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The Legal Empowerment of Saniri to Promote Social Reconstruction in Post-Conflict Ambon

Abstract

Ambon is a migrant town which over the centuries has become a melting pot of cultures and religions from surrounding areas and overseas. To maintain harmony, the Ambonese developed customary laws through the Saniri assemblies. After the Indonesian independence, however, custom and Saniri were systematically suppressed by national regime. The Ambonese conflict of 1999-2002 reignited local movements to revitalize the role of Saniri in reconstruction effort. This article examines what role Saniri can play in this context, what steps have already been taken, and where there is room for improvement. We find that the current political landscape is permissive toward re-empowerment of custom. Saniri, as a grassroots representative institution, is ideal for supporting social reconstruction. However, legal and political efforts undertaken thus far have failed to properly accommodate the nature of Saniri, which has stifled its possible contribution to reconstruction. More attention is required to empower Saniri both legally and politically in a manner consistent with its nature to maximise its role as a harmonising medium.

Keywords

Local Government, Customary law, Post-conflict reconciliation, Ambon

1 Introduction

The history of the City of Ambon, the capital of the Province of Maluku in Indonesia, is a long and dynamic one. Once inhabited only by local Moluccan tribes from the islands of Seram, Banda and Kei, the city quickly flourished thanks to trade with neighbouring islands, and developed into a significant port town and centre of commerce in the region. The city's population grew with arrivals from various ethnicities, such as the Buton, Bugis, Makassar and Javanese, and even migrants from distant lands such as China, Arabia and India. This transformed the city into a multicultural, multi-ethnic, and multi-religious migrant town (Effendi, 1987). Despite the difference in backgrounds, the peoples of Ambon embraced their neighbours as fellow inhabitants of the same city, and developed a new pan-Ambonese identity in addition to maintaining their own group identities. These identities melded together forming a cross-cutting affiliation, enabling the people of Ambon to live together in harmony for many centuries (Watloly, 2016).

The arrival of European colonial powers in 1513 changed the power dynamic in Ambon. Access to Ambon, with its indigenous clove as a prized commodity for European traders, became highly valued by the Portuguese, English and Dutch. By 1926, Ambon had become an administrative district led by a mayor, after previously having been placed under the direct control of the Dutch-Indies Governor-General. The city continued to develop and experienced significant economic growth over the following years. By the time of the Indonesian independence in 1945, Ambon had become the largest and most prosperous town in eastern Indonesia (Situs Budaya, 2019).

Social harmony in Ambon had since long been maintained by *adat* law, the unwritten customary laws and norms of traditional Mollucan cultures (Matuankotta, 2005). *Adat* law in Ambon encapsulates both public norms, such as politics and administration, as well as social norms, such as morality, spirituality, and group identity. *Adat* in Ambon contains a sacred component and is transmitted from generation to generation through oral tradition. To the Ambonese, *adat* is binding and contains important messages and commands from their ancestors. It maintains group cohesion, influences spiritual and religious beliefs, controls social interaction, and propagates cultural and intellectual norms. For the indigenous peoples to which *adat* applies, *adat* law has great persuasive value as a source of social and moral norms (Van Dijk, 1971; Sulastriyono & Pradhani, 2018) and often enjoys significant adherence and authority, sometimes more so than written state laws (Wignjosobroto, 2011).

In Ambon, *adat* manifests itself primarily through *negeri*, small socio-political entities with defined a membership, territory, identity, culture, and social and moral norms, led by a sophisticated governmental system. *Negeri*, led by the *raja* as its head of state, have the authority and capacity to independently regulate state affairs in the interest of their subjects based on their own initiatives and traditional rights. There are currently twenty-two *negeri* in Ambon (Ambon City, 2017). They have autonomy in the governance and regulation of their territory and subjects.

One of the most important governmental organs of a *negeri* is the *saniri*, its council of representatives. The *saniri* functions as a legislative body within each *negeri* and is empowered to guide and apply the *negeri*'s public policies in accordance with custom and *adat* law. *Saniri* act as mediators or adjudicators in disputes concerning civil, *adat*, and minor criminal issues – as such, *saniri* also fulfil a certain judicative function within their *negeri* (Uneputty, 2008). As a council of representatives, a *saniri* enjoys a particular emotional and intellectual proximity with the *negeri*'s population. *Saniri* members are comprised of leaders of *soa* – sub-assemblies consisting of clans and individuals sharing a common genealogical root – and may also comprise representatives of social or economic groups such as certain professions or age groups (Effendi, 1987). This comprehensive representative function has throughout history allowed the *saniri* to maintain stability and internal cohesion within its respective *negeri*. The *saniri* is in fact a microcosm of how representation and social involvement are highly valued in the daily interactions in a *negeri*.

In 1923, the Dutch colonial regime extended recognition of the *negeri* and its organs (such as the *raja* and *saniri*) through legislation (Dutch-Indies Governor-General, 1923). This ordonnance was an effort by the Dutch colonial powers to regulate governance at the village level. (Maschab, 2013). The Indonesian independence brought about significant changes to the legal status of *adat* nationwide. Since the 1950s, the legal position of *saniri* as important *adat* law institutions were systemically suppressed, culminating in the promulgation of Law 5 of 1979 on Village Governments. As a result, *negeri* in Ambon lost their capacity to govern their territory and subjects according to long-standing *adat* law and customs.

This new reality allowed little room for *saniri* and similar existing mechanisms to fulfil their role effectively. It became increasingly difficult to unify the pluralistic nature of Ambonese society as *adat* law-based mechanisms for peaceful conflict resolution – such as those through the *saniri* – were rendered unavailable, resulting in Ambonese having to resort to more formalistic and adversarial avenues, such as litigation or even physical confrontation (Frost, 2004). In the following twenty years, traditional dispute

settlement, such as those involving the *raja* or *saniri*, became less and less prevalent. Courts or formal dispute settlement mechanisms were often chosen, increasingly leaving behind the principles of peace, reconciliation and communication which had defined social life within the *negeri*. This trend also negatively influenced the internal cohesion between social groups and *adat* institutions, disrupting the latter and making them less effective (Lee, 1997).

Over time, the *saniri* lost their close ties to the population they represented; as a result, the *saniri*'s moral authority, and thereby also their practical influence, began to wane. The capacity of *saniri* to intervene in times of crisis using the cultural wisdom and experience which had been cultivated for centuries became stifled (Lee, 1997). This was unfortunate in light of the *saniri*'s original role as the pillar uniting and representing the *negeri*'s people and its original conception as an institution tasked with maintaining stability and balance within social life. Within popular thought, the *saniri* continued to exist as a concept, presumed to one day be able to reprise its original role.

Jati (2013) asserts that the centralised, top-down nature of the Soeharto Regime and the failure of the new paradigm to accommodate group differences in Ambon resulted in social disintegration and an increasing in-group-out-group feeling between the different ethnicities and religious groups. This culminated in the bloody conflict of 1999-2002, which killed at least 5.000 and displaced hundreds of thousands more (Goss, 2000). The outbreak of violence was the failure of both *adat* law and the new system of village governance: *adat* law institutions such as the *saniri* could no longer fulfil their role as conflict mediators under *adat* law, while the Soeharto Regime institutions that should have replaced their functions failed to prevent the outbreak of violence – they were too bureaucratic in nature and foreign to the traditional population in Ambon (Adam, 2010).

This paper explores the possibility of empowering the Ambonese *saniri* institutions as mediums for the city's post-conflict reconciliation and peace-building efforts. This article departs from the presumption that the stability of each *negeri* effectively contributes towards the greater social stability and safety of Ambon. Data was collected through a literature study of historical sources on the situation in Ambon from the nineteenth century onwards. More recent events were analysed on the basis of both writings and qualitative field research. Extensive interviews were conducted based on snowball sampling and purposive sampling, which resulted in discussions with peace activists and important *adat* figures such as *raja* and members of the *saniri*. The researchers also conducted individual observations of the situation in Ambon. Results from the field study were subsequently analysed and crosschecked through focus group discussions (FGD) hosted in Ambon, which were attended by government representatives, the heads of the 22 Ambonese *saniri*, academics, and NGOs. The FGD was monitored and a transcript was produced, which was subsequently analysed to arrive at the conclusions presented in this paper.

2 Literature Overview

When discussing the Ambonese conflict, one issue frequently raised concerns the reasons of why the violence had spread in the first place. Authors, however, have expressed decidedly disparate opinions on the matter, and even today a consensus has yet to be reached (Aditjondro, 2020; Lessy 2005; Sapulete 2002). Literature generally concurs upon the conflict's specific triggering factors (Böhm, 2006; Bräuchler, 2015; Goss, 2000; Ichwanuddin, 2011), but not on the greater underlying causative factors.

One theory advanced by Trijono (2001, 2004) concerns structural factors and intergroup relations between ethnic and religious identities which can be traced back to the Dutch

East Indies era. During the Dutch colonialization period, Christian Ambonese were given special privileges. According to Chauvel (1980) and Adam (2010), they frequently held a monopoly on important positions in the bureaucratic, educational, military and economic sectors, to the point where they were sometimes cynically referred to as the colonisers' *anak emas* (golden children). In contrast, the Muslim Ambonese generally populated lower echelons of the job market such as trade and commerce, in part because of their lower education (Triyono, 2001). This situation persisted for many generations and the increasing social and economic inequality only became more entrenched over the decades.

