

Comparison of Sanctions for the Crime of Persecution According to the Kerinci Customary Criminal Law and the Indonesian Criminal Law

Ade Saptomo¹, Nana Lukmana², Riza Endriyana³, I Gede Sumerta⁴, Kristofel Aditiya Prathama Pardamean Hutauruk⁵

¹⁻⁵Universitas Borobudur, Jakarta

E-mail: ade_saptomo@borobudur.ac.id¹, nana.lukmana1103@gmail.com², r_endriyana@yahoo.com³, gedesumerta64@gmail.com⁴, kristofel.hutauruk@gmail.com⁵

Abstract. This research discusses the application of Kerinci customary criminal law to criminal acts of abuse and its comparison with national criminal law in Indonesia. There is a conflict between Article 351 paragraph (3) of the Criminal Code and the practice of resolving customary abuse in Kerinci Regency. The research method used is normative legal research with a conceptual and analytical approach. The research results show differences in the application of customary and national crimes, with an emphasis on the principle of deliberation in Kerinci customary law. The application of Kerinci's customary crime involves three levels of sanctions, adjusted to the level of the violation, with a Restorative Justice approach. Differences arise in the resolution of minor criminal cases, where customary law involves traditional judges, ninik mamak, and traditional leaders. Harmonization between customary law and national law is crucial to achieving holistic justice.

Keywords: Customary law, criminal law, persecution

INTRODUCTION

In the context of Criminal Law in Indonesia, criminal acts of abuse are regulated in detail in Chapter XX Articles 351-358 of the Criminal Code. This criminal act involves various aspects, such as abuse in the main form, abuse in the form of mitigation, planned abuse with different consequences, aggravated abuse, planned serious abuse, and assault or fighting (Articles 351-358 of the Criminal Code).

However, attention is drawn to Article 351 paragraph (3) of the Criminal Code which states that if abuse results in death, the sanction is imprisonment for a maximum of seven years. The resolving abuse process in Kerinci Regency is often conducted according to custom, which is not in line with Article 1 paragraph (1) of the Criminal Code. (Samosir, 2021) In social practice, the community is familiar with penal mediation with the local wisdom of Indonesian customary law. Restorative Justice, as an alternative to resolving criminal cases, involves the perpetrator and victim. It can be stated that Restorative Justice combines aspects of deliberation in resolving criminal cases. (Yunni, 2021)

The existence of traditional law in Indonesia is recognized by Article 18B paragraph (2) of the 1945 Constitution, which recognizes and respects the unity of customary law communities and their traditional rights. However, the lack of attention to the application of customary law is often caused by difficulties in adapting to current developments and the assumption that customary law is traditional. Customary criminal law refers to Law Number

48 of 2009 concerning Judicial Power, which firmly lays the foundation for the importance of customary criminal law. Even though there are provisions in customary criminal law, many believe that their undertaking tends to be slow.

Customary criminal law is dynamic, which means that an action that was not initially a violation of the law, at one time can be considered a violation by the traditional chief judge because it violates the community's customary norms. It requires indigenous responses for recovery. Therefore, the development of customary criminal law occurs in line with adjustments to society's perception of justice. However, customary violations can become permanent if similar actions occur repeatedly, and as a result, the same decisions are taken by legal authorities. (Sulistiani, 2021)

In the context of the Kerinci customary law community, customary sanctions for perpetrators of abuse vary, depending on the type of injury. Sanctions in the form of fines, known as wounds and death, are imposed to restore balance disturbed by actions that are contrary to customary law. The fundamental difference between customary criminal law and national criminal law arises when applied to cases of criminal acts of abuse that result in fatalities. Customary criminal law in Kerinci Regency emphasizes sanctions in the form of fines and family settlement procedures, while Article 351 paragraph (3) of the Criminal Code stipulates a maximum prison sentence of seven years.

So the legal issue that is legal issue that will be raised in this journal is how the Kerinci customary crime is applied to criminal acts of abuse and the comparison of Kerinci customary criminal law with national criminal law in criminal acts of abuse that cause fatalities.

METHODOLOGY

The research method used is normative legal research which is carried out by conducting research on library materials which is library legal research. (Soekanto, 2013) The approach used in this research includes a conceptual approach and an analytical approach. Existing legal materials include statutory regulations, books, journals, and legal dictionaries.

RESULTS AND DISCUSSION

Application of Kerinci Customary Crime to the Crime of Persecution

The resolution of criminal cases in customary law, especially in Kerinci Regency, is known as a restorative approach or restorative justice. This approach includes resolving cases through mediation between the perpetrator and the victim, with a focus on protecting not only demand but also the interests and losses experienced by the victim, both materially and psychologically.

