

Customary Criminal Dispute Resolution in Baduy Tribe Customary Law and Indonesian National Criminal Law

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Abstract. The research explores the resolution of customary criminal disputes in the context of the Baduy tribe, an ethnic group in Banten Province, Indonesia, with a focus on harmonization between local customary law and national criminal law. Through normative juridical methodology and analytical descriptive analysis, this study explores the mechanisms for resolving customary criminal disputes and their relationship with national criminal law. The results reveal the challenges in achieving harmony between traditional values and modern criminal law principles, as well as the implications for legal justice and human rights. The statutory approach and case approach help to comprehensively describe these dynamics, provide in-depth insight into the interaction between Baduy tribal customary law and Indonesian national criminal law and highlight the need for improved policies that are more inclusive and just.

Keywords: Customary Criminal Law, Baduy Tribe, National Criminal Law

INTRODUCTION

Customary criminal disputes are a very crucial aspect of the lives of the Baduy people, an ethnic group living in Banten Province, Indonesia. The Baduy tribe has a unique and distinctive customary law system, which has been passed down from generation to generation. (Mustomi, 2017) In addition, Indonesia has a national criminal law system that regulates criminal acts in general. The Baduy tribe's customary legal system is an integral part of the community's daily life, including customary norms, rules, and criminal sanctions. However, when customary criminal disputes arise, questions arise regarding a resolution that is lineup with Indonesia's national criminal law. The conflict between tradition and modernity, locality and nationality, is a complex aspect that needs to be understood carefully. (Bertin, 2017)

In the context of resolving Baduy customary criminal disputes, it is important to note that customary law plays a central role in maintaining social harmony and morality in society. The Baduy tribe's customary criminal dispute resolution mechanism often involves a deliberation and mediation process at the local level, carried out by respected traditional figures or community leaders. The existence of this process reflects local wisdom in resolving conflicts but also lifts questions regarding recognition and implementation from the perspective of national criminal law. (Senoaji, 2014)

The concept of harmonization between Baduy tribal customary law and Indonesian national criminal law is essential for understanding the sustainability of the legal system amidst

a plurality of norms. Even though Indonesia has recognized legal and cultural diversity in the 1945 Constitution, the reality of its implementation in the field is still a challenge. Conflicts between customary law principles and national criminal law can emerge in situations where traditional values collide with more general legal norms. (Kurnia, 2020)

The research aims to explore how traditional criminal dispute resolution is carried out in the context of the Baduy tribe and how it relates to Indonesian national criminal law. In dealing with this dynamic, it is important to understand whether there is harmonization between customary law values and national criminal law norms, or whether there is a conflict that needs to be resolved. (Erwinantu, 2017) Through in-depth analysis of customary criminal dispute resolution mechanisms, it is hoped that this research can provide better insight into the dynamics of the relationship between Baduy tribal customary law and Indonesian national criminal law. In addition, it is hoped that this research can contribute to further understanding of the protection of individual rights in the context of legal pluralism in Indonesia.

METHODOLOGY

This research adopts a normative juridical methodology with a descriptive-analytical analysis approach, which involves an in-depth review of legal literature, statutory regulations, and case decisions related to the resolution of Baduy customary criminal disputes. A statutory approach is used to evaluate and analyze the normative framework governing customary criminal disputes at the national level, while a case approach is used to examine how this dispute resolution has been applied in a concrete context. Analytical descriptive analysis will help in describing in detail how Baduy customary law and Indonesian national criminal law can interact or experience tension. This study aims to provide a comprehensive understanding of customary criminal dispute resolution and its impact on legal justice and human rights in Indonesia. (Angkasa, 2019)

RESULTS AND DISCUSSION

Baduy Customary Criminal Law

The Baduy tribe administratively lives in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. The name Baduy comes from outsiders visiting the community who then uttered the word badui which is likened to an inland tribe in Arabia. The Baduy name refers to the Kanekes urang and does not experience any opposition from the Kanekes urang. The Baduy people themselves are more accustomed to declaring themselves according to the name of their village. (Iskandar, 2015)

Baduy customary criminal law has not been studied specifically as a substantive criminal law system. Baduy customary criminal law recognizes the principle of *ultimum remedium* or the principle of subsidiarity. The formal Baduy customary criminal law applies this principle in the Baduy customary justice system and is only used if the resolution of the case at the family level of the parties does not proceed. The initial stage is always attempted to be completed by the family. So actually, from a broader perspective, the settlement stage at the family level is part of the Baduy customary criminal justice system. If the family stage cannot be completed then Jaro Tangtu with other traditional leaders will investigate the specialization, if it is easy enough it will be completed by Jaro Tangtu, but if it is not completed then it will be handed over to the Baduy customary justice system. (Sam, 2016)

Baduy customary criminal law is not codified in a book, Baduy customary criminal law is not formed in writing. According to Jaro Sami, to preserve knowledge of Baduy customary criminal law, every 2 (two) months all residents are gathered in the field in each of the Dalam Baduy villages (Cibeo, Cikartawana, Cikeusik). In this forum, every prohibition in Baduy was informed along with the threat of punishment. Apart from this forum, knowledge about Baduy customary criminal law is obtained through oral culture in everyday life, so that every generation in Baduy is familiar with the law. (Gita, 2015)

Like Baduy custom, Baduy customary criminal law also philosophizes on the balance of nature, the philosophy used is the same, *lojor teu meunang is cut, hut teu meunang is connected* (long cannot be cut, short cannot be joined). This philosophy of life is then explained in Baduy legal norms, including Baduy customary criminal law norms. In principle, in Baduy customary criminal law, a perpetrator of a crime must be cleansed physically and mentally. This cleaning is a form of accountability for criminals. External cleansing takes the form of accountability of the perpetrator to the victim which is manifested in the sanctions he receives. These sanctions are in the shape of being reprimanded/condemned, given advice/discouraged, penance, compensation, and expulsion from Inner Baduy residents to Outer Baduy residents. (Permana, 2017)

The inner cleansing of the perpetrator is realized in the *ngabokoran* or *pati* handover ceremony. *Ngabokoran* is an inner cleansing ceremony for crimes that are not too serious. *Serah pati* is a ceremony of spiritual cleansing for serious criminal acts. *Ngabokoran* and the handover of *pati* are integrally also a cleansing of the village for criminal acts that have occurred by apologizing to the ancestors led by the *puun*. Whether the Baduy people's apology to their ancestors is accepted or not is determined by the *tangkesan* and *puun* instructions. If you have not been forgiven (*hampurad*), then handing over the *pati* is not enough to be done

once, it needs to be done several times until the response or even determines that the apology has been accepted. (Rukmana, 2016)

During the ngabokoran ceremony, several materials for ngabokoran are provided by the perpetrator's family, including sepaheun tools: lemongrass, gambier, and areca nut. (Suhada, 2018) If the perpetrator has died but has not had time to ngabokoran, then the ngabokoran ingredients are added with kemenyan. In the pati handover ceremony, the principle is the same as ngabokoran, asking forgiveness from the predecessors because the perpetrator and the village have been polluted by a criminal act. However, the pati handover ceremony is carried out for criminal acts that are considered serious, for example, murder, because in murder the perpetrator has lost his life/ngalengitkeun soul which is the right of the Almighty. (Yani, 2018)

Forms of Baduy Customary Crime

Forms of Baduy customary criminal acts include: (Santoso, 2020)

1. Concurrent

In Baduy customary criminal law, concurrent arrangements are not as complicated and serious as the concept of national criminal law. The application of punishment in the form of concurrent criminal acts in Baduy customary criminal law is oriented towards the interests of the victim (as well as the interests of the perpetrator) as an integral part of resolving the case. So, in the context of *concursum realium*, for example, if there is a criminal act of rape (Article 285 of the Criminal Code) that is accompanied by abuse (Article 351 of the Criminal Code) and ends with the victim being killed (Article 339 of the Criminal Code), then the three criminal regulations that occurred in this incident are not combined, merged and applied aggravation (sharpened absorption) becomes a criminal regulation as in the national criminal law. In Baduy customary criminal law, a perpetrator who commits several criminal acts is asked for external responsibility that is tailored to the legal interests of the victim in addition to internal responsibility to cleanse the mind of the perpetrator and the village (community) for the criminal act that has occurred. If the criminal act results in more than one victim, then external responsibility is also given to the number of victims of the criminal act that occurred. Mursyid's father further explained that a series of criminal acts that had been committed were not merged into one, but were asked to be held accountable for each criminal act committed.

2. Trial

Intention in Baduy customary criminal law is something that must be accounted for. So, if someone has the intention to steal, then the intention that exists becomes a separate assessment considering that the intention is not good. So in Baduy customary criminal

law, it is not considered whether a criminal act has been completed or not completed. Mursyid's father explained that, for example, in the case of murder, because the intention was no longer good, it is not separated whether a person died or not (intention geus teu hade, teu separated keun paeh teu paeh, clearly it must be sanctioned, geus mungkar). Baduy customary criminal law in this case focuses on bad intentions that must be cleared, must be given sanctions, that then causes death by the intention then that is another thing. If the offense then ends with the goal, namely death, then the responsibility is adjusted to the rules regarding murder. However, if it is not completed, this intention has become something extraordinary in Baduy society, we must be careful and investigate why this intention arose.

3. Repetition

In Baduy customary criminal law, there is no increase in punishment for the repetition of criminal acts (recidivism) as in the Criminal Code. However, for perpetrators of criminal acts who repeat criminal acts, the resolution process is increased by one level each time a repetition occurs. For example, in the case of theft, as far as possible it is resolved between the family, there is a compensation process, and so on. If you then repeat the same criminal act, the resolution process is completed by the Jaro Tangtu (Jaro in Inner Baduy), for example, if it is done by Cibeo residents, it is resolved and punished by the Cibeo Jaro through deliberation with the overtime kokolot (village elder), the perpetrator is also addressed by the Tangkesan. (shaman), looked for if there is a katulah/kaliwara/kualat problem affecting the perpetrator that must be cleaned up. If a repetition then occurs, the resolution will be increased to Jaro Tujuh (customary structure that resolves legal issues). However, according to Mursyid's father, repetition rarely occurs, because in the settlement of the jaro tangtu a traditional oath is taken, usually if there is a repetition then the perpetrator will be katulah/kualat with his traditional oath, he may get sick (gering bae), he will not live long/ died (teu hebeul age), according to what the perpetrator said in the traditional oath.

4. Inclusion

In Baduy customary criminal law, there is no distinction between the severity of punishment for roles in a criminal act. So the perpetrator (dader); doenpleger; participate in carrying out (mededader/medepleger); persuader (uitlokker); and assistants (medeplichtige)¹⁹³ are not differentiated in terms of the severity of the punishment. However, the various roles above are also known in Baduy customary criminal law only to differentiate the roles carried out in a criminal act but the punishment is generalized

according to the crime in question. Regarding this matter, Mursyid's father said the following: It's the same, in all of us some participate in crimes, for example, the perpetrator is someone who nitah (ordered), titahan saha (who ordered him)? Sakabehna hatena geus teu endah (everyone's heart/intentions are no longer good). In Baduy customary criminal law, intention is a reflection of the behavior of the heart, so everyone involved in a prohibited act must be responsible and be cleansed physically and mentally.

5. Evil conspiracy

Evil conspiracy in the Criminal Code is explained in Chapter IX Article 88. Evil conspiracy is said to exist if two or more people have agreed to commit a crime. Similar to the Criminal Code in Baduy customary criminal law, evil conspiracy is a form of criminal act for which one must be held accountable if the evil conspiracy is discovered. According to Mursyid's father, even if the crime was not carried out because one or all of them withdrew, if it was discovered that there was an evil conspiracy then all the perpetrators who had intended to commit the crime would be held accountable. Because their intentions are no longer good, the perpetrator will be summoned to investigate why they have bad intentions towards someone. Baduy conventional criminal regulation is oriented towards resolving cases completely so that if there are two or more people who have evil intentions towards someone, it is resolved until penance is achieved if there is a motive for revenge against the potential victim. The initial intention in Baduy customary criminal law is seen as a potential criminal act that must be cleared/resolved.

Comparison of Criminal Law Concepts in National Criminal Law and Baduy Customary Criminal Law

The concept of criminal law in Baduy conventional criminal law and national criminal law includes: (Astuti, 2019)

1. Slander or defamation

The degrees of criminal acts of slander in Baduy customary criminal law are differentiated according to the target of the slander. The slander against traditional officials is higher than the slander against ordinary Baduy citizens. According to Mursyid's father, this is because traditional officials as leaders must be respected together, so if there are people who do not respect leaders, it is distinguished by slander against ordinary people. Slander against ordinary people can be resolved between the family, while slander against leaders must be resolved according to custom (the Baduy customary justice system) because traditional leaders are symbols of tradition.

2. Adultery

The handling of adultery in Baduy is different, trials for adultery cases do not take place immediately as they should by formal Baduy customary criminal law. The perpetrator was immediately sent to a 'remand center' for 40 days, the trial process was only carried out after the quarantine period was over. This is because adultery is considered a shameful disgrace to all parties, both the victim, the perpetrator, and the Baduy community. Adultery is also differentiated between consensual sex without marriage, and adultery involving other people's rights, for example having sexual relations with someone else's girlfriend or wife. The severity of the sentence for the last type of adultery is heavier than the first variety.

3. Rape

Rape in Baduy customary criminal law is part of adultery. But the main difference from rape is that it is carried out by force, not based on consensual. For criminal acts of this kind, generally, they are married off if the victim wishes, but if not, the perpetrator is subject to the sanction of being expelled from Inner Baduy.

4. Theft

As previously written, Baduy's customary criminal law views victims as an integral part of the criminal case resolution system. So in the crime of theft, the perpetrator of the theft is obliged to compensate the victim for losses and make reparation. If the perpetrator dies before compensation occurs, then the compensation is handed over to the Sabah (father's/mother's family). The perpetrator will also be asked about his ability not to repeat the act, if he is unable to do so then he will be expelled from Inner Baduy. In the crime of theft, the perpetrator is required to pay for the ngabokoran ceremony.

5. Fraud

The process of enforcing Baduy customary criminal law in cases of fraud begins with a complaint from the victim. However, this does not mean that fraud is a complaint offense (*klacht delicten*). The existence of a victim's complaint is more a manifestation of the principle of *ultimum remedium* when the perpetrator does not want to take responsibility or does not find an agreement regarding compensation so that a resolution at the family stage cannot be achieved. Criminal responsibility for criminal acts of fraud in Baduy customary criminal law is not only oriented towards the interests of the perpetrator (offender-oriented) to be allowed to improve themselves and free their feelings of guilt but is also oriented towards the interests of the victim (victim oriented) so that the victim is an integral part of the criminal case resolution process.

6. Persecution

Persecution in Baduy Customary Criminal Law is differentiated based on the severity and severity of the abuse. If the abuse is mild (hitting *leutik*/hitting a little) then it is enough to resolve it between the parties, making amends for mutual forgiveness/forgiveness, mediated by Jaro Tangtu. However, if the abuse is serious, then, the solution involves the Baduy customary criminal law system by paying attention to the principle of *ultimum remedium*. However, according to *Saidam*, youth leaders from Kampung Kadu *Ketug III* (Outer Baduy) abuse or fights rarely occur in Baduy. If there is an indication that someone hates another person for some reason, then there is always a third party who will immediately facilitate reconciliation. So far, according to *Saidam*, there has never been any persecution in Baduy.

7. Murder

Every Baduy person who intentionally murders according to Baduy customary criminal law is required to repent 40 times, carry out a *pati handover*, be expelled and his family from Inner Baduy for seven generations, and not be included in traditional ceremonies.

8. Black Magic (Julid)

According to Jaro Sami, *Julid ka papada* (cheating other people) is a very great sin, according to Baduy history (oral culture passed down from generation to generation) the death of the perpetrator of *julid ka papada* will not be accepted in the afterlife. The threat of sanctions for perpetrators of *julid ka papada* is the same as for perpetrators of incest, *ditalian dibalangkeun ka sea* (tied up and thrown into the sea).

9. Land Dispute

According to Haji Sapin, Secretary of Kanekes Village, land disputes are the most common problem in Baduy. It is because cultivating land in Baduy has been passed down from generation to generation in each family, so it is not uncommon for disputes to occur regarding land boundaries.

CONCLUSION

The research explores the intricate process of resolving Baduy customary criminal disputes through the lens of both local customary law and Indonesian national criminal law. The findings indicate that balancing the values of customary law and the norms of national criminal law remains a significant challenge, especially in addressing conflicts between tradition and modernity. However, the research methodology, which employed a statutory approach and case approach, provided a detailed understanding of how customary criminal

dispute resolution has been implemented and interpreted in practice. This study highlights the need to continue discussions to improve policies that are more inclusive and just, as well as the challenges in achieving harmony between customary law and national criminal law. By recognizing these dynamics, it is hoped that better efforts can be made to preserve local values while upholding broader legal principles at the national level.

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