The strain brought about by this demographic gap was amplified during the Soeharto Era when tensions between groups gained a political dimension. Muslim Ambonese accused Christians as a whole of undermining the national security and unity of the Indonesian Republic and supporting the separatist Republik Maluku Selatan (South Moluccan Republic) movement, which was previously incorporated into the Royal Dutch East Indies Army (Bartels, 2009). On the other hand, Christians felt their privileged social and economic positions in Ambon threatened by the arrival of many Muslim migrants from other regions in Indonesia as part of the Central Government's transmigration policy. Rumours were spread that the sending of Muslims to Ambon was part of a broader plan by Jakarta to transform Indonesia into an Islamic state (Bartels, 2009; Triyono, 2001).

The arrival of new settlers in Ambon also had a social and cultural impact. Solidarity between Muslim and Christian Ambonese *negeri* had previously been preserved through *pela* and *gandong*, important *adat* concepts. *Pela* and *gandong* refer to social and moral oaths of brotherhood between *negeri*: members of *negeri* sharing a *pela* or *gandong* are regarded kin and are morally bound to help each other in times of need, such as during natural disasters or when they are attacked by a different *negeri*. For centuries, this system ensured peace and brotherhood between the Ambonese, even if they adhered to different religious beliefs (Waileruny, 2011). The arrival *en masse* of new settlers changed this dynamic. Compared to the old peoples which had adopted a unifying pan-Ambonese identity, expressed through adherence to Ambonese *adat* law and uniquely Ambonese customs and traditions, these new settlers had not yet reached this level of assimilation when they arrived. Instead, Muslim Ambonese and Muslim settlers found a common identity – and subsequent solidarity – in their religion, despite their ethnic differences. This further widened the gap between Christian and Muslim Ambonese. Some Christian Ambonese felt concern, even betrayed, that the Muslim Ambonese gravitated towards the new settlers instead of their ethnically shared, but religiously different, Christian Ambonese kin (Böhm, 2006).

These economic, social, and political tensions were further enhanced by the arrival of Ambonese gangsters from Jakarta shortly before the outbreak of conflict in 1999. These Muslim and Christian gang members brought back with them rivalries which fuelled the interreligious sentiments in Ambon (Aditjondro, 2001). A quarrel between Muslim and Christian youths near the bus terminal in Batumerah on 19 January 1999 is generally accepted in literature to have been the final, decisive trigger, after which violence spread rapidly to even the most distant of Ambonese neighbourhoods (Ichwanuddin, 2011). In retrospect, some authors (Adam, 2010; Aditjondro, 2020) are convinced that this sudden explosion of hostility had been induced for broader political reasons, in particular from the faltering Soeharto Regime supporters. These authors have put forward that military actors and Soeharto loyalists were behind a systematic agenda of provocation throughout the country in order to sell the Soeharto Regime as the only leadership capable of restoring security to Indonesia. On the other hand, Ambonese

have also engaged in introspection and found themselves not without blame. Many have acknowledged their own responsibility for the carnage, deeming the conflict a product of their own naïveté and their incapability to restrain their emotions in the face of lies, propaganda, and provocation (Watloly, 2016).

The conflict has had profound effects on Ambon's urban conditions, in particular with regards to the city's demography and ecology. Significant demographic shifts occurred as a result of the protracted violence. Mass migration and displacement took place, which has left Ambon greatly segregated and segmented based on religious affiliation. Neighbourhoods which previously contained a mixture of religions have for a majority turned entirely homogenous (Dandirwalu, 2014). Ansori et al. (2014) demonstrate that Central Bureau of Statistics numbers indicate that the conflict brought with it an influx of settlers to the city of Ambon. Comparing numbers between 2000 (just after the start of the conflict) and 2014 (after the conflict) for an urban area of 377 km², population density almost doubled from 206.210 to 395.429. Ambon's topography, which consists of only 17% lowlands versus 73% mountainous terrain, proves ill-suited for this explosion in population. The uncontrolled expansion of urban living zones to surrounding areas as a result of the city's unsustainable density increases the risk of ecological hazards such as floods and landslides.

Ansori et al. (2014) add that relocation policies aimed at displaced persons or refugees inadvertently also exaggerated socio-spatial segregation, as government relocation plans tended to assign refugees to areas with a matching religious belief. When the conflict had just ended, such a policy was defensible as tensions were still high and the situation in Ambon had yet to normalise. However, in the long term, this policy brought about radical changes to the Ambonese ecosystem, transforming the city into what is sometimes termed a 'segregated plurality'. Important *negeri* authorities (Mewar, 2012; Rehata, 2018; Tahalua, 2018) confirm that currently, Ambonese neighbourhoods are almost exclusively segregated based on ethnicity, religion, or both. While segregation had been an undeniable reality in the city of Ambon even before the conflict, it had never been as extreme as it had become after the conflict. Christian minorities were previously common in Muslim *negeri*, as were Muslim minorities in Christian *negeri*. After the conflict however, *negeri* such as Batumerah had become absolutely 100% Muslim, while the populations of the *negeri* Soya and Hutumuri now consist strictly of Christians.

After Ambon had successfully overcome the height of tensions to the point where the city's economic, social and political landscape had stabilised and normal government administration could resume, the damaging effects of the city's extreme segregation became more noticeable. Post-conflict reconciliation and consolidation faced significant challenges due to the spatial partition between the two warring groups; instead, distrust, fear and hatred seemed to heighten between the Muslims and Christians (Tomagola and Hiarij, 2008). Hostility between the two groups resumed again during an incident on 11 September 2011 and the Pattimura torch parade on 15 Mei 2012, the latter of which resulted in several wounded civilians and houses burnt (Nainggolan, 2012). Post-conflict healing was slow and became increasingly delayed due to these incidents. According to a report of the Bureau of Statistics in 2008, welfare in Maluku was recorded as the fourth lowest nationally. As of September 2008, 17.85% or approximately 320 thousand Moluccans were still living in poverty (Ambonnesia, 2019).

Disputes about ownership and rights to land have become a major hurdle in Ambon's post-conflict healing process. One reported example (Ameks, 2020) concerns a dispute

over the village of Hurunguang, which was claimed simultaneously by the Christian *negeri* of Soya and the Muslim *negeri* of Batumerah. The case was settled through a court procedure, which ruled in favour of Soya. The execution of the decision was nevertheless met with animosity and resistance from the people of Batumerah. As another example, a dispute over land located in the territory of the Christian *negeri* of Hative Kecil between Batumerah and Tantui eventually caused significant tensions and even violence between the inhabitants of the two claimants (Kabar Timur, 2018). Such incidents of conflict and dissatisfaction can only hinder the broader reconciliation process. Difficult and often sensitive claims to land such as these form obstacles to the smooth rebuilding of Ambon and solutions must be provided that can reconcile competing claims for land.

Conflicts sometimes also arise with regards to land certification. Due to the conflict, large numbers of the population reside on territories without having a certified right to inhabit or use the land in question. This is for example the case with ex-refugees from Batumerah which currently live in Kayu Tiga, within the *negeri* of Soya: legal beneficiaries of the territory have not officially rescinded their rights to the land, causing concern (Koreri, 2018). Conversely, problems can also arise for holders of deeds whose land has factually been occupied by other families or groups. In such cases, difficult problems can arise with regards to the enforcement of civil rights of rightful owners of land. As with competing land claims, such issues perpetually form potential triggers to future conflict if not addressed and resolved properly.

3 Research

The fall of Soeharto and the transition to the current Reformation Era in 1998 to a certain extent reversed Jakarta's stance on local governance and *adat* law. Since the reformation, the national government has normatively been much more supportive of decentralisation and regional autonomy, which provides opportunities for traditional peoples such as those in Ambon to restore cultural values and *adat*. The immediate consequence of this new trend was the diversification of regional laws in Indonesia, and state and regional law often worked together to legalise and empower traditional (*adat*) laws and rights (Nurtjahyo, 2011). In a way, this was a correction vis-à-vis the Soeharto Era of uniformization, instead emphasising pluralisation and a recognition of regional differences. Ideally, in this new approach, Indonesian state law would strengthen and empower folk law (Wignjosoebroto, 2011).

Unfortunately, this decentralist policy has not yet reached the point to as to where Ambon can fully reinstate the old *adat* law-based model of governance. The authoritarian and centralist system had left too significant an impact in Ambon for regional autonomy to re-establish itself naturally. While Jakarta now legally acknowledges the existence of *adat* entities such as *negeri* and some of its organs such as the *saniri*, the factual revival of these entities and organs has not yet been achieved (Rehata, 2018; Sameaputti and Thenu, 2020; Tahalua, 2018).

