

OMBO LEGAL SANCTION REGULATIONS IN THE KAOMBO AREA IN WABULA VILLAGE

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ABSTRACT

Ombo is a Wabula customary law rule that prohibits taking certain biota or all biota in a certain area. This research aims to theoretically analyze the effectiveness of the legal regulation of ombo legal sanctions applied to violators both from the Wabula community and people from outside Wabula. The type of research used in this research is normative legal research which uses a statutory regulation approach, a concept approach and a case approach. The result to be achieved is to strengthen the concept of customary legal sanctions (Ombo) which are based on the values of justice and peace in the context of strengthening Ombo legal values in safeguarding, protecting and preserving Kaombo (Marine Protected Areas) for the welfare of the Wabula customary law community.

Keywords: *Legal Effectiveness, Indigenous Peoples, Kaombo, Ombo, Legal Sanctions*

1. Introduction

Indonesia is a coastal country that has a lot of natural fisheries potential that can be utilized by its people. Fisheries resources which are divided into two sectors, namely capture fisheries and aquaculture, are one of the resources utilized. Some Indonesians, especially those living near the coast, work as fishermen.

Since the enactment of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as UUPA on September 24 1960, which has a populist character, it can provide protection to various customary legal institutions that do not conflict with national and state interests, policies as regulated in the Constitution. In 1945 Article 18 b paragraph (2) stated that the state recognizes and respects customary law community units and their traditional rights, whereas in MPR RI Decree No.

XVII/MPR/1998 which contains the Human Rights Charter states that the identity of traditional cultural communities, including territories, is protected.

In the Wabula community's conception, *Kaombo* is a marine protected area. In *Kaombo* there is a customary prohibition on exploiting marine resources. In the conventional practice of protecting marine assets in Wabula village, the boycott is planned to provide an open door for the continued propagation of marine biota and its biological climate system as a customary protected area.

In the form of a customary protected marine area, the people of Wabula, Buton Regency, have local wisdom called *kaombo*. The prohibition on exploiting marine resources in the *Kaombo* sea area continues to apply. The ban is intended to give time for marine biota in the *Kaombo ecosystem* to continue to reproduce. Custom imposes severe penalties for violating these prohibitions. Through Buton Regent Regulation number 13 of 2018, Wabula has been designated as a customary law community area in managing marine resources based on local customary law in order to preserve the local wisdom of the Wabula community regarding the use of marine resources. Sustainable marine resources are thought to come from these regulars.

Understanding Wabula community towards the marine environment cannot be separated from traditional local wisdom regarding the use of marine resources. The marine environment is divided into *Pangkolo* and *Nambo* in the local knowledge system. *Pangkolo* is a land-bound marine environment that functions as a home for the mangrove ecosystem. *Pangkolo* is an area that connects marine and land ecosystems. In contrast, the *Nambo* environment includes shallow, shallow waters. In utilizing marine environmental resources, *Nambo* is divided into two marine areas, namely: i) coastal and deep sea protected areas, and ii) land fishing areas in coastal and deep water areas. Mapping of the marine environment and patterns of sustainable use of marine resources are reflected in the division of *Nambo* into two areas.

Traditional wabula fishermen still rely on the availability of marine and coastal biota to meet household financial needs. Their main daily activities are fishing and looking for shellfish. Adolescent boys usually help their parents in their role as fishermen in fishing families where the father is the head of the household. Housewives also help their husbands in the work they do, such as selling caught fish to the market or making products from dried fish. This fact shows that the food security of local fishermen is very dependent on the availability of marine resources, especially fish and other coastal aquatic biota.

