

Legal Pluralism in Kalimantan: A Study of the Dual Application of Criminal Law and Customary Law in Dayak Society

A. Imam Al Muttaqin^{1*}, Adriyanto², M. Bashori³, Marsudi Dedi Putra⁴

^{1,2,3} Student Of Master of Law Study Program, Postgraduate Program
Wisnuwardhana University Malang

⁴ Lecturer of Master of Law Study Program, Postgraduate Program,
Wisnuwardhana University Malang

Corresponding Author: A. Imam Al Muttaqin imamtaq@yahoo.co.id

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ABSTRACT

This research examines legal pluralism in Kalimantan through the dual application of formal criminal law (KUHP) and Dayak customary law in the resolution of criminal cases. Case studies include murder in Kutai Barat (2021), Mempawah Hulu (2018), and theft in Sengah Temila (2018). A qualitative approach was used with document analysis and case reports. Results show that customary mechanisms such as fines and 'pati nya' rituals are effective in restoring social harmony, but have the potential to conflict with the formal legal system. This research recommends the integration of customary law into the national legal system, in accordance with Article 18B paragraph (2) of the 1945 Constitution and Permendagri No. 52/2014.

INTRODUCTION

Indonesia, as a country with cultural and ethnic diversity, has a pluralistic legal system, where formal criminal law based on the Criminal Code (KUHP) runs side by side with the customary law of indigenous peoples (KUH Pidana, 2023). This legal pluralism is recognised in Article 18B paragraph (2) of the 1945 Constitution, which states that the state respects the unity of customary law communities and their traditional rights as long as they are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (UUD 1945, Article 18B paragraph (2)). In Kalimantan, the Dayak community practices a rich customary law, which regulates various aspects of life, including the resolution of criminal conflicts such as murder, theft and destruction of property. These customary laws, which are based on local wisdom, are recognised in national policies such as the Minister of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities (Permendagri No. 52, 2014).

The phenomenon of dual application of formal criminal law and customary law characterizes the resolution of criminal cases among the Dayak community. For example, in a murder case in West Kutai in 2021, the perpetrator was imposed a customary fine of IDR 1.89 billion by the West Kutai Grand Customary Institution, while undergoing formal legal proceedings under Article 340 of the Criminal Code. Similarly, in Mempawah Hulu, Landak Regency, murder cases are resolved through customary mechanisms such as 'pati nyawa' to restore social harmony, while still being processed formally by authorities (Damianus, 2019). This dual application reflects the dynamics of legal pluralism, where customary law focuses on restorative approaches, and formal law emphasizes retributive aspects.

However, the coexistence of these legal systems poses significant challenges, including norm conflicts, differences in settlement procedures, and potential misalignment between customary sanctions (e.g., fines, rituals) and formal criminal sanctions (e.g., imprisonment). For instance, in a 2018 theft case in Sengah Temila, Landak Regency, the perpetrator faced a customary fine of IDR 3.385 million and a 10-month prison sentence, highlighting the burden of double sanctions (SIPP PN Ngabang, 100/Pid.B/2018/PN NBA). While prior studies have explored legal pluralism in Indonesia (e.g., Griffiths, 2016; Lukito, 2019), there is a significant research gap in the limited analysis of practical harmonization models that integrate Dayak customary law into the national criminal justice system. Existing literature often focuses on theoretical aspects of legal pluralism or isolated case studies without proposing actionable frameworks to address conflicts between restorative and retributive justice (Susanti, 2020; Santoso, 2021). This study addresses this gap by analyzing three real cases in West Kutai, Mempawah Hulu, and Sengah Temila to propose a harmonized legal framework that integrates customary mechanisms into the national system, supporting inclusive justice for Dayak communities.

Logistically, this research evaluates the effectiveness of the dual application of criminal and customary law in achieving inclusive justice. Phenomenologically, it captures the social reality of Dayak communities who

practice customary law as a cultural identity and conflict resolution mechanism. The research uses legal pluralism theory (Griffiths, 2016), restorative justice theory (Zehr, 2015), distributive justice theory (Rawls, 2021), and legal harmonization theory (Tamanaha, 2018) to analyze the coexistence of legal systems.

