

An Institutional Analysis of Customary Marine Tenure in Maluku: Towards Implementation Marine Cadastre in Indonesia

**Andri HERNANDI, Rizqi ABDULHARIS, S. HENDRIATININGSIH,
Marisa MEI LING**

Keyword: Customary Marine Tenure, Marine Cadastre, Institutional Analysis.

SUMMARY

Sustainable development is argued to be closely related to the existence of custom. The customary communities in Indonesia have employed a range of resource management techniques to limit marine resource use. Localized control over marine resources, commonly known as customary marine tenure (CMT), is the legal and cultural foundation for many of these practices. This paper outlines the general is of CMT institutional in Maluku Islands in which these characteristics overlap with modern right-based coastal management. It also examines the effectiveness of CMT regimes at regulating marine resource use and access by focusing on a particular case from the Maluku. The custom institutional robustness and vulnerability of CMT is assessed by examining various performance criteria for three communities in the Maluku particularly Ambon Lease that is Ambon, Haruku, and Saparua Island. These criteria could be identified by coverage of the area, social right holding unit and legality and its enforcement using institutional analysis.

The results show that a number of historical processes have shaped CMT systems into heterogeneous and dynamic institutions, and that CMT regimes can vary even on small geographical scales. Understanding the circumstances in which CMT regimes are more likely to be successful has facilitated the design and implementation of integrated management fishery between customs and local government institution for protecting particular species and habitats in the region. More generally, the paper presents a case study of an institutional analysis of CMT in Maluku. The paper proposes that by analyzing the effectiveness of local governance institutions at regulating resource use and access taking into consideration that these are embedded in particular customary system contexts.

The analysis institutional can also assist in designing integrated management schemes between traditional and modern government structure. This integration is particularly relevant when these policies are to be implemented in marine cadastre in Indonesia that have or have had traditional rights-based coastal management systems of their own that more socio-culturally homogeneous. Given the long history of coastal management, it is now of vital importance to design innovative coastal management prescriptions that integrate engineering and social science research more comprehensively.

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1. INTRODUCTION

Considering the potential of Indonesia's marine resources, as well as existed customs in Indonesia, for supporting the attainment of sustainable development goals. It is argued that customary marine tenure (CMT) could become a means for enhancing the welfare of indigenous communities living in coastal areas. Located at the eastern part of Indonesia, Maluku Islands represents Indonesia as an archipelago state in a small scale. The government of Maluku realizes that in some parts of the province, village people are more likely to comply with this traditional management system than with formal (national or provincial) regulations. However, while in some areas of Maluku, traditional management system is still functioning, in other it is to be growing weaker or has disappeared entirely.

One obstacle to the maintenance and development of effective management customary institution in Indonesia is that the government does not fully recognize or support such institutions. According to (Novaczek, Harkes, Sopacua, & Tatuhey, 2001) local institutions and customs are not reflected in national and provincial resource management laws and policies. Without government support, traditional communities are not able to defend their institutional arrangements or hold off the slow demise of their traditional management systems. While government policy makers know that customary systems exist, they lack information on how well these systems perform. Quantitative or qualitative information on institutional customs system is needed to support decision-making to change policy. Researches on qualitative survey for identification the CMT, such as (Hernandi, MeiLing, & Abdulharis, 2011), provide evidence on how to identify CMT boundary based on customary institutional analysis of each village.

Moreover, the analysis institutional can also assist in designing integrated management schemes between traditional and modern government structure. This integration is particularly relevant when these policies are to be implemented in marine cadastre in Indonesia that have or have had traditional rights-based coastal management systems of their own that more socio-culturally homogeneous. Given the long history of coastal management, it is now of vital importance to design innovative coastal management prescriptions that integrate engineering and social science research more comprehensively.

In this paper, we proposes that by analyzing the effectiveness of modern government structure on regulating resource use and access taking into consideration that these are embedded in particular traditional government structure contexts.

