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Kalinga's Family Justice System on Marriage And Child Support: The Bodong's Legal Perspective

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ABSTRACT

This study explored the experiences of Indigenous families in the family justice system of marriage and child support from the perspective views of legal and frontline family justice personnel. It employed the qualitative study adapting the phenological approach. An interview guide was used to elicit the necessary information. The researcher used video recording and audio recording to document the responses of the participants of the study and used thematic analysis to analyze the data gathered. Based on the study results, the system promotes peace & order and resolves conflict easily, which is the main objective of the Bodong Justice system in general. In addition, it gives an opportunity for the less fortunate to settle disputes in a very bureaucratic way of the formal court. However, it has been noticed that some are still misguided on the process, especially today's youth who were raised in the modern way of life and were not brought up by the traditional ways and culture due to modernization.

KEYWORDS

Bodong, Kalinga, family justice system, qualitative, Philippines

INTRODUCTION

In many countries, most legal disputes, especially in rural areas, are resolved by indigenous or other traditional and customary justice systems and not the official justice system of the state. Often, such systems are either ignored by the official laws and courts of the State, or the State seeks actively to suppress them without regard to the impacts on access to justice and other rights of the local people. Globally, there is increasing interest in the potential role of indigenous and other traditional and customary justice systems in efforts to achieve "access to justice for all" and "effective, accountable, and inclusive institutions" under United Nations Sustainable Development Goal 16.

The UN General Assembly urged States to implement the UN Declaration on the Rights of Indigenous Peoples in consultation with indigenous peoples and others, including through "legislative, policy, and administrative measures"; it also urged States "to promote awareness of it among all sectors of society, including members of legislatures, the judiciary, and the civil service, as well as among indigenous peoples."1 In 2007, the UN recognized the role of some traditional and customary justice systems. The Declaration states that "Indigenous peoples have the right to promote, develop and maintain their institutional structures and... juridical systems or customs, by international human rights standards.". However, practical guidance specifically addressing the implementation of the right to develop and maintain indigenous juridical systems or customs, including concerning the relationship between such indigenous systems and non-indigenous justice systems, remains limited.

Indigenous and other traditional or customary justice systems differ greatly from one another globally in terms of their structure, goals, methods, procedures, and standards. Such systems are frequently found in many different forms within a single nation. The degree to which actors within various systems acknowledge one another's role or authority and attempt to cooperate or confront one another, as well as the degree to which the relationship between these systems and the State system is expressly addressed in the national Constitution or other laws, vary greatly.

Due to the sheer variety of these systems worldwide, extreme caution about the possibility of overgeneralization and hidden biases is necessary. Common divisions like "formal" vs "informal," for example, may have preconceived notions and biases from a particular culture. Additionally, various traditions and customs are incorporated into official State justice systems, and it is always possible to mistakenly distinguish between a procedure that upholds universal human rights norms and one that unfairly or arbitrarily favors some traditions and customs over others. There is a growing body of literature discussing barriers or inequities faced by Indigenous people in the broader justice system, in particular, the criminal justice system and the child welfare system, where Indigenous people are greatly over-represented. However, there needs to be more research on the experiences of Indigenous people in the family justice system (Arcilla et al., 2019). Out of over fifty sources from our literature review, only one offered substantive research focusing exclusively on Indigenous people's experiences in family law (McCallum & Hrymak, 2022). The gap in data is notable when we consider the prevalence of justiciable issues related to family

breakdown. In 2021/2022, family law cases accounted for approximately one-third of all civil court cases (Ciavaglia-Burns et al., 2023), and family cases were more active in civil courts than non-family cases (Ciavaglia-Burns, 2021). Moreover, these statistics do not capture the families who do not turn to the FJSor who abandon initial efforts to work within the FJS to deal with issues arising out of separation or divorce due to barriers to accessibility. While some families settle matters independently, a wide range of family justice services, including legal support as well as alternative dispute resolution services, must be available and accessible to all people should they need support in resolving family law matters

This study aims to contribute to the understanding of the experiences of Indigenous families (specifically, unmarried or married couples with children) dealing with separation and divorce who are going through the family justice system (FJS). This includes both identifying needs specific to Indigenous people going through the mainstream FJS and developing a better understanding of Indigenous approaches to resolving family conflicts. This preliminary information will help to identify specific challenges faced by and opportunities available for Indigenous families going through separation and divorce and those who work with them. The research can inform future efforts to respond more effectively to the needs of Indigenous families and communities, as well as opportunities to welcome the gifts of Indigenous Knowledge Keepers through subsequent policy development, consultation, and research activities about family law and family justice.