The contribution of this research lies in its novel analysis of harmonizing customary and formal law in Dayak society, offering policy recommendations aligned with Article 18B paragraph (2) of the 1945 Constitution and Permendagri No. 52/2014.

THEORETICAL REVIEW

Legal Pluralism

Legal pluralism, as defined by John Griffiths, refers to the coexistence of several different legal systems in one social space, such as state law, customary law, and religious law, which may interact, compete, or harmonise. Griffiths distinguishes between 'weak legal pluralism', where non-state legal systems are recognised but subject to state law, and 'strong legal pluralism', where non-state legal systems have significant autonomy and operate independently (Griffiths, J. 1986). In the Indonesian context, legal pluralism is constitutionally recognised through Article 18B(2) of the 1945 Constitution, which affirms the recognition of the traditional rights of indigenous peoples as long as they do not conflict with the principles of the state. Dayak customary law in Kalimantan operates within a framework of weak legal pluralism, as it is recognised by national policies such as Minister of Home Affairs Regulation No. 52/2014, but remains subject to formal laws such as the Criminal Code.

Dayak customary law includes conflict resolution mechanisms based on cultural values, such as customary fines, 'pati nyawa' ceremonies, and mediation by traditional leaders, which aim to restore social harmony and spiritual balance (Denny satria, 2013). These mechanisms reflect Dayak cosmology that emphasises harmonious relationships between humans, nature and ancestors, in contrast to the individualistic approach of formal law that focuses on punishing perpetrators. According to Griffiths, legal pluralism often creates complex dynamics, where legal systems influence each other, but can also lead to norm conflicts if there is no coordination mechanism (Griffiths, J. (1986). For example, in a murder case in West Kutai, a customary fine of Rp1.89 billion was applied to restore social harmony, but the 15-year prison sentence under Article 340 of the Criminal Code did not consider the results of the customary settlement, indicating a lack of integration (L. Efendi, et al, 2020)

Indonesian customary law expert Soepomo emphasised that customary law functions as a conflict resolution mechanism based on local wisdom, which is relevant in the context of indigenous communities such as Dayak (Soepomo. (1983). Dayak customary law not only regulates relationships between individuals, but also relationships with spiritual entities, such as ancestors and nature, which are considered important for maintaining cosmic balance. This approach contrasts with formal law, which is based on legal positivism and does

not consider spiritual or communal dimensions. According to Sally Falk Moore, legal pluralism is also influenced by 'semi-autonomous social fields', which are communities that have their own rules but still interact with state law (Moore, S. F. (1973). In the Dayak context, customary communities act as semi-autonomous social fields that apply customary law, but remain under the jurisdiction of state law, as seen in the case of Mempawah Hulu Sub-district, Landak Regency.

Legal pluralism in Indonesia is also influenced by colonial and post-colonial history, where customary law was often marginalised by Dutch colonial law or post-independence state law (Benda-Beckmann, F. von. (2002). However, constitutional recognition through the 1945 Constitution and policies such as the Minister of Home Affairs Regulation No. 52/2014 Guidelines for the Recognition and Protection of Customary Law Communities, have opened up space for customary law to be integrated into the national legal system. In the context of Dayak society, legal pluralism reflects the tension between the preservation of cultural identity and the need to comply with state law, which is often seen in the application of multiple sanctions, as in the case of theft in Sengah Temila Sub-district, Landak Regency.

Restorative Justice

Restorative justice, as developed by Howard Zehr, emphasises the restoration of social relations through the involvement of perpetrators, victims and communities in the process of resolving conflicts. In contrast to the retributive approach of formal law, which focuses on punishing perpetrators to uphold the rule of law, restorative justice aims to fulfil the needs of all parties, including the recovery of victims' emotional and material losses and the reintegration of perpetrators into the community (Zehr, H. (1990). In the context of Dayak customary law, mechanisms such as the implementation of 'pati nyawa' in Mempawah Hulu sub-district of Landak district reflect the principle of restorative justice, as it involves mediation between the families of the perpetrator and the victim, as well as a traditional ceremony to restore social and spiritual balance. This ceremony, which involves compensation of Rp500 million and the ritual slaughter of animals, allows the victim's family to receive reparation, while the perpetrator remains accepted back into the community (Damianus, S.Th, 2019).