2. SASI AS CUSTOMARY INSTITUTIONAL SYSTEM

CMT is a situation on which particular groups of people, whether in the form of individuals, clans, tribes and so forth, have informal or formal right to coastal area and in which their historical rights to use and access marine resources are, in principle, exclusionary, transferable, and enforceable (Ruddle, 1996). The CMT system, more commonly understood as traditional rights or customary law, promotes management at community level. In CMT as used here, customary refers to a system that emerges from firmly traditional roots, constitutes part of what is often termed customary law, and which has continuously linked with local history (Lam, 1998). CMT is more than just fishing rights, and their functions range beyond the organisation of economic activities (Hviding & Ruddle, 1991).

As outlined in the research of Novaczek et al. (2001), in some central Maluku communities, control over the land and marine territories (*petuanan*) and their resources is vested in a social institution that has a code of conduct, rules and regulations. This institution is known as *sasi* (Volker 1925, Ellen 1978, Kriekhoff 1991). *Sasi* is not simply an institution designed to regulate resource use; *sasi* also has a significant cultural role. "It is an encompassing body of meaningful relations between people, the natural environment and gods, ancestors and spirits" (von Benda-Beckmann et al. 1995). Although the origins of *sasi* are lost in the mists of time, local legend speaks of *sasi* being in practice in the 14th century and perhaps earlier. Others maintain that *sasi* developed in the 16th century in response to the needs of clove traders (Kissya 1994), but it was almost certainly based on older adat tradition that aimed to protect and control exploitation of natural resources (von Benda-Beckmann et al. 1995).

As an institution, according to (Novaczek, Harkes, Sopacua, & Tatuhey, 2001) that *sasi* has never been static but has changed with the times. *Sasi* have waned, absorbing and reflecting the impacts of colonialism, war, economic development and social change. Despite past predictions of imminent demise in 1998, *sasi* was still widely supported and believed to be a good thing, even in villages where the institution no longer functioned. The spiritual aspects of *sasi*, its cultural legitimacy, ceremonies, and the relationship to indigenous tenure rights, all encourage support by the community.

Sasi are considered as the fundamental concepts within the customary marine tenure system in Maluku. The concept of *sasi* is related to customary marine tenure because it is an institution that not only regulates the exploitation of existing resources in the territorial (*petuanan*) sea but also regulates the set of behaviour and social activities (Hernandi, MeiLing, & Abdulharis, 2011). *Sasi* concept also clarifies the structure of sea tenure model. One example of several types of *sasi* in Maluku, namely (Wahyono, A.R., Laksono, Indrawarsih, Sudiyono, & Ali, 2000):

1. *Sasi hutan* (forest), is a thrill that regulate activities on land resource exploitation;
2. *Sasi kali* (river), is a set of activities at once (as the exploitation of lompas fish and other activities including bathing, washing, and the prohibition of taking out the trash);
3. *Sasi negeri* (village), is a set of behavior and social activities of daily;
4. *Sasi laut* (sea), regulate the activities of exploitation of the sea.

Basically, *sasi* rules and rights to be applied in order to achieve optimal results thus the natural resources exploitation could be met the need.

One example of *sasi kali* and *sasi laut* could be met in Haruku Island that located in part of middle of central Maluku (see Fig 1). *Sasi* in Haruku, there are also areas which at certain times the exploitation of their resources is closed or prohibited to anyone including the people of Haruku Village, except with certain tools for certain types of resources, which is called *labuhan sasi*. *Labuhan sasi* in Haruku village is divided into two parts, *labuhan sasi laut* and *labuhan sasi lompa fish (Trisna Baelana)*. *Labuhan sasi laut* is bounded by an imaginary line drawn along 200 meter from the corner of the village hall towards the sea and southern part until Wairusi Cape, near Fort Nieuwzeeland. The length of *sasi labuhan sasi laut* is approximately 600 meters.

