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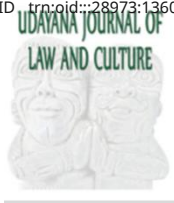
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Legal Empowering the *Saniri*: A Pillar of Harmony in Post-Conflict Ambon

Yustina Trihoni Nalesti Dewi¹, Andreas Pandiangan², Jonathan Kwik³,
Tonny D. Pariela⁴, Aholiab Watloly⁵, Abidin Wakano⁶, Andreas Ryan
Sanjaya⁷

^{1,2,7} Faculty of Law and Communication, Soegijapranata Catholic University, Semarang, Indonesia

³ Amsterdam Law School, the University of Amsterdam, Amsterdam, the Netherlands

^{4,5} Faculty of Social and Political Science, Pattimura University, Ambon, Indonesia

⁶ Ambon Reconciliation and Mediation Center, Ambon Islamic State University, Ambon, Indonesia

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Author E-mail

¹Correspondence:

trihoni@unika.ac.id

² pandiangan@unika.ac.id

³ h.c.j.kwik@uva.nl

⁴ tonnydpariela@gmail.com

⁵ Aholiabwatloly@ymail.com

⁶ abidin90221@yahoo.com

⁷ ryansanjaya@unika.ac.id

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Abstract

Due to the lasting impact of the previous authoritarian system, decentralization has yet to reinstate Ambon's customary law-based governance model fully. However, it was formally acknowledged by the national and Ambon City's regional legislation. This article examines the need to empower Saniri, a quasi-governmental body in a traditional village with close ties to underprivileged groups, in conflict resolution services in Ambon. Data was collected through a literature study of historical sources from the nineteenth century and then analyzed based on qualitative field research. Extensive interviews were conducted based on snowball and purposive samplings. Results from the field study were subsequently discovered and deliberated through Focus Group Discussions. It suggests that the current political landscape is permissive to empower Saniri in conflict resolution mechanisms. Therefore, the legal and political efforts must be sufficient to accommodate Saniri's character and support its contribution to post-conflict reconciliation. More attention is required to empower Saniri legally and politically in a manner consistent with its nature to maximize its role as a harmonizing medium.

1. INTRODUCTION

Adat law (customary law) and customs are vital in maintaining social harmony in Ambon, Maluku. It is transmitted through oral tradition and includes sacred elements. Ambonese people give significant persuasive power to *Adat* law, and it serves as a source of social and moral norms. Sometimes, *Adat* law carries more authority and adherence than written state laws. The land rights dispute within the Woirata tribe on Kisar Island,

Maluku, is resolved through two channels: the customary institution at the *Soa* (clan) level and the customary institution at the village level. The *Woirata* indigenous community prefers using customary law rather than the court system.¹ *Adat* in Ambon is primarily expressed through *Negeri*, small socio-political entities with defined membership, territory, identity, culture, and social and moral norms, led by a sophisticated governmental system through legislation. This ordinance was an effort by the Dutch colonial powers to regulate governance at the village level. The Raja led *Negeri* as its head of state. One of the key governing bodies in a *Negeri* is the *Saniri*, which serves as the council of representatives. The *Saniri*'s close connection with the population enhances their emotional and intellectual proximity, enabling them to maintain stability and cohesion within the *Negeri*. The *Saniri* exemplifies how representation and social engagement hold significant value in the daily interactions of a *Negeri*.

The legal status of *Adat* in Indonesia underwent major changes after independence.² *Saniri*, which held important roles as indigenous institutions, faced systematic suppression starting from the 1950s. This suppression peaked with the passing of Law No. 5 of 1979 concerning Village Government (Law 5/1979),³ consequently, *Negeri* in Ambon lost their ability to govern their territories and people based on long-standing *Adat* law and customs.⁴ The Soeharto Regime's centralized and top-down nature and inability to accommodate group differences in Ambon led to social disintegration and heightened feelings of in-group and out-group among different ethnic and religious communities that eventually resulted in the violent conflict of 1999-2002.⁵

The fall of Soeharto and the transition to the Reformation Era in 1998 reversed Jakarta's stance on local governance and *Adat* law. Since the reformation, the national government has normatively been much more supportive of decentralization and regional autonomy,⁶ providing opportunities for traditional peoples, such as Ambon, to restore cultural

¹ Ruben Lewedalu, Jenny Kristiana Matuankotta, and Novyta Uktolseja, "Penyelesaian Sengketa Hak Atas Tanah Marga Masyarakat Hukum Adat Suku *Woirata* di Pulau Kisar Kabupaten Maluku Barat Daya," *TATOHI: Jurnal Ilmu Hukum* 1, no. 5 (2021): 435-436.

² Sukri Tamma and Timo Duile, "Indigeneity and the State in Indonesia: The Local Turn in the Dialectic of Recognition," *Journal of Current Southeast Asian Affairs* 39, no. 2 (2020): 271-272.

³ *Ibid.*, 280.

⁴ Ridwan, Khudzaifah Dimiyati, and Aidul Fitriciada Azhari, "Perkembangan dan Eksistensi Hukum *Adat*: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi," *Jurnal Jurisprudence* 6, no. 2 (2017): 106.

⁵ Kirsten E. Schulze, "The 'Ethnic' in Indonesia's Communal Conflicts: Violence in Ambon, Poso, and Sambas," *Ethnic and Racial Studies* 40, no. 12 (2017): 2101-2102.