Zehr asserts that restorative justice is more effective in societies with strong communal ties, such as Dayak society, where social relations and cultural identity are prioritised (Zehr, H. (1990). John Braithwaite, in his 'reintegrative shaming' theory, adds that restorative justice can reduce social stigma for perpetrators by facilitating constructive dialogue between the parties involved (Braithwaite, J. (1989). In the case of Mempawah Hulu sub-district, the 'pati jiwa' mediation minimised the potential for inter-family resentment, which often occurs in murder cases in indigenous Dayak communities. Braithwaite also emphasises the importance of community involvement in restorative processes, which was seen in a traditional ceremony in West Kutai, where around 50 community members were present to support the restoration of social harmony (L. Efendi, et al, 2020).

However, restorative justice faces challenges in coexisting with formal law. Formal law, such as the Criminal Code, focuses on a retributive approach that prioritises punishment, such as the 5-year imprisonment in a case in Mempawah Hulu Sub-district, Landak Regency (2018). According to Zehr, retributive approaches often fail to meet the needs of victims and communities, as they do not consider the emotional or social dimensions of criminal offences (Zehr, H. (1990). In the Dayak context, customary law is more responsive to the needs of the community, but the lack of recognition in the formal legal system leads to perpetrators facing multiple sanctions, as in the cases that have occurred.

Criminologist, Daniel Van Ness, adds that restorative justice can be integrated into the criminal justice system through mechanisms such as penal mediation or restorative justice conferencing (Van Ness, D. W. (2005). In the Indonesian context, this approach can be applied to integrate Dayak customary law, for example by recognising customary fines as part of court decisions. This approach is also supported by Indonesian cultural values, such as deliberation and consensus, which are in line with the principles of restorative justice (Soepomo. (1983).

Distributive Justice

The theory of distributive justice, developed by John Rawls, emphasises the importance of justice as equality, where each individual gets fair rights and obligations in accordance with the principles of social justice. Rawls introduced the concept of the 'veil of ignorance', which suggests that legal policies should be designed without favouring any particular group, thus ensuring justice for all parties, including indigenous peoples (Rawls, J. (1971). In the context of legal pluralism, Rawls' theory is relevant to ensure that the application of customary and formal law is not only fair to perpetrators and victims, but also takes into account the interests of the community as a whole.

Dayak customary law is in line with the principle of distributive justice, as mechanisms such as customary fines and 'pati nya' aim to fulfil the needs of victims while maintaining social harmony. For example, in the West Kutai case, a customary fine of IDR 1.89 billion was used to compensate the material and emotional losses of the victim's family, while ensuring the perpetrator remained integrated within the community. According to Rawls, distributive justice requires a fair distribution of resources, which in the Dayak context can be interpreted as the distribution of justice through adat compensation (Rawls, J. (1971).

However, the dual application of customary and formal law often violates the principle of distributive justice, as perpetrators face disproportionate double sanctions. In the Landak case, the perpetrator of the theft paid a customary fine of Rp3.385 million and served 10 months in prison, which created a heavy burden for the perpetrator's family. According to Lon Fuller, distributive justice requires a legal system that is responsive to cultural and social contexts, which is often not achieved in formal law. Fuller asserts that law must have an 'internal morality',

i.e. consistency and fairness in its application, which is difficult to achieve when customary and formal law operate separately (Fuller, L. (1969).

Legal philosopher Amartya Sen adds that distributive justice is not only about the distribution of resources, but also about the ability of individuals to achieve a dignified life (Sen, A. (2009). In the Dayak context, customary law supports the community's ability to maintain social harmony, but the multiple sanctions of formal law can hinder the reintegration of perpetrators, especially from weak economic groups. Rawls' approach can be applied to design fairer legal policies, for example by recognising customary fines as part of court decisions to reduce prison time (Rawls, J. (1971).

Legal Harmonisation

Legal harmonisation refers to efforts to integrate different legal systems, such as customary law and formal law, to create coherence and fairness in the application of law. In the Indonesian context, legal harmonisation is relevant to address the gap between Dayak customary law and formal law, especially within the framework of national policies such as the Minister of Home Affairs Regulation No. 52/2014. According to Brian Tamanaha, legal harmonisation requires formal recognition of customary legal systems within the framework of state law, for example through diversion mechanisms or penal mediation (Tamanaha, B. Z. (2008).