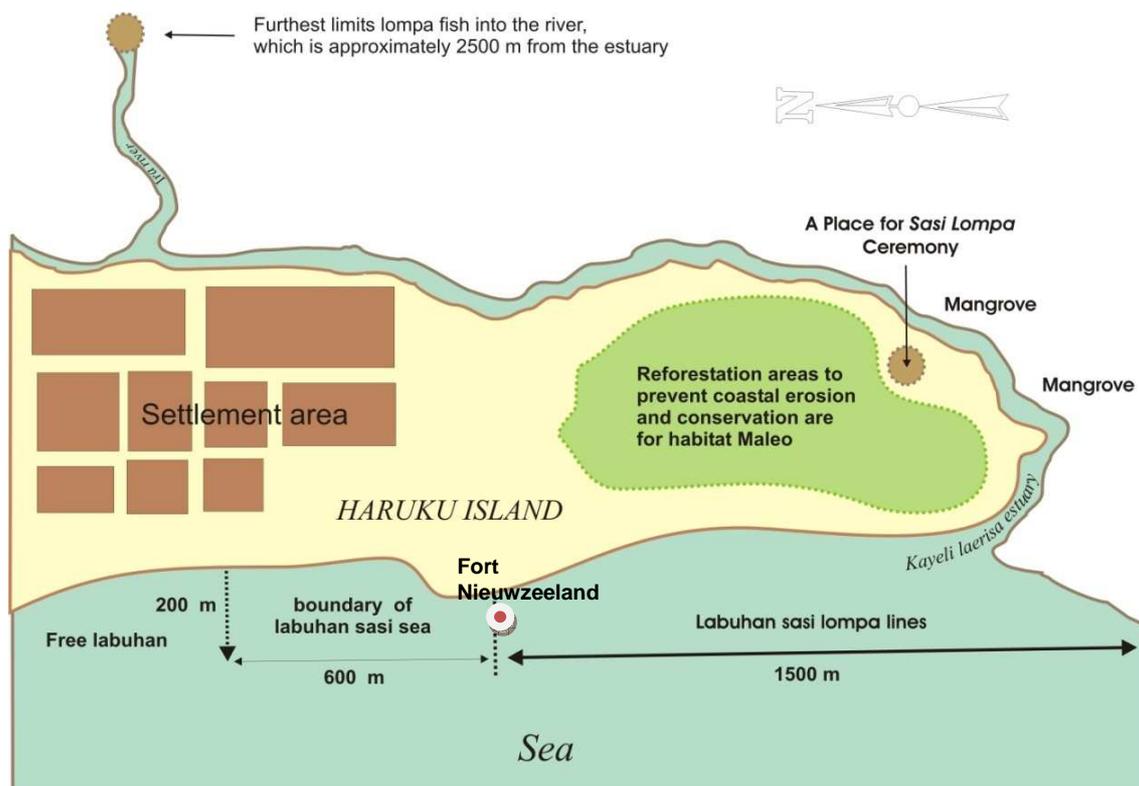


Figure 1. The Map of *Labuhan sasi* in Haruku (Kissya, 1995)

The purpose of establishment of *labuhan sasi* was to protect *lompa* fish that is a type of small sardines. Therefore, the exploitation of *lompa* and make fish is strictly prohibited in these areas. During a specific period of the year, the exploitation of *lompa* and make fish is allowed, which is normally celebrated by a big fest. Due to the existence of *labuhan sasi* and customary system attached to it, *lompa* and make fish caught during the big fest are enough for fulfilling the needs of all members of Haruku community.

3. TRADITIONAL VERSUS MODERN VILLAGE GOVERNMENT STRUCTURE

3.1 Traditional Structure

Prior to coming from outside influences, especially the Dutch, the traditional villages in Maluku (particularly in Ambon Lease) is generally a stand-alone village. Moreover, prior to the enactment of the Local Government Law (Law No. 5, 1979) the traditional villages in Maluku are generally called *negeri*. *Negeri* was led by a hereditary chief or *Raja*. This tradition began in the Dutch colonial era, perhaps even in these days and times before (Effendi, 1987; Ratnawati, 2006). Although now *negeri* is considered as a part of the traditional governmental structure, the position of *raja* was in fact not a part of the indigenous social structure as it was tailored by the Dutch colonial government. When the Dutch consolidated their power in Maluku and forced the hill-dwelling people to settle in coastal villages, they appointed the *raja*. Formerly, the clan groups living in the hills were led by warrior chiefs (*kapitan*).



