* are felt unable to provide access to justice that can be accepted by all parties. The nature of the law, which is open to the involvement of customary law, can be one of the factors that contribute to a better legal settlement and provide opportunities for access to justice for all parties, especially for customary law communities.

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