STATEMENT OF THE PROBLEM

This study explored the experiences of Indigenous families in the family justice system of marriage and child support from the perspective views of legal and frontline family justice personnel. Specifically, this study sought to answer the following:

1. How do the Kalinga's view their family justice system regarding marriage disputes and child support?
2. What are the Kalingas' laws along marriage disputes and child support using the bodong?
3. How are these laws preserved and carried out across generations?
4. What are the enabling and restraining factors in the implementation of these laws in the Kalingas' society?
5. What are the implications of the Kalingas' family justice system using the Bodong and the Philippine Legal laws on marriage and child support?

METHODOLOGY

Research Design

The researcher utilized the qualitative research design, particularly the phenomenological approach. This approach explores the experiences of a specific

phenomenon (observable fact or event) in a person or group. These are "lived experiences. "The method helps researchers better understand people's beliefs, attitudes, behavior, and experiences. In this method, you ask customers to describe their experiences as they perceive them. This approach recognizes no single objective reality; everyone experiences things differently.

According to Brannan (2022), qualitative research gathers participants' experiences, perceptions, and behavior. It answers the hows and whys instead of how many or how much. It could be structured as a stand-alone study, purely relying on qualitative data or part of mixed-methods research that combines qualitative and quantitative data.

Participants and Locale of the Study

Purposive sampling and Linear Snowball sampling were utilized to identify the study participants. The primary source of the data and the only criteria for identifying the participants of the study were the people who belong to the Bodong Legal System of the Kalinga or part of the Itabuk Council as a mediator and elder.

Research Instrument

The researcher used a semi-structured interview guide. The first part elicited the demographic profile of the respondents, and the second part was used to answer the statement of the problems of this study.

Data Gathering Procedure

In-depth interviews were conducted with the key informants by first seeking their free and prior informed consent. As soon as their consent was given, the interviewer scheduled an interview at their most convenient time and space. Video and audio recordings were done upon the approval of the informants.

Data Analysis

The recorded responses of the informants were transcribed, coded, and thematized. Codes were examined based on their divergence and convergence as they served as the basis for coming up with general themes related to the study's objectives. Before the data were analyzed, themes were presented to the study participants to validate whether the themes generated were accurate or whether they represented the ideas they shared during the data-gathering process.

RESULT AND DISCUSSION

Kalinga's view on their family justice system along with marriage disputes and child support.

The Kalinga's views towards their family justice system, marriage disputes, and child support. Based on the interviews with study participants, the Bodong Justice system promotes peace & order and resolves conflict easily, which is the main

objective of the Bodong Justice system in general. That's why most people from Kalinga who belong to a tribe seek the Bodong Justice System rather than the formal court. The law acknowledged the Bodong legal system according to REPUBLIC ACT NO. 8371 Chapter IV "Justice System, Conflict Resolution Institutions, and Peace Building Processes. — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace-building processes or mechanisms, and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights." This was supported by the claim of Layugan (2016), "Kalingas today resort to the jurisdiction of the courts to resolve their disputes, others within the pidlis (peace pact jurisdiction) still follow the procedures of arbitration and adjudication by settling their differences between themselves through the mechanism of the Bodong: Crimes which are not blood-related like stealing, property disputes, and the like are arbitrated through the peace-pact institution. This action finds a solution to the problem, and the prospect of future reprisals can be avoided." Also, this objective was stipulated in their Provision that Bodong is a territorially-based bilateral covenant of non-aggression between Kalinga villages, the centerpiece of which is an Indigenous unwritten mechanism for processing its breach and regulating inter-village relations meaning it has the power to conduct speedy dispositions or trials within the tribal community that aims to strengthen the bond of tribe members to each other (Art. 1 section 1, KBC 2013). Its objective is to maintain peace and stability within the village and create bonds of amity between villages that no other law can do the same (KBC, 2013).