⁶ Dennis Shoesmith, Nathan Franklin, and Rachmat Hidayat, "Decentralised Governance in Indonesia's Disadvantaged Regions: A Critique of the Underperforming Model of Local Governance in Eastern Indonesia," *Journal of Current Southeast Asian Affairs* 39, no. 3 (2020): 374-375.

values and *Adat* law. The immediate consequence of this new trend was the diversification of regional laws in Indonesia, and state and regional law often worked together to legalize and empower *Adat* laws and rights. The decentralization was a correction *vis-à-vis* the Soeharto Era of unification, instead emphasizing pluralism and recognition of regional differences. Ideally, in this new approach, Indonesian state law would strengthen and empower, the law that derives its existence and content from social acceptance.⁷

Unfortunately, this decentralist policy has not yet reached the point where Ambon can fully reinstate the old *Adat* law-based governance model. The authoritarian and centralist system had left too significant an impact on Ambon for regional autonomy to re-establish itself naturally. During the New Order era, there was a unification of village governance, similar to villages in Java. However, Ambon had its unique and traditional village governance system, where the village head was called "*raja*" and held the position by hereditary succession, not by choice. Initially, the *raja* had high authority and was respected and obeyed by the villagers. However, as the uniform village governance system was enforced, little by little, the *raja* began to lose his authority. When traditional village autonomy in Ambon was restored to its origins, it took work to regain the *raja*'s authority as it used to be. While the national government now legally acknowledges the existence of *Adat* entities such as *Negeri* and some of its organs such as the *Saniri* with Law No. 6 of 2014 concerning Village (Law 6/2014), the real revival of these entities and organs has not yet been achieved.⁸

Several articles related to this topic can be mentioned, including those written by Lars Waldorf which explores the concept of legal empowerment and its capacity to tackle horizontal inequalities in post-conflict environments. Earlier research on *Saniri* in Maluku by Lessy has emphasized its function in articulating community aspirations and impacting development initiatives.⁹ However, Frost underlined that there is a requirement for additional investigation to delve into the potential for societal transformation and the impact of regional autonomy on *Saniri*.¹⁰ Furthermore, it is essential to explore the presence, effectiveness, and

⁷ Yoefanca Halim, Fricky Sudewo, and Jestin Justian, "Transformative-Participatory Legal Research Method for Harmonizing the Existence of the Living Law in Indonesia," *Jurnal Media Hukum* 26, no. 2 (2019): 148.

⁸ Sameputty and Thenu, "Revitalisasi Lembaga Adat Saniri di Kota Ambon", Interview by Yustina Trihoni Nalesti Dewi and Andreas Pandiangan, Ambon, February 5, 2020. See also Art. 1 (43) of the Law No. 23 of 2014 concerning Regional Government which confirms the recognition of customary village along with its traditional rights.

⁹ Farah Lessy, Wahab Tuanaya, and Marno Wance, "Peran Saniri Negeri Dalam Menyalurkan Aspirasi Masyarakat Terhadap Penyusunan Program Pembangunan Negeri Tial Kabupaten Maluku Tengah," *Jurnal Studi Ilmu Pemerintahan* 2, no. 1 (2021): 19.

¹⁰ Nicola Frost, "Adat in Maluku: New Value or Old Exclusions?," *Antropologi Indonesia* Special Volume, no. 74 (2014): 2.

institutional resilience of traditional management systems, including *Saniri*, within the framework of decentralization and co-management. These gaps in the existing literature underscore the necessity for more comprehensive studies on the role and potential of *Saniri* in Maluku society.

It examines legal empowerment's difficulties and potential drawbacks, specifically through initiatives involving community paralegals. Drawing insights from two legal empowerment programs in the Republic of Liberia, the article underscores the necessity for additional research and the incorporation of legal empowerment into social accountability strategies.¹¹ Meanwhile, Langer in *Horizontal Inequalities and Violent Conflict: Conceptual and Empirical Linkages* examines the concept of Horizontal Inequalities (HIs) and their connection to violent conflict. It delves into various aspects of HIs, including the difficulties in quantifying them, the categories of friction associated with HIs, and the interplay between violence dynamics and HIs. Additionally, the paper underscores the significance of comprehending group identities and perceptions in analyzing HIs and their involvement in conflict.¹² These two articles do not specifically discuss post-conflict conditions in Ambon and the traditional institution in Ambon, namely *Saniri*, as a traditional institution with a central role in post-conflict reconciliation efforts.

This paper explores the possibility of empowering the Ambonese *Saniri* institutions as mediums for conflict resolution efforts through legal empowerment. Legal empowerment is frequently discussed in the systemic transformation process by which the poor and marginalized people can use the law, the legal system, and legal services to safeguard and advance their rights and interests as citizens and economic participants.¹³ However, the subject of this article's discussion of legal empowerment is a quasi-state organization connected to marginalized populations, particularly because of the ancestor-given responsibility to uphold the rights of these communities. In the legal empowerment process, *Saniri* is expected to handle the following issues: social cohesion and conflict prevention. Horizontal inequalities, or perceived differences between culturally defined groups, can have a variety of characteristics, such as political, economic, social, or cultural standing. These elements may interact with or support one another.

A literature review of historical sources from the nineteenth century onward was used to gather data, which was then analyzed using the findings of qualitative field research. The period of the research is from

¹¹ Lars Waldorf, "Legal Empowerment and Horizontal Inequalities after Conflict," *Journal of Development Studies* 55, no. 3 (2019): 450.

¹² Arnim Langer and Frances Stewart, "Horizontal Inequalities and Violent Conflict," *Routledge Handbook of Civil Wars*, CRPD Working Paper no. 14 (2013): 2.

¹³ Lars Waldorf, "Introduction: Legal Empowerment in Transitions," *International Journal of Human Rights* 19, no. 3 (2015): 229.

January 2020 to September 2022. More recent developments were analyzed based on both writings and qualitative field research. Extensive interviews were conducted based on snowball sampling and purposive sampling, which resulted in discussions with peace activists of The Institut Tifa Damai Maluku, and important *Adat* figures such as *Raja* and members of the *Saniri* from 22 (twenty-two) *Negeri*.