Kerinci Regency, which is located in Jambi Province, has a history and culture that remains intact even though it is divided into two autonomous regions, namely Kerinci Regency and Sungai Banyak City. In community life, when a criminal act occurs, especially abuse, the perpetrator will be subject to sanctions by Kerinci customary law. This customary law has three levels, known as *ske yang tigo takah*, with sanctions in the form of giving rice, goats, or buffalo according to the level of violation.

Customary law in Kerinci Regency has three levels which are generally referred to as *ske yang tigo takah*. *Takah* in the Kerinci customary context refers to the levels that must be passed to resolve a customary issue. The three levels of *Tigo Takah* scores include: (Sintia Febuani, 2023)

1. Male Child *Ske* (*Teganai*), with a penalty in the form of rice equivalent to one chicken's plate.
2. *Ske Ninik Mamak*, with a penalty in the form of rice equivalent to twenty goats per head.
3. *Ske Depati*, with a penalty in the form of rice equivalent to one hundred buffaloes per head.

The value of deliberation promoted by the Kerinci conventional law community is a lineup with the concept of restorative justice in Indonesia. This restorative justice is rooted in traditional societal values, such as balance and peace in society. (Navia, 2022) Kerinci's natural customary provisions have basic norms that are dynamic and easy to adapt to circumstances. The principle is to create peace in society, and in resolving problems, both customary civil and customary crime, the *tigo takah ske* level is used.

The Kerinci traditional law community will face customary sanctions in the form of fines known as "wounds are forgiven, death gives rise." (Somad, 2014) The concept of reparation of wounds refers to the application of customary sanctions if someone commits abuse that causes injury, which violates customary norms. Meanwhile, death gives rise to the perpetrator of the murder giving a ransom for his life to the victim's family if the incident of

abuse causes the victim to die. The rules regarding criminal acts of abuse are explained in Law Eight, the Kerinci customary law. (Affandi, 2021)

In Article 5 paragraph (3) sub b there are three types of sanctions for an action that violates customary criminal law. First, if an act does not have an equivalent or conformity in the Criminal Code (KUHP), a customary violation can result in a maximum prison sentence of 3 months or a fine of Rp. 500,000,-. Replacement punishment is applied if settlement with customary punishment is not possible. Second, if the customary punishment is heavier than a substitute sentence or fine as in the first type, the perpetrator can be subject to a prison sentence of up to 10 years. Third, if there is an equivalent in the Criminal Code, the punishment by the Criminal Code will be applied. Therefore, this action is not considered a violation of customary prohibited law but is considered a violation of the provisions of the Criminal Code. The foundation of customary criminal law also refers to Law Number 48 of 2009 concerning Judicial Power. Article 5 paragraph (1), Article 10 paragraph (1), and Article 50 paragraph (1) in the law clearly and indirectly emphasize the importance of customary criminal law. (Kalengkongan, 2017)

The application of Kerinci customary criminal law regulates customary law related to abuse, with norms that determine sanctions according to the level of the act. The principle is that every action has regulations that regulate it and consequences that must be accepted by the perpetrator, including payment of fines and compensation. Customary sanctions for perpetrators of abuse in Kerinci Regency are determined based on the form and impact of the abuse. There are various sanctions such as payment of a fine, compensation in the form of pampas, or punishment in the form of a wake-up fine. All of this aims to create justice through the traditional norms and conditions of the Kerinci community.

In providing compensation to the perpetrator, the main attention is given to repairing the losses experienced by the victim and allowing the perpetrator to correct his mistakes. Good relations after the resolution of customary criminal cases reflect the creation of a positive social order. The process of resolving customary criminal cases also requires an intermediary role as a mediator who communicates the invitation to resolve the case from the perpetrator to the victim. The involvement of other parties as liaisons or mediators is very crucial in achieving mutual benefit between victims, perpetrators, and residents.

Comparison of the Kerinci Customary Criminal Law with the National Criminal Law in the Crime of Persecution

Abuse is a crime against the integrity of the human body which can threaten life. Regulated in Article 351 paragraph (4), abuse is defined as an action carried out intentionally to damage a person's health. (Kitab Undang-Undang Hukum Pidana) In the context of Kerinci Customary Law, abuse is known as Luko pamper, death gives rise, where pampas or fines are given for injuries, while if the victim dies, there will be an obligation to rebuild.