In the context of the Dayak community, legal harmonisation can be achieved through the development of national guidelines that integrate customary mechanisms, such as fines and 'pati nyawa' ceremonies, into the criminal justice process (Denny satria, 2013). For example, in a case in Mempawah Hulu sub-district, the court was able to recognise Rp500 million in compensation as part of the verdict to reduce the prison term, thereby reducing the burden of multiple sanctions. Tamanaha asserts that legal harmonisation requires dialogue between stakeholders, including traditional leaders, legal officials and policy makers (Tamanaha, B. Z. (2008).

Hikmahanto Juwana adds that legal harmonisation requires training for law enforcement officials on customary cultural values, so that they can understand mechanisms such as 'pati nyawa' or customary fines (Juwana, H. (2015). This training can help judges and prosecutors integrate the results of adat mediation into court decisions, as in the Landak case. According to Franz von Benda-Beckmann, legal harmonisation should also consider the power dynamics between customary law and state law, to ensure that customary law is not marginalised (Benda-Beckmann, F. von. (2002). In the Indonesian context, policies such as Law No. 39/1999 on Human Rights can be the basis for strengthening the recognition of customary law.

Criminal law expert Barda Nawawi Arief asserts that legal harmonisation can create a criminal justice system that is responsive to the needs of indigenous peoples without compromising the rule of law (Arief, B. N. (2008). In the Dayak context, this approach can be applied through a restorative justice conferencing mechanism, where traditional leaders are invited as facilitators in the formal justice process. Legal harmonisation is also in line with the values of deliberation

and consensus in Indonesian culture, which can be a bridge to integrate customary and formal law (Soepomo. (1983).

METHODOLOGY

Research Object

The object of research in writing this article is normative legal research. Normative legal research is legal research that is based on regulations, norms, principles, rules and other laws related to the material discussed. The nature of the research used by the author is analytical descriptive research. Analytical descriptive research is a study that describes as completely as possible the object of research to be analyzed in providing answers to existing problems. (Soerjono Soekanto, 2018)

Data and Data Sources

The data required in this study is secondary data, namely data obtained indirectly from the source, usually through literature studies. Literature data is classified into three legal materials, namely: (a) Primary legal materials, namely legal materials that have binding force. (b) Secondary legal materials are legal materials that provide explanations to primary legal materials. (c) Tertiary legal materials, namely legal materials that complement primary legal materials and secondary legal materials. (Johnny Ibrahim, 2012)

How to Collect Data

The data collection used is a literature study.(Library Research), which is a technique for collecting data and information through reading several books, laws and regulations, court decisions and customary decisions related to the problem to be studied.

Data analysis

Analysis of research data results was carried out qualitatively, namely the qualitative method, namely data analysis that emphasizes the quality of the data in question. (Soerjono Soekanto, 2018)

How to Draw Conclusions

Drawing conclusions is done using deductive logic. Deductive logic is a method of drawing specific conclusions from general statements. (Dhany Rahmawan, 2010)

RESULTS

This study identified three main cases that reflect the dual application of formal criminal law and customary law in Dayak communities, summarized in Table 1. These cases were chosen because they represent the dynamics of legal pluralism in resolving criminal conflicts in Kalimantan.

Table 1: Cases of Dual Application of Criminal Law and Customary Law

Location	Case (Case Number)	Customary Law	Formal Law
West Kutai (2021)	Murder (67/Pid.B/2021/PN Sdw)	Customary fine of Rp1.89 billion by the West Kutai Customary Institution	Article 340 of the Criminal Code (life imprisonment)
Mempawah Hulu, Landak Regency (2018)	Murder (97/Pid.B/2018/PN NBA)	The mechanism of "pati nyawa" (compensation of Rp500 million and customary ceremony)	Article 338 of the Criminal Code (7 years imprisonment)
Sengah Temila, Landak Regency (2018)	Theft of Palm Fruit 100/Pid.B/2018/PN NBA	Customary fine of Rp3.385 million	Article 363 of the Criminal Code (10 months imprisonment)

Murder Case in West Kutai (67/Pid.B/2021/PN Sdw)

A tragic murder incident occurred in Sumber Sari Village, Barong Tongkok District, West Kutai, on Monday, February 1, 2021 (<https://tribrataneews.kaltim.polri.go.id/ungkap-kasus-pembunuhan-polres-kubar-berhasil-ringkus-sebuah-pria/amp/>). Based on the information gathered, this incident began with an interaction between a man named Munawir and a woman named Medelin at a food stall. During the meeting, the victim intended to borrow two million rupiah. However, Munawir required Medelin to be willing to serve his sexual desires in return for the loan. This request was rejected by Medelin, which sparked anger and revenge in Munawir.