Considering the importance of preserving the Wabula marine environment as a source of life for local communities, after the *Coremap* Program ended in 2010, the idea emerged to revitalize local traditional local wisdom as an orientation for utilizing marine resources, this idea was realized, among other things, through the formation of village regulations (PERDES). However, until 2018, among the seven villages in Wabula sub-district, only one village had established the DEPRES in question. Starting from this phenomenon, to maximize the protection and sustainable use of Wabula marine resources with direct involvement of local communities, through Buton Regent Regulation Number 13 of 2018, Wabula is designated as a customary law community in managing coastal and marine resources based on local customary law, and a number of Traditional practices that have been institutionalized in the Wabula community have become an orientation in the utilization of marine resources in the region. This regent's regulation is important and strategic to minimize marine resource exploitation practices which tend to become increasingly destructive while preventing conflicts between local fishermen and fishermen from outside the region which often occur after the end of the *Coremap* Program.

The practice of harvesting marine biota in the *Ombo* sea area is still found in *Ombo* sea. One of them is a giant grouper weighing 143 kg caught by a fisherman who, although not in the *Ombo Laut* area, is located in the *Ombo Laut* area so that the existence of this giant grouper is still part of marine biota which is protected according to local customary law (<https://www.detik.com/sulsel/berita/d-6106997/ikan-kerapu-raksasa-di-buton-diduga-migration-dari-kawasan-laut-adat-ombo> accessed on 27 September 2023). Another thing related to the application of sanctions in research was that it was found that one of the obstacles in implementing customary law sanctions in the *Ombo* area of Wabula village was the application of sanctions for violators from outside the Wabula community who entered the *Ombo area*. For example, when a fine of Rp. 5,000,000 is imposed, the person concerned only pays Rp. 2,000,000, - on the grounds that his abilities are only like that.

These legal issues show that there are problems in terms of the application of customary sanctions law from the wabula both from the aspects of legal structure, legal substance and legal culture. Therefore, this research will focus on comprehensively explaining the legal analysis of legal effectiveness regulation of *ombo* legal sanctions in the *Kaombo Region* in Wabula Village.

2. Regulation of Ombo Legal Sanctions in the Ombo Sea Wabula Area

Development in the legal field, especially in the context of criminal law development, does not only involve structural developments, such as strengthening legal institutions that operate within a framework,

but also involves substantive developments in the form of criminal law products and cultural aspects such as attitudes and values. influencing the application of certain legal systems (Putra Jaya, 2016) . Traditional criminal law and its associated sanctions are in the process of being eliminated from the Indonesian legal system, and will be replaced by official legal regulations, so that the resolution of criminal cases will generally be carried out through a general judicial process.

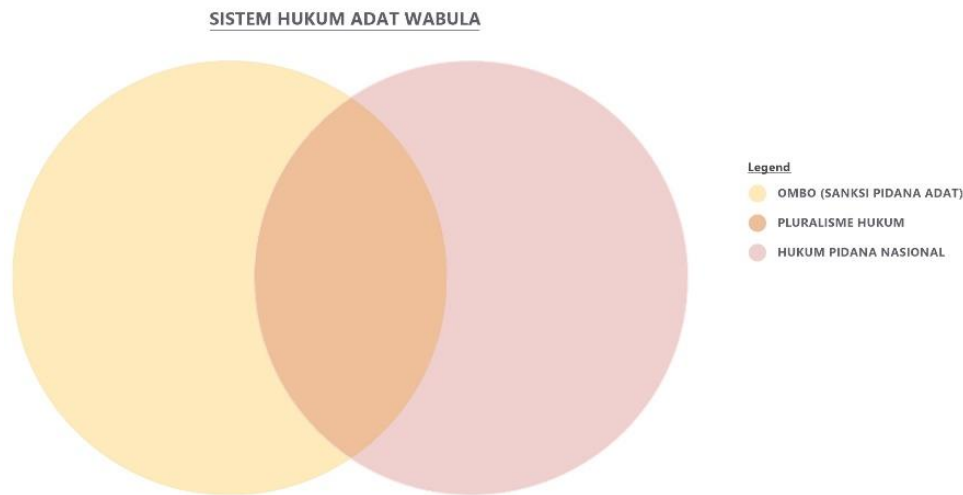
Soepomo then explained in more detail that in customary law there is no separation between unlawful acts which require demands for improvement in the realm of criminal law (faced with a criminal judge) and unlawful acts which can only be processed in the realm of civil law (faced with a civil judge). (Faturrahman, 2010) . This explanation from Soepomo illustrates that in fact in customary law, the terms criminal law and civil law basically do not exist. Local wisdom in managing coastal and marine resources in Buton coastal communities, especially in Pasarwajo, Wabula and Wolowa subdistricts, is reflected through a practice called ombo. In simple terms, ombo means "to forbid." This is a rule that regulates the prohibition of exploitation of marine resources in certain areas, so that Obo can be considered a marine protection zone. In the context of marine resource utilization in Wabula, the prohibition on exploitation of marine resources in the Obo Saumuru area is interpreted as a cultural aspect that functions to: (a) protect marine areas as fish breeding grounds, (b) maintain the habitat of unique and endemic marine biota , and (c) maintaining the diversity of marine biota and ecosystems to avoid potential damage and population decline (La Ode Abdul Munafi, 2023) .

