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15 November 2020 14.04



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Your submission entitled **THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE** has been received by Journal of Legal, Ethical and Regulatory Issues

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Ahmad Syaufi <asyaufi.fh.unlam@gmail.com>
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16 November 2020 08.23

Dear Editor,

Thank a lot for your confirmation.
We are looking forward to hearing from you soon.

Regards,

Syaufi

Lampiran

Title Page



Article Title

The Criminal Settlement through Customary Law from Restorative Justice Perspective

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Statement

We hereby confirm that the manuscript has no any actual or potential conflict of interest with any parties, including any financial, personal or other relationships with other people or organizations within three years of beginning the submitted work that could inappropriately influence or be perceived to influence. We confirm that the paper has not been published previously, it is not under consideration for publication elsewhere, and the manuscript is not being simultaneously submitted elsewhere.



The Criminal Settlement through Customary Law from Restorative Justice Perspective

Abstract

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem.

Keywords: customary law, deliberation, dispute settlement, restorative justice.

1. Introduction

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al. 2020).¹ So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational

¹ Tyesta, L. A., Saraswati, R., & Arif, F. (2020). Implications of Legal Positivism of the Promotion of Children's Rights on National Law. *J. Advanced Res. L. & Econ.*, 11, 661.

justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman 2010; Susanto 1996).² This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi 2016).³ The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests

² Suparman, Eman (2017) "*Perception on Justice and Legal Culture in Dispute Resolution*", <http://www.akademik.unsri.ac.id/download/journal/files/padresources/11%20Persepsi%20ttg%20Keadilan.pdf>. (accessed 8 February 2018).; Susanto, I.S. (1996) "*Judicial and Democratic Institution*", *papers at the National Seminar on the Utilization of Legal Sociology during Global Development and Restructuring*, Faculty of Law UNDIP, Semarang, 12-13 November.

³ Kuswandi (2016) "*The Idea of the Criminal Justice System of Indonesia (Response to the Treatment of Act No. 8 of 1981 (KUHAP) on Victims of Crime)*", *Justitia Journal*, Volume V, No. 1.

and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today.

2. Criminal Law Enforcement

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions.⁴ On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).⁵

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia.

⁴ Muladi (1995) *Kapita Selekta Criminal Justice System*, Semarang: Badan Penerbit Universitas Diponegoro.

⁵ Soemitro, Ronny Hanitjo (1995) *Legal Issues in the Community*, Bandung: Alumni.

3. Restorative Justice

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "a rational total of the responses to crime" or that criminal politics must be rational.⁶ Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime.⁷ Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms,

⁶ Hoefnagels, G. Peter (1963) *The Other Side of Criminology: An Inversion of the Concept of Crime*, Holland: Kluwer-Deventer.

⁷ Umbreit, Mark (1999) "Avoiding the Marginalization and 'McDonaldization' of Victim-offender mediation: A Case Study in Moving Toward the Mainstream" in *Restorative Juvenile Justice Repairing the Harm of Youth Crime*, edited by Gordon Bazemore and Lode Walgrave Monsey, New York: Criminal Justice Press.

involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).⁸

4. Peaceful Dispute Settlement in Customary Practices

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).⁹

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law

⁸ Dandurand, Y., & Griffiths, C. T. (2006). *Handbook on restorative justice programmes*. New York: United Nations.

⁹ Muhammad, Bushar (1995) *Principles of Traditional Law*, Jakarta: Pradnya Paramita.

decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).¹⁰

5. Settlement of Criminal Crime Through Customary Law

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995).¹¹ The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice.

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are

¹⁰ Abbas, Syahrizal (2009) *Mediation in Syariah Law, Customary Law, and National Law*, Jakarta: Kencana Prenada Media.

¹¹ Muhammad, Bushar (1995) *Principles of Traditional Law*, Jakarta: Pradnya Paramita.

essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010).¹² The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).¹³

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

¹² Saptomo, Ade (2010) *Local Law and Wisdom; Revitalization of Traditional Law* Nusantara, Jakarta: Grasindo.

¹³ Muhammad, Bushar (1995) *Principles of Traditional Law*, Jakarta: Pradnya Paramita.

6. Conclusion

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace.

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Initial Review From Editor

Current Status – Initial Review - The Criminal Settlement through Customary Law from Restorative Justice Perspective

Ethical and Regulatory Issues <legalissues@alliedbusiness.org> 16 Desember 2020 19.23

Balas Ke: legalissues@alliedbusiness.org

Kepada: Ahmad Syaafi <asyaafi.fh.unlam@gmail.com>

Dear Ahmad Syaafi,

Thank you very much for submitting your manuscript entitled **"The Criminal Settlement through Customary Law from Restorative Justice Perspective"** to Journal of Legal, Ethical and Regulatory Issues.

We would like to inform you that our internal review committee has found quality research and new technical method/principle in your article.

But some problems still need further revision. We would be grateful to you if you could revise your manuscript according to the following comments:

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Best regards,

Syaufi

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Ahmad Syaufi <asyaufi.fh.unlam@gmail.com>

18 Desember 2020 07.32

kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

Dear editor,

Thank you for your positive feedback.

We will revise accordingly and submit it back to you as soon as possible.

Best regards,

Syaufi

Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

20 Desember 2020 22.27

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Dear Ahmad Syaufi,

Thanks for your kind email.

Look forward to receiving your revised paper.
Please submit the revised paper to us via this email.

Kind Regards,

Editorial Office
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24 Desember 2020 10.12

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Dear Editor,

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We will revise again and send it back to you soon.

Regards,

Ahmad Syaufi

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Dear editor,

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Regards,
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Journal of Legal, Ethical and Regulatory Issues

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28 Desember 2020 09.56

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Dear editor,

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Regards,
Ahmad Syaufi

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25 Februari 2021 07.22

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10 Maret 2021 13.51

kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

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Ethical and Regulatory Issues <legalissues@alliedbusiness.org>
Kepada: Ahmad Syaafi <asyaafi.fh.unlam@gmail.com>

15 Maret 2021 23.51

Dear Ahmad Syaafi,

Thank you for your kind email.

You will receive the review results after the reviewers submit their assignments.

Kind Regards,

Editorial Office
Journal of Legal, Ethical and Regulatory Issues

Ahmad Syaafi <asyaafi.fh.unlam@gmail.com>
kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

16 Maret 2021 14.15

Thank you for your response

Regards,

Ahmad Syaafi

Lampiran

SAMPLE PAPER FOR AN ALLIED ACADEMIES JOURNAL OR PROCEEDINGS PUBLICATION

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This document, which can be used as a template, has been prepared in the correct format. That is, we defined the “Normal” and the Heading 1, 2, 3, 4, and 5 tabs in the tool bar at the top to produce the correct document. If you use this template you will need to copy and paste material into this document to prevent Microsoft Word from keeping the format layouts from your other file (paste by keeping destination format). If you do not use this template, then you will need to modify the defaults in the various tabs in the tool bar. We will describe the changes in the following sections.

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HEADINGS

To make changes to any of the heading tabs in the toolbar, right click on that tab and click on “modify.” This will allow you to structure the heading as you desire. Additional changes

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Present the authors in the order in which they have contributed to the work, and type them one per line (do not double space between authors). When all have been typed, highlight all of the authors and affiliations at once, and click on “Heading 2.” Do NOT use Heading 2 again anywhere in the document.

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H1 This is my first hypothesis. Maybe it will be found to be true. If it is, then all of us will really be extremely pleased!

H2 This is my second hypothesis. Maybe it will be found false.

H₃ This is my third hypothesis and it uses a subscript.

So, that is what an average hypothesis statement looks like. If you would like to put the numbers in subscript, you may do so. If you would like to spell out the word hypothesis, you may do so.

LISTS AND HIGHLIGHTS

If you have material which you would want to include in the form of a list, please do NOT use bullet points. You may number the items or just omit bullets or other indicators. Offset the material the same way you would with hypotheses with a line above and below, and change it to 10 point type. Highlight the material and drag the double tab button on the ruler bar to the one half inch position, then drag the lower triangle on the ruler to the one inch position. Here is an example.