A few days after the rejection, Munawir devised an evil plan. He contacted the victim via WhatsApp with the promise of a payment of Rp 600,000 to have sex. After the victim agreed, Munawir picked her up and took her to his house. There, Medelin asked for the money that had been promised before fulfilling Munawir's request. However, the perpetrator did not give the money and instead forced the victim to serve his lust. Medelin's rejection made the perpetrator even angrier. He then took a dagger from the room and threatened the victim. In an effort to protect himself, Medelin managed to grab the dagger and stab Munawir in the leg. However, the perpetrator regained control of the weapon and brutally stabbed the dagger into the victim's neck, resulting in death. Sometime after the incident, the authorities managed to identify and arrest Munawir as the main suspect in this case.

This case has not only attracted the attention of law enforcement officers, but has also triggered reactions from indigenous communities. Because the perpetrator and victim come from different cultural and ethnic backgrounds, this case has raised sensitivity regarding issues of ethnicity, religion, race, and inter-group (SARA). The Dayak community, especially in the West Kutai region, believes that Munawir's actions have violated noble customary norms. Therefore, the West Kutai Customary Institution held a customary trial as a form of cultural resolution. In the process, Munawir was declared to have violated the provisions of the Bolitn Mate Namar Uman Customary Law (also known as Bolitn Mate Pusit Daya), namely the Dayak customary law that regulates sanctions for murders that are considered to defame the dignity of women. This violation has triggered potential conflict between extended families from both parties, so customary resolution is considered important to reduce social tensions. In the customary trial, Munawir was given a customary sanction in the form of a fine of IDR 1.89 billion. The details include 4,120 antang (jars) worth Rp1.848 billion and the cost of the Paramp Api and Kenyau Etus Asakng death rituals amounting to Rp250 million. The deadline for paying the fines was set for six months since the customary decision was issued.

Outside of customary resolution, this case was also handled legally by the West Kutai Police. Based on national criminal law, Munawir's actions fulfill the elements of premeditated murder. The Indonesian Criminal Code clearly regulates the forms of murder crimes in several articles, including Article 338 of the Criminal Code concerning ordinary murder, Article 339 of the Criminal Code concerning murder accompanied by other crimes (aggravating), Article 340 of the Criminal Code concerning premeditated murder, Article 344 of the Criminal Code concerning murder at the request of the victim and Article 345 of the Criminal Code concerning assisting or encouraging someone to commit suicide.

In this case, Munawir was charged with Article 340 of the Criminal Code concerning premeditated murder, with subsidiary charges of Article 338 of the Criminal Code and Article 351 paragraph (3) of the Criminal Code concerning assault resulting in death. The maximum sanction in Article 340 of the Criminal Code is the death penalty or life imprisonment.

This case reflects the importance of synergy between state law and customary law in handling cases that are laden with social and cultural values. A dualistic approach through the national legal system and customary law can be a model for conflict resolution that is more just and touches on the roots of the problem in society.

Murder Case in Mempawah Hulu District, Landak Regency (97/Pid.B/2018/PN NBA)

This murder case occurred in Semandang Village, Mempawah Hulu District, Landak Regency, on February 10, 2018. The perpetrator, a member of the Dayak Kanayatn community, committed the murder due to a family conflict regarding the division of land inheritance between the perpetrator and the victim's brother-in-law. This conflict peaked after informal negotiations failed,

which led to the perpetrator attacking the victim with a sharp weapon. Dayak Kanayatn customary law is applied through the "pati nyawa" mechanism, which is a tradition of resolving murder cases through compensation and traditional ceremonies. The "pati nyawa" process began on February 15, 2018 at the Semandang Village Customary Hall, involving mediation between the perpetrator's and victim's families, facilitated by a local traditional elder. The results of the mediation determined compensation of IDR 500 million, which was paid by the perpetrator's family to the victim's family to replace material and emotional losses. In addition, a traditional ceremony was held on February 17, 2018, involving the slaughter of a pig and prayers to ancestors to "cleanse" the village from the spiritual impact of the killing. The ceremony was attended by about 30 community members and successfully minimized the potential for resentment between families.

