



Case Settlement Based on the Baduy Indigenous Law System as a Contribution to the National Criminal Law

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Abstract

Settlement of cases using positive law is felt to spend a lot of energy and a long time, this would turn around if the settlement using customary law, especially Baduy customary law which is simpler but does not reduce the sense of justice for the litigants from the statement raises the question of how the settlement of the case based on the Baduy system of law. This study uses a social anthropological approach with qualitative analysis.

Keywords: *Baduy Indigenous Law; National Criminal Law*

Introduction

The concept of legal pluralism is generally opposed to the ideology of legal centralism. The ideology of legal centralism is defined as an ideology that requires the implementation of state law as the only law for all citizens, by ignoring the existence of other legal systems, such as religious law, customary law and also all forms of local regulatory mechanisms that empirically live and develop in people's lives.¹

When the Dutch still controlled Indonesia, the application of the principle of legal pluralism had occurred, the Dutch government implemented a certain legal system applicable to certain communities. However, when Indonesia gained its independence, the principle of pluralism of law was no longer

¹ I Nyoman Nurjaya, *Perkembangan Pemikiran Konsep Pluralism Hukum*, Paper has presented in International Conference About dipresentasikan dalam konferensi internasional tentang Land Tenure and Natural Wealth in Indonesia. That Is Changing "Questioning Back Various Answers, 2004, Jakarta, 10.

applied, Indonesia chose to use law unification where positive law was prioritized by ignoring *religious law* and *folk law*, even *religious law* and *folk law* were only used as mere sources of law.

The facts in the field show that there are many contradictions using positive law in solving the law in the community. The *religious system of law* and *folk law* which are supposed to be the source of law are only used as mere symbols. While hundreds of various laws and regulations that have resulted in precisely cause disharmony or contradiction between equal laws or with regulations above or below. The process of law enforcement becomes difficult when it is not only the factor of the apparatus, the culture of the community, the means of infrastructure but only relies on the factor of laws and regulations.

Formulation of the Problem

How to Settle a Case Based on the Baduy Indigenous Law system

Research Method

The research method used in this legal research is empirical legal research with socio legal antropology approach. The data used are primary data and secondary data which are then analyzed by qualitative analysis.

Analysis

At present the legal thinkers have begun to harmonize between the legal system that lives in the community and the positivistic legal system used by the state. At present the state prioritizes the use of positive law as the main reference in legal settlement, one of which is in the settlement of criminal cases. The main weakness in the resolution of criminal cases is to prioritize absoluteness in punishment.

To overcome the classic problem of positivistic modern criminal law today, criminal law academics have re-emerged the idea of applying customary law as a solution to problems in the midst of society that is expected to overcome the weaknesses of criminal law. Particularly related to the overcrowding capacity of prisons and fertilizing cases in courts, prosecutors and the police.²

To implement the idea, it is necessary to re-excavate, discover and form legal values that live and develop in the midst of society and the idea is in line with the Penal Code that accommodates the entry into force of customary law and reduces the absoluteness of the principle of legality in the discourse on the role of law in the community. Settlement of cases is one of the points of realization of conviction. According to Barda Nawawi in the Criminal Code Bill the source of the principle of material legality as long as it is in accordance with the values of Pancasila means that it is in accordance with the religious moral paradigm, the humanitarian paradigm, the national paradigm, the democratic paradigm and the justice paradigm.³

The choice of mechanism for resolving disputes outside the court has long been used and practiced by indigenous and tribal peoples in Indonesia.⁴ This choice is made by considering all forms of efficiency and at the same time beneficial for the parties to the dispute, in addition it will be much easier if in the settlement of cases using a legal system that is familiar, close and has values that reflect the life

² Erdianto Efendi, *Hukum Pidana Adat Gagasan Pluralisme dalam Hukum Pidana dan Penerapan Hukum Menurut Keyakinan Hukum*, PT Refika Aditama, Bandung, 2018, 20.

³ Barda Nawawi Arief, *Perkembangan Sistem Pemidanaan di Indonesia*, Semarang, Penerbit Pustaka Magister, 2007, 1.

⁴ Rachmad Safa'at, *Advokasi dan Alternatif Penyelesaian Sengketa*, Malang, Surya Pena Gemilang Publishing, 2016 81.

of the community. These values are contained in the law that lives in the community and serves as a guide to people's lives, in legal pluralism this is called *strong pluralism*. Indonesian constitution indeed recognizes and respects the existence of customary law communities along with traditional rights in Article 18 B paragraph 2 of the 1945 Constitution of the Republic of Indonesia, and international conventions are regulated, referring to or referring “to the general principles of law recognized by the community of nations”. Contained in Article 15 paragraph of the *International Compenant on Civil and Political Rights*. Settlement of cases according to I Nyoman Nurjaya, namely:⁵

- a. Conflict resolution institutions that are traditional in nature, are sourced from the people's political and legal systems and take place traditionally.
- b. Dispute resolution institutions built from the country's political and legal system.