The authors also conducted observations of the situation in Ambon, especially of 4 (four) *Negeris* i.e. *Negeri* of Laha, *Negeri* of Urimessing, *Negeri* of Soya, and *Negeri* of Hutumuri.¹⁴ Focus Group Discussions (FGDs) were organized in Ambon to explore the facts, clarify some findings, and deepen the understanding. The FGDs were attended by Ambonese government representatives, the heads of the 22 (twenty-two) Ambonese *Saniri*, academics of Pattimura University and Islamic Institute of Ambon, and Non-Governmental Organizations (NGOs).¹⁵

To empower *Saniri* in the conflict resolution mechanism can be done through legal empowerment is defined as 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 by improving guarantees of justice, by providing a more accessible and concrete solution to everyday issues.¹⁶ Despite all the many formulations, there is general agreement over the essential components of legal empowerment. First, it adopts a bottom-up strategy, putting the needs of the underprivileged and marginalized. Second, legal empowerment places a strong emphasis on rights, participation, and accountability as a type of rights-based development. Thirdly, it takes a practical stance toward legal pluralism, collaborating with formal, informal, and religious law. As a final point, civil society is more involved with legal empowerment than official organizations. Overall, legal empowerment can support justice sector reforms rather than replace them.¹⁷

There is no absolute consensus regarding the scope of legal empowerment in the context of post-conflict reconciliation, but it can be

¹⁴ Yustina Trihoni Nalesti Dewi, Andreas Pandiangan, Tonny D. Pariela, observation in *Negeri* of Soya, *Negeri* of Hutumuri, *Negeri* of Laha, and *Negeri* of Urimessing from 26 May 2021 until 6 June 2021.

¹⁵ Focus Group Discussions were organized in the Ambon City Government Office on 20 February 2020, 13 May 2021, and 18 September 2022.

¹⁶ Catherine Boone, "Legal Empowerment of the Poor through Property Rights Reform: Tensions and Trade-Offs of Land Registration and Titling in Sub-Saharan Africa," *Journal of Development Studies* 55, no. 3 (2019): 392.

¹⁷ Laura Goodwin and Vivek Maru, "What Do We Know about Legal Empowerment? Mapping the Evidence," *Hague Journal on the Rule of Law* 9, no. 1 (2017): 187.

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. This right to legal empowerment is derived from fundamental principles of human rights enshrined in the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. The declaration mentions that all people are born free and equal in dignity and rights.¹⁸

Legal empowerment comprises several important elements. First, achieving a deep understanding of the legal problems and their 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 that are most relevant for the poor and marginalized. Second, the active involvement of poor or marginalized 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 emphasize institutional reform and top-down policies. This element encourages the affected to become active participants, use the law to promote their own interests and become the subjects of political discussion instead of objects of policy.¹⁹ Legal empowerment employs the law and legal mechanisms as a medium to modify the balance of power by increasing the agency of individuals and groups, through the reformation of opportunities in social structures.²⁰ 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.²¹ 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. By providing chances for individuals, legal empowerment is a rights-based methodology that democratizes laws and centers people in their struggle for justice. In other words, legal empowerment returns control over the law to the people.

Legal empowerment can be implemented through a variety of means, such as education, spreading awareness, encouraging organization, and

¹⁸ Universal Declaration of Human Rights, Art.1.

¹⁹ Bakhytzhan Kurmanov and Colin Knox, "Open Government and Citizen Empowerment in Authoritarian States," *Journal of Eurasian Studies* 13, no. 2 (2022): 165.

²⁰ Boone, *op.cit.*, 394.

²¹ Anna Lise Purkey, "Justice, Reconciliation, and Ending Displacement: Legal Empowerment and Refugee Engagement in Transitional Processes," *Refugee Survey Quarterly* 35, no. 4 (2016): 24.

mediation.²² On the other hand, legal empowerment of grass-roots 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 people's civil rights or individuals' duties as state citizens.

Equity, social cohesion, and conflict prevention are three justifications for legal empowerment to address horizontal inequities following a conflict. Political, economic, social, or cultural status are just a few examples of the dimensions that might be present in horizontal inequalities, which are perceived disparities between culturally defined groups.

2. RESULT AND ANALYSIS

2.1. The Religious Conflicts in Ambon of 1999-2004 and its Impact to Social Harmony

2.1.1. The Ambon Conflict of 1999-2004

The history of the City of Ambon, the capital of the Province of Maluku in Indonesia,²³ is a long and dynamic one. Once inhabited only by local Maluku tribes from the islands of Seram, Banda, and Kei, the city flourished thanks to trade with neighboring islands and developed into a significant port town and center 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. The result was the creation of a multicultural, multiethnic, and multireligious migrant community in the city.²⁴ Despite the difference in backgrounds, the peoples of Ambon embraced their neighbors as fellow inhabitants of the same city and developed a new pan-Ambonese identity, a collective or unified identity shared by the people of Ambon despite their diverse backgrounds and group identities, 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.

The arrival of European colonial powers in 1513 changed the power dynamic in Ambon.²⁵ With its clove as a prized commodity for European

²² Imane Chaara, Jean Benoît Falisse, and Julien Moriceau, "Does Legal Aid Improve Access to Justice in 'Fragile' Settings? Evidence from Burundi," *Journal of Peace Research* 59, no. 6 (2022): 811.

²³ One of the characteristics of the Province of Maluku is its ethnicity and culture, consisting of ethnic diversity, rich history, language, arts, customary law, community unity, rituals, traditional ceremonies, cultural sites, and local wisdom that shows religious and cultural character while upholding community customs and environmental sustainability. See Law No. 13 of 2023 concerning the Province of Maluku, Art. 5 (d).

²⁴ Mohammad Hasan Ansori et al., *Segregasi, Kekerasan dan Kebijakan Rekonstruksi Pasca Konflik di Ambon*, (Jakarta Selatan: The Habibie Center, 2014), 7.