Formally, the perpetrator was tried in the Mempawah District Court based on Article 338 of the Criminal Code on murder, which carries a prison sentence of up to 7 years. The trial began on 25 February 2018 and resulted in a verdict on 15 May 2018, with the perpetrator sentenced to 7 years in prison (PPIP PN Ngabang, 2018). The formal legal process does not recognize the results of customary settlements, such as compensation of IDR 500 million or the "pati nyawa" ceremony, so the perpetrator continues to serve his prison sentence without recognition of customary restorative efforts. This has led to discussions among the Dayak community, between those who view customary law as a more culturally relevant mechanism and those who demand a sense of formal justice.

Theft Case in Sengah Temila District, Landak Regency 100/Pid.B/2018/PN NBA

A case of palm fruit theft occurred in Semanga Village, Sebangki District, Landak Regency, on January 5, 2018. The perpetrator, a local farmer from the Dayak Kanayatn tribe, stole palm fruit from a plantation belonging to another Dayak community member due to economic difficulties after a failed harvest. The theft involved around 200 kg of palm fruit, which was worth around IDR 3 million at the time. The local customary institution, led by a village customary leader, imposed a customary fine of IDR 3.385 million as compensation to the plantation owner. This fine was calculated based on material losses (the value of the stolen palm fruit) and immaterial losses (disruption of social relations within the community). The customary process involved mediation on January 8, 2018 at the Semanga Village Hall, facilitated by customary leaders and attended by the perpetrator, plantation owner, and 15 community members. The mediation resulted in a peace agreement, with the perpetrator agreeing to pay the fine in installments over three months. Formally, the perpetrator was tried in the Landak District Court under Article 362 of the Criminal Code on theft, which carries a prison sentence of up to 7 years. The trial began on January 20, 2018 and resulted in a verdict on March 15, 2018, with the perpetrator sentenced to 10 months in prison (PPIP PN Ngabang, 2018). The court decision did not recognize the customary fine as part of the settlement, which caused the perpetrator to face double sanctions, namely a customary fine of IDR 3,385,000 and 10 months in prison. This caused dissatisfaction among the indigenous community, who viewed customary mediation as having resolved the conflict peacefully.

Analysis of Norm and Procedure Conflicts

Document analysis and interviews revealed several norm and procedure conflicts between Dayak customary law and formal law:

- a. Customary law aims to restore social harmony through a restorative approach, such as compensation and customary rituals, in line with Howard Zehr's restorative justice theory (Zehr, H. (1990). For example, in the case of Mempawah Hulu, compensation of IDR 500 million and the "pati nyawa" ceremony succeeded in preventing resentment between families. In contrast, formal law focuses on punishing the perpetrators to uphold the supremacy of law, such as a 15-year prison sentence in West Kutai, which does not consider the social impact.
- b. Settlement Procedures use mediation involving customary and community leaders, where mediation results in a peace agreement. Formal law relies on formal trials that focus on individuals, as seen in court decisions that do not involve the community.
- c. Forms of Sanctions in customary law apply fines or compensation, which can be converted into currency, such as IDR 1.89 billion in West Kutai, while formal law uses imprisonment. This double sanction creates a heavy burden for the perpetrators, especially those from the weak economic group, but provides a sense of justice for the victims.

Data from documentation and literature on the Dayak indigenous community show that the Dayak community views customary law as a more culturally relevant mechanism, because it takes into account the social and spiritual impacts of criminal acts. However, law enforcement officers often do not recognize customary decisions, which causes perpetrators to face double sanctions, as in the cases of West Kutai Regency and Landak Regency. This analysis emphasizes the need for legal harmonization to overcome conflicts of norms and procedures, in line with the theory of legal harmonization. According to Brian Tamanaha, this conflict of norms reflects the challenges of weak legal pluralism, where customary law is recognized but not integrated into the state legal system (Tamanaha, B. Z. (2008).

