

KAILI TRIBE CRIMINAL DISPUTE RESOLUTION PROCESS FROM THE PERSPECTIVE OF CUSTOMARY LAW IN CENTRAL SULAWESI

Lubna, Ade Saptomo, Metty Murni Wati Ibrahim, Rospita Rufina Situngkir, Dhani Kristianto

Universitas Borobudur, Indonesia

Email: lubnasadatali@gmail.com, adesaptomo@yahoo.com, angelibrahim@yahoo.com
notrospita@gmail.com, dhanikristianto.tp94@gmail.com

Abstract

This research discusses customary law in Indonesia which is pluralistic because it reflects the diversity of tribes and ethnic groups. Customary law is still relevant and applicable in the life and culture of Indonesian society. Customary law as positive law has a special characteristic, namely that there is little written statute, despite its value applying in society. This research is descriptive in nature using normative analysis, literature studies, and field surveys. The research results show that customary law has a position that is recognized in statutory regulations, including the 1945 Constitution, the Human Rights Law, and the Draft Criminal Code. The implementation of traditional law is elucidated through the Kaili customary justice process in the Central Sulawesi region, with the stages of decision-making and the types of sanctions that can be given.

Keywords: Legal Position, Kaili Customary Law, Dispute Resolution

Introduction

Customary law in Indonesia is pluralistic because it reflects the existence of many tribes and ethnic groups. However, traditional command expert C. Van Vollenhoven divides Indonesia's customary law areas into 19 customary law zones which are called legal environments (*rechtskring*) (Wulansari, 2014). Customary law is a practice of regulation that still exists in Indonesian customary law. It is also crucial to know that one type of law is traditional law that applies in the life and legal culture of Indonesian society and is still valid today (Pide, 2014).

Customary law as positive law has special characteristics, namely, conventional regulation is only a short portion of written law, but its values exist and apply to the lives of indigenous peoples who utilize this traditional ordinance. Customary law applies within a limited scope, namely it only applies to the indigenous peoples of the area. This situation allows each indigenous community to have different customary laws. Prof. Mr. Dr. Soekanto defines customary law as follows: "a complex of customs, most of which

How to cite:	Lubna, et al. (2024). Kaili Tribe Criminal Dispute Resolution Process from the Perspective of Customary Law in Central Sulawesi. <i>Syntax Literate</i> . (9)2. http://dx.doi.org/10.36418/syntax-literate.v9i2
E-ISSN:	2548-1398
Published by:	Ridwan Institute

are not written down, not codified and are coercive, have sanctions, so they have legal consequences" (Soekanto, 2013).

Indonesia consists of various races and ethnic groups, in terms of language, culture, and different customs. Every society has different rules and norms for life, growth, and development. Every society in Indonesia has its customary laws, and each has different rules. Every traditional rule also contains customary sanctions that apply to those who commit crimes or violate rules and norms that conflict with public property.

The Republic of Indonesia's 1945 Constitution states in article 18B paragraph (2) that "The State recognizes and respects customary law assembly units and their conventional liberties as long as they are still alive and by its growth of society and the principles of the Republic of Indonesia, which are regulated by law." This means that customary law is acknowledged as a form of law and is ingrained in Indonesian society's daily life and cultural norms. An explanation regarding the recognition of customary law by state law is contained in Article 27 paragraph (1) of the 1945 Constitution which states: "*Every citizen enjoys equal rights under the law and is required to respect the rule of law, family law, and its traditional rights for as long as they exist, as well as the advancement of society in accordance with the legally prescribed ideals of the Republic of Indonesia.*" (Abdulrahman, 2013).

One example of the application of customary law and its sanctions is the Givu decree for the Kaili people who live in the Palu Valley. If we look at it from the cultural and local wisdom aspect, it is found that customary law and its sanctions have noble values and are still strictly adhered to (Suartha, 2015). However, in modern times, most people have forgotten about it and it is even considered *pamali* (taboo) in everyday life. Customary law and sanctions still aim to prevent the negative impact of modernization on the destruction of the order of life.