Figure 2. Traditional Structure at Haruku (<http://www.kewang-haruku.org/struktur.html>)

The *raja*, together with administrative and legislative councils called *saniri*, governs *negeri*. Each member of *saniri* is the representative of clan in *negeri* in question. The *raja's* power under this system is not absolute. He, or occasionally she, is obliged to consult his/her decision with the village council. Other hereditary functionaries included a war leader called *kapitan*, persons responsible for communicating government decisions to the people called *marinyo*, keepers of sacred knowledge called *tuan negeri* and the major land owners called *tuan tanah*. There are also the hereditary institution called *kewang*, which is responsible for enforcing social and resource management regulations that are both existed under or without *sasi* scheme (see Fig. 2). The *kewang* applies *sasi* rules on both land and sea within the village territory. Some villages have separate *kewang* for land and sea resources (Novaczek, Harkes, Sopacua, & Tatuhey, 2001).

People who break *sasi* rules are punished, but the punishment may be divine, psychological, physical or financial. Physical punishment and financial fines are used most often in Muslim villages, such as in Haruku and Seram Island. Physical sanctions may include labour such as moving rocks and sand and cleaning streets. Offenders may be caught by *kewang* members or reported by ordinary villagers. Sanctions are imposed by *kewang* or *raja negeri*, unless the offensive act is already within the jurisdiction of the police.

3.2 Modern Structure

After promulgation of Local Government Law (Law no. 5, 1979) and Government Regulation no. 72 of 2005, the provincial governance structure throughout Indonesia was being standardised under a single national model. The unification scheme was also done for village governance that was regulated by national regulation. Each of Indonesia's 33 provinces is administrated by provincial government (*Gubernur*). Below the district are the sub-district government offices which are called *Kecamatan*. Government decrees, guidelines and programs are passed down through this structure to the local administrative units which are called *desa* or, for larger land units attached to urban centers, *kelurahan*. Each *desa* is governed by a *kepala desa* or village head, together with his staff, and may comprise one or several villages. It has 10 to 15 members presided over by the village head and the village secretary and is divided into sections, i.e., village development, government administration and community affairs, each of which has a chief. Villages that are smaller than 2,000 inhabitants are usually not independent but have the status of *dusun* under the larger unit (*desa*). In connection with the settlements distance are far away, especially from *desa* government office, a *dusun* is established as representation in the *desa*. *Dusun* is lead by a local leader (*Kepala Dusun*). *Dusuns* were further divided into RWs (*rukun warga*: *rukun* is a harmonious unit, *warga* is a society member), and subsequently into RTs (*rukun tetangga*: *tetangga* is neighbor). The RT is the smallest political unit in the village