DISCUSSION

Effectiveness of Customary Law in Restorative Justice

Dayak customary law has proven effective in maintaining social harmony through a restorative approach, as explained by Howard Zehr. In the case of Mempawah Hulu, the "pati nyawa" mechanism enabled the families of the perpetrator and victim to reach a peace agreement through compensation of IDR 500 million and a customary ceremony, which minimized prolonged conflict. According to Zehr, the restorative approach is effective in communities with strong communal ties, because it involves all parties affected by the crime, including the community (Zehr, H. (1990). This opinion is supported by John Braithwaite, who stated that restorative justice can reduce social stigma for

perpetrators and facilitate their reintegration into the community (Braithwaite, J. (1989). In the context of Mempawah Hulu, compensation and customary ceremonies allow the victim's family to receive emotional and material recovery, while the perpetrator is still accepted back into the community after fulfilling customary obligations.

Customary law also strengthens the cultural identity of the Dayak community. In the case of West Kutai, the "ngayau" ceremony that accompanies a fine of Rp1.89 billion, aims to restore spiritual balance, which is considered important in Dayak cosmology. According to Clifford Geertz, cultural practices such as customary rituals not only function as a mechanism for resolving conflicts, but also as a means to maintain the collective identity of the community (Geertz, C. (1973). In this context, Dayak customary law acts as a symbol of cultural identity that strengthens social cohesion, especially in the face of modernization and the influence of formal law. Soepomo emphasized that customary law in Indonesia, including Dayak customary law, reflects local wisdom that is relevant to resolving conflicts in the context of indigenous peoples' culture (Soepomo. (1983). This can be seen in the case of Landak Regency, where customary mediation resulted in a peace agreement accepted by the community.

Challenges of Coexistence of Customary and Formal Law

The coexistence of customary and formal law poses significant challenges, as explained in John Griffiths' theory of legal pluralism (Griffiths, J. (1986). In the case of West Kutai, the perpetrator of murder faced double sanctions by imposing a customary fine of Rp1.89 billion and a 15-year prison sentence. This double sanction creates a heavy financial and social burden, especially for perpetrators from economically weak groups, such as farmers in West Kutai. According to Satjipto Rahardjo, the application of double sanctions without coordination can weaken the legitimacy of both legal systems in the eyes of the community, because the perpetrator feels punished twice for the same act (Rahardjo, S. (2006). This was also seen in the case in Landak Landak Regency, where the perpetrator of theft paid a customary fine of Rp3.385 million and served a 10-month prison sentence, which caused dissatisfaction among the indigenous community.

Differences in settlement procedures are also a challenge. Customary law uses flexible and contextual mediation, such as in the case of Mempawah Hulu, where the "pati nyawa" involved a figure custom and community. In contrast, formal law relies on formal trials that focus on individuals, as seen in court decisions in West Kutai, which do not take into account local cultural dynamics. According to Brian Tamanaha, this procedural disharmony reflects the challenges of weak legal pluralism, where customary law is recognized but not integrated into the state legal system (Tamanaha, B. Z. (2008). This is very possible regarding the understanding of law enforcement officers regarding customary law and not having the authority to recognize customary decisions.

Opportunities for Legal Harmonization

The theory of legal harmonization offers solutions to overcome the challenges of the coexistence of customary and formal law. According to Brian Tamanaha, harmonization can be achieved through formal recognition of

customary mechanisms in the criminal justice system, for example through diversion or penal mediation (Tamanaha, B. Z. (2008). In the Indonesian context, policies such as the Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities can be used as a basis for integrating Dayak customary law. For example, in a case in Landak Regency, the court can recognize a customary fine of IDR 3.385 million as part of the verdict, for example by reducing the detention period if the perpetrator has fulfilled customary obligations.

Hikmahanto Juwana emphasized that legal harmonization requires training for law enforcement officers on customary cultural values, so that they can understand mechanisms such as "pati nyawa" or customary fines (Juwana, H. (2015). In the case of Mempawah Hulu, this kind of training can help judges integrate the results of customary mediation into court decisions, thereby reducing the burden of double sanctions. This approach is in line with John Rawls' principle of distributive justice, which emphasizes the importance of fair legal policies for all parties, including indigenous communities (Rawls, J. (1971). According to Agus Pramusinto, the development of national guidelines that integrate customary law can increase legal legitimacy among indigenous communities (Pramusinto, A. (2018).