The peace-building capacity of the *saniri* stems directly from its unique cultural and social position in Ambonese society. The *saniri* is an *adat* institution and is the product of centuries of Ambonese tradition, in contrast to the more sterile, impersonal courts applying national law in Indonesia. Throughout history, *saniri* have been an integral part of the Ambonese *gemeinschaft*. Problem-solving through *saniri* relies on friendly settlement pursuant to *adat* law principles and is characterised by compromise and reconciliation (De Fretes, 2020; Soplantila, 2019, 2020; Sameaputti and Thenu, 2020; Tantua, 2020). Watloly (2018) emphasises that when solving disputes, *saniri* procedures

generally avoid proclaiming a ‘winner’ and ‘loser’, as modern judicial procedures often do, but instead focus on creating an environment wherein sustainable peace can be achieved. *Saniri* rulings have authoritative value and become a new source of law for the community due to the *gemeinschaft*’s conviction of all members’ readiness to apply the law in the spirit of fairness and to the best of their abilities. Even during the Dutch Indies era, *saniri* in Ambon continued applying *adat* law instead of colonial law, the latter of which was adopted by Indonesia as its main body of state law. This creates a certain dichotomy as the current Indonesian state law is drawn from continental European law, which is highly codified, unified, and intended for a more homogenous culture (Wignjosoebroto, 2002). This clashes heavily with the more communal and traditional nature of *adat* law which has evolved to cater to a greatly diverse society such as that in Ambon (Wignjosoebroto, 2011).

For the multicultural and multi-ethnic Ambonese society, application (and adherence) to *adat* law solutions is more intuitive, as it had become part of normal everyday culture over the centuries. This is in contrast to state law, which is foreign and had in practice only been introduced to Ambon in the late 20th century. Many similar experiences demonstrate how the raw imposition of a juridical system to a distinctly different legal culture can be problematic. Eugen Ehrlich from the University of Vienna cites how in Austria, problems arose when Austrian state law was applied in the province of Bukovina (Günther, 2008). The new state law, which borrowed from the French *Code Civil*, contrasted greatly with the already-established legal customs of the region; as a result, the law was not congruent with the region’s everyday socio-cultural reality and failed to resonate with its subjects. A similar conclusion was reached in a study by Robert B. Seidman on British ex-colonies in Africa, wherein Seidman found that it is often ineffective to simply ‘transfer’ the legal tradition of one country to another that is culturally distinct (Wignjosoebroto, 2011).

Considering the above, there is a strong case to be made that in the plural Ambonese society, the applicable legal culture should encompass all socially applicable normative systems, and should not be limited to only state law or state-recognised law (Nurtjahyo, 2011). *Adat* law can even become the primary body of law regulating Ambonese life. The imposition of subsidiary state law unto Ambonese society should not face significant resistance or problems as long as state law provisions do not undermine or weaken traditional rights of Ambonese communities. In the current era where Ambonese *adat* is undergoing a difficult journey to restore its legal culture after several decades of atrophy, it would behove state law to support, instead of sabotage, this effort.

A *negeri*’s *saniri* is comprised of respected figures from amongst the population, such as heads of *soa* (which in turn represent the interests of the families they constitute), elders, and public figures. The *saniri* assembly is viewed with reverence and respect and thus commands cultural, political and social authority (De Fretes, 2020; Sameaputti and Thenu, 2020; Soplantila, 2019, 2020; Tantua, 2020). In the exercise of its function, the *saniri* can act as a central mediator between parties in dispute, an arbiter for public issues, and to ensure that the interests of all parties and groups it represents are taken into consideration during the determination of its *negeri*’s policies. *Adat* decisions passed by *saniri* are culturally binding and bear great authoritative weight: rulings in response to *adat* disputes and *adat* delicts, and sanctions that may follow, are respected and carried out with high degrees of obedience (Putuhena et al., n.d.).

To enable *saniri* to optimally contribute to the Ambonese healing process, however, they must attain legal empowerment. Legal empowerment is defined by the UN in 2009 as “the process of systemic change through which the poor are protected and enabled to

use the law to advance their rights and their interests as citizens and economic actors” (UN Secretary-General, 2009: Para. 3). Legal empowerment is a way to strengthen social institutions and social participation, and views grassroots actors and even people from the very lowest levels of society as important allies to embrace. By encouraging social institutions and individual members to engage together in solving societal problems that may arise, legal empowerment is one way to politically empower the common people. This can be achieved through greater representation during law- and policy-making and improving guarantees of justice, by providing a more accessible and concrete solution to everyday issues (Open Society Justice Initiative, 2012).

One of the aims of legal empowerment is to broaden the protection and opportunities of all people, particularly those who are poor or marginalised, against violations to their rights (Banik, 2009). Most Ambonese in the post-conflict era are victims who face injustices and difficulties in enforcing their rights. There is no absolute consensus regarding the scope of legal empowerment in the context of post-conflict reconciliation, but it can be generally understood as a process facilitating individuals or groups in attaining access to legal services, which are capable of protecting and promoting their rights and interests, as well as achieving and increasing control (Purkey, 2016). This right to legal empowerment is derived from fundamental principles of human rights enshrined in the Universal Declaration, which⁴⁶ states that all people are born free and equal in dignity and rights (UN General Assembly, 1948: Article 1). To achieve this goal, legal empowerment acts as an essential mechanism guaranteeing the supremacy of the law and access to justice.

Waldorf (2017) explains that legal empowerment comprises several important elements. First, achieving a deep understanding of the legal problems and its solutions. This should not be limited to formal considerations, such as legislation, procedure and litigation, but also encompass regulation, administrative processes, alternative dispute settlement, and traditional dispute settlement mechanisms. A broad approach is crucial in light of the fact that it is often the non-formal, alternative avenues of settlement which are most relevant for the poor and marginalised. Second, the active involvement of poor or marginalised grassroots groups in solving their problems: in other words, adopting a bottom-up approach to legal empowerment. This is necessary as emergent rule-of-law approaches often emphasise institutional reform and top-down policies. This element encourages the affected to become active participants, use the law to promote their own interests, and to become the subjects of political discussion instead of objects of policy. Legal empowerment employs the law and legal mechanisms as a medium to modify⁵⁷ the balance of power by increasing the agency of individuals and groups, through the reformation of opportunities in social structures. Purkey (2016: 5) adds that “empowerment is also about protecting and fostering the dignity of individuals by increasing their agency and by reforming the opportunity structure within which that agency is exercised. Empowerment initiatives then seek to foster the capabilities that enable individuals and communities to act in their own interests, to participate.” As such, the development of self-assurance, skills and capacities should be the priority.

Legal empowerment can be implemented through a variety of means, such as education, spreading awareness, encouraging organisation, and mediation. On the other hand, legal empowerment of grassroots institutions should not preclude access to other remedies, including litigation through state institutions, in particular if other means have failed to provide an effective solution. Legal empowerment should also not infringe upon other persons’ civil rights or individuals’ duties as state citizens. (Purkey, 2016).

In this context, and referring back to the UN definition above, legal empowerment would refer to a systematic change which promotes the recognition and capacity building of *saniri* to use (*adat*) law and its traditional position of authority to enforce its rights and interests as a facilitator of social change. The ‘systemic’ aspect of legal empowerment contains both a top-down (from the State to the people) and bottom-up (the people’s use of the law) dimension (Waldorf, 2017). Translated to the situation in Ambon, this has to reflect the Indonesian State’s willingness to ensure the existence and rights of *saniri* through formal recognition in the form of a firm legal basis (both at the national and regional levels). The final result would be a legally plural system which incorporates both state law and *adat* law, and if appropriate even other sources of norms such as religion and custom.

Progress has been made to a certain extent on this issue. In 2014, a law on village governments (Republic of Indonesia, 2014) was adopted nationally, which was subsequently implemented through a regional regulation of the City of Ambon on *Negeri* (Ambon City, 2017). These two laws together legally acknowledged the status of *negeri* and reinforced the existence of both *negeri* and the *saniri* bodies. Unfortunately, however, a closer inspection of the text reveals that their purported support for the *adat* entities is more rhetorical in nature. The laws are insensitive to local cultural differences and tend to conform instead to state law paradigms and equate organs of *negeri* with what it deems similar organs in normal administrative villages. One notable example is how the *saniri* are legally equated to village assemblies (Ambon City, 2017: Articles 54-69). The latter are purely administrative organs found in the common village or *kelurahan* all throughout Indonesia, while the *saniri* traditionally also fulfils important and very specific functions under *adat* law. These functions flow from the *saniri*’s connection to the cultural and genealogical roots of the population. The national push toward more recognition of local *adat* has thus, unfortunately, not yet been translated well into regional regulations and its implementation.

Laws that have thus far been adopted subject *saniri* to regional government administration moulds, standardised throughout Indonesia. Although *saniri* are a uniquely Moluccan concept, they are conflated with standard village councils with respect to both philosophy and budgetary planning. Functionally, they are recognised only as a local legislative body while disregarding the *saniri*’s judicative roles in problem-solving and dispute management (Ambon City, 2017: Article 55). Laws also are not accommodative of the *saniri*’s extensive value as a representative organ: *saniri* membership is often extended to varying social and economic groups, such as fishermen, farmers, the elderly, women, and youths. In fact, some *negeri* can have a *saniri* membership of more than 20 representatives. However, standard village councils (outside of Ambon) are only comprised of five to nine members. No adaptations are made with regards to *saniri*, meaning that budget is only made available for nine *saniri* members at most (Republic of Indonesia, 2014: Article 58; Ambon City, 2017: Article 58). As a result of these cultural insensitivities, laws currently in force intended to empower *saniri* instead weaken their reach.