This is the first example of listed material and it will be highlighted in the text by its location and appearance.

This is the second example of listed material. You could number these items, if you prefer

Here is the same example, but this time, we use numbers for each of the items in the listed material. We like to avoid bulleted lists because the variety of bullets varies greatly between manuscripts and impacts the overall appearance of the journal.

1.□ This is the first example of listed material and it will be highlighted in the text by its location and appearance.

2.□ This is the second example of listed material.

If you have material that you wish to highlight, such as a quotation from another researcher or some statement from a research subject, offset it with a line above and below, and change it to 10 point type. Highlight the material, drag the double tab button on the ruler bar to the one half inch position, then covert the material to italics. Here is an example.

When we were doing the literature review, we found this quote to be very insightful, and we wanted to present it as a highlighted item in the manuscript.

FORMULAE

When using formulae, you may want to use the software called Math Type, made by Decision Science. It plugs nicely into Word and is available for a nominal fee with your academic discount. You may find it at <http://www.dessci.com/en/products/mathtype> or you may use a different package. Just present the formulae the way you want them to appear in the final version of the manuscript.

Below we have inserted some meaningless formulae just to serve as an example. In this example we offset the equation by one half inch, then set a left tab on the ruler bar at the margin to handle the display of the equation number. You change the type of tab on the ruler bar by clicking on the little icon at the far left edge of the ruler bar. The type of tab will change, and then you can click on a location within the ruler bar to insert the newly defined tab.

$$\sqrt{a^2 + b^2} x \lim_{x \rightarrow \infty} \left(\frac{-b \pm \sqrt{b^2 - 4ac}}{2a} \right) \tag{1}$$
$$\sum_{i=1}^n X_i = \frac{1}{n}$$

When you have certain formulaic characters that are simply italicized letters (i.e. *r*, *z*, etc.) that you would like to include in the body of a paragraph, it is best just to use the letter rather than a formula box. Formula boxes in the body of paragraphs can alter the line spacing, which we would like to avoid, if at all possible.

TABLES

We encourage you to submit your tables just as you would like them to appear. With that in mind, we do have a few requests to maintain some consistency from one paper to the next. We would like for the table contents to be in 10 point font (or smaller if the size of the table calls for it) and centered on the page. Tables should NOT exceed the width of the one inch margins of the document. Please include the table's title **inside** the borders of the table as shown below. The table title should be centered and bolded, and in the same size font as the rest of the table.

Left justify, center, or right justify columns in your table to make your material more readable, as you desire. Please note that an auto indent setting in your "Normal" tab will affect the contents of your table. To correct this, highlight the table, open the "Paragraph" box in the "Home" tab, and remove the first line indent instruction. Also, please place the tables in the body of the document where you would like them to appear. If the table breaks a page, move text material from above or below to keep the table on one page. If the table cannot fit on one page, set the title and the descriptive rows to "repeat" on the following page. Here is an example.

Table 1		
DESCRIPTION OF STUDY		
Table Title on the Inside		
COMPANY	Name	DATE
ABC	A Name	1/1/2010
DEF	B Corp.	1/2/2009
GHI	C. Name	5/5/2008
WXY	D. Inc.	7/21/2007

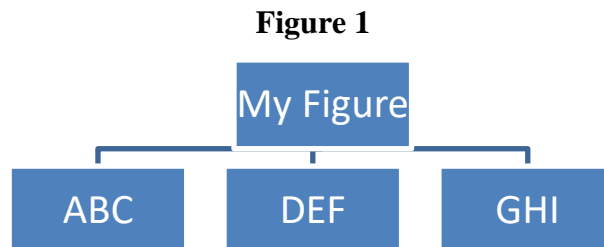
If your table is extremely complex, or extremely large, you can try to get it to work by sizing down the font to 9 point, or even 8 point. Do NOT go below 8 point type as that will make it extremely difficult to read your table. If you are still unable to get your table to work on the page, then you must create it as a jpg and shrink it to fit.

We do not accept landscape tables or figures. You must scale the table to fit in portrait mode. If you are unable to handle this yourself, you may contact us for advice or engage us to handle the conversion.

We might advise you concerning tables, that extremely complex, or busy tables are difficult to read, and do not add to the manuscript. It is better to use simple tables, even if you need more of them, than to create something that no one can understand.

FIGURES

Your figures should always be centered, and should have a title for reference purposes. When you create figures, remember to use Times New Roman as the font in the figure, and think about how it will look in the journal. Generally, figures should not exceed 6 inches in width. Keep in mind that the hard copy journals are printed in black and white, which might alter how you format your figures. The PDF versions will be in color. Put the figures where you want them to appear and format them the way you want them to look in the final document.



If you have extremely complex figures, or if you have trouble placing them in the manuscript, you may need to consider engaging us to process the figures. You may contact us for a price quote for any aspect of the formatting process.

CITATIONS AND FOOTNOTES

Please use APA style for all of your publications. The American Psychologist's Association Style Manual does NOT employ footnotes. Instead, a citation is handled in the body of the text (Carland & Carland, 1984), by putting the last names of the authors, followed by the year of the publication within parentheses. If there are multiple citations with a single sentence then separate the articles with a semicolon (Carland & Carland, 1984; Stewart, Carland & Carland, 1997). If the citation occurs at the end of the sentence, it should be inside the period. If you cite specific information, or you quote a reference, add a page number after the date. We present examples of the proper approach to citation a bit later in these instructions.

Please try NOT to use footnotes or endnotes. Instead, please include that supplemental material in the body of the text (in parentheses if necessary). If you absolutely cannot avoid using a note, please use endnotes. Put the Endnotes in front of the References. The title, Endnotes, should be a "Heading 3," and the endnotes should be in 10 point type, numbered and

indented with a hanging indent. To create a hanging indent, highlight the text, drag the upper triangle indicator in the ruler bar to the left margin, then drag the lower triangle indicator in the ruler bar to the one half inch position. This will indent all of the second lines of the notes.

ENDNOTES

- 1 As we indicated, we want you to avoid endnotes when you can. If you feel that you must have them, make them look like this and insert them just before the “References.”

REFERENCES

References should be entitled “References,” and should be a “Heading 3” highlight. Remove tabs, or hard returns, or other attempts to format your references, then highlight the entire group of references. Click on 10 point type in the Home tab, then drag the upper triangle in the ruler bar to the left margin, and drag the lower triangle in the ruler bar to the one half inch position. This will create a hanging indent.

References should be prepared in general accordance with the APA (American Psychological Association). We do deviate from APA style with respect to underlines. These do not reproduce well, consequently, we ask that you use italics in place of underlines. Single space between references and do NOT use underlining (___) at the beginning of a reference as a shortcut. In fact, do NOT use underlining anywhere in the document.

Below are some examples of different citations. Please note that if you have a break problem because of a website, you should manually choose a break point by inserting a space into the citation.

Citing a Journal Article

Carland, J.W., F. Hoy, W.R. Boulton & J.A. Carland (1984). Differentiating entrepreneurs from small business owners. *Academy of Management Review*, 9(2), 354-359.

Citing an Online Journal Article

Fredrickson, B.L. (2000). Cultivating positive emotions to optimize health and well-being. *Prevention & Treatment*, 3, Article 0001a. Retrieved November 20, 2000, from <http://journals.apa.org/prevention/volume3/pre0030001a.html>

Citing a Book

Carland, J.W. & J.A. Carland (1999). *Small business management: Tools for success (Second Edition)*. Houston, TX: Dame Publishing.

Citing an Article in a Magazine

G. Gendron & B. Burlingham (1989, April). The entrepreneur of the decade: An interview with Steve Jobs, *Inc.*, 114-128.

Citing a Proceedings

Carland, J.A., J.W. Carland & W.H. Stewart (2000). The indefatigable entrepreneur. *Proceedings of the Association of Small Business and Entrepreneurship*, 168-180.

Citing a Presentation

Ensley, M.E., J.A. Carland & J.W. Carland (May, 1998). The lead entrepreneur. Presented to the *Babson College Entrepreneurship Conference*, Gent, Belgium.