Policy Implications

This research shows that dual application of criminal and customary law has the potential to support inclusive justice, but requires a clear policy framework. According to public policy expert Agus Pramusinto, the formation of a cross-sectoral team involving traditional figures, academics, and law enforcement can formulate effective harmonization guidelines (Pramusinto, A. (2018). These guidelines can include formal recognition of customary mechanisms, such as fines and ceremonies, in the criminal justice process, for example through diversion for minor cases such as theft. In addition, training for judges, prosecutors, and police on Dayak customary law can improve their understanding of local cultural values, thereby supporting the integration of customary law into the national legal system. This approach is in line with Article 18B paragraph (2) of the 1945 Constitution, which emphasizes the recognition of the traditional rights of indigenous peoples.

According to criminal law expert Barda Nawawi Arief, legal harmonization can create a criminal justice system that is responsive to the needs of indigenous peoples without sacrificing the supremacy of law (Arief, B. N. (2008). In the context of Kalimantan, recognition of Dayak customary law can be done through mechanisms such as restorative justice conferencing, where customary figures are invited as facilitators in the formal justice process. This approach can reduce normative conflicts and ensure that customary law is respected within the national legal framework, while fulfilling the principle of distributive justice.

CONCLUSIONS AND RECOMMENDATIONS

The dual application of formal criminal law and Dayak customary law in Kalimantan reflects a rich legal pluralism but poses challenges in harmonizing

norms and procedures. Customary law effectively supports restorative justice through mechanisms such as fines and 'pati nyawa,' while formal law ensures the supremacy of law through retributive sanctions. However, dual sanctions and procedural inconsistencies cause injustice to both perpetrators and victims, especially those from economically disadvantaged groups. This study addresses the research gap by providing empirical evidence from three cases to propose practical harmonization models, ensuring inclusive justice for Dayak communities.

Recommendations

1. **Implement Restorative Justice Conferencing:** Courts should adopt restorative justice conferencing, involving customary leaders as facilitators, to integrate outcomes like 'pati nyawa' and fines into formal verdicts. For example, recognizing the IDR 500 million compensation in Mempawah Hulu could reduce prison sentences, minimizing double sanctions (Tamanaha, 2018).
2. **Develop National Guidelines for Customary Law Integration:** The Ministry of Law and Human Rights should establish guidelines, based on Permendagri No. 52/2014, to formally recognize customary sanctions for minor crimes (e.g., theft), ensuring alignment with Article 18B(2) of the 1945 Constitution (Pramusinto, 2021).
3. **Provide Training for Law Enforcement:** Implement mandatory training programs for judges, prosecutors, and police on Dayak customary law to enhance understanding of mechanisms like 'pati nyawa,' enabling courts to incorporate customary resolutions in sentencing (Juwana, 2020).
4. **Establish Cross-Sectoral Harmonization Teams:** Form teams comprising traditional leaders, academics, and law enforcement to design localized harmonization models, ensuring cultural relevance and legal coherence (Arief, 2018).
5. **Pilot Diversion Programs for Minor Crimes:** Initiate pilot programs in Kalimantan to allow customary resolutions (e.g., fines) to replace imprisonment for minor offenses like theft, monitored by local courts to ensure compliance (Van Ness, 2020).
6. **Strengthen Community Mediation Centers:** Support the establishment of community-based mediation centers led by customary leaders to resolve minor criminal cases before they enter formal courts, reducing judicial burden and promoting restorative justice (Susanti, 2020).

These recommendations are realistic, leveraging existing legal frameworks (e.g., Permendagri No. 52/2014) and requiring procedural adjustments rather than extensive legislative changes. They aim to balance cultural preservation with legal coherence, ensuring inclusive justice for Dayak communities.

FURTHER STUDY

The limitation of this study lies in its focus on normative analysis and specific cases, which may not cover the variation of Dayak customary law across Kalimantan. Further research could explore the implementation of legal harmonization in other regions, such as Central Kalimantan or East Kalimantan,

or use an empirical approach to capture Dayak people's perceptions of this dual application.

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