

## Ultimum Remedium Approach in Resolving Mining Conflicts Based on Local Wisdom of Gorontalo Community

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**Abstract:** This study aims to examine the legal resolution of people's mining conflicts in Gorontalo Province, using the ultimum remedium principle approach guided by the values of Gorontalo local wisdom known as the Dulohupa tradition. The purpose of this study is to analyze the resolution of mining conflicts with the ultimum remedium approach as an effort to resolve mining conflicts that reflect the values of certainty and justice for the community. The method used in this study is socio-juridical research, an approach that studies the reciprocal relationship between law and other social phenomena by obtaining data relevant to the object of research. Based on the results of the study, it shows that there have been 3 major conflicts involving a consortium of mining permit holders and mining community groups during 2023 in Gorontalo Province. The peak of the conflict was the burning of the Pohuwato Regency Regent's Office during the action that ended in riots on Saturday, September 21, 2023, and the determination of 35 representatives of the mining community as perpetrators of the destruction which has now entered the criminal trial stage in court. The conclusion is that the implementation of conflict resolution with this approach has not been running optimally, as indicated by the continued repressive approach in the form of criminal law enforcement against traditional miners. But at least, local wisdom in Gorontalo can be an initial alternative for solving problem.

**Keywords:** *Ultimum Remedium; Mining Conflict; Local Wisdom, Gorontalo.*

### 1. Introduction

The rampant community mining activities in Gorontalo Province, which have been going on from generation to generation since the 1970s and have developed rapidly into many mining areas since 1992, have even become part of the community's economic activities in the informal sector, which support the family economy but with the status of Unlicensed Mining. (PETI).<sup>1</sup> Mining conflicts emerged in the 2020s, marked by the government's efforts to stop illegal mining activities to ensure exploration activities in accordance with the provisions. The entry of companies such as PT Puncak Emas Tani Sejahtera (PETS) and PT Gorontalo Sejahtera Mining (GSM) as holders of mining business

<sup>1</sup> Halid, A., & Fauzi, A. (2012). Inventarisasi dan Analisis Identifikasi Penggunaan Laban Berdasarkan Tumpang Tindih Laban Kontrak Karya pada PT. Gorontalo Mineral. *Journal of Agrotechnotropics*, 1(1), pp. 56-60.

permits (IUP) in the Gorontalo Province area added to the burden on local governments in resolving PETI issues and ensuring exploration by companies holding IUPs.

The mining conflict peaked at the end of 2023, marked by the burning of the Pohuwato Regency Regent's Office during an anarchic action against the rejection of the legal solution to the people's mining conflict in Pohuwato Regency. Based on the current problems, that; how to resolve people's mining conflicts with the *Ultimum Remedium* approach based on *Dulohupa* values or consensus which is the local wisdom of the Gorontalo community, with the aim of analyzing the resolution of mining conflicts with the *ultimum remedium* approach as an effort to resolve mining conflicts that reflect the values of certainty and justice for the community.

## **2. Method**

The type of research used in this study is the type of empirical normative legal research, by collaborating Positive Law and Living Law (Law that lives in Society). The type of research that seeks to identify law in a real sense, this type is also known as sociological legal research. The location of this research will be carried out in Pohuwato Regency and Bone Bolango Regency, all of which are in Gorontalo Province, the consideration is that this location is the existence of mining conflicts in order to support the acquisition of information related to the problems studied, by combining a literature study model through literature searches on books, Gorontalo Province RTRW, Regional legal products, Legislation, journals and articles related to the problems studied, as well as field studies, which are carried out by conducting observations and direct data collection in the field in order to obtain empirical data related to the problems studied.

## **3. Results and Discussion**

Mining issues in Gorontalo Province, such as Pohuwato and Bone Bolango Regency, are not just land and natural resource conflicts between communities and companies, such as those that triggered the riots on September 21, but are also a matter of resolution that has not provided justice for mining communities around the concession locations of mining companies PT Puncak Emas Tani Sejahtera (PETS) and PT Gorontalo Sejahtera Mining (GSM), which many people even suspect are located in the Panua Nature

Reserve. Referring to the Geoportal map of the Ministry of Energy and Mineral Resources (ESDM), GSM's work contract is in a conservation area in Gorontalo.

As is known, in general, mining conflicts in Indonesia are related to various issues such as compensation, community rights, occupational safety, and environmental impacts, therefore, the resolution and prevention of violations in the mining industry, more effective law enforcement is needed, because mining conflicts are complex problems that require a holistic approach involving the government, industry, and local communities, especially in Gorontalo, the conflict began. Mining conflicts emerged in the 2020s, marked by efforts to stop illegal mining activities by the government to ensure exploration activities in accordance with the provisions. The entry of companies such as PT Puncak Emas Tani Sejahtera (PETS) and PT Gorontalo Sejahtera Mining (GSM) as holders of mining business permits (IUP) in the Gorontalo Province area adds to the burden on local governments in resolving PETI issues and ensuring exploration of IUP holding companies.