Citing an Article in a Book

Brockhaus, R. H. (1982). The psychology of the entrepreneur. In C. Kent, D. Sexton, & K. Vesper (Eds.), *Encyclopedia of Entrepreneurship* (pp. 39-57). Englewood Cliffs: Prentice-Hall.

Citing an Internet Source

GVU's 8th WWW user survey. (n.d.) Retrieved August 8, 2000, from <http://www.cc.gatech.edu/gvu/usersurveys/survey1997-10/>

Citing a Dissertation

Carland, J. W. (1982). *Entrepreneurship in a small business setting: An exploratory study*. Unpublished doctoral dissertation, University of Georgia.

Citing a Film

R. LaPointe & H. Glazer (Executive Producers) (1992). *H. Ross Perot: A vision for success in the '90s*. Boston, MA: Goldhirish Group, Inc.

CONCLUSION

This concludes our formatting guidelines, unless you are preparing a case. Guidelines for case preparation follow this section. Convert your finished document to PDF and submit it in accordance with the instructions you have been given. If you have any questions or issues, please email us at editor@whitneypress.com for clarification. We have an Editor under contract who will format your manuscript for you, and the fee is normally US \$10 per page. In the case of extremely complex manuscripts which have extensive formulae, figures or tables, the fee might be higher, but we can look at your manuscript and quickly let you know what the cost might be in advance.

GUIDELINES FOR CASES

Prepare cases as described above with these exceptions. First, instead of an abstract, begin the case with a “Case Description” and a “Case Synopsis,” both in italics as illustrated below. Technical information is in the Description, while the Synopsis should gain the reader's interest. The body of the case should follow the synopsis, separated by a heading. Prepare the “Instructors’ Note,” described more fully below, in accordance with these instructions as well. The description and synopsis are important as they communicate basic information about the case to the reader. Never forget that the Note is actually more important than the case, at least in the perspective of accrediting agencies for your university!

CASE DESCRIPTION

The primary subject matter of this case concerns (describe the most important subject, ie, entrepreneurship/conflict management/ethics/etc.). Secondary issues examined include (list as many as the case contains just like for the primary subject). The case has a difficulty level of (choose one of the following: one, appropriate for freshman level courses; two, appropriate for sophomore level; three, appropriate for junior level; four, appropriate for senior level; five, appropriate for first year graduate level; six, appropriate for second year graduate level; seven, appropriate for doctoral level). The case is designed to be taught in (indicate how many) class hours and is expected to require (indicate how many) hours of outside preparation by students.

CASE SYNOPSIS

In this section, present a brief overview of the case (a maximum of 300 words). Be creative. This section will be the primary selling point of your case. Potential case users are more apt to choose cases for adoption which catch their fancy.

The Case Description and Case Synopsis are not used when the case is assigned to students. Their purpose is to inform instructors and prospective users of the case.

CASE BODY

The body of the case will follow the description and synopsis, and should be formatted in accordance with the forgoing instructions. Avoid using photographs or extensive exhibits which will make reading the case more difficult. The general rule of thumb is, if looking at this exhibit is not important to the decision point of the case, then omit it.

Please do NOT include assignment questions in the body of the case. These should be in the Instructors’ Notes. Leaving them in the case body will prejudice student readers, as they will seize on the assignments, ignoring much of the content of the case.

INSTRUCTORS' NOTES

Instructors' Notes are an important part of the referee process and must be included with all cases submitted for review or for publication in any form. Notes should be prepared in accordance with these publication guidelines and prepared as a separate manuscript and a separate PDF because the case notes are published in a different issue from the case. Cases are

published in odd numbered issues, while notes are published in a companion even numbered issue.

Prepare Instructors' Notes for use by instructors who are not familiar with the case issues. The note should allow the instructor to teach the case without additional research. Begin the note with a **REPEAT** of the Case Description and Case Synopsis. Follow the Case Synopsis with Recommendations for Teaching Approaches. Specific questions, assignments or teaching methodologies should follow. Be sure to **INCLUDE ANSWERS** for all questions or assignments. Please do not include the questions and assignments in the case, but include them in the Instructor's Note instead. This gives instructors more flexibility in what to assign. Epilogues, if appropriate, should close the note. If your case is from library research, include the references for all material used in a **REFERENCES** section.

CONCLUSION

This concludes our formatting guidelines. Thank you for sharing your work with us. We look forward to publishing many more of your manuscripts!

THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE



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ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem.

Keywords: customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al. 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman 2010; Susanto 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there

are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today.

CRIMINAL LAW ENFORCEMENT

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to **Muladi (1995)**, the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (**Soemitro, 1980**).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia.

RESTORATIVE JUSTICE

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of **Hoefnagels (2013)** who stated that "a rational total of the responses to crime" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

According to **Mark Umbreit (1999)** stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (**Dandurand & Griffiths, 2006**).

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (**Muhammad, 1995**).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and

public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice.

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary

institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace.

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PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of

indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice.

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace.

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Balas Ke: decisionscience@alliedbusiness.org
Kepada: Ahmad Syaufi <asyaufi.fh.unlam@gmail.com>

22 April 2021 21.52

Allied Business Academies

Article Title: **THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE**

Journal Title: **Journal of Legal, Ethical and Regulatory Issues**

Dear Dr. **Ahmad Syaufi**

This is to inform you that Reviewers have now commented on your Manuscript. You can see that they are advising that you should revise your manuscript. For your guidance, reviewers' comments are appended below.

To submit a revision, go to <https://www.abacademies.org/editorial-tracking/> and log in as an Author. You will see a menu item call Submission Needing Revision. You will find your submission record there.

Username : **ahmad**
Password : **gPDNpBJA**

Yours sincerely,
Editor,
Journal of Legal, Ethical and Regulatory Issues

Reviewer 1

□□□□R□□□

REFERENCES

References are inadequate.

Reviewer 2:

ABSTRACT

Abstract is a source of information independent from the article. It is written before the main text of the article is finished. It includes description of the main subject, problems, object, work purpose and its results. It indicates what is new in this document compared to others related to the subject and purpose.

INTRODUCTION

The introduction is intended to provide an introduction to the topic of the article and explain the purpose of the study. When writing the introduction, the author should first state the general topic of the research. Next, it is necessary to reveal the theoretical and practical significance of the work and describe the most authoritative and accessible to the reader publications on the topic under consideration. In the introduction, the author also identifies the problems that have not been solved in previous studies, which this article is intended to solve.

RESTORATIVE JUSTICE

The explanation is inadequate. Please provide some expert views on your subject.

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

In this section, the discussion presented does not describe how the tradition of resolving conflicts and disputes in a legal society is. What is meant by "customary patterns" and "kinship" is not well understood.

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Some customary areas in Indonesia still apply customary law quite well. For example in Gayo Land and several other areas. These can be added to get a comprehensive picture.

CONCLUSION

The conclusion contains a brief formulation of the study results. It repeats the main ideas of the main part of the work in a concise form. It is better to formulate any repetitions of the material presented with new phrases, new formulations that differ from those expressed in the main part of the article. In this section, the results should be compared with the goal stated at the beginning of the work

REFERENCES

Add some relevant sources and can enrich the article.

2 Lampiran



Reviewer 1 comments.docx
92.5K



Reviewer 2 comments.docx
90.5K

Ahmad Syaafi <asyaufi.fh.unlam@gmail.com>
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26 April 2021 12.37

Dear editor,

Thank you for your email.

We are glad that our articles received valuable reviews from reviewers. We will revise and respond to reviewers' comments and suggestions, and send them back to you as soon as possible.

Sincerely,

Ahmad Syaafi

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28 April 2021 20.24

Dear Ahmad Syaafi,

Thanks for your reply. Look forward to receiving your revised paper.
Please submit the revised paper to us via this email.

Best Regards,

Editor

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19 Mei 2021 15.46

Dear Editor,

Sorry for the late response.

We hence send the revision of our article submitted for your journal.