In addition, the Kalinga people view their family justice system along with marriage and child disputes as unique and effective. According to the participants of the study, "this Bodong law can only be found and emanated in Kalinga and we have a high rate of resolved cases compared to the supreme court." This is possible because it is only in the Cordillera Administrative Region that the Bodong system can be found. According to Cordillera Peoples Alliance (2004), "the region is known for its Bodong Site, however, as studies show, only the Province of Kalinga emphasizes the essence of the constitution and by-laws of their system and with this matter, the essence of having Criminal Justice System in the locale is not highly recognized due to their strong attachment to traditional setups which has been embodied by some of the young generations of the Kalinga."

Moreover, the people of Kalinga viewed their Bodong System as an effective way of solving conflicts. This has been supported by Domingo (2017), Cordillera Administrative Region's urge to pursue the legalization and government recognition of the Bodong System has an ease with the lengthy trials of the Criminal Justice System. Likewise, it has allowed the less fortunate to settle disputes without paying any debts to attorneys just for cases to be settled. Also, this was been supported by Vecaldo et. Al (2015), that among the subgroups of the external assessors, the local chief executives gave the highest evaluation rating. In the implementation of the declaration of principles and policies, rights and duties of the binodngans, and rights and responsibilities of the bodong holders, the weighted mean of the group was 3.84, 3.92, and 3.83 respectively. In general, the external assessors consider bodong to be

effective. On the other hand, the internal assessors gave higher evaluation than the external assessors the internal assessors consider the implementation or observance of the declaration of principles and policies, and the rights and duties of the binodngans to be very effective with the weighted mean of 4.25 and 4.2 respectively." Also, according to Vecaldo et. al (2015), "Bodong is seen by many people in Kalinga including those who are working in the government as effective as it was perceived in the past. In the past, bodong was binding despite the reality that the constitution and by-laws were not as extensive and comprehensive as they are today. This manifests now the effectiveness of bodong in keeping the peace and order situation of the province of Kalinga. In fact, in the study of Lang-ay et.al [1], they reveal that specifically, the police personnel strongly agreed on the integration of Kalinga Indigenous law in the implementation of modern criminal law in Tabuk City."

These findings strongly back up the point of Kalinga Provincial Peace and Order Council Resolution 003 series of 2002 which cites a resolution requesting all tribal-related crimes in the urban barangays of Tabuk, Kalinga Matagoan Zone, particularly in the barangays of Bulanao, Appas, Magsaysay, Dagupan West and Casigayan in the application of Section 1 Article 11 of the proto pagta which aims to solicit the active involvement of the council of elders in mediating between the warring tribes. It emphasizes the role of the council of elders as leaders of their respective tribes and promotes strict adherence to bodong. With these, the PPOC-RPOC expected to come with a peaceful settlement of tribal conflicts, better relationships among the different tribes, and strict subscription to the Bodong system by the indigenous system tribes of Cordillera.

Figure 1. Kalinga's views on their family justice system along with marriage disputes and child support

Kalingas' laws along marriage disputes and child support using the bodong

Based on the Itabuk Pagta By-laws of the Tabuk Bodong Legal system the following are their different laws:

Crimes Against Women and Children

Section 1. Pugod/Gobao (Rape), when and how Rape is committed:

a) By a man who shall have carnal knowledge of a woman against her will.
b) By any person who shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.
c) When the offended party is under twelve (12) years of age or is demented, even when the sexual intercourse is with consent.
d) By having sexual intercourse with sleeping, unconscious women or sexual

intercourse through deceit.

Section 2. Penalty- The penalty for rape committed through sexual intercourse is twelve (12) carabaos. The penalty for rape committed through sexual assault is six (6) carabaos. However, if the rape is committed by a relative, the penalty is fifteen(15) carabaos.

Section 3. If as a result of rape, a child is born, the child is entitled to support (palakson or patawid), in addition to the penalty of rape.

Section 4. If after the rape, the parties agreed to marry, the penalty is extinguished.

Section 5. Any person who commits acts of lasciviousness, such as kapokap, or kobol, with lewd desire upon another person without his/her consent shall pay a fine (multa) of 1 carabao.

Section 6. Sohwao/Daladag -Any married man having an illicit affair with the wife of another man, shall be fined (mamulta) one (1) carabao to be butchered during the settlement. In addition, he shall pay a fine (multa) of three (3) carabaos to be given to the husband of the woman (dagdagas), and the married woman shall also be fined (mamulta) three (3)carabaos to be given to the wife of the offending husband.