The mining conflict peaked at the end of 2023, marked by the burning of the Pohuwato Regency Regent's Office during an anarchic action against the rejection of the legal solution to the people's mining conflict in Pohuwato Regency. However, if examined, long before the news emerged regarding the conflict between the community and the company, in the 1970s, the rampant community mining activities in Gorontalo Province, which had been going on from generation to generation since the 1970s and had grown rapidly to many mining areas in 1992, even this mining activity had become part of the community's economic activities in the informal sector, which supported the family economy but with the status of Mining Without a Permit.<sup>2</sup>

Mining disputes start from problems that arise with mining activities that include general investigations, exploration and exploitation of mining materials and result in conflict. Thus, what is meant by mining disputes are disputes that occur in the implementation of mining activities. The existence of mining companies often causes conflict with communities around mining activities, due to non-compliance with policies issued by the government. According to Salim HS, the types of disputes that occur in the implementation of mining activities include disputes between indigenous peoples and mining companies; Disputes over environmental pollution; Disputes over land rights;

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<sup>2</sup> Halid, A., & Fauzi, A. (2012). *Inventarisasi dan Analisis Identifikasi Penggunaan Laban Berdasarkan Tumpang Tindih Laban Kontrak Karya pada PT. Gorontalo Mineral*. *Journal of Agrotechnotropics*, 1(1), pp. 56-60.

Disputes over share divestment; disputes over community development programs; disputes over work contracts; and labor disputes.<sup>3</sup>

Basically there are three ways to resolve disputes, which are described as, first, dispute resolution through the courts, which is a pattern of dispute resolution that occurs between the disputing parties, where the dispute is resolved by the court and its decision is binding. second, dispute resolution through ADR (Alternative Dispute Resolution) or alternative dispute resolution (APS), which is a set of procedures or mechanisms that function to provide alternatives or choices for dispute resolution through the form of APS/arbitration in order to obtain a final decision and bind the parties. Third, dispute resolution through customary institutions, is a dispute resolution that uses institutions that live and develop in customary law communities.<sup>4</sup>

### **3.1 Identification of Customary Values of Gorontalo Society**

The Gorontalo people are one of the ethnic groups that are the natives of northern Sulawesi, precisely in Gorontalo Province, the 32nd province in Indonesia which was separated from North Sulawesi Province in 2000. The number of Gorontalo ethnic groups is estimated to be more than 1 million or is the majority of the population (90%) on the Gorontalo mainland. While a number of other ethnic groups that are minorities are the Suwawa Tribe, Bone Tribe, Atingola Tribe, and Mongondow Tribe. Several assumptions have been made regarding the etymology of the word Gorontalo. Some say that Gorontalo comes from the word "hulussalam", which also comes from the word "hulontalangi" which means "wanderer who came down from heaven". This view is based on the mythology that has developed in society and tells of Hulontalangi who was the first person to live in Gorontalo at the foot of Mount Tilongkabila. Several other theories state that Gorontalo comes from the word "Hua Lolontalango" which means "a cave that used to go back and forth", "Pongolatalo" or "Pohulatalo" which means "waiting place", "Gunung Telu" means "which means" three mountains ", and many other assumptions.

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<sup>3</sup> Salim HS, *Hukum Law of Mining Dispute Resolution in Indonesia* (Bandung: Pustaka Reka Cipta, 2013), hal. 221.

<sup>4</sup> Priyatna Abdurasyid, *Arbitration & Alternative Dispute Resolution an Introduction* (Jakarta: PT Fikabati Aneska, 2002), b. 42.

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Gorontalo people use the Gorontalo language. In addition to the Gorontalo language, there are also several other languages that are often considered as dialects of the Gorontalo language, namely Suwawa and Atinggola. The Gorontalo language itself is now experiencing strong assimilation with the Manado language (Manado Malay) which is also widely used in the daily lives of the Gorontalo people. Gorontalo and its surroundings are inhabited by different tribes, namely the Gorontalo Tribe, Bugis Tribe, Polahi Tribe, Javanese Tribe, Makassar Tribe, Balinese Tribe, Mongondow Tribe, Minahasa Tribe and Chinese Tribe. The development of community life in general also has a significant impact on the Gorontalo people. There is a different lifestyle that has been changed to a more modern lifestyle. The progress of the times has not made Gorontalo forget the customs of its ancestors.