We have made corrections according to your suggestions.

Below we will answer the comments of reviewers or editors one by one.

Best regards,

Ahmad Syaafi

3 Lampiran

 **Reviewer 1 comments.docx**
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 **Reviewer 2 comments.docx**
35K

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99.5K

Ethical and Regulatory Issues <legalissues@alliedbusiness.org> □

23 Mei 2021 21.38

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Thanks for your kind email.

We have received your paper. If further revision is required, we will contact you again.

Best Regards,

Editor

Ahmad Syaufi <asyaufi.fh.unlam@gmail.com>

25 Mei 2021 11.18

kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

Dear editor,

Thank you for your information.

We are looking forward to hearing from you.

Yours Sincerely,

Ahmad Syaufi

Kepada: □□ □d□□□□□□□□□□□□□□□□ □ □□ □□□□□ □

Dear Ahmad Syaufi,

We wish you well.

After receiving your revision, the reviewers provide a final evaluation of your article. You can find it in the attached file. Please send us your feedback as soon as possible.

Sincerely yours,

Editor

General Comments

Reviewer 1

Title, Abstract and Introduction – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Methodology / Materials and Methods – overall evaluation

Reviewer 1: Sound

Objective / Hypothesis – overall evaluation

Reviewer 1: Sound

Figures and Tables – overall evaluation

Reviewer 1: Outstanding

Results / Data Analysis – overall evaluation

Reviewer 1: Sound

Interpretation / Discussion – overall evaluation

Reviewer 1: Sound

Conclusions – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

References – overall evaluation

Reviewer 1: Sound

Compliance with Ethical Standards – overall evaluation
Reviewer 1: Sound

Writing – overall evaluation
Reviewer 1: Sound with minor or moderate revisions

Supplemental Information and Data – overall evaluation
Reviewer 1: Sound

Reviewer 2

Title, Abstract and Introduction – overall evaluation
Reviewer 2: Unsound or fundamentally flawed

Methodology / Materials and Methods – overall evaluation
Reviewer 2: Unsound or fundamentally flawed

Objective / Hypothesis – overall evaluation
Reviewer 2: Unsound or fundamentally flawed

Figures and Tables – overall evaluation
Reviewer 2: Sound with minor or moderate revisions

Results / Data Analysis – overall evaluation
Reviewer 2: Sound with minor or moderate revisions

Interpretation / Discussion – overall evaluation
Reviewer 2: Sound with minor or moderate revisions

Conclusions – overall evaluation
Reviewer 2: Sound with minor or moderate revisions


References – overall evaluation
Reviewer 2: Sound with minor or moderate revisions

Compliance with Ethical Standards – overall evaluation
Reviewer 2: Sound

Writing – overall evaluation
Reviewer 2: Sound

Supplemental Information and Data – overall evaluation
Reviewer 2: Sound

1 Lampiran

 **Overall evaluation.docx**
15K

Ahmad Syaafi <asyaufi.fh.unlam@gmail.com>
kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

13 Juni 2021 16.34

Dear editor,

Thank you for your email.
We will make a final revision based on the evaluation
of the reviewers.

Sincerely,

Ahmad Syaafi

Ahmad Syaafi <asyaufi.fh.unlam@gmail.com>
kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

15 Juni 2021 15.13

Dear Editor,
This is our response to overall evaluation from reviewers.
Find it in the attached file.

Regards,

Ahmad Syaafi

1 Lampiran

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16 Juni 2021 19.56

Kepada: [redacted]

Dear Ahmad Syaufi,

Thank you for your reply.
You will receive the final decision on your article.

Sincerely,

Editor

Ahmad Syaufi <asyaufi.fh.unlam@gmail.com>

17 Juni 2020 08.23

kepada: Ethical and Regulatory Issues <legalissues@alliedbusiness.org>

Dear editor,

Thank you for your information.

We are looking forward to hearing from you.

Regards,

Ahmad Syaufi

Lampiran



THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE

ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a **problem**.

Keywords: customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today.

CRIMINAL LAW ENFORCEMENT

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who

Commented [U1]: Abstract

The abstract should be prepared according to international standards and include the following points:

- Introduction to the research topic.
 - Purpose of the scientific research.
 - Description of scientific and practical significance of the work.
 - Description of the research methodology.
 - Main results, conclusions of the research work.
 - The value of the conducted research (what contribution this work has made to the relevant field of knowledge).
 - Practical value of the work results.
- The author should specify the last three points.

Commented [U2]: Introduction

The introduction is necessarily clear:

- the purpose and object of the research undertaken by the author. The work should contain a certain idea, a key idea to which it is devoted. To articulate the purpose, you must answer the question: "What do you want to create as a result of the research? This result may be a new methodology, classification, algorithm, structure, a new version of a known technology, methodical development, etc. The formulation of the purpose of any work usually starts with verbs: find out, identify, form, justify, check, define, etc. The object is the material of study.
- relevance and novelty. Relevance of a topic is the degree of its importance at the moment and in the given situation. It is the ability of the results of the work to be applicable to fairly significant scientific and practical problems. Novelty is what distinguishes the result of this work from the results obtained by other authors.

have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia.

RESTORATIVE JUSTICE

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "a rational total of the responses to crime" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

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The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law

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What makes it different from the conventional criminal justice system?

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Add some explanation of the laws in your country.

decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

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Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

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CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or

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violations of customary norms or fights or traffic violations, then the community tends to settle peace.

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Commented [U7]: Conclusion

In conclusion, the results of comprehension of the topic are summarized, conclusions, generalizations, and recommendations are made, which follow from the work, their practical significance is emphasized, and the main directions for further research in this area are defined. In the final part of the article, it is desirable to include attempts to forecast the development of the discussed issues.

Commented [U8]: References are inadequate.



THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE

ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem.

Keywords: customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today.

CRIMINAL LAW ENFORCEMENT

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of

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detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia.

RESTORATIVE JUSTICE

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "a rational total of the responses to crime" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of

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togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice.

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace.

Commented [U5]: Some customary areas in Indonesia still apply customary law quite well. For example in Gayo Land and several other areas. These can be added to get a comprehensive picture.

Commented [U6]: Conclusion
The conclusion contains a brief formulation of the study results. It repeats the main ideas of the main part of the work in a concise form. It is better to formulate any repetitions of the material presented with new phrases, new formulations that differ from those expressed in the main part of the article. In this section, the results should be compared with the goal stated at the beginning of the work

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Add some relevant sources and can enrich the article.

Reviewer 1 Comments



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Revisions and changes are marked in yellow and green.

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Sincerely yours,

ABSTRACT

The abstract should be prepared according to international standards and include the following points:

- Introduction to the research topic.
- Purpose of the scientific research.
- Description of scientific and practical significance of the work.
- Description of the research methodology.
- Main results, conclusions of the research work.
- The value of the conducted research (what contribution this work has made to the relevant field of knowledge).
- Practical value of the work results.

The author should specify the last three points.

Response

ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.

Keywords: criminal case, customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

The introduction is necessarily clear:

- the purpose and object of the research undertaken by the author. The work should contain a certain idea, a key idea to which it is devoted. To articulate the purpose, you must answer the question: "What do you want to create as a result of the research? This result may be a new

methodology, classification, algorithm, structure, a new version of a known technology, methodical development, etc. The formulation of the purpose of any work usually starts with verbs: find out, identify, form, justify, check, define, etc. The object is the material of study.

- relevance and novelty. Relevance of a topic is the degree of its importance at the moment and in the given situation. It is the ability of the results of the work to be applicable to fairly significant scientific and practical problems. Novelty is what distinguishes the result of this work from the results obtained by other authors.

Response

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today. Seeing the reality that exists in order to achieve fair procedural justice and restorative justice in resolving criminal cases, it is only possible to achieve it through the agreement of the conflicting parties. One of the ways is through the concept of resolving criminal cases based on local wisdom in indigenous and tribal peoples in Indonesia based on cosmic, magical and religious nature. Completion of criminal cases through the mechanism of customary law has long been recognized and has become a tradition of the people in many parts of the world (Chirayath et al., 2005; Meron, 2005; Cryer, 2006; Fletcher, 2007).