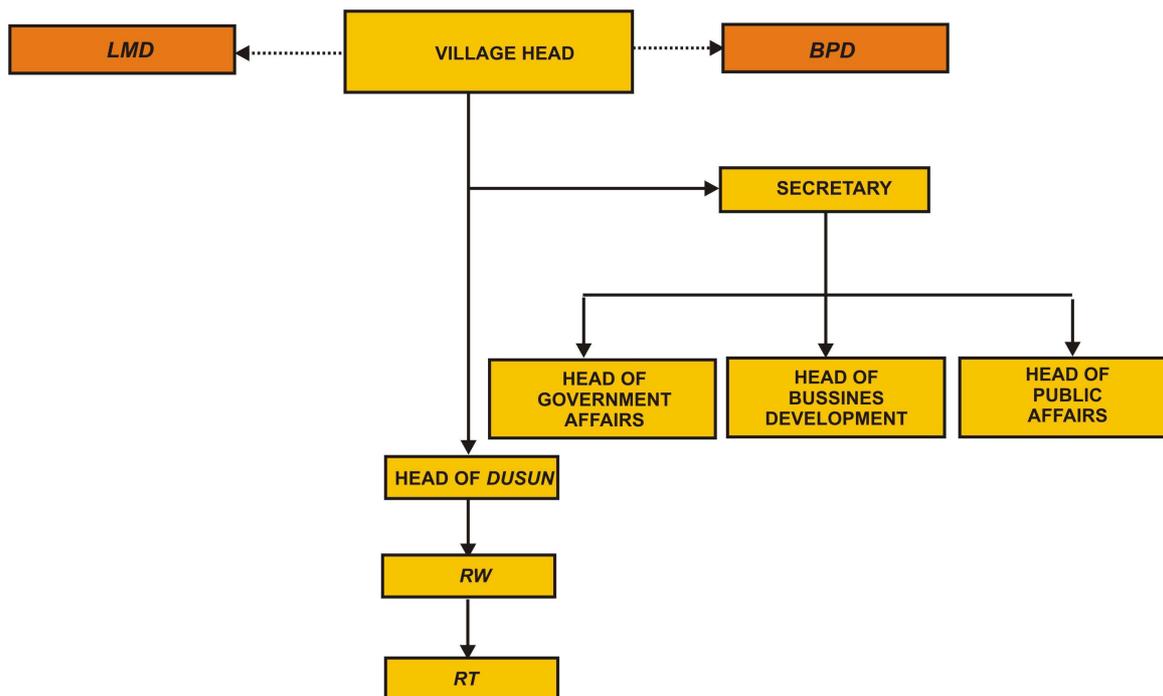


Figure 3. Modern Village Government Structure Village (Based on Law no. 5, 1979)

4. DISCUSSION

After Law no. 5 of 1979, traditional political structures in the villages were abolished. The country was divided into uniform hierarchical units until a local level, reflected social structures in Java, but did not accommodate the traditional structure in other parts of the country (such as Maluku). The hereditary *Raja* was replaced by an elected village head, the *Kepala Desa*. The village council (*Saniri*) were replaced by bodies known as the *Lembaga Masyarakat Desa* (LMD). LMD is the formal village legislative body occupied together with *Kepala desa* to control over implementation of government. Unfortunately, there was no place in the new structure for the *kewang*, nor was any replacement developed to take over the function of resource management. Moreover, the clan system also became dysfunctional when, instead of being divided along clan lines, the village territory was geographically divided into *dusuns* (hamlets).

Consequently, *sasi* must adapt to modern society and gain formal legal status or it may, at the operational level, cease to function. There are various options for providing a legal basis for local management bodies, including decrees by the provincial governor, the district head or the sub-district head, and promulgation of a provincial law. Another option is through amendment of the Law No. 5, 1979 which is changed to Law No. 32, 2004 on Local Government. Since the enactment of Law No. 32, 2004, the traditional village governmental structure has been restored.

Through the issuing of Law No. 32, 2004 the implementation of latter law, traditional political structures in the villages could be accommodated. The country provides some authority to local government to manage the organizational structure of the village that can accommodate the traditional structure. This is reinforced by the release of Regional Regulation No. 1, 2006 on *Negeri* Government. So, the new village government structure will be modified by the traditional and modern structures (see Fig 4). Consequently, village leaders are attracted to *sasi* intuitions as a culturally acceptable basis for collection of resources to support the local government.