The formulation of existing laws must be seriously reconsidered so decentralisation and empowerment of local governments, and in particular the *saniri*, can be realised. In addition to the top-down component, legal empowerment also consists of a bottom-up relation entailing a factual capacity of the beneficiary – in this case the *saniri* – to make use of the rights and guarantees provided by the State. The *saniri* should have the opportunity and support to effectively fulfil their envisaged role as a contributor to urban social reconstruction, via informal initiatives, decisions and rulings, and policies. Implemented ideally, legal empowerment encompassing both top-down and bottom-up

efforts can solidify the *de facto* legal pluralism experienced by Ambonese society, and establish a transparent framework which defines the relation and interaction between the different legal cultures in force.

Bruce et al. (2007) state that ¹² legal empowerment contains four components: rights enhancement, rights awareness, rights enablement and rights enforcement. The rights of *saniri* can be promoted firstly through the *saniri* members' own awareness of their rights and how these rights are protected legally – as such, focus should be placed on increasing the legal literacy of the *saniri* members. Rights enhancement can be supported through a more inclusive law-making process, which in turn protects the interests of the *saniri*. Rights enablement can take the form of capacity enhancement, such as through training and legal assistance programmes, that can educate *saniri* members into fulfilling a paralegal role. Through this, the *saniri* can better contribute as a medium for peaceful dispute resolution (rights enforcement). Proper implementation of these components is crucial in particular with regards to *saniri* bodies, as many of its members achieve their position as part of a genealogical or hereditary right (such as *soa* representatives). For *saniri* to be able to fulfil their functions efficiently, therefore, members should possess both the necessary competences (e.g. knowledge of law, *adat*, conciliation, dispute settlement) and soft skills (e.g. interpersonal communication, public speaking, empathy, social psychology).

The legal empowerment of *saniri* can reduce social friction, tensions, and injustice by establishing a mediating forum. It will have an important function internally through the consolidation of the *negeri*'s community. However, it would ideally also have external benefit in the form of consolidation *between* *negeri*, making the establishment of a *saniri* forum at the city level an important consideration. If implemented successfully, it can enhance public trust in not only the *saniri* and *negeri*, but also the Government, which in turn can enhance the broader peace-building effort.

4 Research

Social reconstruction is defined by the US Institute of Peace (2020) as “a condition in which the population achieves a level of tolerance and peaceful co-existence; gains social cohesion through acceptance of a national identity that transcends individual, sectarian, and communal differences; has the mechanisms and will to resolve disputes nonviolently; has community institutions that bind society across divisions; and addresses the legacy of past abuses.” One essential component is the establishment of a living environment founded on principles of ⁴³ social justice and equality by altering the various social systems upon which society rests (Zacko-Smith, 2012). This ideal is based on three major considerations. First, in the absence of counterbalancing efforts, societies naturally tend to develop social systems that marginalise and eventually suppress ‘out-groups’. In such situations, harmful ideologies which underpin or encourage such segregation have to be altered. Second, achieving this social change requires the founding of a system which is open to rethinking its own purposes and structure, and one that is capable of acting as a broader facilitator of change. Third, the strengthening of the identity of relatively homogenous communities, and supporting the adoption of a common identity for those which are relatively heterogenous. This factor is particularly important for Ambon as a pluralistic city. Once entrenched, a common identity as an ‘Ambonese’ can serve as a social glue to improve the peoples’ cohesiveness in diversity.

Applying this framework to the situation in Ambon, social reconstruction can be realised through the help of *saniri* institutions. The Ambonese *saniri* can act as agents

of change and to encourage positive social transformation pursuant to the living law in society (*adat*). Effective social reconstruction will prove invaluable for Ambon's critical post-conflict rebuilding process, by propagating positive cultural and social values that can overcome potential conflict triggers, such as religious extremism, inequality, poverty, and other similar factors.

One positive change brought about by the bitter conflict is a new realisation amongst the Ambonese population about the merits of traditional values for conflict prevention and reconciliation, and the impact of effective *adat* leadership for social cohesion. Active efforts are made to revive *adat* and re-establish old, pre-Soeharto Era institutions and leadership roles (Watloly, 2018). However, it is important to consider that society has experienced some significant changes in the past century. Reinstated 'traditional' leadership should have the capacity to accommodate the complex and heterogeneous nature of twenty-first century life, which is founded upon principles of democracy, equality and justice (Frost, 2004).

Adat figures in this modern era should apply custom not as a fixed and rigid series of norms immune to change, but as a living tradition open to revision and adaptations in accordance to society's developments and needs. *Adat* as a culture is by nature dynamic. Irianto (2003) refers to it as the reproduction of social institution through day-to-day social interaction. Positive traditional values, such as peaceful co-existence, interreligious tolerance, intergroup solidarity and respect for authority, should be integrated with modern ideas such as gender equality, accountability, fairness and the rule of law. If done correctly, both traditional and modern values can remain relevant, and thus can be successfully transferred, to newer generations.

The legal empowerment of *saniri* can be a significant step towards creating the broadest possible opportunity for public participation in the reconciliation process. As an institution that is familiar and trusted by the common people, it becomes an easily-accessible forum through which grievances can be expressed and resolved. With its important position in intra-*negeri* life and inter-*negeri* affairs, the *saniri* can promote positive relations between individuals, communities, and between *negeri*, surpassing cultural, ethnic, and religious barriers that may still exist. Through this, a better and more harmonious Ambon can be achieved, wherein trust is regained and a sustainable peace can be developed. Ultimately, the old cornerstone of Ambonese society *hidop orang basudara* ('living in brotherhood'), an ideal that entails that one should treat another as though they are one's own sibling, should be achievable once more.

Hidop orang basudara can be promoted by *saniri* through fostering interpersonal and intergroup communication, as well as policies and rulings. For example, a *saniri* can promote the hosting of traditional ceremonies that strengthen old bonds between *negeri* (locally called *panas pela* or *panas gandong*) or even those which establish entirely new bonds of kinship. Wisudo (2010) reports that such ceremonies have been used successfully in the past to unite *negeri* from different faiths, and have proven effective to deter conflicts between the two *negeri*'s subjects. Such events can be particularly valuable for a segmented community such as Ambon, where interactions between religious groups are rare and often discouraged (Buchanan, 2011).

5 Conclusions

It is an unfortunate reality that the influence of positive values contained in Ambon's *adat* law has systematically waned, both from the perspective of general governance and individual, day-to-day life. For the former, few policies adopted in recent years

properly respect *adat* values and instead many play a part in reducing its significance even further. One example of this is how legislators do not consider the *adat* paradigm in new laws, generating legislation that is continually at odds with how *negeri* wish to function in the field. On an individual level, one finds that within the modern zeitgeist, materialism has become the norm. Important and often sacred positions in the *negeri* are fought for not to maintain the peace or uphold *adat* values, but instead for material gain or power. All these factors negatively impact the *saniri*'s capability to fulfil its role as a harmonising medium within its community.

Reviving the *saniri* is an important step toward successful social reconstruction in post-conflict Ambon. Legal empowerment is an important means to accomplish this. Its proper implementation will empower the *saniri* and enable it to function properly in a complicated modern legal and political world. Its proper implementation is an investment for both current and future social actors, one to the benefit of those inhabitants of *negeri* who are poor or marginalised and thus more vulnerable to exploitation of their rights. This latter group is particularly prevalent in post-conflict Ambon due to the continuing social and economic fallouts of the conflict, further increasing the relevancy of their empowerment. Both existentially and in the context of reconstructing Ambon's partially-lost notion of brotherhood, the *saniri* can bridge the gap in a multicultural and polyethnic culture whose intergroup sentiments of distrust cannot be reversed, but which can be reunited.

Acknowledgment:

The authors are grateful to ⁴⁹the Managing Agency of Endowment Fund for Education (Lembaga Pengelola Dana Pendidikan, known as LPDP) ²¹for supporting this project under the Productive Research Grant (Hibah RISPRO) Year 2020. We also thank the *raja* and the heads and members of the *saniri* from the 22 *negeri* in Ambon who have supported our research as interviewees and FGD participants, and the Government of Ambon for facilitating the FGD event on 16 February 2020.

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SURAT TUGAS

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⁸¹ Kepala Lembaga Penelitian dan Pengabdian Kepada Masyarakat Universitas Katolik Soegijapranata Semarang dengan ini memberi tugas kepada :

- Nama : Dr. Yustina Trihoni Nalesti Dewi, S.H.,M.Hum
NPP. 058 1 1995 172
- Status : ⁷³ Dosen Tetap Fakultas Hukum dan Komunikasi Universitas Katolik Soegijapranata Semarang
- Tugas : Pemakalah “The Urban Law Centre’s Sixth Annual International and Comparative Urban Law Conference”
- Waktu : 10-13 Juli 2019
- Tempat : University of New South Wales Law, Sidney -Australia
- ³⁴ Lain-lain : Harap melaksanakan tugas dengan sebaik-baiknya dan penuh tanggung jawab serta memberikan laporan setelah selesai melaksanakan tugas.

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Semarang, 21 Juni 2019

Kepala LPPM



Dr. Berta Berti Retnawati, MSi

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.....
Telah melaksanakan tugas,

C Sherry
(*Ass Prof Cathleen Sherry*)
.....