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. In traditional societies the settlement of criminal cases through peace is still alive because peace has a very high value. For this reason, in the effort to resolve criminal cases it is time to pay attention to the settlement mechanism through customary law. In an effort to develop and renew criminal law in Indonesia, it is necessary to study, how to solve criminal cases through customary law in the perspective of restorative justice.

CRIMINAL LAW ENFORCEMENT

What makes it different from the conventional criminal justice system?

Response

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has

long been applied by indigenous law communities in Indonesia. These patterns of settlement of conflicts and disputes based on customary law are still alive, developing and recognizing their existence. Restorative Justice is a model approach that appears in the attempt to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. This view is in fact developing and influencing many legal policies and practices in various countries, such as Canada, New Zealand, and Australia (Manan, 2008).

RESTORATIVE JUSTICE

Add some explanation of the laws in your country.

Response

...

Article 1 point 6 of Indonesian Law No. 11 of 2012 concerning the Criminal Justice System of the Child has used the term restorative justice stating that restorative justice is the settlement of criminal acts involving the perpetrator, victim, family of the perpetrator/victim, and other parties related to jointly seeking a just solution by emphasizing recovery back to its original state, and not retaliation. Completion of criminal cases using a restorative justice approach basically focuses on efforts to transform errors committed by the perpetrator with remedial efforts. Included in this effort is the improvement of relations between parties related to the event. This is implemented with the existence of actions that are a picture of changes in the attitude of the parties in an effort to achieve a common goal of improvement.

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Explain in more detail.

Response

...

The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice. Communal justice is justice where no one feels disadvantaged by the decision taken by the leader or traditional figure in resolving conflicts/disputes. This justice is very important to be upheld as a joint of the order of life of indigenous peoples. Customary law is applied in order to uphold community justice. The values and dignity of indigenous peoples are very much determined by the degree to which the values of communal justice are realized. The higher the value of communal justice, the stronger and nobler the position of the customary law community (Abbas, 2011).

Explanation of traditional leaders needs to be added

Response

...

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. This value is also a guideline for traditional leaders in carrying out their duties in resolving conflicts/disputes. Customary leaders are people who have "customary charisma" and understand customary laws obtained from generation to generation. They are a reference for resolving conflicts and disputes in indigenous law communities. Customary law is in their hands, and they inherit customary law and enforce it in the lives of indigenous peoples. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

CONCLUSION

In conclusion, the results of comprehension of the topic are summarized, conclusions, generalizations, and recommendations are made, which follow from the work, their practical significance is emphasized, and the main directions for further research in this area are defined. In the final part of the article, it is desirable to include attempts to forecast the development of the discussed issues.

Response

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. One of the mechanisms for resolving criminal cases through customary law as a tradition of the people in Indonesia is by using the customary law facilities of the tribes in Indonesia to uphold custom as a result of the process of deliberation in joint discussions with the intention of reaching a decision as a solution to a problem. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace. the results showed that tribal customary law is in line with the concept of restorative justice.

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References are inadequate.

Response

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Reviewer 2 Comments



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In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide

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RESTORATIVE JUSTICE

The explanation is inadequate. Please provide some expert views on your subject.

Response

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "a rational total of the responses to crime" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

Barb Toews (2006) sees that attention to victims is the core values of restorative justice. Although attention to the perpetrators is also not less compared to the previous theory. According to Zulfa (2011), the meaning contained in the concepts of rehabilitation, resocialization, restitution, reparations, and compensation seems only to be part of the concepts contained in the restorative. Tom Cavanagh (2017) stated that restorative justice is a systematic response to acts of irregularities that are emphasized in the recovery of losses suffered by victims and or society as a result of criminal acts.

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

In this section, the discussion presented does not describe how the tradition of resolving conflicts and disputes in a legal society is. What is meant by "customary patterns" and "kinship" is not well understood.

Response

Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

Settlement of conflicts and disputes in customary law communities is based on the views of life adopted by the community itself. Indigenous peoples have a democratic nature in which common interests take precedence, without neglecting or harming individual interests. The atmosphere of free domination and social justice goes hand in hand with communal and mutual cooperation in indigenous law communities. Democratic behavior is imbued with the principle of universal customary law. This value is in the form of general power, principle of deliberation, and representation in the customary government system

The tradition of resolving customary law conflicts and disputes is based on the values of the philosophy of togetherness (communal), sacrifice, supernatural value, and justice. In the customary law the common interest is a philosophy of life that permeates the heart of every member of society. Customary law communities in their consciousness always attach importance to communal interests, and prevent interventions of individual interests in their social lives. Conflicts and disputes that occur between individuals and between groups, in the view of indigenous and tribal peoples are actions that interfere with common interests and therefore must be resolved wisely by using a pattern of customary settlement (Surya, 2012).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities.

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Some customary areas in Indonesia still apply customary law quite well. For example in Gayo Land and several other areas. These can be added to get a comprehensive picture.

Response

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the land of Gayo, the village court was placed above the responsibility of the kings. The village court in Batak land was in the hands of the head of the city center or king of Padusunan. In South Tapanuli, this power was given to the head of the curia, but since 1916 by the district head. In Minangkabau society, there is a customary

institution that works motivated by a culture of consensus. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

CONCLUSION

The conclusion contains a brief formulation of the study results. It repeats the main ideas of the main part of the work in a concise form. It is better to formulate any repetitions of the material presented with new phrases, new formulations that differ from those expressed in the main part of the article. In this section, the results should be compared with the goal stated at the beginning of the work

Response

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. One of the mechanisms for resolving criminal cases through customary law as a tradition of the people in Indonesia is by using the customary law facilities of the tribes in Indonesia to uphold custom as a result of the process of deliberation in joint discussions with the intention of reaching a decision as a solution to a problem. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace. the results showed that tribal customary law is in line with the concept of restorative justice.

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Add some relevant sources and can enrich the article.

Response

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THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE



ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.

Keywords: criminal case, customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today. Seeing the reality that exists in order to achieve fair procedural justice and restorative justice in resolving criminal cases, it is only possible to achieve it through the agreement of the conflicting

parties. One of the ways is through the concept of resolving criminal cases based on local wisdom in indigenous and tribal peoples in Indonesia based on cosmic, magical and religious nature. Completion of criminal cases through the mechanism of customary law has long been recognized and has become a tradition of the people in many parts of the world (Chirayath et al., 2005; Meron, 2005; Cryer, 2006; Fletcher, 2007).

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. In traditional societies the settlement of criminal cases through peace is still alive because peace has a very high value. For this reason, in the effort to resolve criminal cases it is time to pay attention to the settlement mechanism through customary law. In an effort to develop and renew criminal law in Indonesia, it is necessary to study, how to solve criminal cases through customary law in the perspective of restorative justice.

CRIMINAL LAW ENFORCEMENT

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia. These patterns of settlement of conflicts and disputes based on customary law are still alive, developing and recognizing their existence. Restorative Justice is a model approach that appears in the attempt to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. This view is in fact developing and influencing many legal policies and practices in various countries, such as Canada, New Zealand, and Australia (Manan, 2008).

RESTORATIVE JUSTICE

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "a rational total of the responses to crime" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

Barb Toews (2006) sees that attention to victims is the core values of restorative justice. Although attention to the perpetrators is also not less compared to the previous theory. According to Zulfa (2011), the meaning contained in the concepts of rehabilitation, resocialization, restitution, reparations, and compensation seems only to be part of the concepts contained in the restorative. Tom Cavanagh (2017) stated that restorative justice is a systematic response to acts of irregularities that are emphasized in the recovery of losses suffered by victims and or society as a result of criminal acts.

According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).