Section 7. If the relationship is between a married man and an unmarried woman, the offending spouse shall be fined (mamulta) of one carabao to be butchered during the settlement. In addition, he and his paramour (dagdagas), shall pay one (1) carabao each to be given to the offended spouse.

Section 8. If a married woman carries an illicit affair with a single man, the single man shall be fined (mamulta) of one (1) carabao to be butchered during the settlement.

In addition, the married woman (dagdagas) and the single man shall pay one (1) carabao each to be given to the offended husband.

Section 9. If a husband or wife, whether married under the civil code or through a customary law abandons permanently his or her spouse, the offender shall pay a fine (multa) of three (3) carabaos. If they have children, the offending spouse shall forfeit his/ her share of all their conjugal properties and provide support to the children.

Section 10. If the reason for leaving the spouse is due to repeated violence on his or her person, the spouse who leaves the conjugal home is not liable, but he/ she may give support when warranted.

Section 11. The spouse who inflicts injuries on his/her spouse shall be liable to pay three (3) carabaos to the injured spouse

Section 12. The spouse who intentionally inflicts injuries on his/ her children whether legitimate or illegitimate shall be liable to pay three (3) carabaos to his/her spouse.

Section 13. If as a result of repeated beating or any brutal acts, the battered spouse is killed, the offending spouse is liable to pay ten (10) carabaos by way of amicable settlement and provide support to the children. If the offender is the one killed by the offended spouse in self-defense, there is no liability/ bug-uy. The fine to be paid by the spouse shall not come from the community or conjugal property of the spouses.

Section 14. Lugung (Seduction) - When a man has carnal knowledge with an unmarried woman committed by means of deceit, he shall be liable to pay a fine of 2 carabaos. In case she gives birth to a child, support (palakson/ patawid) shall be given.

If the woman dies at childbirth (nanapil), the offender shall be liable for three (3) carabaos and shoulder the funeral expenses.

Section 15. Lukluk/ lobak (desecrating a widow/widower) - Any person cohabiting with a widow/widower who is still in mourning shall be fined (mamulta) of one (1) carabao and the widow/widower shall pay one (1) carabao as baba-u to the heirs/ relatives of the deceased husband/wife. The mourning period shall be understood to be 1 year from the death of the deceased spouse.

Section 16. Any married person whether legally married or married under customary law, who having surprised his spouse in the act of committing sexual intercourse with another person, kills any one of them or both of them in the act or immediately thereafter, or shall inflict upon them or any of them serious physical injuries, shall not be liable. However, he shall pay reasonable financial assistance to the families of the victims. There is no bug-oy.

Section 17. Forcible Abduction - If a man takes away a woman against her will with force and lewd design, the offender shall pay five (5) carabaos. However, if the crime is a means employed in the commission of the crime of rape, the offender shall be imposed the penalty for rape which is twelve (12) carabaos.

Section 18. Toddak di babai- If a man takes away a minor, even with her consent with a lewd design, the offender shall pay the family of the minor three (3) carabaos.

Section 19. Corruption of minors - Any person who shall hire, employ, induce, or coerce a child to engage in prostitution shall be fined 5 carabaos. Any person who persuades, instigates, or pressures a minor to commit a crime shall be penalized five (5) carabaos.

Section 20. Failure to give support- The spouses shall have the obligation to give support to their legitimate or illegitimate children up to the age of 21, however, children with disabilities shall be supported till death. The spouse who withdraws or refuses to give support to his spouse and their common children shall be fined One (1) carabao.