The crime of abuse is regulated in Book Two Chapter XX from Article 351 to Article 358 in the Criminal Code (KUHP). The range of punishments for various types of abuse varies, with ordinary abuse subject to a maximum prison sentence of 2 years and 8 months (Article 351 paragraph (1) of the Criminal Code) or imprisonment of up to 7 years if it causes death (Article 351 paragraph (3) of the Criminal Code). Light assault is subject to a criminal sentence of 3 months and a maximum fine of Rp. 4,500,- (Article 352 of the Criminal Code). If the abuse is carried out with prior planning, the perpetrator can be sentenced to prison for 4 to 9 years (Article 353 of the Criminal Code). Serious assault can result in a prison sentence of between 8 and 10 years (Article 354 of the Criminal Code), while serious maltreatment with planning can result in a sentence of 12 to 15 years (Article 355 of the Criminal Code). The use of objects to assault certain individuals is regulated in Article 356 of the Criminal Code, while attacks or fights can be subject to imprisonment for 2 to 4 years (Article 358 of the Criminal Code). These provisions reflect variations in the punitive sanctions applied depending on the severity and planning of the acts of abuse committed.

Settlement of criminal cases in customary law, especially in Kerinci Regency, is known as a restorative approach or restorative justice. This approach includes resolving cases through mediation between the perpetrator and the victim, with a focus on protecting not only order but also the interests and losses experienced by the victim, both materially and psychologically.

Kerinci Regency, which is located in Jambi Province, has a history and culture that remains intact even though it is divided into two autonomous regions, namely Kerinci Regency and Sungai Banyak City. In community life, when a criminal act occurs, especially abuse, the perpetrator will be subject to sanctions by Kerinci customary law. This customary law has three levels, known as *sko yang tigo takah*, with sanctions in the form of giving rice, goats, or buffalo according to the level of violation.

The value of deliberation promoted by the Kerinci customary law community is in line with the concept of restorative justice in Indonesia. This restorative justice is rooted in traditional societal values, such as balance and peace in society. Kerinci's natural customary

provisions have basic norms that are dynamic and easy to adapt to circumstances. The principle is to create peace in society, and in resolving problems, both customary civil and customary crime, the *tigo takah sko* level is used.

Procedures for resolving minor crimes using the Restorative Justice method in the realm of National criminal law at the investigation stage can be described as follows: (Syah, 2014)

1. After a crime has occurred, the first step is to make a police report, which is then followed by an examination of the reporter (victim), witnesses who have related information, and the reported party. This process is part of the investigation and inquiry carried out by the police.
2. To support an amicable or peaceful resolution, if there is a request from both the reporting party and the reported party, a meeting is held between the two. The Restorative Justice method facilitates dialogue between the parties involved to reach a peaceful agreement.
3. Parties involved in minor crimes, such as *ninik mamak* from both parties, can be invited to take part in the meeting. Involvement of the village government or related agencies can also be part of this restorative process.
4. If the situation requires, *ninik mamak* can be asked to participate in resolving this problem at the village level. Their role in the restorative justice process is to assist mediation and facilitate dialogue to reach an agreement that is fair and beneficial to all parties.
5. Even though the restorative justice process is ongoing, complete investigation administration is still required. The peace letter resulting from the agreement between the reporter and the reported party is an important part of the investigation administration.
6. As a final step, a letter of withdrawal of the police report and a letter from the reporter can be attached as formal proof that a restorative resolution has been successfully carried out, and the parties involved have agreed to officially end the legal process.

The customary law in Kerinci Regency shows that there are differences in the application of the concept of Restorative Justice between national criminal law and Kerinci customary criminal law, which can be described in the following points: (Pratama, 2015)

1. Teganai, as a traditional judge, has resolved the crime of light maltreatment using the principles of restorative justice.
2. In conducting the settlement, Teganai as a traditional judge did not reject the existence of obstacles to existing regulations, where these obstacles arose due to the lack of

awareness of the immigrant community regarding customary law which has become an integral part of life in this country.

3. Ninik mamak and traditional leaders have a role as supervisors in cases of criminal acts of abuse. If Teganai experiences difficulties that cannot be overcome, the resolution of the case will be taken over by traditional leaders and the government.

In the Kerinci custom, settlement of customary cases is carried out in several ways, such as settlement at the family or tribal level (Lembago Dapur), settlement at the village level (Lembago Kurung), settlement at the village level (Lembago Negeri), and customary settlement through customary deliberations in different customary spheres (Lembago Alam). (Pitriani, 2018)

Kerinci Customary Law regulates customary law regarding abuse, with norms that determine sanctions according to the level of the act. The principle is that every action has regulations that regulate it and consequences that must be accepted by the perpetrator, including payment of fines and compensation. Customary sanctions for perpetrators of abuse in Kerinci Regency are determined based on the form and impact of the abuse. There are various sanctions such as payment of a fine, compensation in the form of pampas, or punishment in the form of a wake-up fine. All of this aims to create justice through the traditional norms and conditions of the Kerinci community. However, it should be noted that although customary law has a significant role, the existence of conflicts between customary law principles and national law principles, as seen in the case of persecution in Kerinci Regency, shows the demand for harmonization between customary law and national law to achieve holistic justice.