²⁵ Gerrit Knaap, "Slavery in the Dutch Colonial Empire in Southeast Asia: Seventeenth-Century Amboina Reconsidered," *Slavery and Abolition* 43, no. 3 (2022): 499.

traders, access to Ambon became highly valued by the Portuguese, English, and Dutch. In 1923, the Dutch colonial regime extended recognition of the *Negeri* through legislation of the Dutch-Indies Governor-General, 1923 to regulate governance at the village level. By 1926, Ambon had become an administrative district led by a mayor after being placed under the direct control of the Dutch Indies Governor-General. Social harmony in Ambon has long been maintained by *Adat* law, the unwritten customary laws, and norms of traditional Maluku cultures.²⁶ *Adat* in Ambon contains a sacred component transmitted from generation to generation through oral tradition. 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 norms²⁷ and often enjoys significant adherence and authority, sometimes more so than written state laws.

In Ambon, *Adat* manifests itself primarily through *Negeri*, led by the *Raja* as its head of *Negeri* who has the authority and capacity to independently regulate village affairs in the interest of their subjects based on their own initiatives and traditional rights. There are currently 22 (twenty-two) *Negeri* in Ambon.²⁸ They have autonomy in the governance and regulation of their territory and subjects.

The Indonesian independence brought about significant changes to the legal status of *Adat* nationwide. Since the 1950s, the legal position of *Saniri* as an important *Adat* law institution was systemically suppressed, culminating in the promulgation of Law 5/1979, in particular Article 3. As a result, *Negeri* in Ambon lost their capacity to govern their territory and subjects according to long-standing *Adat* law and customs.

The centralized, 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 peoples and displaced hundreds of thousands more. 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 fulfill 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

²⁶ Saidin Ernas, "Dari Konflik Ke Integrasi Sosial: Pelajaran dari Ambon-Maluku," *International Journal of Islamic Thought* 14, no. 1 (2018): 217.

²⁷ Sulastriyono and Sartika Intaning Pradhani, "Pemikiran Hukum Adat Djojodigono dan Relevansinya Kini," *Mimbar Hukum* 30, no. 3 (2018): 448.

²⁸ Ambon City Regional Regulation No. 8 of 2017 Concerning the *Negeri* (Regional Regulation of Ambon City 8/2017).

violence – they were too bureaucratic in nature and foreign to the traditional population in Ambon.²⁹

2.1.2. The Impact of Conflict on the Ambonese Community

The conflict has had profound effects on Ambon's urban conditions, in particular with regard to the city's demography. 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. Neighborhoods that previously contained a mixture of religions have for a majority turned entirely homogenous.³⁰ 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 normalize. However, in the long term, this policy radically changed the Ambonese ecosystem, transforming the city into what is sometimes termed a 'segregated plurality'. Important *Negeri* authorities³¹ confirm that currently, Ambonese neighborhoods are almost exclusively segregated based on ethnicity, religion, or both. While segregation had been an undeniable reality in the Ambon City 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 and Laha had become absolutely 100% Muslim, while the populations of the *Negeri* of Soya, Hutumuri, Ema, Rutong, Hukurila, and Leahari now consist strictly of Christians.

2.2. The Present Conflict in Ambon

After Ambon had successfully overcome the height of tensions to the point where the city's economic, social, and political landscape had stabilized 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

²⁹ Jeroen Adam, "How Ordinary Folk Became Involved in the Ambonese Conflict Understanding Private Opportunities during Communal Violence," *Bijdragen Tot de Taal-, Land- En Volkenkunde/ Journal of the Humanities and Social Sciences of Southeast Asia* 166, no. 1 (2010): 27.

³⁰ Resa Dandirwalu, "Totem Ambon Manise: Membongkar Segregasi Teritorial Berbasis Agama di Kota Ambon," *Antropologi Indonesia* 35, no. 1 (2014): 37-38.

³¹ Mewar J and Rehata, "Revitalization of Saniri in Ambon City", Interview by Yustina Trihoni Nalesti Dewi and Andreas Pandiangan, Ambon, May 17-18, 2022.

Christians. Hostility between the two groups resumed again during an incident on 11 September 2011 and the Pattimura torch parade on 15 May 2012, the latter of which resulted in several wounded civilians and houses burnt.³² Post-conflict healing was slow and became increasingly delayed due to these incidents.

Tensions sometimes also arise concerning land certification. Due to the conflict, many refugees were reluctant to return to their previous settlements and reside on territories without having a certified right to inhabit or use the land. In such cases, problems can arise with enforcing the civil rights of rightful landowners. Following the Maluku conflict, the government resettled *Bethabara* congregation refugees from the Muslim area of Batumerah to the Christian neighborhood of Kayu Tiga, *Negeri Soya*, in 2003. However, there have been disputes because some refugees are still dealing with the problem of land ownership documents in Ambon District Court as described in its ruling on a Case No. 32/PDT.G/2018/PN AMB.³³ As with competing land claims, such issues perpetually form potential triggers to future conflict if not addressed and appropriately resolved.

Disputes also arise between Ambonese clans about who has the right to govern a traditional village based on heredity (*mata-rumah parentah*), the clan of the line, and the descendant of the king or village head. At the Batumerah, there are two selected clans. It is hereditary, surnamed Hatala and Nurlete. These two clans were once kings a long time ago. The Hatala assert that from 1575, their forefathers have ruled the Batumerah, while in contrast, the Nurlete family asserts that their ancestors long presided over the Batumerah. The case was later settled before the Ambon State Administrative Court. The court in its ruling decided that Nurlete was prevailed.³⁴ Despite the court has decided the matter, the tension, however, is remaining today. Another legal case was also about *mata-rumah parentah* in Passo between the Sarimanela and Simauw clans regarding whose clans had the authority to rule in the *Negeri*. The Ambon District Court presided over the legal case brought by Matarumah Simauw against Matarumah Sarimanela and the Passo Negeri Government.³⁵

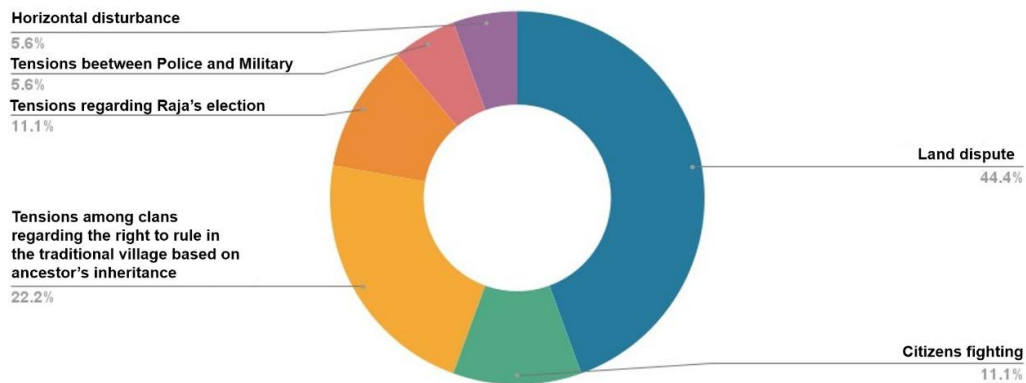
³² Poltak Partogi Nainggolan, "Mengapa Konflik Berulang Terjadi di Kota Ambon? Tinjauan Demografi dan Keamanan Atas Konflik Horizontal Perkotaan," *Politica* 3, no. 2 (2012): 168.

³³ Ambon District Court, Decision No. 32/PDT.G/2018/PN AMB, 1-2.

³⁴ Ambon State Administrative Court, Decision No. 12/G/2020/PTUN.ABN, 1-3.

³⁵ Ambon District Court, Decision No. 72/Pdt.G/2022/PN Ambon, 1-2.

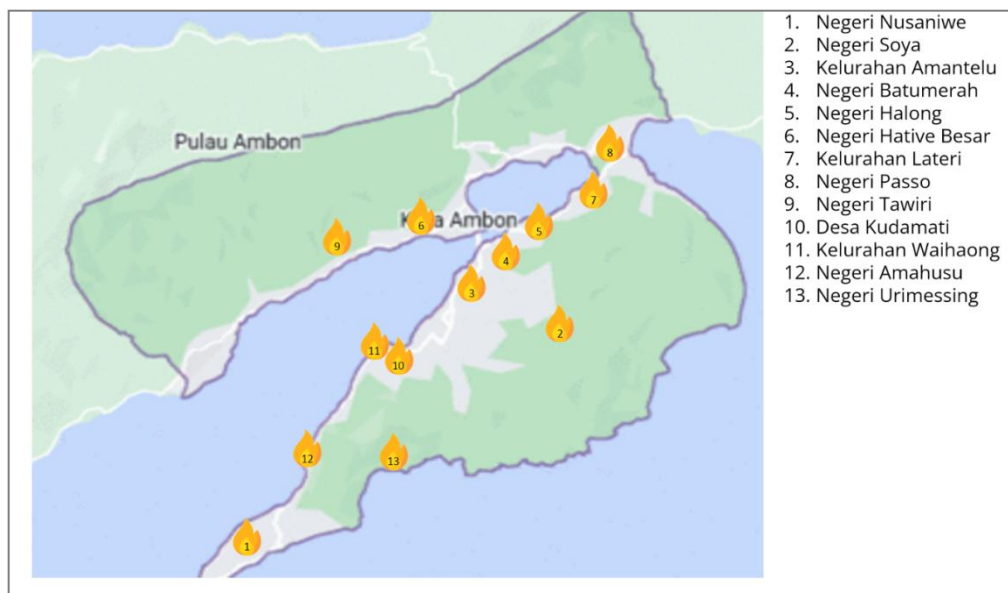
Picture 1. Cause of Conflict in Ambon



Source: data from the website of the Supreme Court directory and online media from 2010 up to January 2023

Picture 1 shows that until January 2023, there are still potential conflicts in 13 (thirteen) areas in Ambon due to various tensions and issues such as land ownership disputes, teenage fights, tensions among clans regarding the right to rule in the traditional village based on ancestor's inheritance, the election of the village head (Raja); tensions between police and military personnel; and horizontal disturbances.

Picture 2. Potential Conflict Location in Ambon



Source: data from the website of the Supreme Court directory and online media from 2010 up to January 2023³⁶

Tracing court decision data on the website of the Supreme Court directory and searching news on online media up to January 2023 can be

³⁶ Data collected by the Authors.

described as areas that have the potential to experience conflict in the past 15 (fifteen) years as shown in Picture 2. The picture describes that potential conflicts (orange dots) are spread across villages of Nusaniwe, Soya, Amantelu, Batumerah, Halong, Hative Besar, Lateri, Passo, Tawiri, Kudamati, Waihaong, Amahusu, and Urimessing.