Regulations regarding the ombo legal sanctions in question are regulated in two regional regulations, namely Buton Regent Regulation Number 13 of 2018 concerning the recognition and protection of Wabula customary law communities in the management of coastal and marine resources based on customary law (hereinafter referred to as Buton Regency Regulation No. 13 of 2018) and Village Regulation Number: 03 of 2006 concerning Implementation Rules for Integrated Coral Reef Management in Wabula Village, Wabula District, Buton Regency (hereinafter referred to as Village Regulation No. 3 of 2006)

Regulation of kaombo legal sanctions is regulated in Article 11 paragraph (1), paragraph (2) and paragraph (3) Buton Regent Regulation No. 13 of 2018, namely:

1. The customary law system of the Wabula customary law community as referred to in Article 5 paragraph (2) letter d, is ombo as a written and unwritten legal institution that is applied to the management area.
2. The regulation, implementation and enforcement of ombo in the management area, including procedures for resolving disputes as intended in paragraph (1), shall be carried out by the Wabula and/or sara customary law communities as long as they do not conflict with the principles as intended in Article 3 of this regent's regulation.
3. Violations and/or criminal acts in the management area outside the Ombo regulations and/or outside the authority of the Wabula and/or Sara customary law communities, enforcement is carried out by the relevant agencies in accordance with statutory provisions.

Article 11 paragraph (1) and paragraph (2) Perbu. Buton Number 13 of 2018 shows that Ombo as a legal institution is referred to as written law and unwritten law is customary law which is enforced in the regulation of the Wabula marine customary area. In this context, Wabula customary law emphasizes that its legal form is not only written law but also unwritten law. Then, in Article 11 paragraph (3) Perbup. Buton No. 13 of 2018 shows that the Wabula customary law system provides legal space for national criminal law to regulate criminal sanctions outside the Wabula maritime customary territory. This shows that the Wabula customary law system adheres to the concept of regulating customary criminal law sanctions which adheres to the concept of legal pluralism as depicted in the following figure:



Sumber : Primer Data at 2023

Figure 1 shows that the Wabula customary law system in regulating sanctions adheres to the concept of legal pluralism, where in the picture there are two legal rules that go hand in hand, namely between Ombo (customary criminal sanctions colored orange), national criminal law (colored pink) and pluralism. law is dark brown. This shows that the Wabula customary law system has combined law with national criminal law in order to protect Wabula maritime customs. In terms of customary law, the form of legal pluralism in the Wabula legal system is the character of togetherness inherent in Wabula customary law. The communal style (*Communal*) means that this style prioritizes common interests, where personal interests are encompassed by common interests. One for all and all for one. Every individual is an integral part of society as a whole. Customary law communities believe that every individual's interests should be adjusted to the interests of the community, because no individual is separated from the life of the community (Aprianti, 2020).