Article 1 point 6 of Indonesian Law No. 11 of 2012 concerning the Criminal Justice System of the Child has used the term restorative justice stating that restorative justice is the settlement of criminal acts involving the perpetrator, victim, family of the perpetrator/victim, and other parties related to jointly seeking a just solution by emphasizing recovery back to its original state, and not retaliation. Completion of criminal cases using a restorative justice approach basically focuses on efforts to transform errors committed by the perpetrator with remedial efforts. Included in this effort is the improvement of relations between parties related to the event. This is implemented with the existence of actions that are a picture of changes in the attitude of the parties in an effort to achieve a common goal of improvement.

PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

Settlement of conflicts and disputes in customary law communities is based on the views of life adopted by the community itself. Indigenous peoples have a democratic nature in which common interests take precedence, without neglecting or harming individual interests. The atmosphere of free domination and social justice goes hand in hand with communal and mutual cooperation in indigenous law communities. Democratic behavior is imbued with the principle of universal customary law. This value is in the form of general power, principle of deliberation, and representation in the customary government system

The tradition of resolving customary law conflicts and disputes is based on the values of the philosophy of togetherness (communal), sacrifice, supernatural value, and justice. In the customary law the common interest is a philosophy of life that permeates the heart of

every member of society. Customary law communities in their consciousness always attach importance to communal interests, and prevent interventions of individual interests in their social lives. Conflicts and disputes that occur between individuals and between groups, in the view of indigenous and tribal peoples are actions that interfere with common interests and therefore must be resolved wisely by using a pattern of customary settlement (Surya, 2012).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice. Communal justice is justice where no one feels disadvantaged by the decision taken by the leader or traditional figure in resolving conflicts/disputes. This justice is very important to be upheld as a joint of the order of life of indigenous peoples. Customary law is applied in order to uphold community justice. The values and dignity of indigenous peoples are very much determined by the degree to which the values of communal justice are realized. The higher the value of communal justice, the stronger and nobler the position of the customary law community (Abbas, 2011).

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the land of Gayo, the village court was placed above the responsibility of the kings. The village court in Batak land was in the hands of the head of the city center or king of Padusunan. In South Tapanuli, this power was given to the head of the curia, but since 1916 by the district head. In Minangkabau society, there is a customary institution that works motivated by a culture of consensus. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. This value is also a guideline for traditional leaders in carrying out their duties in resolving conflicts/disputes. Customary leaders are people who have "customary charisma" and understand customary laws obtained from generation to generation. They are a reference for resolving conflicts and disputes in indigenous law communities. Customary law is in their hands, and they inherit customary law and enforce it in the lives of indigenous peoples. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. One of the mechanisms for resolving criminal cases through customary law as a tradition of the people in Indonesia is by using the customary law facilities of the tribes in Indonesia to uphold custom as a result of the process of deliberation in joint discussions with the intention of reaching a decision as a solution to a problem. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace. the results showed that tribal customary law is in line with the concept of restorative justice.

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General comments



Reviewer 1

Title, Abstract and Introduction – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Methodology / Materials and Methods – overall evaluation

Reviewer 1: Sound

Objective / Hypothesis – overall evaluation

Reviewer 1: Sound

Figures and Tables – overall evaluation

Reviewer 1: Outstanding

Results / Data Analysis – overall evaluation

Reviewer 1: Sound

Interpretation / Discussion – overall evaluation

Reviewer 1: Sound

Conclusions – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

References – overall evaluation

Reviewer 1: Sound

Compliance with Ethical Standards – overall evaluation

Reviewer 1: Sound

Writing – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Supplemental Information and Data – overall evaluation

Reviewer 1: Sound

Reviewer 2

Title, Abstract and Introduction – overall evaluation

Reviewer 2: Unsound or fundamentally flawed

Methodology / Materials and Methods – overall evaluation

Reviewer 2: Unsound or fundamentally flawed

Objective / Hypothesis – overall evaluation

Reviewer 2: Unsound or fundamentally flawed

Figures and Tables – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Results / Data Analysis – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Interpretation / Discussion – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Conclusions – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

References – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Compliance with Ethical Standards – overall evaluation

Reviewer 2: Sound

Writing – overall evaluation

Reviewer 2: Sound

Supplemental Information and Data – overall evaluation

Reviewer 2: Sound

THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE



ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.

Keywords: criminal case, customary law, deliberation, dispute settlement, restorative justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today. Seeing the reality that exists in order to achieve fair procedural justice and restorative justice in resolving criminal cases, it is only possible to achieve it through the agreement of the conflicting

parties. One of the ways is through the concept of resolving criminal cases based on local wisdom in indigenous and tribal peoples in Indonesia based on cosmic, magical and religious nature. Completion of criminal cases through the mechanism of customary law has long been recognized and has become a tradition of the people in many parts of the world (Chirayath et al., 2005; Meron, 2005; Cryer, 2006; Fletcher, 2007).

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. In traditional societies the settlement of criminal cases through peace is still alive because peace has a very high value. For this reason, in the effort to resolve criminal cases it is time to pay attention to the settlement mechanism through customary law. In an effort to develop and renew criminal law in Indonesia, it is necessary to study, how to solve criminal cases through customary law in the perspective of restorative justice.

CRIMINAL LAW ENFORCEMENT

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia. These patterns of settlement of conflicts and disputes based on customary law are still alive, developing and recognizing their existence. Restorative Justice is a model approach that appears in the attempt to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. This view is in fact developing and influencing many legal policies and practices in various countries, such as Canada, New Zealand, and Australia (Manan, 2008).

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According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).

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PEACEFUL DISPUTE SETTLEMENT IN CUSTOMARY PRACTICES

The tradition of resolving conflicts and disputes in customary law communities tends to use "traditional patterns" or in other terms it is often called a pattern of "kinship". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "dispute" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

Settlement of conflicts and disputes in customary law communities is based on the views of life adopted by the community itself. Indigenous peoples have a democratic nature in which common interests take precedence, without neglecting or harming individual interests. The atmosphere of free domination and social justice goes hand in hand with communal and mutual cooperation in indigenous law communities. Democratic behavior is imbued with the principle of universal customary law. This value is in the form of general power, principle of deliberation, and representation in the customary government system

The tradition of resolving customary law conflicts and disputes is based on the values of the philosophy of togetherness (communal), sacrifice, supernatural value, and justice. In the customary law the common interest is a philosophy of life that permeates the heart of

every member of society. Customary law communities in their consciousness always attach importance to communal interests, and prevent interventions of individual interests in their social lives. Conflicts and disputes that occur between individuals and between groups, in the view of indigenous and tribal peoples are actions that interfere with common interests and therefore must be resolved wisely by using a pattern of customary settlement (Surya, 2012).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

SETTLEMENT OF CRIMINAL CRIME THROUGH CUSTOMARY LAW

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice. Communal justice is justice where no one feels disadvantaged by the decision taken by the leader or traditional figure in resolving conflicts/disputes. This justice is very important to be upheld as a joint of the order of life of indigenous peoples. Customary law is applied in order to uphold community justice. The values and dignity of indigenous peoples are very much determined by the degree to which the values of communal justice are realized. The higher the value of communal justice, the stronger and nobler the position of the customary law community (Abbas, 2011).

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the land of Gayo, the village court was placed above the responsibility of the kings. The village court in Batak land was in the hands of the head of the city center or king of Padusunan. In South Tapanuli, this power was given to the head of the curia, but since 1916 by the district head. In Minangkabau society, there is a customary institution that works motivated by a culture of consensus. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. This value is also a guideline for traditional leaders in carrying out their duties in resolving conflicts/disputes. Customary leaders are people who have "customary charisma" and understand customary laws obtained from generation to generation. They are a reference for resolving conflicts and disputes in indigenous law communities. Customary law is in their hands, and they inherit customary law and enforce it in the lives of indigenous peoples. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. One of the mechanisms for resolving criminal cases through customary law as a tradition of the people in Indonesia is by using the customary law facilities of the tribes in Indonesia to uphold custom as a result of the process of deliberation in joint discussions with the intention of reaching a decision as a solution to a problem. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace. the results showed that tribal customary law is in line with the concept of restorative justice.

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THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE

Ahmad Syaufi, **Lambung Mangkurat University, Banjarmasin**
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ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.

Keywords: Criminal Case, Customary Law, Deliberation, Dispute Settlement, Restorative Justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the

vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today. Seeing the reality that exists in order to achieve fair procedural justice and restorative justice in resolving criminal cases, it is only possible to achieve it through the agreement of the conflicting parties. One of the ways is through the concept of resolving criminal cases based on local wisdom in indigenous and tribal peoples in Indonesia based on cosmic, magical and religious nature. Completion of criminal cases through the mechanism of customary law has long been recognized and has become a tradition of the people in many parts of the world (Chirayath et al., 2005; Meron, 2005; Cryer, 2006; Fletcher, 2007).

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. In traditional societies the settlement of criminal cases through peace is still alive because peace has a very high value. For this reason, in the effort to resolve criminal cases it is time to pay attention to the settlement mechanism through customary law. In an effort to develop and renew criminal law in Indonesia, it is necessary to study, how to solve criminal cases through customary law in the perspective of restorative justice.

Criminal Law Enforcement

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained

life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia. These patterns of settlement of conflicts and disputes based on customary law are still alive, developing and recognizing their existence. Restorative Justice is a model approach that appears in the attempt to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. This view is in fact developing and influencing many legal policies and practices in various countries, such as Canada, New Zealand, and Australia (Manan, 2008).

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Peaceful Dispute Settlement in Customary Practices

The tradition of resolving conflicts and disputes in customary law communities tends to use "*traditional patterns*" or in other terms it is often called a pattern of "*kinship*". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

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Settlement of conflicts and disputes in customary law communities is based on the views of life adopted by the community itself. Indigenous peoples have a democratic nature in which common interests take precedence, without neglecting or harming individual interests. The atmosphere of free domination and social justice goes hand in hand with communal and mutual cooperation in indigenous law communities. Democratic behavior is imbued with the principle of universal customary law. This value is in the form of general power, principle of deliberation, and representation in the customary government system

The tradition of resolving customary law conflicts and disputes is based on the values of the philosophy of togetherness (communal), sacrifice, supernatural value, and justice. In the customary law the common interest is a philosophy of life that permeates the heart of every member of society. Customary law communities in their consciousness always attach importance to communal interests, and prevent interventions of individual interests in their social lives. Conflicts and disputes that occur between individuals and between groups, in the view of indigenous and tribal peoples are actions that interfere with common interests and therefore must be resolved wisely by using a pattern of customary settlement (Surya, 2012).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

Settlement of Criminal Crime through Customary Law

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice. Communal justice is justice where no one feels disadvantaged by the decision taken by the leader or traditional figure in resolving conflicts/disputes. This justice is very important to be upheld as a joint of the order of life of indigenous peoples. Customary law is applied in order to uphold community justice. The values and dignity of indigenous peoples are very much determined by the degree to which the values of communal justice are realized. The higher the value of communal justice, the stronger and nobler the position of the customary law community (Abbas, 2011).

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the land of Gayo, the village court was placed above the responsibility of the kings. The village court in Batak land was in the hands of the head of the city center or king of Padusunan. In South Tapanuli, this power was given to the head of the curia, but since 1916 by the district head. In Minangkabau society, there is a customary institution that works motivated by a culture of consensus. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

Settlement of conflicts and disputes in the customary law community as described above is determined by the values of customary law, traditional leaders, and customary institutions. The values of customary law are the norms that become the standard of the behavior patterns of customary law communities. This value is also a guideline for traditional leaders in carrying out their duties in resolving conflicts/disputes. Customary leaders are people who have "*customary charisma*" and understand customary laws obtained from generation to generation. They are a reference for resolving conflicts and disputes in indigenous law communities. Customary law is in their hands, and they inherit customary law and enforce it in the lives of indigenous peoples. Those who understand and master customary law norms are called traditional leaders who tend to be leaders in indigenous law communities. Meanwhile, customary institutions are institutions that have certain duties and functions, who maintain customary law in society (Muhammad, 1995).

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. The settlement of conflicts and disputes through customary law mechanisms that are carried out through deliberation generally uses a broader approach to mediation, negotiation, facilitation and arbitration compared to positive law in Indonesia. In practice, traditional leaders generally use this approach together to resolve private and public conflicts/disputes.

CONCLUSION

The essence of conflict resolution/dispute in customary law is to realize peace in a comprehensive sense. The peace meant here is not only for the parties of perpetrators and victims, but peace for the community as a whole which is permanent. One of the mechanisms for resolving criminal cases through customary law as a tradition of the people in Indonesia is by using the customary law facilities of the tribes in Indonesia to uphold custom as a result of the process of deliberation in joint discussions with the intention of reaching a decision as a solution to a problem. The decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society if there are disputes between citizens or acts of abuse or violations of customary norms or fights or traffic violations, then the community tends to settle peace. The results showed that tribal customary law is in line with the concept of restorative justice.

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THE CRIMINAL SETTLEMENT THROUGH CUSTOMARY LAW FROM RESTORATIVE JUSTICE PERSPECTIVE

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ABSTRACT

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.

Keywords: Criminal Case, Customary Law, Deliberation, Dispute Settlement, Restorative Justice.

INTRODUCTION

Nowadays, the use of criminal justice procedures as a means of distributing justice is often considered unfair to all parties. One of the contributing factors is that the current criminal justice procedures is full of strict formalities, procedures, bureaucracy and methodologies, and there is still a process that is the same for all types of problems or one for all mechanism, even positivism or legalistic views still dominates the law enforcers (Tyesta et al., 2020). So that justice distributed through criminal justice institutions is given through bureaucratic decisions for the public interest. Therefore, it tends to be substantial-rational justice. So, it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice, while the legal objectives achieved are prioritizing legal certainty, without being balanced with two other legal ideals, namely justice and legal benefits (Suparman, 2010; Susanto, 1996). This condition is very contrary to the desire of the people who seek for restorative justice in every settlement of criminal cases (Kuswandi, 2016). The problem is the number of prisoners or detainees in Indonesia which exceeds the capacity of prison or state detention centers. The number of prisoners or detainees in June 2020 has reached 228,225 people, while the capacity of prison or detention 132,645 people. So, there are surplus of 95,850 people. This condition results in the

vulnerability of prisons or detention to security and order disturbances, escape of prisoners or detainees, illegal levies, extortion, drug trafficking, threats of sexual diseases and irregularities. In addition, by the time where there is an increase in number of cases with all forms and variations that enter the court, so the consequences become a burden for the court in examining and deciding cases, that it is difficult to avoid congestion in the judiciary.

In this context, it is certain that efforts to seek justice can no longer only rely on the state, but must be sought through competitive social relations and cooperation. Because justice provided by the state is not necessarily even often not in accordance with the will of the justice seekers themselves, because basically everyone needs and pursues their interests and a wide range of acceptability for a sense of justice. This kind of justice will never be found in the grand design of the Indonesian criminal justice system today. Seeing the reality that exists in order to achieve fair procedural justice and restorative justice in resolving criminal cases, it is only possible to achieve it through the agreement of the conflicting parties. One of the ways is through the concept of resolving criminal cases based on local wisdom in indigenous and tribal peoples in Indonesia based on cosmic, magical and religious nature. Completion of criminal cases through the mechanism of customary law has long been recognized and has become a tradition of the people in many parts of the world (Chirayath et al., 2005; Meron, 2005; Cryer, 2006; Fletcher, 2007).

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. In traditional societies the settlement of criminal cases through peace is still alive because peace has a very high value. For this reason, in the effort to resolve criminal cases it is time to pay attention to the settlement mechanism through customary law. In an effort to develop and renew criminal law in Indonesia, it is necessary to study, how to solve criminal cases through customary law in the perspective of restorative justice.

Criminal Law Enforcement

Criminal law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy, and then this policy is implemented into the criminal justice system. According to Muladi (1995), the criminal justice system has multiple functional dimensions. On the one hand, it functions as a community facility to detain and control crime at a certain level (crime containment system), on the other hand the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed a crime and those who intend committing a crime through the process of detection, criminal prosecution and execution. Criminal law is often used to solve social problems, especially in crime prevention. The use of criminal law is in accordance with the legal function as social control which is a process that has been planned in advance and aims to encourage, invite, order or even force members of society to comply with legal norms or legal rules that are in force (Soemitro, 1980).

Peaceful settlement of conflicts and disputes has been developed in the lives of indigenous and tribal peoples in Indonesia. Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has led them to a harmonious, just, balanced and sustained

life (communal) values in society. The peaceful resolution of conflicts and disputes is a means of resolving conflicts (disputes/cases) that is in line with the Restorative Justice approach, which has long been applied by indigenous law communities in Indonesia. These patterns of settlement of conflicts and disputes based on customary law are still alive, developing and recognizing their existence. Restorative Justice is a model approach that appears in the attempt to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. This view is in fact developing and influencing many legal policies and practices in various countries, such as Canada, New Zealand, and Australia (Manan, 2008).

Restorative Justice

Restorative justice approach is assumed to be the most recent shift from various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations (UN) through the Basic Principles outlined considers that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of Hoefnagels (2013) who stated that "*a rational total of the responses to crime*" or that criminal politics must be rational. Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategy that aims to answer the dissatisfaction with the operation of the criminal justice system that exists today.

Barb Toews (2006) sees that attention to victims is the core values of restorative justice. Although attention to the perpetrators is also not less compared to the previous theory. According to Zulfa (2011), the meaning contained in the concepts of rehabilitation, resocialization, restitution, reparations, and compensation seems only to be part of the concepts contained in the restorative. Tom Cavanagh (2017) stated that restorative justice is a systematic response to acts of irregularities that are emphasized in the recovery of losses suffered by victims and or society as a result of criminal acts.

According to Mark Umbreit (1999) stated that: Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime—victims, community members and offenders – are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important. In the Handbook on Restorative Justice Programs, it states that: Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community (Dandurand & Griffiths, 2006).

Article 1 point 6 of Indonesian Law No. 11 of 2012 concerning the Criminal Justice System of the Child has used the term restorative justice stating that restorative justice is the settlement of criminal acts involving the perpetrator, victim, family of the perpetrator/victim, and other parties related to jointly seeking a just solution by emphasizing recovery back to its original state, and not retaliation. Completion of criminal cases using a restorative justice approach basically focuses on efforts to transform errors committed by the perpetrator with remedial efforts. Included in this effort is the improvement of relations between parties related to

the event. This is implemented with the existence of actions that are a picture of changes in the attitude of the parties in an effort to achieve a common goal of improvement.

Peaceful Dispute Settlement in Customary Practices

The tradition of resolving conflicts and disputes in customary law communities tends to use "*traditional patterns*" or in other terms it is often called a pattern of "*kinship*". This pattern is applied not only for civil matters but also criminal cases. In contrast to the positive law that separates the realm of private law and criminal (public) law, there is no differentiation in customary law so that the resolution of all conflicts and disputes arising is resolved through the same institutions and mechanisms.

The term "*dispute*" for indigenous peoples is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts (crimes or violations). The meaning of disputes for indigenous and tribal peoples is aimed at social imbalances. That is, if there is a dispute in civil law, or a crime and a violation in criminal law, then the customary law community feels an imbalance that occurs in the life of indigenous and tribal peoples. Therefore, the community will resolve the dispute through the customary law mechanism (Muhammad, 1995).

Settlement of conflicts and disputes in customary law communities is based on the views of life adopted by the community itself. Indigenous peoples have a democratic nature in which common interests take precedence, without neglecting or harming individual interests. The atmosphere of free domination and social justice goes hand in hand with communal and mutual cooperation in indigenous law communities. Democratic behavior is imbued with the principle of universal customary law. This value is in the form of general power, principle of deliberation, and representation in the customary government system

The tradition of resolving customary law conflicts and disputes is based on the values of the philosophy of togetherness (communal), sacrifice, supernatural value, and justice. In the customary law the common interest is a philosophy of life that permeates the heart of every member of society. Customary law communities in their consciousness always attach importance to communal interests, and prevent interventions of individual interests in their social lives. Conflicts and disputes that occur between individuals and between groups, in the view of indigenous and tribal peoples are actions that interfere with common interests and therefore must be resolved wisely by using a pattern of customary settlement (Surya, 2012).

The sacrificial philosophy in resolving conflicts and disputes is an emphasis in indigenous law communities. The parties to the conflict/dispute, both in the private and public spheres, are willing to sacrifice individual interests for communal interests. Settlement of disputes with customary patterns reflects the value of communality that must be accepted by conflicting individuals, with the awareness that they are part of the others. Customary law decisions taken in resolving conflicts and disputes are umbrellas that maintain the values of togetherness and equality. Therefore, the parties to the conflict/dispute are willing to step back and sacrifice in order to maintain the values and order of customary law that they uphold. Willingness to sacrifice for communal interests and refrain from dominating individual interests will receive more respect and ethical value from indigenous law communities. On the other hand, those who do not consider communal interests and are far more interested in individual interests tend to get negative ratings from indigenous peoples, and can lead to customary sanctions (Abbas, 2011).

Settlement of Criminal Crime through Customary Law

Supernatural philosophy of resolving conflicts and disputes in indigenous law communities is identified in the form of ritual ceremonies. The goal is that the disputing party needs to get recognition from the supernatural in its settlement. Therefore, the sincerity of the parties to sit together, to resolve conflicts and disputes that plagued them, and to be facilitated by traditional leaders is the will of the Almighty. The existence of spiritual values obtained from ritual ceremonies indicates that the resolution of conflicts and disputes gets approval and monitoring from the supernatural. The parties are not free to fight again after their dispute is resolved through customary patterns (Muhammad, 1995). The philosophy of justice that wants to be upheld in resolving conflicts and disputes among indigenous peoples is communal justice. Communal justice is justice where no one feels disadvantaged by the decision taken by the leader or traditional figure in resolving conflicts/disputes. This justice is very important to be upheld as a joint of the order of life of indigenous peoples. Customary law is applied in order to uphold community justice. The values and dignity of indigenous peoples are very much determined by the degree to which the values of communal justice are realized. The higher the value of communal justice, the stronger and nobler the position of the customary law community (Abbas, 2011).

The fourth philosophy is what underlies the tradition and resolution of conflicts and disputes in indigenous law communities. In addition, each region has cultural themes that are essentially the same substance, namely upholding a culture of deliberation. For example, in Aceh there is a court whose nature is only as a separation board, the power is given to the village head. If there are parties to the dispute, the village head acts by reconciling the disputing parties. In the land of Gayo, the village court was placed above the responsibility of the kings. The village court in Batak land was in the hands of the head of the city center or king of Padusunan. In South Tapanuli, this power was given to the head of the curia, but since 1916 by the district head. In Minangkabau society, there is a customary institution that works motivated by a culture of consensus. In the meeting the parties to the dispute voluntarily softened their attitudes and opinions, and at the same time accepted and understood the opinions of others (Saptomo, 2010). The concept of deliberation is basically in line with the interest-based bargaining technique, which is the style and technicality of modern negotiations that are popular and applied in various countries.

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CONCLUSION

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Abstract

The Criminal Settlement through Customary Law from Restorative Justice Perspective

Author(s): Ahmad Syaufi, Aurora Fatimatuz Zahra, Mursidah

In traditional societies, conflicts that arise as a consequence of life relations between community members are generally sought to be resolved through deliberation and peace so as not to cause resentment, shame, guilt, or which can make new conflicts. The whole process of resolving the conflict is pursued solely so that the balance and peace of the community is restored. This article provides an analytical report on how to resolve a case through the customary law in Indonesia. The essence of conflict/dispute resolution in customary law is to bring about peace in a comprehensive sense. One mechanism for resolving criminal cases through the customary law as a community tradition in Indonesia to uphold custom which is used as a customary law tool for the many tribes in Indonesia in the process of deliberation to resolve a problem. The decision produced through the deliberation mechanism is an alternative effort in finding a solution to resolve problems that occur in the community if there are conflicts or disputes between citizens in accordance with the concept of restorative justice.



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Abstract

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