

Application Of Customary Criminal Law In Deciding Crimes In The Marind Tribe Of Merauke

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Abstract This research aims to analyze and document the application of customary criminal law in dealing with criminal acts in the Marind Tribe of Merauke. The Marind tribe of Merauke, as a community group that maintains traditional values and local wisdom, has a unique customary criminal law system that is deeply rooted in their traditions. The research results show that the customary criminal law system in this tribe plays an important role in maintaining social order and maintaining harmony among community members. The application of customary criminal law in the Marind Tribe of Merauke involves a process of deliberation, consensus, and the formation of collective decisions by traditional stakeholders. The decision includes traditional sanctions that reflect social norms and local wisdom values. Apart from that, this research also identifies the challenges and obstacles faced in implementing customary criminal law, especially in facing rapid changes in the social and economic environment. It is hoped that this research can contribute to understanding the dynamics of the application of customary criminal law in modern society. This research offers promise for criminal justice by providing findings that can help create a more effective and balanced approach to addressing criminal behavior. Combining traditional criminal law with a formal legal system can lead to a better and more efficient system for handling criminal activity.

Keywords: Customary Crime, Crime, Papua

Abstrak Penelitian ini bertujuan untuk menganalisis dan mendokumentasikan penerapan hukum pidana adat dalam menangani tindak pidana pada Suku Marind Merauke. Suku Marind Merauke sebagai kelompok masyarakat yang menjaga nilai-nilai tradisional dan kearifan lokal mempunyai keunikan sistem hukum pidana adat yang mengakar kuat dalam tradisi mereka. Hasil penelitian menunjukkan bahwa sistem hukum pidana adat pada suku ini berperan penting dalam menjaga ketertiban sosial dan menjaga keharmonisan antar anggota masyarakat. Penerapan hukum pidana adat pada Suku Marind Merauke melibatkan proses musyawarah mufakat dan pembentukan keputusan kolektif para pemangku adat. Keputusan tersebut memuat sanksi adat yang mencerminkan norma sosial dan nilai kearifan lokal. Selain itu, penelitian ini juga mengidentifikasi tantangan dan hambatan yang dihadapi dalam penerapan hukum pidana adat, khususnya dalam menghadapi perubahan lingkungan sosial dan ekonomi yang begitu cepat. Penelitian ini diharapkan dapat memberikan kontribusi untuk memahami dinamika penerapan hukum pidana adat dalam masyarakat modern. Penelitian ini menjanjikan peradilan pidana dengan memberikan temuan yang dapat membantu menciptakan pendekatan yang lebih efektif dan seimbang dalam menangani perilaku kriminal. Penggabungan hukum pidana tradisional dengan sistem hukum formal dapat menghasilkan sistem penanganan pidana yang lebih baik dan efisien.

Kata Kunci : Kejahatan Adat, Kejahatan, Papua

INTRODUCTION

Customary law is an unwritten rule that lives within the traditional community of a region and will continue to exist as long as the community still fulfills the customary law that has been passed down to them from their ancestors. So, the existence of customary law and its position in the national legal order even though customary law is not written. Customary law will always live in people's lives. Customary law is a law that lives from the conscience of members of customary law communities which is reflected in their patterns of action by their customs and socio-cultural patterns that do not conflict with national interests. Law enforcement in customary law must also be by the living laws of the community and must reflect the values that exist within it. (Kusumaatmadja, 2013)

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In Soepomo's perspective, customary law is a living law because it signifies the concrete sense of people's vitality by their nature, whereas customary law continues to grow and develop like the community itself. (Sudiyat, 2015) In customary law, sanctions or punishment are not very important because in customary law sanctions function as an effort to restore balance that is disturbed due to a violation committed by someone in society.

The basis for the application of customary law from a philosophical perspective is that the values and nature of customary law are identical and are even contained in Pancasila, namely religious magic, cooperation, deliberation for consensus, and justice. So, Pancasila is the crystallization of customary law. Sociologically, the application of customary law in society is voluntary without any coercion, so customary law is living law. In Article 10 section (1) of Law Number 48 of 2009 about Judicial Power, the court is prohibited from refusing to examine, try, and decide on a case that is submitted on the pretext that the law does not exist or is unclear but rather it is an obligation to carry out the examination and trial. In Article 50 paragraph (1) of Law Number 48 of 2009 about Judicial Power, it is stated that court decisions, apart from being required to contain the reasons and basis for the decision, also contain certain articles from the relevant statutory regulations and sources of unwritten law which are used as the basis for adjudicating. (Antara, 2021)

One of them is that criminal acts of violence are not new, there is a lot of news regarding victims of violence, and actions that show violence are considered normal in society. (Nufa, 2015) The acts of violence carried out increasingly vary in value because they relate to size or local norms. In Indonesia, the diversity of ethnic groups spread across regions where the role of custom cannot be denied influences every action of certain communities, such as individual actions to ceremonies related to human life, and also gives sanctions for perpetrators who violate customs. (Azizah, 2018)

One of the places where customs are still very strongly enforced is the Papua region. Papua is a region consisting of 27 (twenty-seven) ethnic groups, one of which is the emphasis of this journal, namely the Marind Tribe in Merauke Papua and also the regulations in Article 53 of Law Number 21 of 2001 concerning Papua Autonomy which provides for the possibility of imposing sanctions customary criminal and customary justice for perpetrators. (Mauwama, 2017) The existence of the Marind tribe in carrying out their lifestyle is still relatively unique, such as in traditional marriages in the Marind tribe with the oliv-bombard tradition, a tradition where the bride on the first night of marriage is not directly with her husband but is a shared right of the community where there is a tradition of sexual enjoyment by traditional leaders or certain people who have supernatural powers. (Marttia, 2014)

The consequence of this action is that there will be a possibility of the formation of a fetus due to the biological consequences of this tradition which will obscure the origins of the future child which will ultimately give rise to legal consequences in the future. If a female Marind is about to give birth, she will go to the forest to give birth without being helped by anyone. (Efendi, 2017) Apart from that, if violence occurs, it must depend on the perception of customary crime within the Madrid tribe. (Mofu, 2014) Where the existing punishment is the expenditure of customary fines with very varied standards which are paid by the perpetrator to the injured party.

Therefore, this is a very attractive topic where this journal will provide restrictions on customary fines related to violent crime cases in the Marind Tribe of Merauke. It will be studied further regarding the aspect of giving criminal sanctions in the form of customary fines and how judges in handing down their decisions pay attention to customary criminal law.

METHODOLOGY

This research uses a type of research method with an empirical juridical approach where this research considers normative legal issues, but also technical matters in operationalizing these legal regulations. This research will examine the legal regulations governing customary crimes in the Marind tribe of Merauke and will also look at the implementation in the Marind tribe of Merauke.

RESULTS AND DISCUSSION

Customary Criminal Imposition in Criminal Action

Papua is one of the regions recognized by the Indonesian people as one of the ethnic groups that also applies customary law in regulating customary law communities by their customs. One thing that needs to be regulated in customary law is customary criminal acts. Ter Haar uses the term offense or violation to describe the community's customary legal sanction system. So, the offense indicates that there is a unilateral action conducted by another party that is expressly or tacitly declared as an action that disturbs the balance. (Hadikusuma, 2014) So, it can be said that customary criminal law is a law that determines events and actions that must be resolved or redressed because these events and actions have disturbed the proportion of society. (Agung, 2013)

So that the cause of a criminal act that is carried out has no provisions or prohibitions, but if the result is conducted fetch harm and is in conflict with the party affected, the party who provided the cause and effect is obliged to take responsibility for his actions. A customary

offense is an action that may not be carried out even though, in reality, the event or action is only a minor incident. (Elizabeth, 2017)

Hilman classifies the customary criminal law system into 9 (nine) crucial elements, namely: (Helena, 2018)

1. Open System

If an event or action occurs that disturbs the balance, the legal officer will try to restore the balance by finding a way to resolve it, after an agreement can be reached, then look at the existing customary law norms or determine a new law to fulfill the contract for resolution, which is often issued by parties who feel they have been harmed or disadvantaged.

2. Wrong Action

Customary criminal law only relates to offenses that conflict with the interests of the local community and/or conflict with a person's interests. So, often no proof is needed at all because the public is already assumed to know about it or because the general has already been affected by the consequences of their actions.

3. Error Liability

Responsibility for mistakes committed by the perpetrator will be assessed based on the benchmark of the perpetrator's position in society so that the higher a person's dignity in society, the heavier the punishment he must receive because of the mistakes he has committed.

4. Own Judgment

The person who suffers the loss has the right to make his judgment. If the wrongful act is related to objects, the affected party has the right to sue for compensation based on the value of the object.

5. Helping or Attempting to do Wickedness

Customary criminal law is not related to assisting or attempting to commit wrongdoing because everything is assumed to be a mistake that must be resolved through penalty or forgiveness.

6. Recidivist Error

Customary recidivism errors can result in being permanently banished from society.

7. The Punishment is Heavy or Light

In traditional justice, implementation is continually founded on the principles of kinship, peace and harmony, and a sense of justice. Traditional judges have the freedom to resolve customary criminal cases by paying attention to the atmosphere and awareness of the local community.

8. The Right to Obtain Protection

Under customary law that applies in several regions, there is a rule that someone guilty can be given protection from the threat of punishment from a party if he comes to request protection from a traditional head, religious leader, or king.

9. Errors in Customary Law

In customary law, what is emphasized is that the mistake has occurred, regardless of whether it was done intentionally or through negligence.

Then there is the regulation of Law Number 21 of 2001 concerning Papua Autonomy which provides recognition of the existence of customary justice in certain customary law communities. This customary court is prepared by the customary law rules that apply in the relevant traditional law community. If one of the parties taking out the dispute or conducting the case submits an objection to the decision that has been taken by the customary court carrying out the examination, the party who feels the objection has the right to submit a request to the court of first instance within the judicial body which has the authority to carry out the examination and retrial of related matters or issues by Article 51 of the Papua Autonomy Law. (John, 2017)

If violence occurs against the Marind Tribe of Merauke, it will generally be resolved through local community customary courts, but it does not rule out the possibility of directly handing over the matter to the local judicial level. For example, in Decision Number 58/Pid.B/2000/PN.Mrk regarding incest committed by an uncle who raped an 18-month-old baby who was not handed over to customary crime, the defendant was sentenced to 1 year and 8 months in prison.

Regarding the judge's decision which is related to deviations from local customs, the judge's duties and authority become a serious polemic. Then in Decision Number 29/Pid.B/2004/PN.Mrk where the defendant was accused of violating Article 351 paragraph (1) of the Criminal Code regarding abuse where the victim came from the Marind tribe, where the defendant must also submit to the customary law of the Marind tribe so that the defendant must try to restore the balance that was disturbed as a result of his actions in carrying out the abuse by paying a blood fine.

It is different from Decision Number 39/Pid.B/2004/PN.Mrk regarding rape committed by a defendant from the Marind tribe on his child victim. In Marind customary law, it is permissible to impregnate one's biological child as long as the victim is not from one's seed, even in certain rituals of sex parties within blood relatives are a sacred thing. However, the judge still decided this case using positive criminal law, namely by imposing a sentence of 9 years.

Customary Fines in Violent Crimes in the Marind Tribe of Merauke

Customary fines are actions that correct or react to any action that gives rise to consequences that are considered detrimental, whereas customary fines are a reaction to restore balance in society. (Iman, 2018) However, in the Marind tribe, the termination of customary fines will be studied whether this can be done by imposing customary fines or whether they must be sentenced to positive criminal penalties. For example, in Decision Number 29/Pid.B/2004/PN.Mrk where the defendant who is proven to have committed abuse is required to pay the customary fine in the form of a regional fine and submit an apology. This blood forfeiture can usually be conducted by sacrificing a pig or requiring the defendant or the family to be subjected to treatment of a commensurate quality. However, in this case, the defendant was demanded to pay a blood penalty in the form of a charge of 6 million rupiah to pay for the victim's medical costs at the hospital, but the defendant was sentenced to prison for 4 (four) months and 5 (five) days.

So, when deciding on customary crimes, judges are obliged to pay attention to the imposition of customary crimes, such as customary fines, only as a reduction of positive criminal penalties, so that positive criminal penalties will still be imposed to protect the sufferer.

CONCLUSION

In the aspect of providing criminal sanctions, especially the provision of sanctions in the form of customary fines which are found in cases of violent crimes in the form of "blood fines" do not only apply to residents who have customary law but also apply to residents of other tribes who submit themselves to local customary law. This "Blood Fine" does not apply if the parties involved in the offense are not from a tribe with a local culture. Apart from that, "blood fines" can currently be realized in the form of assistance for medical expenses, and payment of fines. Traditional fines in the form of an apology from the guilty party (defendant) to the suffering party (victim) have significant value. In sentencing, customary criminal law, in this case in the form of customary fines, has a significant role in determining the severity of the crime. In other words, the judge in handing down his decision (sentencing) pays attention to customary criminal law, especially customary fines. However, in cases of crimes of violence against women, positive criminal law is prioritized or it could even be said that positive criminal law in cases of crimes of violence against women ignores local customary law.

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