The style of togetherness inherent in Wabula customary law forms legal pluralism in terms of the application of customary criminal sanctions (ombo) and national criminal sanctions which refer to the Criminal Code so that legal pluralism can be realized as described in Article 11 paragraph (1), paragraph (2) and paragraph (3) Perbu. Buton Number 13 of 2018. Legal pluralism in the application of customary criminal sanctions in the regulation of Wabula sea ombos is then described in Village Regulation Number: 03 of 2006 concerning Implementation Rules for Integrated Coral Reef Management in Wabula Village, Wabula District, Buton Regency, regulated in Article 11, namely:

1. If a user passes through the DPL area, the following sanctions will be given:
 - a. If a user passes through the DPL area once, they will be warned verbally and make a written statement not to do it again.
 - b. If you pass through the DPL area twice, you must pay a fine of Rp. 50,000,- (fifty thousand rupiah) or imprisonment (cell) for 2 days.
 - c. If a user passes through the DPL area 3 times or more, they are required to pay a fine of Rp. 500,000 (five hundred thousand rupiah) or imprisonment for 10 days.
2. If users fish in the DPL area, they are required to pay a fine of Rp. 1,000,000 (one million rupiah) or with 15 days imprisonment.
3. If the user nets in the DPL area, they are required to pay a fine of Rp. 2,000,000,- (two million rupiah) or with 1 month (30 days) imprisonment
4. If the user uses tube roots (columnation) and gouges coral rocks either with a crowbar, pick or other destructive equipment, whether in the DPL area or outside the DPL area, they are required to pay a fine of Rp. 2,000,000 (two million rupiah) or a minimum of 1 month (30 days).
5. If the user carries out bombing and uses potassium (a chemical) then he is obliged to pay a fine of Rp. 10,000,000 (ten million rupiah) or with a minimum imprisonment of 3 months in prison and

specifically for perpetrators who come from the Wabula village community, this will be supplemented with the traditional KAPONDOLEASO WATA sanctions.

These legal provisions show that Article 11 of Village Regulation Number: 03 of 2006 is a customary offense that regulates violators of ombo Laut Wabula. These legal provisions also show that the implementation of customary offenses is regulated not only in the form of imprisonment but also accompanied by fines and additional customary sanctions in the form of KAPONDOLEASO WATA. This shows that the customary offense (ombo) is a special offense that regulates sanctions for violations of the customary maritime territory of Wabula (Nambo). This shows that the regulation of customary criminal sanctions (ombo) is dynamic, meaning that at any time it can be considered an offense by the traditional chief judge because it is against community order so that there needs to be a reaction to customary efforts to restore it (Yulia, 2016). Therefore, customary law will arise as it develops and disappears by adapting to the community's sense of justice.

3. Legal Effectiveness of Implementing Ombo Legal Sanctions in the Ombo Sea Area of Wabula

Customary law is non-statutory law which as a whole is customary law and some Islamic law. Customary law discusses law based on several judges' decisions regarding legal principles in the environment where the case is decided. Customary law is based on traditional culture (Warjiyati, 2011). Customary law is law that arises because it originates from the real legal feelings of the people. In accordance with his own nature. The role of customary law as a tool of social control can apply and run optimally if there are things that support it. The implementation of this function is closely related to clear and good legal material. Apart from that, the subject who will actualize the law has no less important role in implementing the law as a social contract tool (Warjiyati, 2011). In measuring the effectiveness of the application of ombo legal sanctions in the Obo Wabula Sea area, it is reviewed from the factors that influence it through Soejono Soekanto's theory of law enforcement. According to Soejono Soekanto, the factors that influence law enforcement are (Warjiyati, 2011):