The choice of settlement through adat court is aimed at maintaining the existence of adat courts. According to Hilman, customary justice is an event that applies according to customary law in examining, considering, deciding or resolving a case of adat issues.⁶ The purpose of resolving customary disputes is to maintain the balance of people's lives, if the balance is disturbed then the community legal officers must try to restore that balance. The purpose of imposing customary sanctions in the Baduy community is to restore the balance of nature disrupted by adat violations. The principle of imposing customary sanctions is not to retaliate so as to make the person deter and frighten others, but the most important thing is to maintain human dignity and dignity and maintain harmony in the lives of indigenous peoples.⁷

Baduy indigenous people who are included in the parochial category have several reasons to still maintain the settlement of the case with their customary law.

- a. The settlement of cases in the customary law community is more effective and efficient and can be solved physically and mentally, compared to state institutions (courts) that have a long procedural and cost a lot;
- b. The settlement of cases in indigenous peoples in general wants to be resolved by deliberation and peace with the aim that after the case is finished there is no remorse or resentment between the parties;
- c. Settlement of cases with customary law is more effective because it uses laws originating from the community itself;
- d. Traditional societies have strong traditions based on their customary law.

The settlement of the matter in the customary legal system of the Baduy through the Customary Institution *Three Principles (Tangtu Tilu)* is illustrated in the following pictures:

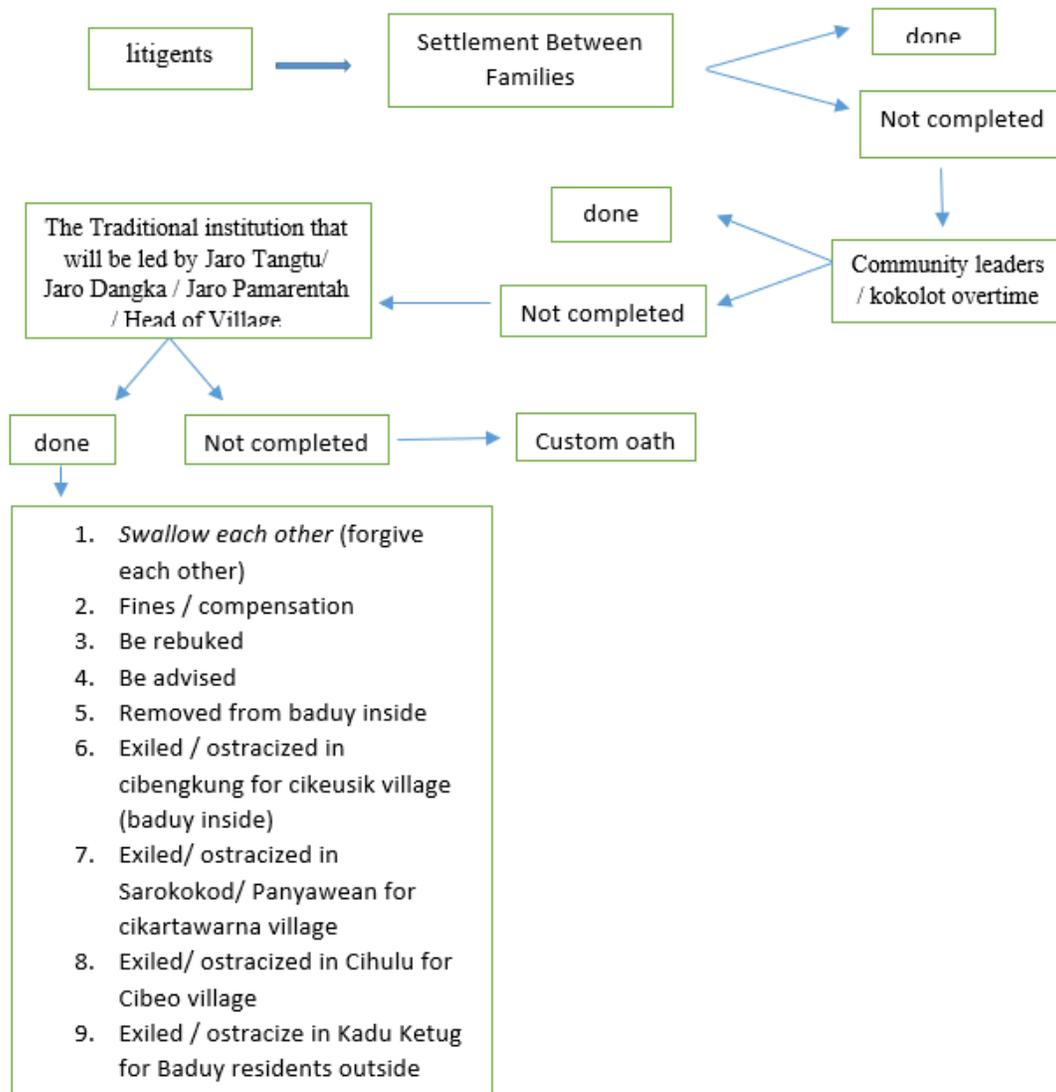
⁵ *Ibid*, 78.