2.3. The Status of *Saniri* as a Customary Institution in a *Negeri*

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* acts as mediators or adjudicators in disputes concerning civil, *Adat*, and minor criminal issues – as such, *Saniri* also fulfills a certain judicative function within their *Negeri*.³⁷ As a council of representatives, *Saniri* enjoys a particular emotional and intellectual proximity with the *Negeri* 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.³⁸ This comprehensive representative function has throughout history allowed the *Saniri* to maintain stability and internal cohesion within its respective *Negeri*. The *Saniri* is a microcosm of how representation and social involvement are highly valued in the daily interactions in a *Negeri*.³⁹

The position of *Saniri* in Ambon's history is stated in the regulations governing the *Negeri* administration as a *gemeenteraad* (municipal council). Article 2 of *Staatsblad* No. 471 of 1923 concerning Dutch-Indies Governor-General *Inlandsche Gemeenteordonnantie Voor Amboina En Saparoea, Staatsblad van Nederlandsch-Indië* (Stb 471/1923) formed the Indigenous Governing Council called *Indigenous Gemeenteraad*, which consisted of The Head of Indigenous Government (*Negeri*); customary head and elders, who are entitled to become *Gemeenteraad* members according to customary law; and elected members of the Government who have expressed their wish to include as members. Under such membership, the author assumes that the Indigenous *Gemeenteraad* is *Saniri Rajapati*. *Saniri Rajapati* is a council, a body of customary executive power formed by customary law as the *Negeri* administrator, headed by the Head of *Negeri* (*Raja*). *Saniri Rajapati*, in practice, is an important element in customary governance because all

³⁷ Pieter S Soselisa, Ivonny Y Rahanra, and Rugayah Alhamid, "Performance of *Saniri* in Village Government System in Central Maluku Regency," *International Journal of Multidisciplinary Research of Higher Education* 6, no. 1 (2023): 13.

³⁸ M Ridwan Tuny et al., "Legitimacy and Resistance against Foreign *Saniri* Community Dynamics Tulehu, Jazirah Leihitu Central Maluku District," *International Journal of Scientific and Research Publications* 6, no. 1 (2016): 531-32.

³⁹ Yustina Trihoni et al., "The Strategic Role of Lembaga *Adat Negeri* in the Fulfilment of Victims' Rights to Reparation in Post-Conflict Ambon," *Udayana Journal of Law and Culture* 1, no. 2 (2017): 174-175.

members of *Saniri Rajapati* are elected according to lineage and are the traditional leaders of the *Negeri* concerned.

Thus the *Staatsblad* not only recognizes the existence of *Saniri* (which is called the Indigenous Council or Indigenous *Gemeenteraad*) but also expands *Saniri*'s membership by introducing elected members who have expressed their wish to be involved as members, namely those other than old members who were elected based on custom (such as the *Raja* and *soa* heads). Article 4 of Stb 471/1923 stipulates that the election of Indigenous *Gemeenteraad* members was expanded to include all adult voting rights in the *Negeri*, which was a direct, non-representative process and under the supervision of a commission to be appointed by the Head of Region (*Gewest*). Appointment and dismissal of Indigenous *Gemeenteraad* members are carried out according to *Adat* law, and proof of acknowledgment is submitted by the Local Head (*Hoofd van plaatselijk bestuur*). Such procedures for selecting and extending rights conform to Western ways. Moreover, it turns out that the new Indigenous *Gemeenteraad* is burdened with administrative problems more than before due to the increased number of members. The Dutch East Indies government only approved, but the burden of administration and financing remained on the *Negeri*. In this way, the Dutch East Indies government obtained massive manpower for the administration of its government easily and at very low cost, often even without the slightest cost, because it was the village that provided wages/salaries for members/village government apparatus. With these characteristics, this *Staatsblad* contains legalistic characteristics and only gives legitimacy to matters that already exist and are valid in the administration of traditional villages. By ratifying the position of the village government through a *besluit* letter, it officially placed the village government as part of the colonial government.⁴⁰

Articles 8-9 of Stb 471/1923 stipulate that the authority of the Indigenous *Gemeenteraad* is to stipulate regulations or decisions related to the *Negeri* households. However, these regulations and decisions are prohibited from containing provisions regarding matters that have been regulated through general or local regulations or *Gewest* regulations or *keur van politie* (regulations that are contrary to the norms of general). Article 10 of Stb 471/1923 mentions that under local customs, *Gemeenteraad*, with the general approval of the government (*Negeri*), citizens can collect money or building materials needed to implement policies in the public interest. Besides that, *Gemeenteraad*, together with one or more other Governments, is also authorized to stipulate regulations or decisions related to common

⁴⁰ *Ibid.* See also A J Silubun et al., "Village Authority and Position in Realizing Village Autonomy," *IOP Conference Series: Earth and Environmental Science* 473, no. 1 (2020): 012032.

interests or work that cannot be determined, changed, or revoked without the approval of the Local Head.

Article 11 of Stb 471/1923 stipulates that regarding the *Negeri* deliberation, if local custom requires it, then before the *Gemeenteraad* makes a decision, an open *Gemeenteraad* meeting must be held with the local people. The Head of *Gewest* can stipulate holding meetings, minimum attendance rates, and decision-making provisions if consensus cannot be found. With the characteristics described above, the *Staatsblad* is a Dutch East Indies Government policy in managing customary village administration. It has a static character because it only maintains the *status quo*, even though it impacts maintaining the *Adat* law and the customs of the local community.

Article 8 of *Staatsblad* No. 490 of 1938 concerning General Rules of the Government and Administration of the Indigenous Governments (Stb 490/1938) stated that the administration of the regions is led by the Head of Customary Village Government (*Raja*) and the Indigenous *Gemeenteraad* (*Saniri*). The *Raja* leads the day-to-day activities of *Saniri* and is responsible for executing *Saniri* decisions. Arrangements for the membership and composition of the *Saniri* will be carried out based on the regulations stipulated by the *Saniri*⁴¹ and which have been approved by the Resident.⁴² Meanwhile, the Government determines the composition of the initial *Saniri* based on deliberations with the Resident who needs to be involved according to *Adat* law, and by following instructions that the Resident can issue.

Stb 490/1938 stipulates that *Negeri*'s organizational structure, authority, membership, and organs, excluding the Government appointed by the Governor, should be primarily determined by *Adat* Law. *Adat* law is to be used as much as possible to define the powers and responsibilities of each governmental organ and the relationships between *Negeri* and their subdivisions. This provision in the *Staatsblad* demonstrates significant acknowledgment of *Adat* law. However, it remains concerning because it grants the Resident significant authority in appointing and removing the Head of the *Negeri*.