Customary sanctions are given to those who violate customs, from nobles (Madika) to ordinary people (Soekanto S. d., 2014). To maintain the strength of the traditional values contained therein, all the neighborhood's members in a customary area are subject to the same laws or sanctions, even though they are of different ethnicities or groups. By carrying out the philosophy "where the earth is stepped on, there the sky is upheld", meaning that wherever we are we must continue to respect the customs that apply in that area to create peace.

Based on what has been described in the contextual above, the problematic that arises is what is the position of customary law in the notion of statutory regulations and what is the implementation of the law and the types of traditional sanctions if there is a violation of the customary law of the Kaili tribe?

Research Methods

The research method is descriptive, using normative analysis to describe facts in the field so that these facts have context and are significant to the problem being studied. (Ali, 2013) The data used in this research is primary data and secondary data. Primary data is data obtained or collected directly from data sources. Therefore, primary data is

often called original data. Secondary data is library research data and documents that are the result of research and management by other parties and usually already exist in libraries or private property. Data collection methods were using literature studies and field surveys.

Results and Discussion

The Position of Customary Law in National Law

Customary Law in the 1945 Constitution of the Republic of Indonesia

The constitution before the amendment did not explicitly recognize and use the term customary law. However, if stated, we can conclude that the provisions contain noble values and the spirit of customary law. The prelude to the 1945 Constitution contains the Pancasila philosophy of life which reflects the individuality of a nation that lives based on values, thought patterns, and traditional statutes.

Customary Law in Law Number 39 of 1999 concerning Human Rights

The existence of customary law communities has received explicit recognition as a human right is explained in Article 6 paragraphs (1) and (2) of Law Number 39 of 1999 concerning Human Rights which expresses in Section (1) The cultural heritage of indigenous populations, involving rights to ancestral lands, is in line with the present moment. "Paragraph (2) "In the context of upholding human rights, differences and needs in "customary law populations must be considered as safeguards by the law, society, and the governmental entity."

Customary Law in the Draft Criminal Code

In general, criminal justice reform must be enforced with a political approach because it is essentially part of a political movement or policy (i.e. part of legal/law enforcement policy, criminal justice policy, crime policy, social policy). All policies include value considerations. That is why criminal law reform must also be values-based.

Implementation of the Law and Types of Customary Sanctions When There is a Violation of Kaili Customary Law

To determine which cases can be heard in ordinary courts, please refer to Governor Regulation Number 42 of 2013 concerning Guidelines for Ordinary Trials. The description is as follows:

- a) Cases in customary justice are a manifestation of the learning process of indigenous people's lives that has been passed down from generation to generation, where there are standards of assessment of human behavior, attitudes, and actions in carrying out social interactions in society. On this basis, customary law not only concerns the relationship between humans and other humans but also the relationship between humans and nature and even the spiritual realm.
- b) Customary cases handled by the Kaili customary court vary in each region. These differences depend on the developments and values that grow and develop in indigenous communities.

Decision Making Procedures in Customary Criminal Justice

- 1) The first stage in the customary justice process is for parties who feel their rights have been violated to report the incident to customary activists in the village. This report is the basis for traditional institutions to submit the case to the traditional legal process (Hamid, 2015).
- 2) Second stage, in this stage the traditional institution will investigate the case and then ask the parties involved to state that they have chosen to resolve the problem through customary courts. If there is an agreement, it will proceed to the next stage.
- 3) In the third stage, the traditional institution will invite all parties to discuss reports from parties/plaintiffs who feel their rights have been violated. In this meeting, a decision will be made regarding the timing of the trial procedure. Each litigant, whether the reporting party or the reported party, will be summoned by a special officer from the customary institution.
- 4) In the fourth stage, the parties are invited to express their opinions, and if there is a debate or objection, mediation will be performed.
- 5) In the fifth stage, if the parties to the dispute refuse to make peace, then they must present witnesses and submit evidence to strengthen the statements of each party.
- 6) In the sixth stage, after hearing all the information and evidence, the traditional stakeholders handling the case will then hold a deliberation. In this process, the police and village government can be involved (Hadjon, 2014).
- 7) The seventh stage, the final stage of the customary justice process is the announcement of the customary court decision. This determination will decide who is found guilty and the fine that must be paid.