⁶ Hilman Hadikusuma. *Hukum Pidana Adat*. Bandung, Alumnus. 1984, 116.

⁷ Interview with Ayah Mursyid in ViBaduy Dalam Village, December, 7, 2019.

Flow of Case Settlement Scheme

In the Baduy Indigenous Law Society



Source : Primary Data, processed by researchers, 2019

- The first stage, namely the parties to the dispute resolve the family by holding an inter-family consultation. If the first stage has not found a solution then proceed to the next stage.
- The second stage is to bring the problem to find a solution to community leaders (*overtime kokolot*) by deliberation and in the meeting, community leaders will invite relatives of the parties who litigate as witnesses.
- The third stage is if the settlement through the *overtime kokolot* is not completed, then it will be completed through Jaro Pamarentahan / Village Head attended by Jaro Tangtu Tilu and Jaro Tujuh.

The principle or principle in the settlement of cases in the Baduy community is the principle of presumption of innocence, the principle of consensus agreement for both parties in finding solutions. If a verdict is made and it is determined that there is a guilty person then it will be subject to sanctions, depending on the level of wrongdoer of the offender. As Jaro Saija⁸ said that to examine the parties must be balanced and we do not yet know who is wrong, to find out who is wrong, then it must be investigated and tried in traditional institutions. There are two types of sanctions, namely:

- a. Outward sanctions are sanctions given to offenders for physical or physical harm, outward sanctions consist of:
 - 1) Choose Hampura (forgive each other). The main principle in resolving cases in Baduy is swapping (forgiving one another), because by swapping (forgiving) the parties will feel free from mistakes and restore the cosmos in society;
 - 2) Advise, so as not to repeat the act;
 - 3) Be rebuked. It was told not to repeat the act because it violated customary rules, according to the customary community of Baduy 2: *first*, reprimanded by humans that was told not to ever do the same act, *secondly*, reprimanded by nature, reprimanded by nature in the form of calamity / disaster such as fire, illness or being attacked by animals;
 - 4) Fines or Compensation, if the victim feels that she still wants to be compensated for the loss, then the perpetrator must be compensated according to the ability of the perpetrator based on deliberations at the customary institutions;
 - 5) Expelled from Baduy Dalam if the deed is deemed to have crossed inside Baduy's good name
 - 6) Exiled / excommunicated for 40 days. The imposition of sanctions for exile carried out is not based on *distributive justice* as in modern criminal law but rather fostering the behavior of perpetrators so as not to repeat their actions. In addition, during the period of exile, the offender is allowed to bring his wife and children to participate. This does not mean that wife and children share the burden of the offender, but there is a philosophical meaning in it all, namely that the perpetrator continues to carry out his obligations as the head of the family, namely by giving the child the right to continue to receive attention and affection from his father, the wife's right to get attention, affection and relationships biological. In exile the perpetrator can still work to support his family. Alienation of the perpetrators is seen from the origin of the abode (village), if the perpetrators are residents of Cibeo village, they will be exiled in Cihulu village, Cikartawarna perpetrators in Panyawengan village, Cikeusik residents in Cibengkung village and if the Outer Baduy people will be exiled in Jaro Pamarentah's official residence is in Kadu Ketug. During the process of exile the perpetrator will be advised not to repeat his actions.

- b. Inner sanctions with *taboo (ngabokoran)* are traditional ceremonies to clean up which are intended to restore the disturbed natural balance and must provide keris sapucuk (1 piece), one real money, one ringgit money, betel leaf, betel leaf, gambir, *boeh* (cloth when) and offer , *taboo (ngabokoran)* is divided into:
 - 1) *Ngabokoran* Cleaning
 - 2) *Ngabokoran* fines custom
 - 3) *Ngabokoran* handover starch

Customary Oath, if each party still feels right and no meeting point is reached between the parties who are litigants, then the Customary Oath will be conducted. According to Jaro Saija XE "Saija", the wrong person then commits customary oaths so that he will be qualified, in general the accepted quality

⁸ Interview with Jaro Saija in Cibeo Village, October, 12, 2019.

is, short life / fast death, chronic illness, the illness can be cured if the perpetrator admits his mistake. The customary oath will apply to children of their descendants. Baduy's customary law enforcement avoids *distributive justice* which aims to punish perpetrators by imprisonment, but prioritizes intermittent justice or *restorative justice* by resolving social conflicts and freeing guilt, conviction according to the level of error, payment of compensation and fulfillment of obligations according to the law that lives in the community. Utilizing settlement through customary justice sourced from living law or customary criminal law by conducting selection using 4 (four) benchmarks namely *Spirit forward looking*, *Spirit restorative justice*, *Spirit natural crime*, *Spirit integrative*.

Conclusion

The settlement of the case in the Baduy indigenous people is very simple and straightforward, the solution is to prioritize mutual forgiveness (almost each other) because the main purpose of the settlement of the case is to create peace, restore the balance of nature and restore the atmosphere as before. This settlement practice has been carried out for hundreds of years and is effective in reducing crime rates.

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