This new reality allowed little room for *Saniri* and similar existing mechanisms to fulfill 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

⁴¹ It strengthens the existence of customary law

⁴² Resident is a Government official responsible for supervising governance, economic, and political matters in particular areas of the Dutch East Indies, present-day Indonesia. He held significant authority in decision-making and often symbolized the colonial administration that disadvantaged the indigenous population. It reflects a colonial government intervention.

to more formalistic and adversarial avenues, such as litigation or even physical confrontation. In the following twenty years, traditional dispute settlements, such as those involving the *Raja* or *Saniri*, became less and less prevalent.⁴³ Courts or formal dispute settlement mechanisms were often chosen, increasingly leaving behind the principles of peace, reconciliation, and communication that 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,⁴⁴ in addition, the vast majority of cases in state courts are protracted and delayed significantly. This process can go all the way to the Supreme Court. This is mainly due to the fact that when a district court makes a ruling, the losing party invariably appeals the decision to the high court. This process can continue all the way to the Supreme Court, and even after a court decision has been made, there is still resistance to the implementation of the court's ruling, often resorting to violent means.

As a result, *Saniri*, as a traditional government institution, is increasingly alienated from its cosmos and needs strong ties and legitimacy from indigenous peoples so that it cannot appear as an authority for the harmony of its people. Over time, *Saniri*'s ability to exert authoritative and wise actions has diminished. The situation reached its peak during the violent conflict in Ambon between 1999 and 2002, where customary institutions, including *Saniri*, failed to prevent or halt the strife. Similarly, formal government institutions established by the national government also lacked societal roots and authority, leaving them unable to effectively carry out their responsibilities.

Following the downfall of the Soeharto Order, a regional autonomy system was established, presenting an opportunity to reaffirm regional identity and show respect for local cultural values. The implementation of decentralization and regional autonomy by Law No. 22 of 1999 concerning Regional Government (Law 22/1999) replaced Law 5/1979, which allowed communities to reclaim their distinct regional identity and revalue their local cultural heritage, which had previously been overshadowed by the uniformity imposed during the New Soeharto era. This shift in governance altered the dynamics of political relations between the central and regional governments, leading to a dispersion of law production from Jakarta to the regions. Consequently, laws in different regions became more diverse and pluralistic. Both state law and customary law began to collaborate, acknowledging the existence of indigenous peoples and recognizing their traditional rights. Various legal systems coexist in this plural legal

⁴³ Sospelisa, Rahanra, and Alhamid, *loc.cit.*

⁴⁴ Frost, *loc.cit.*

landscape, serving as a corrective measure against the centralism and legal uniformity that previously dominated.

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 that had been cultivated for centuries became stifled,⁴⁵ 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.

The ideal outcome is for state law to strengthen and complement *Adat* law, thereby creating a harmonious legal framework that respects the national legal system and the traditional practices of different communities. Law 22/1999 replaced Law 5/1979 which introduced the concept of a village as a distinct legal community unit empowered to govern and oversee local community interests based on their traditional origins and customs. Consequently, this law shifted a village's perception from merely an administrative area or a subordinate entity of a larger region to an independent and unique region. Considering their socio-cultural conditions, this transformation allows every villager to participate in decisions affecting their community's affairs. Recognizing a village's rights based on its origins and customs carries significant implications, emphasizing its autonomous nature. As a result, villages now have their government apparatus and sources of income and handle hereditary household matters based on customs.⁴⁶

However, Law 22/1999 still needs to create a more conducive environment for the development of autonomous village governance because the existing regulations for villages only provide general provisions without detailing the characteristics of the village government. To address this legal concern, Law No. 32 of 2004 concerning Regional Government (Law 32/2004) replaces Law 22/1999 and includes a specific chapter (Chapter XI) dedicated to villages. One drawback is that the mentioned law still needs to fully address the revival of traditional villages as a part of the village government system in Indonesia. This aspect remains to be given greater attention to incorporate traditional villages' rich heritage and customs into the modern governance framework.

Nevertheless, in Ambon, there is a desire to restore government administration according to the prevailing customs and *Adat* laws. Thus, the

⁴⁵ *Ibid.*

⁴⁶ Mewar J and Rehata., *loc.cit.*

Provincial Government of Maluku issued Regional Regulation No. 14 of 2005 concerning the Re-establishment of the *Negeri* as an *Adat* Law Community Unit within the Province of Maluku (Regional Regulation of Maluku Province 14/2005) and then followed by the Ambon City Government by issuing Regional Regulation No. 3 of 2008 concerning *Negeri* in Ambon City (Regional Regulation of Ambon City 3/2008).

Law 6/2014, often called the Village Law, provides fresh air for the re-development of traditional villages in the village government system in Indonesia. A new point regarding customary village management is the unique feature that distinguishes the scope of village management in the Law 6/2014 and previous laws (Law 5/1979, Law 22/1999, and Law 32/2004). Article 103 of Law 6/2014 promotes customary law for resolving disputes in Traditional Villages located within the unified region, focusing on prioritizing deliberative solutions that align with human rights principles.

In Ambon, arrangements regarding Traditional Villages (*Negeri*) are contained in the Regional Regulation of Ambon City 8/2017, and the regulation stipulates that every *soa* (traditional clan) in *Negeri* appoints each of its members to become members of *Saniri*. Customary village regulations state the formation of *Saniri*, guided by applicable laws and regulations, and protect the local indigenous village community's rights of origin, customs, and socio-culture. Article 59 Regional Regulation of Ambon City 8/2017 stipulates that the *Saniri* Chairperson consists of a Chairperson, a Deputy Chairperson, and a Secretary who are directly elected from and by members of *Saniri* at a specially held *Saniri* meeting.

The historical significance of *Saniri* as a customary institution in Ambon traces back to the period of the Dutch Colonial Government and has continued to endure until the present day. In recent times, as Ambon has faced various challenges related to reconciliation and conflict resolution, the essay endeavors to shed light on the potential of *Saniri* to play a more prominent role in these processes. Due to its deep roots within the community and its inherent understanding of local customs and traditions, *Saniri* can become a powerful agent of reconciliation, fostering understanding and healing rifts between conflicting parties. By leveraging its traditional wisdom and peaceful conflict resolution practices, *Saniri* can act as a bridge between different groups, encouraging dialogue and promoting the resolution of long-standing disputes. Moreover, its status as a customary institution imbues it with a sense of legitimacy and acceptance among the local population, contributing to its effectiveness in conflict settlement efforts.

A settlement model adapted to regional conditions and Ambon culture is ideal. This settlement was carried out on the entire initiative of the grass-roots community who still adhere to local customs and are aware of the importance of local culture in maintaining and guaranteeing community

integrity because when the role of religion is unable to resolve conflicts, local wisdom is effective in uniting divided communities based on the religious community so that Ambon is not eroded in the vortex of prolonged religious conflict. This local wisdom is rooted and usually not only socially oriented but also sacred oriented, so it is more effective in resolving conflicts because the community readily accepts it and avoids latent or further conflicts. Local wisdom, a culture that refers to cultural wealth, which grows and develops in society, is recognized, trusted, and recognized as an essential element capable of strengthening social cohesion among citizens and will become the universal language of humanity for parties in conflict.⁴⁷

The Ambonese people are currently building a process of social reconstruction and are giving great attention and opportunity to the momentum of the revival of customary law in resolving various societal problems such as civil disputes, minor criminal matters, and land disputes entirely by adopting a peaceful settlement so that the parties tend to obey, no one humiliated and not at great expense. This settlement is essential for multi-ethnic and multicultural societies that have just emerged from conflict where vulnerability and suspicion still loom along with other problems. The revitalization of customary law in Ambon is viewed as a vital method of conflict resolution, relying on the active involvement of *Saniri* and the implementation of customary practices. Consequently, this aspect deserves to be prioritized and given due consideration in the pursuit of a harmonious and united community.

2.4. Empowering *Saniri* in the Conflict Resolution Mechanism in Ambon

The peace-building capacity of the *Saniri* stems directly from its unique cultural and social position in Ambonese society. The *Saniri* is a customary 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* has been an integral part of the Ambonese *gemeinschaft*. Problem-solving through *Saniri* relies on friendly settlement pursuant to *Adat* law principles and is characterized by compromise and reconciliation.⁴⁸ Watloly emphasizes 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.⁴⁹ *Saniri* rulings have authoritative value and become a new source of law for the community due

⁴⁷ Birgit Bräuchler, *The Cultural Dimension of Peace Decentralization and Reconciliation in Indonesia* (New York: Palgrave Macmillan, 2015), 12.

⁴⁸ Mewar J and Rehata, *loc.cit.*

⁴⁹ Aholiab Watloly, *Perdamaian Berbasis Adat Orang Basudara*. (Yogyakarta: Kanisius, 2016), 57.

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. 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.⁵⁰

For the multicultural and multi-ethnic Ambonese society, application (and adherence) to *Adat* law solutions is more intuitive, as it has become part of the 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.⁵¹ 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, the new state law, which borrowed from the French Civil Code, 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, found that it is often ineffective to simply 'transfer' the legal tradition of one country to another that is culturally distinct.⁵²

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-recognized law. *Adat* law can even become the primary body of law regulating Ambonese life. The imposition of subsidiary state law unto Ambonese society should not encounter significant resistance or problems as long as state law provisions do not undermine or weaken the 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 behoove state law to support, instead of sabotage, this effort.

The *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

⁵⁰ Muhamad Syamsudin, "Reconceptualising the *Adat* Law in Indonesian Legal System," *International Journal of Innovation, Creativity and Change* 13, no. 8 (2020): 1417.

⁵¹ *Ibid*, 1418.

⁵² *Ibid*.

is viewed with reverence and respect and thus commands cultural, political, and social authority.⁵³ 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* 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.

3. CONCLUSION

The *Saniri* stands out as a distinctive feature of *Negeri*, collaborating with the Raja in legislative and judicial capacities and addressing civil and minor criminal cases and customary disputes. Comprised of leaders from Soa and those sharing genealogical ties, the *Saniri* mirrors the aspirations of indigenous peoples, maintaining a close connection to the community. Throughout history, it has been pivotal in preserving harmony as the foundation for peace in Ambonese society, spanning centuries. Reviving *Adat* is crucial to support post-conflict development in Ambon City, and the *Saniri*, along with *Negeri*'s democratization process, provides strategic pathways for participatory city development. Despite a significant opportunity in the current political landscape to enhance *Saniri*'s role in conflict resolution, past efforts have yet to fully embrace its essence, limiting its potential contribution to post-conflict reconciliation. It is imperative to prioritize legal empowering *Saniri*, ensuring alignment with its inherent nature. In Ambon, central to reconciliation efforts in a city recovering from religious conflicts, *Saniri* strengthens community cohesion, contributing significantly to lasting peace. Recognizing its unique attributes and values is vital for the journey toward a harmonious and prosperous future for Ambon City, necessitating legal and political efforts to empower *Saniri* as a medium for harmony in *Negeri*. Strengthening *Saniri*'s institutional capacity for legal empowerment must involve enhancing the personal capacities of its members, supported by well-crafted regulations at both the city and *Negeri* levels.

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⁵³ J and Rehata, *loc.cit.*

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