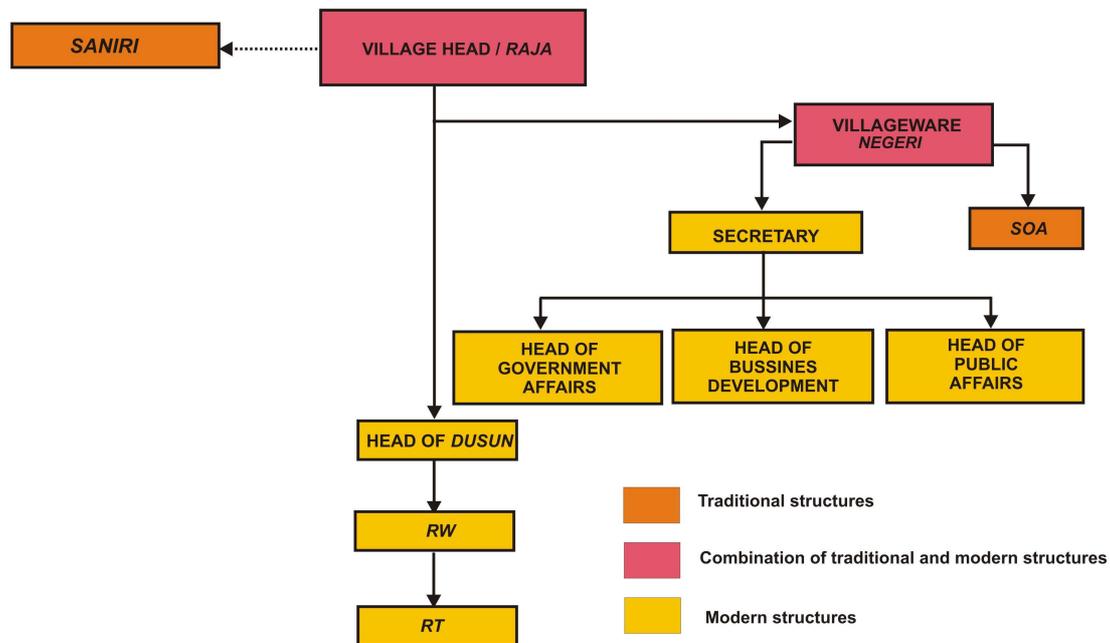


Figure 4. The New Village Government Structures

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BIOGRAPHICAL NOTES

1. Andri Hernandi
 - Academic Background: B.Sc and Ph.D on Geodesy and Geomatics Engineering from Institute of Technology of Bandung and Master of Urban dan Regional Planning from Institute of Technology of Bandung;
 - Current Position: Lecturer at Surveying and Cadastre Research Division, Faculty of Earth Sciences and Technology, Institute of Technology of Bandung;
 - Research Interest: Land Administration, Photogrammetry and Cultural Preservation
2. Rizqi Abdulharis
 - Academic Background: B.Sc on Geodesy and Geomatics Engineering from Institute of Technology of Bandung and M.Sc on Geomatics from Delft University of Technology;
 - Current Position: Ph.D candidate on Spatial Planning in Developing Countries at Technische Universität Dortmund;
 - Research Interest: Land administration in particular on customary land tenure, geographic information science, spatial data infrastructure and disaster management.
3. S. Hendriatiningsih
 - Academic Background: B.Sc, M.Sc and Ph.D on Geodesy and Geomatics Engineering from Institute of Technology of Bandung;
 - Current Position: Associate Professor at Institute of Technology of Bandung and Head of Surveying and Cadastre Research Division, Faculty of Earth Sciences and Technology, Institute of Technology of Bandung;
 - Organisational Experience:
 - Member of Indonesian Surveyor Association;
 - Member of Indonesian Geodetic Engineer Association;
 - Member of American Geophysical Union on 1995;
 - Research Interest: Surveying and 3D Cadastre
4. Marisa Mei Ling
 - Academic Background: B.Sc on Geodesy and Geomatics Engineering from Institute of Technology of Bandung and M.Sc on Geomatics from ITC Faculty of Geo-Information Science and Earth Observation, University of Twente, The Netherlands, Delft University of Technology; Ph.D on Environmental Geotechnology from Kyushu University
 - Current Position: Academic Assisant, Faculty of Earth Sciences and Technology, Institute of Technology of Bandung;
 - Research Interest: Land Administration, Land Information System
 -

CONTACTS

Andri Hernandi
Surveying and Cadastre Research Division
Faculty of Earth Sciences and Technology
Institute of Technology of Bandung
Labtek IX-C, 1st floor
Jl. Ganesha 10
Bandung 40132
INDONESIA
Tel. +62 22 2530701 ext. 3479
Fax +62 22 2530702
Email: andri@gd.itb.ac.id; andri_hernandi@yahoo.com
Website: <http://surkad.gd.itb.ac.id>