FACULTY OF LAW
THE UNIVERSITY OF NEW SOUTH WALES
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Sixth Annual
**International &
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About the Conference

³⁰ The International & Comparative Urban Law Conference, sponsored by the **Fordham Urban Law Center**, **The University New South Wales (UNSW) Faculty of Law**, and **UN-Habitat**, is gathering scholars at **UNSW** for its sixth global conversation about the field of urban law. As the Conference will explore, the intersection of law and urbanism raises vital, pressing questions about urban governance, the structure and scope of local authority, and the role of law in the entire urban experience.

THE URBAN LAW CENTER THANKS

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Maya Conradi
Administrative Assistant, UNSW Law

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Faculty Director, Urban Law Center

Luisa Taveras,
Program Coordinator, Urban Law Center

Geeta Tewari
Associate Director, Urban Law Center

Dr. Cathy Sherry
Associate Professor, UNSW Law

Dr. Amelia Thorpe
Associate Professor, UNSW Law

Sixth Annual International & Comparative Urban Law Conference

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Faculty of Law, University New South Wales
UNSW Law Building, Building F8
Union Road, UNSW Kensington Campus
Sydney, NSW 2052

Thursday, July 11th

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9:00 a.m. – 9:15 a.m.

Welcome Remarks and Acknowledgement of Country

9:15 a.m. – 10:15 a.m. **Plenary I | Public Space**

Location: Law School Common Room, Level 2, Law Building
Moderator: Nestor Davidson, Fordham Law School

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1. **Thomas Coggin**, *Judicial Imaginations of Everyday Space: A Hohfeldian Critique of Spatial Relationships in US Jurisprudence*
2. **Laura Crommelin**, *The Production of Public Space and Infrastructure in Sydney: What Role do Voluntary Planning Agreements Play, and What are the Implications for Equity and Transparency?*

Fifteen-Minute Break 6

10:30 a.m. – 12:00 p.m. **Plenary II | Lodging, Strata, and Collective Homeownership**

Location: Law School Common Room, Level 2, Law Building
Moderator: Cathy Sherry, UNSW Law

1. **Chris Martin**, *Regulating Airbnb and Short-Term Letting: An International Review*
2. **Nicole Johnston**, *Regulating the Construction Quality of Residential Strata Schemes: An Australian Perspective*
3. **Komal Vaidya**, *Collective Homeownership as a Response to Discriminatory Risk Assessment and Valuation in Minority Communities*

Lunch

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12:00 p.m. – 1:00 p.m.

Law School Common Room, Level 2, Law Building

1:00 p.m. – 2:30 p.m.

Breakout I**(A) Belonging and Displacement in Cities**

Location: Law School Common Room, Level 2, Law Building
Moderator: Steven Nelson, University of Memphis Law

1. **Nahid Rabbi**, *Urban Development-induced Forced Eviction: Rule by Law or a State Crime?*
2. **Badrinath Rao**, *Land, Law, and State-Sponsored Immiseration: Evidence from Bengaluru, India*
3. **Marc Roark**, *Comparing Urban Squatters: Resilience, Territoriality, and the State*

(B) The Local and Constitutional Law

Location: Room 203, Level 2, Law Building
Moderator: Bronwen Morgan, UNSW Law

1. **Nestor Davidson**, *City Charters as Local Constitutions*
2. **Na Fei**, *Local Governments Framing the U.S. Constitution*
3. **Richard Kaplan**, *When Cities Compete for Employers: Tax Policy and Amazon's Search for a Second Headquarters*

Fifteen Minute Break

2:45 p.m. – 3:45 p.m.

Plenary III | Urban Environments

Location: Law School Common Room, Level 2, Law Building
Moderator: Aviv Gaon, Ben Gurion University of the Negev

1. **Olivia Barr**, *The Tank Stream*
2. **Cristy Clark & John Page**, *Detroit and the Lawful Forest*

Fifteen-Minute Break

4:00 p.m. – 5:30 p.m. **Plenary IV | Social Movements in the City**

Location: Law School Common Room, Level 2, Law Building

Moderator: Richard Kaplan, University of Illinois Law School

1. **Gabriel Mantelli & Julia de Moraes Almeida**, *From a Critical Urban Law to an Insurgent Right to the City: Exploring Resistance Cases in São Paulo, Brazil*
2. **Bronwen Morgan and Amelia Thorpe**, *Urban Law and Translocal Politics: Reimagining Enterprise, Ownership and Democracy in the City*
3. **Glenn Patmore**, *The First Amendment and Social Movements – Demonstration by Occupation in a Democracy*

Conference Dinner

7:00 p.m.

Coogee Pavilion – Ground Floor

169 Dolphin Street, Coogee

(Building with the dome on the north end of Coogee Beach)

Friday, July 12th

9:15 a.m. – 10:45 a.m. **Plenary V | Urban Agriculture and Urban Area Management**

Location: Law School Common Room, Level 2, Law Building

Moderator: **Olivia Barr**, Melbourne Law School

1. **Linda Corkery**, *Legal Frameworks for Urban Agriculture: a Sydney Case Study*
2. **Oscar Sang & Hillary Barchok**, *The New Face of Urban Area Management in Kenya*
3. **Cathy Sherry**, *Learning from the Dirt: University Food Gardens as Teaching Tools*

Fifteen-Minute Break

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11:00 a.m. – 12:30 p.m. **Breakout II**

(A) Urban Mobility

Location: Law School Common Room, Level 2, Law Building

Moderator: **Thomas Coggin**, University of the Witwatersrand

1. **Guy Seidman & Aviv Gaon**, *Will New Technologies Change the Relations between Town and Car?*
2. **Valentina Montoya Robledo**, *"One puts up with transport as it is": Unionized Domestic Workers crossing Medellín*
3. **Visakha Phusamruat**, *The Unimagined Privacy on the Roads of Bangkok*

(B) Law and Urban Governance

Location: Room 203, Level 2, Law Building

Moderator: **Laura Crommelin**, UNSW Law

1. **Rajesh Kumar**, *Urban Local Governance in India: Organization, Challenges and Prospects*
2. **Steven Nelson & Lajuan Gray-Sylvester**, *School Funding Inequities and the Myth of Failing Urban Schools*
3. **Margarita Vladimirova**, *Application of ADR in Disputes Arising from Urbanization*

Lunch

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12:30 p.m. – 1:30 p.m.

Law School Common Room, Level 2, Law Building

1:30 p.m. – 2:30 p.m. **Breakout III**

(A) Housing and the Built Environment

Location: Law School Common Room, Level 2, Law Building
Moderator: Marc Roark, Southern University Law

1. **Papon Dev & Sahjabin Kabir**, *Affordable Housing Provision in Global South: A Comparative Analysis between Global North and Global South*
2. **Robert Sroka**, *Two Models for Indigenous Land Development Outside of Vancouver, British Columbia*

(B) Conflict and the Legal Narrative of the City

Location: Room 203, Level 2, Law Building
Moderator: Amelia Thorpe, UNSW Law

1. **Silvina Alonso-Grosso**, *"To invent dwellers by creating new abodes": The sanitary legislation for the City of Buenos Aires during the last military dictatorship, 1976-1983*
2. **Yustina Trihoni Nalesti Dewi**, *The Legal Empowerment of Saniri (Ambonese Customary Institution) to Promote Urban Social Reconstruction in Post-Conflict Ambon*

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Fifteen Minute Break

2:45 p.m. – 4:15 p.m. **Plenary VI | Immigration, Eviction, and the City**

Location: Law School Common Room, Level 2, Law Building
Moderator: Cristy Clark, Southern Cross University

1. **Tess Heirwegh**, *Belgian Local Authorities and their Reluctant Attitude Towards Implementing Human Rights in Conflicts Concerning Travelers' Evictions – A Case Study Analysis*
2. **Joelle Sanpetchuda Krutkrua**, *Sanctuary Cities and the Federal Immigration*

Enforcement; Comparative Analysis with the Case Study of Immigration Leniency in the Border Provinces of Thailand

3. **Kate McCarthy**, *Interaction of the "Right to Rent" and Section 17, Children Act 1989: Defining a "Child in Need," Provision of Accommodation, and the Properties of Immigration in English Law*

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4:15 p.m.

Closing Remarks

4:30 p.m.

Closing Reception

Location: Law School Common Room, Level 2, Law Building

About the Urban Law Center at Fordham Law School

Located in New York City, U.S.A., the Urban Law Center at Fordham Law School is committed to understanding and shaping the role of law and legal systems in contemporary urbanism, advancing the scholarship, pedagogy, and practice of urban law, and affecting the most pressing issues facing the world's metropolitan areas. Law is central to almost every aspect of the life of 21st-century cities, influencing critical issues as diverse as the structure of local governance, the regulation of the built environment, and social justice in the urban context. In turn, the complexity, density and diversity of urban life shape the law. A majority of the world's population is living in urban environments for the first time in history. Through its innovative programs and initiatives, and in collaboration with interdisciplinary partners, the Urban Law Center aims to be a premier resource for exploring and elevating the role of law amidst the myriad conditions that face the global urban commons.