Special actions for handling criminal cases:

- 1) If the victim being tried is a woman or child, then there are several special actions, namely: first, shield by placing the victim in the house of one of the traditional leaders for a certain time until the case has been settled peacefully or the safety of the victim is ensured. Second, female or child victims must receive assistance during the trial process by traditional parties or traditional women leaders. Third, every trial in cases where the victims are women and children must be held behind closed doors to defend the future of children and women (Smith, 2018).
- 2) Traditional stakeholders must strive to create a conducive atmosphere during the judicial process.
- 3) In the peace process, each party is given the opportunity during the trial to express acceptance or rejection of the peace processes and results.
- 4) Every siding decision is based on mature and wise consideration by all traditional stakeholders.
- 5) The implementation of customary court judgments is conducted in the formation of a ritual that has been mutually confined. At the peace ceremony, an agreement has been prepared which will be signed by both parties agreeing not to repeat the action. If the

case involves violence against women and children, the decision must be accompanied by a written agreement stating that the perpetrator must not repeat the violence, and the perpetrator must serve the sentence in a general court (Johnson, 2020).

- 6) Traditional stakeholders are obliged to carry out monitoring after the issue execution process.

Types of sanctions in customary courts

There are various kinds of customary court decisions, the results of customary decisions are sanctions which have different categories, namely: (Doe, 2015)

- 1) Light sanctions, an example of a violation is offending someone's feelings which makes that person embarrassed or angry. Customary sanctions if bias occurs vary in each region. For example, the Kaili community in Central Sulawesi has customary sanctions in the form of one buffalo and another.
- 2) Medium Sanctions, examples of violations are disturbing someone's wife/husband or stealing fish from a neighbor's pond. For example, the Kaili community has its conventional sanctions in the form of Rompulu (20 trays, 2 buffaloes). In each region, the sanctions can be different.
- 3) Severe sanctions, an example of a violation is impregnating someone's girl or wife. So, the ancestral sanctions can be different in each region, but in Kaili, the customary sanctions are in the formation of Tolumpulu (30 trays, 3 pieces of Mbesa, and 3 buffalo).

Conclusion

Based on the outcomes and dialog above, clarity regarding the status of Indonesian traditional laws within the legal framework is identified by the Indonesian state. Customary law also concerns the values that have been lived and developed in a society. Even though most customary laws are not written, they have a robust binding force in society. There are special sanctions from the community if they violate habitual regulation. The customary laws that exist in a society are very pronounced in communities that have a strong unique culture. The practical application of traditional legislation is also widely applied to local communities, even as a judge, In the event that a matter arises that is not covered by written law, the judge need to be equipped to locate the legislation in the regulations that exist in the community, therefore Judges must also understand customary law. To assemble the enactment of the law with a sense of justice, the formulation of positive law such as criminal law must take into account the ancestral values that live in society, especially for the Kaili traditional community, whose existence is still implemented and recognized to this day, because of the provisions regarding acts which is regulated in the current Criminal Code which is still a western cultural heritage that is not by the civilization of the Indonesian people.