1. Legal factors, namely interference originating from possible laws. For the Wabula community, two legal regulations have been issued to protect the Wabula marine area, namely Buton Regent Regulation Number 13 of 2018 concerning the recognition and protection of the Wabula customary law community in managing coastal and marine resources based on customary law (hereinafter referred to as Buton Regency Regulation No. 13 of 2018) and Village Regulation Number: 03 of 2006 concerning Implementation Rules for Integrated Coral Reef Management in Wabula Village, Wabula District, Buton Regency (hereinafter referred to as Village Regulation No. 3 of 2006). From a regulatory perspective, two legal regulations legally regulate customary criminal sanctions (Ombo) and criminal sanctions regulated in the Criminal Code. So, for legal factors, customary criminal law sanctions have been fulfilled as regulated in these two legal regulations.
2. Law enforcement factors, namely the parties who form and implement the law. In implementing the wabula sea ombo as stipulated in Perbup Number 13 of 2018, the institution appointed to enforce the ombo is a traditional institution, namely sara as regulated in Article Perbup Number 13 of 2018. In Dinna Dayana La Ode Malim's research in 2022 it was found that the existence The Kadie Wabula traditional institution in regulating marine customary rights within the national legal framework is reflected through a number of official regulations. One of them is Buton Regent Regulation Number 13 of 2018, which aims to recognize and protect the Wabula Traditional Law Community in managing Coastal and Marine Resources. This regulation not only identifies Wabula as a Customary Law Community that has marine customary rights, but also provides a strong legal basis for the Sarana Kadie Wabula Traditional Institution, which functions as a traditional authority institution in regulating the current use of Wabula's marine customary rights (Malim, 2022). This shows that the authority to enforce the Wabula sea ombo lies with the Sarana Kadie Wabula Traditional Institution. So this element has been fulfilled.
3. Community factors, namely the environment in which the law applies or is applied. Until now, the Wabula residents continue to follow the principles, customary systems and customary laws that

apply, including restrictions on customary land rights (Davfid et al., 2022) . The Wabula people to this day still obey the law, or can be more accurately described as the values embedded in customary law, which is expressed in the traditional saying "Wabula Liwuno Lape-Lape, Liwuno Tampo-Tampo." This means that the Wabula people continue to care for, guard and defend what is right, while correcting what is wrong. They also always prioritize unity, cohesion and common interests, with a focus on peace, tranquility and inner and outer well-being through deliberation as a way to reach agreement (Davfid et al., 2022) . The customary system that is respected and still followed by the Wabula community means that there is a prohibition against human actions that involve taking, using, or claiming something to which they do not have rights. Violation of this prohibition can result in sanctions, whether in the form of spiritual sanctions in the form of breaking prayers or customary sanctions (Davfid et al., 2022) .

4. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life. In the implementation of customary law sanctions in the Ombo area of Wabula Village, there is no significant difference between criminal cases and civil cases (Davfid et al., 2022) . The most important thing is that the resolution of customary violations that result in imbalances in society must be immediately remedied. Court proceedings are usually carried out at the village hall, traditional hall, or at the village head's house. Court sessions are usually attended by village heads, community leaders, influential individuals in the village, sharia officials (religious teachers), and traditional leaders. The trial schedule is not fixed and is adjusted to the situation and needs, sometimes held in stages, such as the first stage of the trial which involves a limited meeting between the senior citizens of the two disputing parties. In the implementation of customary law in the Ombo Area of Wabula Village, Wabula District, Buton Regency, the Traditional Head elected by the community through the Customary Justice Institution has the authority to determine the severity or lightness of the sanctions or fines imposed, as stated in the local customary law regulations used. to assess the alleged violation. However, this authority does not mean unlimited freedom, but is intended to provide customary law enforcers with the opportunity to consider various aspects related to violations that occur. This includes consideration of the severity of the violation, the personal characteristics of the perpetrator, as well as the context and situation in which the violation occurred (Davfid et al., 2022)

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