For further details about the Urban Law Center, please visit:

www.urbanlawcenter.org

Contact: Geeta Tewari

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About the University of New South Wales Faculty of Law

UNSW Law is a top-ranking Law School and a global leader in legal education and research, having set the pace in Australia for more than 40 years. The pre-eminence of our teaching, research excellence and our outstanding student support are the characteristics that continue to attract the most talented teachers, researchers and students from Australia and internationally. UNSW's Law School ranked 14th in the 2019 QS World University Rankings, and 13th position in the Employer Reputation category of the Rankings. In research excellence, UNSW received an ERA rating of 5, the highest possible score, in the most recent round of rankings. Our research is interdisciplinary, collaborative and leads to real change in public policy and the law. Grounded in black-letter skills and inspired by principles of justice, we study law in action and make a difference in this world.

For further details about UNSW Law, please visit:

www.law.unsw.edu.au/

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Participant Biographies



²³ **Julia de Moraes Almeida** - Postgraduate student in Criminology at the Law School of University of São Paulo (USP). Law degree by the ²³ University of São Paulo (USP), with exchange period at the Université Paris 1 -

Panthéon-Sorbonne. Attends the Architecture and Urban College of University of São Paulo (FAUUSP) also as post-graduate student with a co-advisor in the field. She has experience in the area of Criminal Law, Politics and Rights to the City. As an undergraduate student, she participated in research activities, especially in the Brazilian Institute of Criminal Sciences (IBCCRIM) and the Group of Dialogue University-Jail-Community (GDUCC). Now, as a researcher in São Paulo, acts in the areas of Criminology, Urban Law and popular culture. Associated with the Brazilian Institute of Criminal Sciences (IBCCRIM), the Latin American Studies Association (LASA), the Order of Lawyers of Brazil ³³ (OAB / SP) and the International Research Group on Law and Urban Space (IRGLUS). Also integrates the international research networks of the University of Pittsburgh (The Center for Latin American Studies - CLAS, USA). She is national coordinator of the Brazilian Decolonial Network. She is coordinator of NEF USP - Feminine Expression Center. She was a student of Partenariat International Triangulaire Program d' Enseignement Supérieur (PITES), partnership FDUSP - Université de Lyon. She holds the position of Technical in Environmental Compensation Board in Green and Environment Secretariat of the São Paulo City Hall and works as a monitor of the Lato Sensu Postgraduate Program of Getulio Vargas Foundation (FGVLAW) in the field of Real Estate Law.



Dr. Hillary Kipngeno Barchok is the Deputy Governor of the County Government of Bomet in Kenya. He is a holder of a PhD in Curriculum Development from Moi University, Kenya and a former Dean, Faculty of Education and Resources

Development at Chuka University. He has a wealth of experience in the area of science education having taught at high school and at university level. Besides his roles relating to his career as an educator, Dr. Barchok has been involved in ³⁵ empowering the community by participating and organizing activities that promote entrepreneurship skills among the youth and the vulnerable in the society. In his position as Deputy Governor, he has directly participated in the broader review of the urban legal framework in Kenya and has spearheaded negotiations with development partners on the improvement of the urban environment in Bomet.



²⁵ **Olivia Barr** is a Senior Lecturer at Melbourne Law School, University of Melbourne. She has worked as a government ²⁵ solicitor, in law reform, and for the United Nations Permanent Forum on Indigenous Issues. Olivia writes about the

unsettled place of law in Australia by engaging with geography, history, architecture and contemporary public art practices. She is currently working on a book called *Legal Place?* which argues for greater attention to the place-making practices of law. This follows on from her earlier book, ²⁵ *A Jurisprudence of Movement: Common Law, Walking, Unsettling Place* (Routledge 2016).



3 **Cristy Clark** is a Lecturer at the Southern Cross University School of Law and Justice where she teaches Human Rights, Competition and Consumer Law, and Equity. **24**

Her research focuses on the intersection of human rights, environmental justice and neoliberalism, and on issues of legal geography and the commons. Her work has been published in leading journals, including the Human Rights Law Review, UNSW Law Journal and Ecology Law Quarterly. **5** Cristy completed her BA/LLB at the Australian National University and did her honours research in comparative constitutional law, with a focus on the appropriate scope of the implied freedom of political communication in Australia. After graduating, Cristy worked for a year as an Environment and Planning Law solicitor at Freehills, **5** before returning to university to complete a Masters in International Social Development at the University of New South Wales. Her masters research focused on the human rights to food and water, and this led her into a PhD.



27 **Thomas Coggin** Thomas Coggin is a Senior Lecturer at the University of the Witwatersrand, Johannesburg. He holds an SJD from Fordham University, and is a fellow at the Urban Law Center. His

research interests are in the fields of property law and critical legal geography. He is a global coordinator of the International Research Group on Law & Urban Space (IRGLUS), and has been a member of numerous policy groups convened through UN Habitat. His current research interests include a book project that reads Wesley Hohfeld through a spatial lens with a view towards unpacking alternative, non-property legal entitlements in everyday space, and he is organizing a workshop in Johannesburg in

November 2018 which looks at the interplay between property legal systems and informal work in the urban and spatial environment.



Linda Fritz Corkery is a Professor at UNSW.

Through the wide-angle lens of landscape architecture, my research and teaching are broadly focused on people and place. I examine how the planning and design of urban open spaces and parklands support and contribute to the resilience of ecological systems and human health. An understanding of landscape is essential to building resilient 21st century cities because every aspect of the city is grounded in a landscape and its systems. That is the starting point for how and where cities grow and support the activities of their inhabitants. I research the interactions of human and natural systems and apply those findings to the design of public parks and other urban greenspaces to balance environmental and human needs in a sustainable way. The more we understand the fundamental importance of human connections to nature, the more effectively we can share that knowledge with our students, other built environment professionals, and the general public. Landscape architecture addresses quality of life issues ensuring that the landscape functions well to support healthy urban living.



12 **Laura Crommelin** is a Research Lecturer at the City Futures Research Centre, working on projects related to urban and housing policy, and

teaches planning law in the Faculty of Built Environment's City Planning program. Laura's research interests cover a range of trends and issues in post-industrial cities, including urban renewal, urban governance, digital disruptions (e.g. Airbnb),

place branding, and DIY urban revitalisation practices. Laura was the 2012-2013 Fulbright NSW Scholar, spending 8 months as a visiting researcher at the University of Michigan. She holds a PhD in urban planning from UNSW, an M.Litt in US Studies from the University of Sydney and a BA/LLB (Hons) from the University of Melbourne.



Nestor Davidson joined Fordham in 2011 and was named to the Albert A. Walsh Chair in Real Estate, Land Use and Property Law in 2017. Professor Davidson has published widely in the fields of property theory, urban law, and affordable housing law and policy. Professor Davidson earned his AB from

Harvard College and his JD from Columbia Law School. After law school, he clerked for Judge David S. Tatel of the United States Court of Appeals for the District of Columbia Circuit and Justice David H. Souter of the Supreme Court of the United States. Professor Davidson practiced with the firm of Latham and Watkins, focusing on commercial real estate and affordable housing, and served as Special Counsel and Principal Deputy General Counsel at the U.S. Department of Housing and Urban Development. His teaching and scholarship focus on property, land use, local government law, transactional lawyering in the public-private context, and affordable housing law and policy. In 2012, he founded the Urban Law Center, which focuses broadly on the intersection of law and urban phenomena in the United States and globally.



Papon Kumar Dev has more than eight years of professional experience in Asia, Europe and Africa with universities (Technical University Berlin, Khulna University etc.), consulting firms (Council for Asian

Liberal and Democrats, IFC- World Bank etc.), national and international NGOs (Save the Children, Global2030 e.V. etc.), research organizations (Wetland Resource Development Society, Social Activities for Environment, etc.) and public institutions (Khulna City Corporation, Berlin Senate Department for Urban Development and Housing etc.) with completion of his M.Sc. on Urban Development from TU Berlin Campus El Gouna and B.Sc. on Urban & Rural Planning from Khulna University, Bangladesh. He has worked in different urban domains like urban climatology, urban sociology, urban ecology, urban resilience, urban agriculture with a specialization in environmental and social studies. He has numbers of publications in the field of climate change adaptation, agriculture, transport planning, urban governance, solid waste management etc. Presently he is also working as "Team Leader" of the project- Urbang5 (Dhaka as Child Friendly City) funded by Bernard Van Leer Foundation.



Yustina Trihoni Nalesti Dewi graduated from Law Faculty of Gajah Mada University, Indonesia. She currently is a senior lecturer and the Head of The Center for

Urban Studies of Soegijapranata Catholic University, Indonesia. She specializes in international law, humanitarian and human rights law, and conflict reconciliation. She has published 4 books, many articles, and other works. She was invited as a visiting scholar at Flinders Law School,

Adelaide, Australia (2010, 2013 and 2019) and as a guest researcher at Norwegian Center for Human Rights, Oslo University, Norway in 2009. Dr. Dewi has been involved in multiple research projects on social conflict, reconciliation and reparation, and frequently works together with the International Committee of the Red Cross (ICRC) in disseminating of human rights and humanitarian law issues in the workshops, seminars, and courses for the Indonesian lecturers and public officials.



Na Fei is an S.J.D. candidate at Tulane University in Louisiana, United States. Her research explores the role of local governments in interpreting the Constitution and framing the constitutional order. She has published articles on regulatory negotiation and administrative law theory. She is licensed to practice law in both China and New York.