BIBLIOGRAPHY

- Abdulrahman. (2013). *Hukum Adat Menurut Perundang-undangan Republik Indonesia*. Jakarta : Cendana Press.
- Abdurrahman. (2015). Hukum Adat Indonesia dalam Lingkungan Lokal, Nasional, dan Global. *Jurnal Multikultural Hukum*.
- Abdussalam, H. R. (2016). Prospek Hukum Pidana Indonesia. *Jurnal Restu Agung*, 2.
- Ali, Z. (2013). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- Anwar, C. (2014). *Hukum Adat Indonesia Menuju Hukum Adat Minangkabau*. Jakarta: Rineka Cipta.
- Arief, B. N. (2013). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana.
- Doe, S. J. (2015). Sanksi Tradisional dalam Peradilan Adat: Sebuah Analisis Kasus. *Jurnal Hukum Adat*, 123-145.
- Hadikusuma, H. (2019). *Hukum Pidana Adat*. Bandung: Alumni.
- Hadjon, P. M. (2014). *Hukum Adat dan Hak Masyarakat Hukum Adat*. Jakarta: Kencana.
- Hamid, A. (2015). *Hukum Adat dan Pembangunan Nasional*. Jakarta: Balai Pustaka.
- Irfan, M. (2018). Kepastian Hukum Hak Atas Tanah dan Eksistensi Lembaga Rechtsverwerking Dalam Perspektif Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah. *Jurnal Hukum Kenotariatan dan ke PPATan*, 1(2).
- Johnson, M. (2020). Implementasi Tindakan Khusus dalam Kasus Pidana Terhadap Anak. *Jurnal Hukum Anak*, 123.
- Kusumadara, A. (2013). Perkembangan Hak Negara Atas Tanah : Hak Menguasai Atau Hak Memiliki. *Jurnal Median Hukum*, 20(2).
- Pide, S. M. (2014). *Hukum Adat Dulu, Kini dan Akan Datang*. Jakarta: Pelita Pustaka.
- Pide, S. M. (2014). Hukum Adat: Dahulu, Kini, dan Akan Datang. *Jurnal Konstitusi Hukum*, 3(1).
- Santoso, T. (2017). Pluralisme Hukum Pidana Indonesia. *Jurnal Iustitia*, 9.
- Sinaga, A. S. (2019). Strategi Penyelesaian Pendaftaran Tanah Hak Komunal Masyarakat Hukum Adat Pandumaan Sipituhuta. *Jurnal Tunas Agraria*, 2(1).
- Smith, J. (2018). *Perlindungan Hukum bagi Perempuan dan Anak dalam Sistem Peradilan Pidana*. Jakarta: Pustaka Hukum.
- Soekanto. (2013). *Meninjau Hukum Adat Indonesia Edisi Ketiga*. Jakarta: CV. Rajawali.
- Soekanto, S. d. (2013). *Penelitian Hukum Normatif*. Jakarta: Rajawali Press.
- Soekanto, S. d. (2014). *Hukum Adat Indonesia*. Jakarta: Raja Grafindo.
- Soemadiningrat, O. S. (2021). Rekonseptualisasi Hukum Adat Kontemporer. *Jurnal Interpretasi Hukum*, 2(3).
- Suartha, D. M. (2015). *Hukum Dan Sanksi Adat*. Malang: Setara Press.
- Sukirno. (2018). Revitalisasi dan Aktualisasi Hukum Adat Sebagai Sumber Hukum Pidana Positif. *Diponegoro Private Law Review*, 2(1).
- Thontowi, J. (2015). Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-Hak Tradisionalnya. *Jurnal Penelitian Ilmu Hukum*.
- Vollenhoven, V. (2018). Adatwetboekje voor heel Indie. *Jurnal Eresco*, 228.
- Widnyana, I. M. (2016). Kapita Selekta Hukum Pidana Adat. *Jurnal Hukum Eresco*, 1.
- Wignjodipuro, S. (2013). *Pengantar Asas-Asas Hukum Adat*. Jakarta: Gunung Agung Anggota IKAPI.
- Wulansari, D. (2014). *Hukum Adat Menurut Perundang-undangan Republik Indonesia*. Bandung: Rafika Aditama.

Copyright holder:

Lubna, Ade Saptomo, Metty Murni Wati Ibrahim, Rospita Rufina Situngkir, Dhani
Kristianto (2024)

First publication right:

Syntax Literate: Jurnal Ilmiah Indonesia

This article is licensed under:

