



The Meaning of Customary Criminal Sanctions in the Baduy Customary Law Community

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Abstract

Baduy customary community is one of the customary law communities that still exists, including in their customary law, there is a philosophical difference in the interpretation of criminal sanctions on positive law and customary law. Positive law reflects more absolutes so that it is far from a sense of justice as the law aspires, while Baduy customary law prioritizes the restoration of behavior and harmony. This research uses the antropological social approach with qualitative analysis.

Keywords: *Sanctions; Customary Crimes; Customary Law Communities*

Introduction

Indonesia is a big country that is not known for its natural wealth but is also known for its multicultural wealth. Multi-cultural wealth has an impact on how you interact in life. As a pluralism-based state, the existence of indigenous and tribal peoples who live and develop and have their own legal systems, in other words the law applies in Indonesia not only state law but also customary law and religious law. The third position of the legal system based on the concept of legal pluralism has the same position and still exists in several regions, although sometimes the legal system faces each other.

Among the the customary law communities in Indonesia that still exist, there is a Baduy customary community. The Baduy customary community has its own legal system that has been in place for hundreds of years. Customary law in the Baduy community which is reflected in customary rules (mandate of *wiwitan*) is a collection of ethics or behavior that is formed into a philosophical life that is:

*Gunung teu benang di lebur Lebak teu benang dirakrak Lojor teu benang dipotong
Pondok teu benang disambung*

mountains cannot be destroyed, valleys must not be destroyed, long must not be cut, short must not be continued

For the Baduy customary law community, the *wiwitan* mandate has a very deep philosophy of maintaining a balance between humans and humans, humans with nature and humans with their God

through mutual interaction, compassion and foster care. Conformity between an act with customs and customary law is a necessity because it is passed down from generation to generation since human life has become a benchmark, guidelines, rules, norms of life, customary law and is the basis of religious expectations.

The increase in crime and the number of fostered citizens in a country indicates that there are serious problems in resolving law enforcement. Law enforcement carried out on positive law prioritizes misery while in the customary law community especially the Baduy community criminal law is not intended to provide misery or suffering but instead provides an improvement to behavior.

Formulation of The Problem

What is the meaning of criminal sanctions on the Baduy customary community?

Research Methods

This research is a legal research using the socio-legal antropology approach. The data used are primary data and secondary data analyzed using qualitative analysis.

Analysis

According to Dyah Irawati and Hinijati, the presence of law had never thought about whether to consider whether or not it would be recognized by state power, but instead it had emerged genuinely from within the unitary community of customary peoples long before the birth of the state. This indicates the real authenticity of customary law, because customary law arises from the content of the community itself autonomously and it is called authentic¹. The pattern of interaction is a source of community knowledge which then gives birth to the values of wisdom that underlie the patterns of behavior that govern the behavior of customary peoples in a group so that the code of conduct is held, respected and has the power to remember for the community².

Any violation of customary law or customary criminal act will result in damage, not only to the level of the body and lives of people (victims), but also to cause disturbance or shock in the magical realm due to natural imbalances. This has consequences, the resolution of violations of the law is not enough to only be an outward solution but must also include restoring the balance of nature.

In the Baduy customary law community, legal settlement is the most recent effort, so it must be based on the foundation of "justice and *silih hampura*/forgiveness"³. This philosophy guarantees a balance in legal settlement on the one hand and creates harmony between peace and tranquility on the other. In relation to justice, the justice referred to by the Baduy traditional law community is to place something in its position, a value which is a balance point between legal certainty and legal usefulness. The solution by forgiving each other aims to maintain and re-realize the balance of the cosmos, restore the existing cosmopolitan and keep the order of human life running well and harmoniously.

¹ Mohammad Jamin, *Politik Hukum Peradilan adat di Propinsi Papua Pasca Berlakunya Undang-Undang Otonomi Khusus*, Fakultas Hukum Universitas Brawijaya, 2013, p. 167-168.

², *ibid*, p. 167.

³ Interview with Ayah Mursyid at Cibeo Village, August 28, 2019.

The law gets attention and is felt as a sanction for community members depending on the values and behavior that grows from the awareness of the community members concerned. In the law, it is not difficult for us to know, it can be seen in the legislation, on the court, before the judge, in certain institutions, but in customary law it is not easy to know, because what is said customary law is not in the form of systemic regulations and modified.⁴

One of the factors that is driving the obedience and obedience of individuals to the law is none other than the existence of sanctions so it cannot be imagined how the law can be binding without sanctions, whether effective or even vice versa. Criminal law, for example, which has a different legal system compared to other fields of law that bases more sanctions on physical sanctions also raises the pros and cons of criminal sanctions imposed by judges, both among legal practitioners and legal academics themselves, especially among those seeking justice. Every social relationship must not conflict with the provisions in the existing legal regulations and apply in society. Sanctions in the form of (criminal) penalties will be imposed on any violator of existing legal regulations as a reaction to an unlawful act he committed⁵.

Criminal sanctions as stated by Van Bemmelen last cure (*ultimum remedium*). This last cure is the ultimate step if the enforcement mechanism in other fields of law does not work effectively, but in the development of Indonesian criminal law criminal sanctions in some cases shifted their position. No longer as *ultimum remedium* but as *primum remedium* (the main cure)⁶.

Crime prevention by using criminal law wherever criminal law is built based on and derived from the legal values that live in society, the criminal law that will be built will reflect the social, cultural and structural values of Indonesian society, bringing the consequences that in overcoming crime by means of penal, criminal law can be used as a source and needs to be studied in depth, so that it can carry out its role as a source of national criminal law that can support the implementation of legal development⁷.

There is a difference meaning in giving sanctions to national law and adat law. The meaning of sanctions in national criminal law is still oriented towards retaliation and detention of the perpetrators so that the perpetrators do not repeat their actions again. It is explicitly interpreted that the meaning of sanctions actually kills the character and future of the perpetrators because the perpetrators are not protected by their human rights. It is often illustrated that prison is a crime high school, so Sudarto⁸ defines criminality as suffering intentionally given to people who commit acts that meet certain conditions.

Types of criminal sanctions in the Criminal Code (Criminal Code), Article 10

Criminal principal:

- 1) Criminal death;
- 2) Criminal imprisonment;
- 3) Criminal confinement;
- 4) Criminal fines, and
- 5) Criminal closing

⁴ Hilman Hadikusuma, *Antropologi Hukum Indonesia*, Alumni, Bandung, 2013, p. 12.

⁵ Rusli, *Tinjauan Yuridis Persamaan dan Perbedaan Sanksi Pidana Antara Hukum Pidana Islam Dengan Hukum Pidana Indonesia*, *Jurnal Ilmun Hukum Legal Opinion* Edisi 6 Volume 2 Tahun 2014, p. 2.

⁶ Agus Surono, *Hukum Pidana Sebagai Ultimum Remedium Dalam Penyelesaian Konflik Pengelolaan Sumber Daya Alam Sektor Kehutanan*, *Pidato Pengukuhan Guru Besar Ilmu Hukum Universitas Al Azhar Indonesia*, December 7, 2019, p. 13.

⁷ Nyoman Serikat, *Relevansi Hukum Pidana Adat dalam Pembaharuan Hukum Pidana Nasional*, Citra Aditya Bakti, Bandung, 2005, p. 120.

⁸ Sudarto, *Hukum Pidana I*, Semarang, Yayasan Sudarto, FH-Undip, 2009, p. 13.

Additional crimes consist of:

- 1) Revocation of certain rights
- 2) Expropriation of certain items;
- 3) Announcement of the judge's decision

Although normatively in Law No. 12 of 1995 concerning Corrections, Article 2, the correctional system is implemented in order to form correctional fostered citizens so that they become fully human, aware of mistakes, improve themselves and do not repeat criminal acts so that they can be re-accepted by the community, can actively play a role in development, and can live reasonably as a good and responsible citizen.

The meaning of the sanctions is very much different from the meaning of sanctions on the customary law community, especially the Baduy customary law community. In tracing the meaning of sanctions on customary law can use the method said by Llewellyn and Hoebel in three ways, namely:⁹

- a. By investigating abstract norms that can be recorded in the memories of customary leaders, community leaders or authority holders who are authorized to make legal decisions (ideology method)
- b. By observing every real action / actual behavior of community members in daily life when interacting in their community (descriptive method)
- c. By reviewing cases of disputes that have occurred or are occurring in the community (trouble cases method).

The purpose of imposing sanctions on customary peoples is to restore the disturbed balance due to adat violations. This concept of thought has been absorbed in the souls of Baduy people, which resulted in a belief that the occurrence of unresolved adat violations according to the provisions of the prevailing customary law will be able to cause disruption that causes the suffering of customary peoples. So a recovery step is needed by imposing a customary obligation on the offender in the form of organizing certain rituals to restore the situation at a time. If it is not fulfilled, then greater responsibility is needed, because there must be, related to converging, expensing, converging, fighting or the surrounding community. This thought is due to issuing customary sanctions in the application of customary and cosmic court laws is always linking them with the cosmic and always linking these two realms that there must be a balance of the world of birth and the inner world.

Imposition of customary sanctions that will be given to the perpetrators is not immediate but must pay attention to the mental and physical condition of the perpetrators, if the perpetrators are in not a state of mental and physical health then the imposition of sanctions for adat trials must be postponed. This is the meaning of the law must be wise in Baduy customary law, after recovering the health of the perpetrators, then execute a ceremonial ceremony and imposing customary sanctions.

If we compare the meaning of Baduy customary criminal sanctions with the meaning of criminal sanctions in the Criminal Code, there is clearly a philosophical difference, the Criminal Code is currently more philosophical in punishment while the philosophy of Baduy customary law sanctions as stated by Ayah Mursyid¹⁰ is protect human dignity and maintain harmony, which means that even if a person is considered guilty but must still be protected by his rights, family good name, family's future, and maintain the integrity of his family because of imposing sanctions that are inappropriate or should actually damage the balance of nature. Similarly with Jaro Saija¹¹ the meaning of sanctions is coaching towards one's

⁹ I Nyoman Nurjaya, *Pengelolaan Sumber Daya Alam dalam Persepektif Antropologi Hukum*, UM Press, Malang, 2006, p. 4.

¹⁰ Interview with Ayah Mursyid at Cibeo Village, August 28, 2019.

¹¹ Interview with Jaro Saija at Kaduketug Village, October 14, 2019.

behavior, especially their mind, when one's mind is calm then they will behave properly. In giving sanctions, don't overdo it because it will have a bad impact, not only for the perpetrators, the family but also for the customary, so the dignity of the perpetrators must also be maintained, the implementation of customary sanctions is not forced. However, if it is not implemented, it will have a bad impact on them, their family or their descendants, because the philosophy of sanctions of the Baduy customary people returns the balance and harmony of the community as before (*Restitutio in integrum*).

The meaning of harmony is associated with maintaining wholeness in the family. In Baduy customary criminal sanctions that are associated with criminal deprivation of independence. Customary violations with sanctions are exiled / excluded including categorized as severe traditional violations. There is a uniqueness in exile for perpetrators of customary violations in Baduy, perpetrators who were exiled for 40 days under Baduy customary law, are allowed to bring their families. According to Ayah Murshid, aside from protecting human dignity and also aiming to maintain harmony. According to the harmonious researcher in question there are 2 (two) meanings;

- a. Harmony with the community, which is when the criminal period is over, the perpetrators and the family (if they brought) can interact again with other communities as usual, for the Baduy community, a person who has served traditional punishment accompanied by a *Ngabokoran* or a traditional ceremony then he is considered as a clean person, and Baduy customary people will not give a stamp or stigma as perpetrators of crime. *Ngabokoran* is a cleansing ceremony for traditional violations committed by perpetrators, this ceremony is not intended as a torture or suffering but to restore cosmic balance.
- b. Harmony with the family that each head of the family has rights and obligations to his wife and children. The obligation to maintain safety and comfort, to the child, parents are obliged to give attention and affection to their children, the obligation to the spouse is the obligation to provide for birth, inner and biological needs. This must be applied to avoid sexual irregularities, sexual harassment, same-sex rape and the practice of renting space in prisons by prisoners. That is the philosophy why in customary Baduy people who are exiled are allowed to bring their wife and children.

In this harmony, there are family values that are security values and comfort values. These values can only be given by the head of the family. The meaning of this sanction, according to the researcher, should be applied to all criminal acts regulated in Indonesian criminal law, not only limited to criminal acts regulated in customary law. If it is limited to certain criminal acts which are only regulated by customary law or subject to customary law, then the values or principles contained in customary law cannot be function as the soul of the nation or the *volkgeist* who animates national law. But only limited in *concrito* to customary law in national law.

Conclusion

The meaning of sanctions on positive law is still miserable or absolutism, so naturally the crime rate is still high, in contrast to the meaning of sanctions on the Baduy customary law community prioritizing protecting dignity and maintaining harmony.

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