CONCLUSION

Kerinci Customary Law regulates customary law regarding abuse, with norms that determine sanctions according to the level of the act. The principle is that every action has regulations that regulate it and consequences that must be accepted by the perpetrator, including payment of fines and compensation. Customary sanctions for perpetrators of abuse in Kerinci Regency are determined based on the form and impact of the abuse. There are various sanctions such as payment of a fine, compensation in the form of pampas, or punishment in the form of a wake-up fine. All of this aims to create justice by the traditional norms and conditions of the Kerinci community. However, it should be noted that although customary law has a significant role, the existence of conflicts between customary law principles and national law principles, as seen in the case of persecution in Kerinci Regency,

shows the need for harmonization between customary law and national law to achieve holistic justice.

ACKNOWLEDGMENT

The funding and resources provided by Universitas Ahmad Dahlan to conduct this research are greatly appreciated by the authors. They would also like to express sincere gratitude to the anonymous reviewers and editors for their constructive feedback, which has contributed to making this manuscript worth reading and citing.

REFERENCES

- Abdurrahman. (2015). Hukum Adat Indonesia dalam Lingkungan Lokal,. Nasional, dan Global. *Jurnal Multikultural Hukum*.
- Abdussalam, H. R. (2016). Prospek Hukum Pidana Indonesia. *Jurnal Restu Agung*, 2.
- Affandi, M. N. (2021). Analisis Hukum Pidana Adat Di Indonesia Serta Sanksi Dan Penerapannya Dalam Tindak Penganiayaan (Studi Kasus Di kabupaten Kerinci), dalam *Jurnal De Juncto Delicti : Journal Of Law*, Vol 1, No. 2 . *Fakultas Hukum Universitas Singaperbangsa Karawang*, 99.
- Kalengkongan, S. B. (2017). Kajian Hukum Pidana Adat Dalam Sistem Hukum Pidana Indonesia. *Lex Crimen Vol. 6, no. 2*, 33.
- Kitab Undang-Undang Hukum Pidana*. (n.d.).
- Navia, D. (2022). Penerapan Konsep Restorative Justice Dalam Hukum Pidana Adat Terhadap Tindak Pidana Penganiayaan Ringan Di Nagari Koto Baru Kabupaten Dharmasraya. *Skripsi S1 Universitas Andalas*, 45.
- Pitriani. (2018). Penyelesaian Sengketa Hak Milik atas Tanah Warga Menurut Hukum Adat di Desa Air Tenang Kecamatan Air Hangat Kabupaten Kerinci . *Jurnal Al-Qishthu, Vol. 16 No. 1*, 17-24.
- Pratama, A. N. (2015). Mekanisme Penyelesaian Tindak Pidana Adat Tikam Di Kecamatan Air Hangat Kabupaten Kerinci. *Tesis Fakultas Hukum Universitas Bung Hatta*, 12.
- Samosir, C. D. (2021). *Tindak Pidana Tertentu di dalam Kitab Undang-undang Hukum Pidana, cet. 1*. Bandung: CV. Nuansa Aulia.
- Santoso, T. (2017). Pluralisme Hukum Pidana Indonesia. *Jurnal Iustitia*, 9.
- Sintia Febuani, A. I. (2023). PENERAPAN SANKSI TINDAK PIDANA PENGANIAYAAN MENURUT HUKUM PIDANA ADAT KERINCI DENGAN KUHP . *UNES Journal of Swara Justisia Vol. 7, no. 1*, 153.
- Soekanto, S. d. (2013). *Penelitian Hukum Normatif*. Jakarta: Rajawali Press.
- Somad, K. A. (2014). Mengenal Adat Jambi Dalam Perspektif Modern. *Dinas Pendidikan Provinsi Jambi* , 11.
- Sulistiani, S. L. (2021). *Hukum Adat Indonesia*. Bandung: Sinar Grafika.

- Syah, A. (2014). Penyelesaian Penyidikan Tindak Pidana Ringan Dengan Pendekatan Restorative Justice Di Wilayah Hukum Polres Dharmasraya, Tesis Program Megister Ilmu Hukum. *Fakultas Hukum Universitas Andalas*, 154.
- Thontowi, J. (2015). Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-Hak Tradisionalnya. *Jurnal Penelitian Ilmu Hukum*.
- Yunni, K. T. (2021). *Restorative Justice Dalam Peradilan Pidana Di Indonesia, cet. 1*. Purwokerto: CV. Pena Indis.