Many Gorontalo people still maintain their customs and culture. Some customs and cultures that have been preserved by the Gorontalo people include: traditional wedding ceremonies, tondhalo (seven-month ceremony), aqiqah, circumcision and tawon, tumbilotohe, bunggo, wailma, meraji, traditional medicine such as pohutu momulangga, dayango and so on. The majority of the Gorontalo population is Muslim (96.82%). The Gorontalo people strongly believe in Islam. Indeed, some traditional Gorontalo traditions contain many Islamic elements. Only a small number of them embrace other religions outside of Islam. Although they have

been Muslim for a long time, remnants of local beliefs can still be felt in the beliefs of several spirits and ritual ceremonies that have a traditional feel.

Dulohupa is one of the Gorontalo traditional value systems that has been used for generations as a means of solving problems. Initially, dulahupa was only known as part of a house building used as a place for deliberation, but in the Gorontalo cultural value system, dulahupa has a very broad meaning, in the form of deliberation and is equated with the heluma (consensus) and huyula (mutual cooperation) values.<sup>5</sup>

### **3.2 Mining Conflict Resolution Model Based on Gorontalo Local Wisdom Norms**

In the concept of Gorontalo society, custom is seen as an honor (adab), norm, even a guideline in the implementation of government. This is associated with the book of scripture with the general phrase syara ', syara' which means that customs are carried out on the basis of Sara (rules) while these rules must be based on the Qur'an. Thus it can be understood that the joints of Gorontalo society are very religious and full of noble values. Therefore, every action or behavior of society must be in accordance with the Qur'an. The strong traditional nuances in Gorontalo are also characterized by having a general institution known as Pastwo Limo Lo Pohalaa (association of five kingdoms) which is filled with bait and wu'u (common interest groups) which are usually seen as being used for consolidation. Unification of perceptions about the activities of "granting ordinary titles (Pulanga)", then also with the Gorontalo Customary Council, PNS, Tauwa lo Bonela (who usually serves as regent / mayor) and Tolomato (ordinary legislative council).

Dulohupa is usually established in Gorontalo because of its history or origin as a community organization that carries out activities to preserve and develop traditional culture and other Gorontalo customs in the area. Institutions that are usually formed and stipulated in the Regional Regulation of Gorontalo Province and their implementation are regulated in several district/city regional regulations. Regular

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<sup>5</sup> Masruroh, M., Eraku, S. S., Kobi, W., & Tamau, N. (2023). *Local Wisdom Values in the Dulohupa Traditional House of Gorontalo*. *Journal of Socio-Economics and Humanities*, 9(1), 111-116

institutional maintenance is an effort to preserve and uphold the customs and cultural arts values of the community concerned, especially ethical, moral and moral values that are the core of customs. customs and habits in society. and regular institutions to maintain their existence and move forward,<sup>6</sup> Meanwhile, these regular institutional development activities are planned, integrated and directed efforts so that the values of togetherness and social culture of the community can develop after social, cultural and economic changes occur.<sup>7</sup>

Routine activities previously carried out by regular agencies in Gorontalo in the author's research, namely holding conferences or awarding titles, are usually interpreted in this area as a very high level of appreciation for a person or official who makes an appointment. Significant Contribution Has contributed to the development of Gorontalo Province towards better governance with good governance and clean governance. One of them is that this distinction is made through studies and studies and observations by church elders. from common interest groups in the area before the sedan receives lo pohala'a. If you look at the name it bears, the assumption is that the institution used in Gorontalo can be interpreted as having the same authority as regular cuisine, although it is still very different.

The term legal practice is essentially a discussion of law and justice carried out by the litigation system (advice) to resolve cases outside the court or in court. If the discussion is based on common law, it is called a common court. Ordinary justice can be given by individual parishioners, by family members or neighbors, by the head of the family or by Adat (Adat judge), village leader (village judge) or organization administrator in the peaceful settlement of common crimes to restore justice to be carried out to the community. the balance of the community is disturbedterganggu.<sup>8</sup>

In short, the district court is a judicial authority designed to resolve disputes in communities with conflicting or conflicting interests among people who are often present when people interact with each other. The dispute resolution system is usually used between parties by involving a neutral and import third party. These considerations can lead to the realization of a lasting and sustainable peace

<sup>6</sup> Chapter 1 paragraph (10) Gorontalo Provincial Regulation No. 2 of 2016 concerning the Implementation of Customary Institutions.