Section 21. Bullying of Children- any student who shall commit severe or repeated written, verbal, or physical acts directed at another student that has the effect of actually causing the latter unreasonable fear or physical or emotional harm shall be guilty of bullying. The parents of the child guilty of bullying shall be fined. (First offense- reprimand, second offense- warning, third offense- One (1) carabao to be given to the offended party)

Preservation Mechanisms of Kalinga People to Preserve Bodong Legal System Across Generations

Figure 03 shows the different mechanisms of the Kalinga people to preserve the Bodong Legal System. Based on the participants of the study, the Bodong legal system of Kalinga has been introduced by the local community to the different learning institutions by conducting seminars or symposiums. Also, teachers of different learning institutions contextualize and localize their lessons as one of the mandates of the Department of Education (DepEd). According to the Section 5 of RA 10533 or the Enhanced Basic Education Act of 2013 states that the "K to 12 curricula shall be learner-centered, inclusive and developmentally appropriate,

relevant, responsive, research-based, culture-sensitive, contextualized, global, and flexible enough to allow schools to localize, indigenize, and enhance the same based on their respective educational and social contexts. K to 12 teachers are allowed to use contextualization strategies in their lessons."

Also, according to DepEd Order No. 32, s. 2015 entitled Adopting the Indigenous Peoples Education Curriculum Framework, contextualization is "the educational process of relating the curriculum to a particular setting, situation, or area of application to make the competencies relevant, meaningful, and useful to all learners." The degree of contextualization can be further distinguished into localization which involves relating curriculum content to information and materials found in the learners' immediate community, and indigenization which involves enhancing curriculum competencies, learning resources, and even the instructional process about the bio-geographical, historical, and socio-cultural context of the learners' community. In preparing lessons, teachers are encouraged to make full use of these contextualization strategies, if necessary, to make lessons more relevant and meaningful to learners."

Also, this funding was supported by Panabang (2007) said "Hopefully our authorities in the world of academe will be convinced to integrate in the curriculum and offer as a separate subject this Indigenous people's cultural practices involving conflict management - the Bodong as the justice system." Bodong as justice system is same as saying conflict management indigenous system that plays a minor role nowadays but in my opinion it is still effective. We can only restore the rich culture of Abra by educating the youth in formal and engaging them in more cultural activities (Tinggono, 2007).

Inclusion or contextualizing the curriculum in the learning institutions in Kalinga can help preserve the Bodong legal system. According to Santiago (2007), "If Bodong will be included in the curriculum, it will be an advantage to the younger and future generation because they seem to be innocent already with our cultures. Their attention and concern are now focused on the fast-changing technologies and modernization in all aspects."

In addition, orientation, and re-orientation of the Bodong members are usually conducted when there are some amendments to the Bodong Legal System or Pagta. However, according to the participants of the study, these amendments will not be possible if there are no violations of the Pagta or Bodog because this implies that people of Kalinga or members of the Bodong are following their laws. However, when there are some frequent cases of violation of the Pagta, there is a re-orientation will be conducted usually called Dolnat (warming). If the provisions of the pagta have been violated or after many years have elapsed and both parties want to warm the relationship or when the pact is transferred to another custodian because of the death of the keeper of the peace pact or because the other wants to relieve himself of the responsibility or if there is a dispute and the case has not been resolved for a long time. Either one of the peace-pact holders informs the other to make preparations for the dolnat (warm/reheat) to tighten once more the relationship between the two sin-ilians as well as to remind their respective constituents about the consequences of the violations of the page.

According to the participants of the study, one way to preserve their Bodong Law or their Pagta is through the celebration of the Bodong every February 14. The first Bodong Festival was launched through provincial ordinance No. 2016-029. The ordinance was authored by Eduardo Sarol and Frederick Pangsiw of the provincial board. Another name that was considered during deliberation was the Bodong Mankapyaan Festival.

Figure 03. Preservation Mechanisms of Kalinga People to Preserve Bodong Legal System Across Generations

Enabling and Restraining Factors in The Implementation of these Laws in The Kalingas' Society

Figure 04 below shows the different enabling and restraining factors in the implementation of the Bodong Legal System. The first factor that enables the implementation of the said legal system is the personal factor. According to Anderson et al. 2007, "A personal factor is a characteristic of a person such as age, sex, sociocultural identity, organic systems, capabilities, education, etc." Based on the interview of the participants of the study, one and the major factors in the implementation of the Bodong legal system is the personal conscience of every member of the Bodong legal system. According to the one mediator of the Tabuk City, Kalinga their Bodong is based on the three (3) core values PANYAW(curse), MILIN, and BAIN(shame).

Following these three (3) core values of the said legal system will help promote peace and order in the community. If there is peace and order in the community this implies that the punishments stipulated in the Bodong Legal System will not be implemented to a certain individual.