Aviv Gaon earned his Ph.D. in Law from Osgoode Hall Law School, Toronto Canada in 2019. Dr. Gaon is a member of IP Osgoode Center for Intellectual Property and Technology, and a 2019-2020 Fellow at The Munk School of Global Affairs and Public Policy at the University of Toronto. Dr. Gaon specializes in Intellectual Property, Law & Technology and Competition Law. Dr. Gaon earned his bachelor and master degrees in Law (LL.B & LL.M) at IDC Herzliya, and upon completion of his legal studies, joined top Israeli law firm as an associate at the Competition & Antitrust Department, where he provided legal counsel to individuals and companies with respect to a wide range of legal issues. In his academic capacities, Dr. Gaon is the Director of IDC Herzliya Experiential Programs, the Director of Harry Radzyner Law

School Honorary Program and a lecturer at Ben-Gurion University of the Negev. Dr. Gaon recent publications focus on legal implications and regulation of emerging technologies including artificial intelligence.



Tess Heirwegh is a PhD Research Fellow at the Human Rights Centre from October 2016. After finishing her studies in Law at Ghent University (Ghent, Belgium, 2015), she obtained a European Master's Degree in Human Rights and Democratisation at EIU (Venice, Italy) and Uppsala University (Uppsala, Sweden) (2016). She participates in the multi-disciplinary project 'Procedural fairness in local approaches to multicultural conflicts', which includes researchers in the fields of human rights, psychology and sociology. Her PhD research focuses on the development of local human rights approaches to prevent and address multicultural conflicts.



Nicole Johnston is a Lecturer in the Department of Finance in Deakin Business School. Nicole is a socio-legal researcher focusing on multiple aspects of multi-owned properties (strata title, condominium, apartments) including governance, conflicts of interest and legal relationships. She completed her PhD, Master of Criminology and Criminal Justice, Bachelor of Law (Honours) from Griffith University. Nicole also finished her Bachelor of Arts in Criminology and Criminal Justice/Psychology from the University of Queensland.



Sahjabin Kabir is an architect, urban designer and social researcher. Her professional career is imbued with diversified work experiences of more than seven years in different

organizations locally and internationally. She has the experience of working under direct supervision of Annisul Huq, the Mayor of Dhaka North City Corporation (DNCC). She worked with UNICEF New York as a National Consultant for monitoring and evaluation and also with UNDP on Smart City Initiation. After completion of her Master in Design Studies from Harvard University, she founded a non-profit school- Deyalkotha- for the underprivileged population living in the slums and pavements of Dhaka city. She received the grant from EMK Center Dhaka with collaboration of United States Cultural Affairs. The school has received two international awards. Under Dhaka North City Corporation she researched and designed park and children play spaces. Sahjabin worked as an Executive Director at National Association for Resource Improvement (NARI), where she led the research project by World Bank IFC on Women Small and Medium Enterprises (SME) in Bangladesh. With NARI, she was worked on the livelihood improvement of women and children in disaster prone and coastal areas. Sahjabin was an adviser to the Youth School for Social Entrepreneurs (YSSE) and Voices of Bangla in United States. Sahjabin has completed her Bachelor in Architecture (B.Arch) from Bangladesh University of Engineering and Technology and her second Master's in Governance Studies (MGS) from Dhaka University (DU).

Silvina Alonso-Grosso is a PhD candidate at Birkbeck School of Law, University of London. Her areas of research are critical urban theory and the interdisciplinary studies of law and geography. Specifically, she explores the juxtaposition of urban planning and the legal form to analyse the violence and control exerted through the built environment. Silvina has been distinguished with different awards and scholarships including the Ronnie Warrington

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Professor Richard Kaplan, the Guy Raymond Jones Chair in Law, at the University of Illinois graduated from Indiana University with highest honors and earned his law degree from Yale University. He practiced law in Houston with Baker & Botts, specializing in U.S. tax consequences of international

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Joelle Sanpetchuda Krutkrua- Prince of Songkla University



Mr. Rajesh Kumar is full time Doctoral candidate at Faculty of Law, University of Delhi, India. He is pursuing his doctoral research on the topic *"Evolution of Federalism in India with Special Reference to Financial Relations"*.

He has completed his LL.B. and LL.M. from Faculty of law, University of Delhi. He also has M.A. (Masters) in Political Science. In 2018, he participated and presented his research progress in the Summer Academy organized by Max Planck Institute for European Legal History (MPIER), Frankfurt and in Max Planck Symposium for Alumni and Early Career Researchers, Berlin, Germany. In February, 2019 he participated and gave a presentation in a workshop organized by Minerva Centre for Rule of Law under Extreme Conditions, Haifa University, Israel. His research interests are Constitutional Law, International Law, Federalism and related aspects etc.



Gabriel Antonio Silveira Mantelli - Master in Law and Development by Getulio Vargas Foundation's Sao Paulo Law School (FGV Direito SP) awarded with a Brazilian scholarship (CAPES/PROSUP

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Chris Martin is a Research Fellow at the City Futures Research Centre, where he is part of the City Housing program. Chris's research interests are in rental

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Kate McCarthy has worked in universities in both England and Australia. Her research interests include interdisciplinary work across law and history with a focus on property, both in historical context and its contestation in recent legal provisions. She is currently senior lecturer in law at the University of Chester in England.



Bronwen Morgan joined UNSW Law School in October 2012, having taught at the University of Bristol, UK for seven years as Professor of Socio-legal Studies. Prior to Bristol, I taught at the University of Oxford for six years in association with the Centre for Socio-legal Studies, and both St Hilda's College (1999-2001) and

Wadham College (2002-2005). A very long time ago, I taught at the University of Sydney Law School. I am currently Professor of Law at UNSW Law. My research has long focused on transformations of the regulatory state in both national-comparative and transnational contexts, with a particular interest in the interaction between the technocratic interstices of regulation and collective commitments to democracy, conviviality and ecological sustainability. More recently, I have focused on new and diverse economies, mostly of the kind affiliated with solidarity and the creation of a commons, and the tensions between these and recent developments in sharing or platform economies. Empirically I have most recently explored energy, food, water and new kinds of lawyers.



Alexis Alvarez Nakagawa is a doctoral researcher and associate lecturer at Birkbeck College, University of London, where he also served as Graduate Teaching Assistant. He is currently a

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Property Diversity and its Implications (Routledge, 2017). His research explores the nature of property rights in public spaces, the diversity of property, and the intersection of property, place, and the environment. Current projects include a theorization of public property in land, and a legal geography of the commons.



Visakha Phusamruat is a J.S.D. candidate at the UC Berkeley School of Law expecting to graduate in 2018. Her dissertation under the supervision of Professor Laurent Mayali will

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9 **Glenn Patmore** studied law at Monash University and Queen's University, Canada. Before coming to Melbourne Law School (MLS), Glenn was a member of the Faculty of Law at Monash University.

Glenn's research focuses on the legal regulation of democratic participation, with reference to constitutional amendment, constitutional freedoms, freedom from discrimination and workplace participation. He is the author of a large body of published work on these topics including: two monographs, six books of collected essays, numerous book chapters, and many scholarly articles. His work has been published in numerous journals including the *Melbourne University Law Review*, *Federal Law Review*, *Public Law Review*, *Comparative Labor Law and Policy Journal* and *Queen's Law Journal*. He has also contributed chapters to field-specific handbooks published by Oxford University Press and Edward Elgar.



Nahid Rabbi has completed his LL. B. (Honors) and LL. M. in International and Comparative Law from the Department of Law, University of Dhaka with first class in both the examinations. In his student life

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Mr. Rabbi started his academic career as a Lecturer of Law at Northern University Bangladesh and later on he worked as a Senior Lecturer of Law at Bangladesh University. Presently he is an Assistant Professor of Law at Eastern University and also enrolled in the Research Intensive Master of Laws program at the Peter A. Allard School of Law, **14** University of British Columbia in Vancouver, Canada. Apart from being an academic, he is also an Advocate of the Supreme Court of Bangladesh.

Mr. Rabbi has to his credit several research articles published in reputed law journals. He participated and presented papers in different conferences and workshops, both home and abroad. Earlier in 2015, based on his paper he was awarded as a scholar by the International Bar Association. And in 2017, he received the WIPO-WTO Fellowship for his participation at the WIPO-WTO Colloquium for IP Teachers and Researchers in Asia.



3 **Badrinath Rao** is an Associate Professor of Sociology and Asian Studies in the Department of Liberal Studies at Kettering University. He is also a licensed attorney in Michigan, United States. Dr. Rao obtained his JD

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Guy Seidman has been on faculty at the Radzyner School of Law since 1999. A graduate of Tel-Aviv University (LL.B., 1989; LL.M. 1995) and Northwestern University of Chicago, Illinois (LL.M., 1997, S.J.D. 1999). Prof. Seidman has visited and taught at

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public-private divide” (in: Gary Schaub, Jr., Ryan Kelty & Nikolas Gardner eds. *Controlling the Corporate Warrior* (Rowman & Littlefield, 2016) and – “Public and International Procurement: a Comparative Approach” (co-authored with Eran Ifargan, published in: “The Transnational Law of Public Contracts” Mathias Audit & Stephan Schill, eds. (Bruylant, Brussels, 2016)).