<sup>7</sup> Chapter 1 paragraph (11) Gorontalo Provincial Regulation No. 2 of 2016 concerning the Implementation of Customary Institutions

<sup>8</sup> Talib Setiady, Intisari The Essence of Indonesian Customary Law in Literature Review., (Bandung, Alfabeta, 2015) hal.339.

agreement, considering that dispute resolution through deliberation puts both parties in the same position, no party wins or loses. The benefits of completing consultations can be felt because the parties have reached an agreement that ends the dispute fairly and mutually beneficially.<sup>9</sup>

### **3.3 Conflict Resolution According to Legal Principles**

Based on the data obtained from the Pohuwato Regency Government, since 2023 a Task Force (Satgas) has been formed to analyze the compensation process. By the Regent of Pohuwato Saipul Mbuinga, the implementation of compensation began with the process of data collection and documentation of community plots of land that would be compensated by the company. In early August 2023, the task force had even submitted the document to Regent Saipul Mbuinga, witnessed directly by the Pohuwato Regional Leadership Coordination Forum (Forkopimda) regarding administrative documentation of ownership and status of mining community plots.

The next stage after the plot document was received, was through the local government to forward it to the head office of the company consortium located in Jakarta. However, until then, before the riots in the form of burning the regent's office, the compensation process had not all been given, especially since the money did not match the community's expectations. This condition triggered unrest among the gold mining community who were members of the Pohuwato Miners' Heirs Forum, which led to the burning of the Pohuwato Regent's Office.

The second form of settlement is a civil lawsuit, which was registered on February 15, 2023 by representatives of the community and the Jamber NGO, led by Zainudin Hasiru through his attorney, Romi Pakaya SH, which highlighted a number of violations allegedly committed by PT Gorontalo Minerals. Although it was withdrawn and re-submitted on February 15, 2023, this lawsuit finally reached its peak with the decision of the Gorontalo District Court, as conveyed by the Public Relations of the Gorontalo District Court, Bayu Lesmana Taruna, confirming this information and explaining that the decision was recorded in case number 16/Pdt.g/2023/PN.Gto. In its lawsuit, the community group that is part of the Bone Bolango mining community forum, several important points in the verdict include:

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<sup>9</sup> *Syabrizal Abbas, Mediation in Sharia Law, Customary Law, and National Law., (Jakarta, Kencana, 2009) hal 25*



rejecting the exceptions of the defendants and co-defendants, granting part of the plaintiff's lawsuit, stating that the Gorontalo Provincial Government, including previous legal acts, has violated the provisions of the mineral and coal mining law. Although in the lawsuit, the judge decided that the Gorontalo Provincial Government had committed an unlawful act by providing considerations and/or recommendations that were contrary to the mining law, it also stated that local communities who have been mining since 1991 are entitled to obtain a People's Mining Area Permit (WPR) in accordance with the provisions of the laws and regulations. Sentenced Defendant I and Defendant II to pay court costs. Of course, this decision is an important historical milestone in protecting the rights and interests of the Bonebolango community regarding mineral mining in their area. It is hoped that this decision will also provide a positive signal for environmental protection and sustainability in the mining sector in general, but in the process of implementing this decision, of course, waiting for the Provincial Government's stance in protecting the rights of mining communities who have long been carrying out people's mining activities.

Third, the conflict resolution model with a legal approach, namely the repressive efforts of law enforcement officers in arresting and detaining perpetrators of anarchic demonstrations after the failure of compensation mediation between the company, government and mining community. This can be seen from the determination of 35 representatives of the mining community as perpetrators of the destruction who until now (September 2024) have entered the final stage of the criminal trial examination at the Limboto District Court, with different sentences according to their roles in the incident, ranging from 2.3 years in prison to 4 years in prison. In the records of the Gorontalo Regional Police, there have been 3 major conflicts involving a consortium of mining permit holders and mining community groups during 2023 in Gorontalo Province. The peak of the conflict was the burning of the Pohuwato Regency Regent's Office during the action that ended in riots on Saturday, September 21, 2023, which resulted in criminal proceedings against 35 people on charges of criminal destruction.

#### **4. Conclusion**

Based on the results of the research and analysis above, the author concludes as follows, First; the application of the *ultimum remedium* principle with the customary value approach to mining conflicts has not been implemented, this is evidenced by the continued use of a repressive approach in the form of law enforcement, which is marked by the determination of 35 representatives of the mining community as perpetrators of destruction who have now entered the criminal trial stage in court, Second; related to the formulation of handling mining conflicts, the values of *dulohupa* or deliberation by consensus have not been maximized, as has become a hereditary custom of the Gorontalo community in resolving problems in the community, thus triggering 3 major conflicts involving a consortium of mining permit holders and mining community groups during 2023 in Gorontalo Province. The peak of the conflict was the burning of the Pohuwato Regency Regent's Office during the action that ended in riots on Saturday, September 21, 2023. Regarding the findings, the researcher proposed several suggestions that can be given, namely the need to reformulate the values of deliberation and consensus that have become the spirit of Gorontalo's traditional values known as *Dulohupa Culture* into formal provisions in the form of customary regulations, so that customary regulations do not only contain symbolic rituals, as well as the importance of strengthening the Customary Council in resolving social problems that involve the livelihoods of the community, before taking a positive legal approach.

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