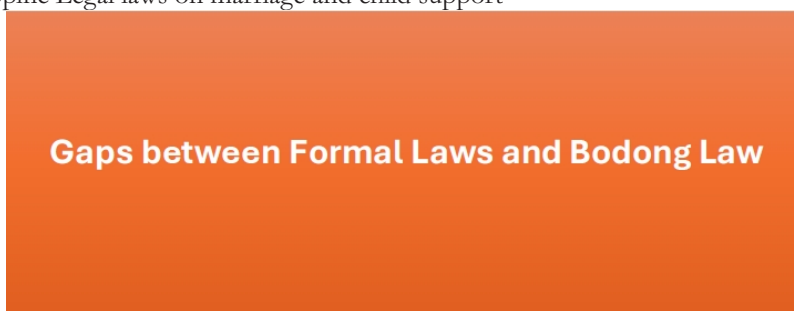
In addition, the educational attainment of each member of the Bodong Legal System is one of the restraining factors in the implementation of the said legal system. Since some members undergo formal schooling, particularly in the field of law sometimes they do not acknowledge the Bodong Legal System anymore and resort to the formal court.

Moreover, ACCULTURATION and MODERNIZATION FACTOR is one of the restraining and enabling factors in the implementation of the Bodong legal

system. According to Nickerson (2024), Acculturation is the process by which a culture adopts the customs and ideas of another culture. It is a process of learning and adopting the values, behaviors, and traditions of another group or society." Due to the modernization of the society and due to migration of the different ethnolinguistic groups in Kalinga some non-native Kalinga people signify their interest in becoming members of the Bodong. This is significantly seen in the composition of their Bodong Council. In their council, there are representatives of the different ethnolinguistic groups that made this Bodong legal system Multisectoral and inclusive. With this, it enables the implementation of the Bodong legal system in their society. However, some other migrants do not acknowledge the Bodong legal system since it is not part of their cultural beliefs and practices. This situation leads to cultural conflicts among non-members and members of the Bodong Legal system. Also, due to the said cultural conflicts the main objectives of the Bodong cannot be attained. This can be supported by the claim of Gamarcho (2005), that "there is more to discover in their tradition than meets the eye, meaning that bodong will always be how it is and it should stay as it is, it may be through a bloody battle but it gives balance in the societal advancement that modernization brings".

Figure 3. Enabling and Restraining Factors in The Implementation of these Laws in Kalinga's Society

Implications of the Kalingas' family justice system using the Bodong and the Philippine Legal laws on marriage and child support



Based on the generated theme during the thematic analysis, the major implication of the Kalingas' family justice system using the Bodong and Philippine Legal Laws on marriage and child support is gaps between the formal law and Bodong law. Even though there are lots of studies showing its effectiveness, there are still Kalinga people who don't honor the results of the Bodong legal system, which can cause more conflicts and disorientation of the peace and order of the community. According to the head of the Bodong council, "person who is a judge or a lawyer and the exercise of culture or system of the bodong. The education of a person such as a Kalinga LAWYER is considered a hindrance because what they fight for is the

provision of the formal law or the consequences of the law rather than respect for the system of the bodong which aims for peace and unity." Also, according to another participant "we have supposed to have settled the case of murder for 1 million pesos but because the other party has a lawyer who is also a member of the tribe, he said that the settlement is only for the civil aspect of the crime and not the criminal aspect which is for the court's jurisdiction. So how can there be peace between the parties if the lawyer would not acknowledge the settlement in the bodong and insist on the respondent's liability based on national law?".

However, this finding implies that bodong leaders must rationalize the indemnities and ensure that imposing the indemnities against different violations of the national law should be consonant with the existing provisions of the Republic of the Philippines. In this manner, the imposition of the sanction is constructive and just. This is to harmonize with the laws of the land that are highly presumed to be superior to other culturally related guidelines.

CONCLUSION

The Kalinga people viewed their Family Justice System through their Bodong Legal System as effective and distinct, promoting peace and order and resolving conflicts efficiently without experiencing long trials in the formal court. In addition, it gives an opportunity for the less fortunate to settle disputes in a very bureaucratic way of the formal court. However, it has been noticed that some are still misguided on the process, especially today's youth who were raised in the modern way of life and were not brought up by the traditional ways and culture due to modernization.

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