Cathy Sherry is a leading Australian expert on strata and community title. She provides advice to government and the private sector on the complexities of collectively-owned

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Robert Sroka is a PhD Candidate in Sport Management at the University of Michigan. He holds a Juris Doctor and BA (Hon.) from the University of British Columbia, a LLM from Michigan Law School, and is a lawyer called in British Columbia and Alberta. His law practice centers on local

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Amelia Thorpe is Associate Professor in the Faculty of Law at UNSW, where she teaches and researches in planning and environmental law. Amelia studied Architecture and City Policy before Law, and worked for several years in the

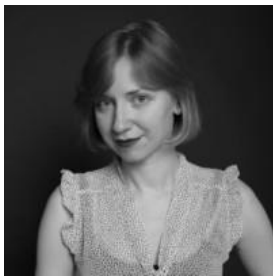
planning, housing and transport departments for the state government in Western Australia. Her research centres on urban governance, ranging from small scale, citizen-led initiatives to institutional frameworks for decision-making in planning and development. Prior to joining UNSW

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in 2012, Amelia was a director at the Environmental Defenders Office, Australia's largest and oldest public interest environmental law centre. Amelia studied law at the University of Oxford (BA(Hons)), Harvard Law School (LLM) and ANU (PhD), and is a member of the New York Bar.



Komal Vaidya is an Assistant Professor of Law and the Director of the Clinic for Law and Entrepreneurship at Villanova University's Charles Widger School of Law. Her teaching and

research focus on transactional approaches to shifting the urban political economy and challenging ways in which legal systems perpetuate inequality in marginalized communities. Specifically, students in Professor Vaidya's clinic represent community enterprises on a wide range of nonprofit, small business, and other transactional matters. Her research interests focus on collective ownership, wealth inequality, and progressive property rights. Professor Vaidya has a background in community development law and community lawyering. She received her undergraduate degree from the University of Illinois and juris doctorate from the University of Miami School of Law.



47
Margarita Vladimirova is a Lawyer, Associate Professor with a demonstrated history of working in the higher education industry and private arbitration. Skilled in Legal Writing, Trials,

Licensing, Corporate Governance, and International Law. Strong education professional with a Ph.D. in Law.



The Legal Empowerment of Saniri to Promote Urban Social Reconstruction in Post-Conflict Ambon

Yustina Trihoni Nalesti Dewi

Character: the City of Ambon


- ▶ Port town
 - ▶ Surrounding by coastal area
 - ▶ Once inhabited only by locals from Moluccan tribes
 - ▶ quickly flourished to trade with neighbouring islands
 - ▶ developed into a significant port town and centre of commerce in the region
- ▶ Migrant town that is a multicultural, multi-ethnic, and multi-religious in nature
 - ▶ population grew with arrivals from various ethnicities, such as the Buton, Bugis, Makassar, and Javanese, and even migrants from distant lands such as China, Arabic and India.
- ▶ These identities melded together forming a cross-cutting affiliation
 - ▶ developed a new pan-Ambonese identity in addition to maintaining their own group identities

Administrative Governance:

- ▶ The arrival of European colonial powers in 1513 changed the power dynamic in Ambon
 - ▶ Came for clove and some other spices as prized commodity for the European traders
 - ▶ Became an administrative district led by a Mayor governed by colonial regime
- ▶ By the time of the Indonesian independence in 1945
 - ▶ become the largest and most prosperous town in eastern Indonesia


The Harmony of Social Order

- Maintained by Adat, the customary and Mollucan traditional cultures, contains a sacred component and is transmitted from generation to generation through oral tradition
- Governed by adat law, the unwritten norms of adat, encapsulates public norms, such as politics and administration, as well as social norms, such as morality, spirituality, and group identity. One of the strengths of adat is its prevalence in society and how its relevance is directly rooted in the morals and history of the people
- Negeri, a small socio-political entity with defined members, territory, social norms, moral norms, identity and culture led by a sophisticated governmental system. It led by raja as its head of state, have the authority and capacity to independently regulate state affairs in the interest of its subjects based on their own initiatives and traditional rights
- Saniri, the council of representatives organ of a negeri. It is to ensure whether custom and adat laws are implemented by Raja



The harmony of social order has weakened during the Soeharto Era

- adat was more as a romanticised expression of tales and tradition.
- significant changes to the legal status of adat nationwide by The Act No.5 of 1979 on Village Governments that is a strictly centralised and authoritarian rule over Indonesia,
- decreed a uniformization of all local (village) governments in accordance with national government templates
- the influence of adat as a mechanism capable of maintaining social harmony and conflict resolution gradually diminished


- 
- The policy of the Soeharto Regime resulted in social disintegration and increased in-out group feeling among the different ethnicities and religious groups
 - negeri gradually lost their capacity to govern their territory, and subjects according to long-standing adat law and customs
 - The Saniri lost their close ties to the population they represented; as a result, the capacity of saniri to intervene in times of crisis using the cultural wisdom and experience which had been cultivated for centuries became stifled.
 - One of the obvious result is the weakened Saniri that led to the bloody conflict of 1999-2002, which killed at least 5.000 and displaced hundreds of thousands more.

The Conflict And Its Effects on Ambonese Urban Demographies

- an influx of settlers to the city of Ambon
- Comparing numbers between 2000 (just after the start of the conflict) and 2014 (after the conflict) for an urban area of 377 km², population density almost doubled from 206.210 to 395.429.
- Ambon's topography, which consists of only 17% lowlands versus 73% mountainous terrain, proves ill-suited for this population explosion.
- The uncontrolled expansion of urban living zones to surrounding areas as a result of the city's unsustainable population density increases the risk of ecological hazards such as floods and landslides.

Residential Segregation

- Mass migration and displacement have left Ambon greatly segregated and segmented based on religious affiliation.
- Relocation policies aimed at displaced persons or refugees inadvertently also exaggerated socio-spatial segregation, as government relocation plans tended to assign refugees to areas with a matching religious belief.
 - When the conflict had just ended, such a policy was defensible as tensions were still high and the situation had yet to normalise.
 - However, in the long term, this policy brought about radical changes to the ecosystem, transforming the city into a 'segregated plurality'



Disputes about ownership and rights to land

► land certification

- Due to the conflict, large numbers of the population reside on territories without having a certified right to inhabit or use the land in question.
- Conversely, problems can also arise for holders of deeds whose land has factually been occupied by other families or groups. In such cases, difficult problems can arise with regards to the enforcement of civil rights of rightful owners of land
- As with competing land claims, such issues perpetually form potential triggers to future conflict if not addressed and resolved properly

Government Attempts

- ▶ Since the reformation, the national government has normatively been much more supportive of decentralisation and regional autonomy, which provides opportunities for traditional peoples such as those in Ambon to restore cultural values and adat.
- ▶ This new paradigm of decentralisation dispersed law-making competence from Jakarta to the regional level.
- ▶ As consequence was the diversification of regional laws in Indonesia, and state and regional law often worked together to legalise and empower traditional (adat) laws and rights
- ▶ Unfortunately, this decentralist policy has not yet reached the point as to where Ambon can fully reinstate the old adat law-based model of governance. The authoritarian and centralist system has left too significant an impact in Ambon for regional autonomy to re-establish itself naturally.
- ▶ Why it is difficult to revitalized themselves



Legal Empowerment Saniri

- ▶ Meaning: a systematic change which promotes the recognition and capacity building of saniri to use (adat) law and its traditional position of authority to enforce its rights and interests as a facilitator of social change.
- ▶ The 'systemic' aspect of legal empowerment contains both a top-down (from the State to the people) and bottom-up (the people's use of the law) dimension. Translated to the situation in Ambon, this has to reflect the Indonesian State's willingness to ensure the existence and rights of saniri through formal recognition in the form of a firm legal basis (both at the national and regional levels). The final result would be a legally plural system which incorporates both state law and adat law, and if appropriate even other sources of norms such as religion and custom.

legal empowerment has four components

- Rights awareness : The rights of saniri can be promoted firstly through the saniri members' own awareness of their rights and how these rights are protected legally – focus should be placed on increasing legal literacy.
- Rights enhancement can be supported through a more inclusive law-making process, which in turn protects the interests of the saniri.
- Rights enablement can take the form of capacity enhancement, such as through training and legal assistance programmes, that can educate saniri members into fulfilling a paralegal role.
- Through this, saniri can better contribute as a medium for peaceful dispute resolution (rights enforcement). Proper implementation of these components is crucial in particular with regards to saniri bodies as many of its members achieve their position as part of a genealogical or hereditary right (such as soa representatives). For saniri to be able to fulfil their functions efficiently, therefore, members should possess both the necessary competences (e.g. knowledge of law, adat, conciliation, dispute settlement) and soft skills (e.g. interpersonal communication, public speaking, empathy, social psychology).



The Function of SANIRI in URBAN SOCIAL RECONSTRUCTION

- ▶ Arti urban social reconstruction
- ▶ Apa yang perlu dilakukan
- ▶ Saniri yg dituntun dan diatur oleh adat akan berkontribusi:
 - ▶ Mengedukasi sistem keyakinan dan sistem pengetahuan adat untuk mempromosikan spirit Hidup Orang Basudara
 - ▶ Pusat pergerakan dalam pusaran arus korelasi eksistensial dengan konstruksi kekerabatan adat antar-individu, antar-marga, maupun antar-negeri
 - ▶ Pusat pengendalian, penegakan, pembaharuan dan pemulihan hukum adat

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