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IDENTIFICATION OF CUSTOMARY DELICT OF SOUTH PAPUA AND ITS CUSTOMARY SANCTIONS AS A FORM OF PRESERVATION OF CUSTOMARY LAW

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ABSTRACT
Until now, there has been no specific reference to customary offenses and customary courts in Papua, especially the South Papua Customary Court, except for the writings of some anthropologists who touch on this issue in discussing the leadership system or community structure or customary government system in Papua. The purpose of this study is to determine the existence or existence of customary law in the Anim Ha customary territory and the need for mapping customary law in force in South Papua by identifying customary violations and customary sanctions. This research uses a descriptive method of analysis with a normative juridical approach supported by empirical data, namely direct data from customary law communities and secondary data, namely legal material such as laws and regulations, legal doctrines, and court decisions/jurisprudence, and supported by primary data, namely by conducting interviews with related parties. There are three types of customary sanctions in South Papua, namely legal action in the form of imposition of fines (objects or goods), legal action in the form of imposing physical and spiritual suffering on violators (physical and psychological punishment), in the form of legal action to restore magical balance (punishment in the form of carrying out traditional ceremonies / rituals). Customary law communities in South Papua in fact although state law applies the principle of legal centralism, customary law is more dominant in regulating community life because it is considered more beneficial to the parties in resolving cases or disputes than positive law.

INTRODUCTION

Customary law is a terminology that provides the possibility of different understandings. In the past, the term customary law living in a community (living law) in an area was also often equated with the behavior of isolated communities or rural communities, primitive societies or also traditional societies. However, at present the model of such a society has slowly begun to shift by new civilizations that directly or indirectly influence its implementation and recognition.

Customary law is a custom that has sanctions (reactions) while customs that do not have sanctions (reactions) are normative habits, namely habits that manifest as behaviors that prevail in society. In fact, between Customary Law and Customary Custom, the boundary is not clear.

The birth of customary law and customary sanctions cannot be separated from the consequences of a violation or crime which according to customary law is considered a crime and can damage the sense of comfort, tranquility and sense of peace in community life, so that for the perpetrators and violators in accordance with customary sanctions is a reward or lesson for the perpetrator of the crime not to repeat it again, Even according to customary law it is not

only useful for the perpetrator but also applies to everyone not to commit crimes (D. R. M. H. Ali & SH, 2022).

The existence of customary law itself cannot be separated from the existence of its customary law community. Indigenous peoples have their own customary law system and even when violations occur, they have legal rules with regard to sanctions that can be applied to members of customary law communities who commit violations of customary law so that they can be subject to customary criminal sanctions (Ahmadi, 2018; Effendi, 2018; Ferry, 2016; Jamin, 2014). However, like most customary law rules in Indonesia, customary law rules relating to customary criminal law, especially with regard to the application of customary sanctions, are conveyed orally and are not contained in written form or unwritten law.

Similarly, the existence of customary offenses in Papua is in line with the existence of indigenous Melanesian people who settled on the island previously called New Guinea. Until now there has been no reference specifically to customary offenses and customary justice in Papua, except for the writings of some anthropologists who touch on this issue in discussing the leadership system or community structure or traditional government system in Papua.

The existence and functioning of customary offenses go hand in hand with the ups and downs of the existence of the customary law community concerned (Fitria, 2020; Lukito, 1998; Soekanto & Taneko, 2011). The application of customary sanctions or reactions aims to maintain and or re-establish communal balance, restore the existing cosmic world, maintain the harmony of human life, and realize restitutio in integrum.

Given the existence of indigenous peoples in South Papua, specifically the Anim Ha customary territory, in terms of solving a problem that occurs both in the customary civil and criminal fields where the settlement often uses the provisions of the law that is still alive in community life (customary law). Customary solutions are often used by communities because they are considered fairer and more able to answer problems that occur because the decisions taken are decided and determined by parties who are considered to be accused or traditional leaders and have been agreed upon by both parties so as not to cause friction between communities as well (Uktolseja & Balik, 2022; Utama & Aristya, 2015).

Departing from this, there are problems that are criminal offenses that have been punished in accordance with positive law, but by the people of South Papua are more considered as customary offenses whose resolution must use customary law (customary criminal law). In addition, it also turns out that it is difficult to apply the rules of customary criminal law in today's indigenous communities. This is because many people already understand the existence of Indonesian national law and the severity of customary sanctions imposed related to customary crimes (M. D. Ali, 2007; Anshori & Harahab, 2008; Bisri, 1997).

Therefore, based on the above background, several questions will be raised in this study, including: how is the existence of customary offense law in indigenous peoples of South Papua and what is the ideal concept in the implementation of customary offense law in South Papua.

RESEARCH METHOD

This research was conducted in the Anim Ha customary area, namely Merauke, Asmat, Mappi and Boven Digoel Districts, South Papua Province, in This research was carried out using analytical descriptive methods with normative juridical and empirical juridical approaches. The normative juridical approach is intended to review criminal law and identify the existence of customary offense sanctions in the context of developing and reforming Indonesian criminal law (Pattinama, 2009; Priambodo, 2018; Rohman, n.d.). The empirical juridical approach is intended to conduct research on the development of indigenous peoples related to indigenous peoples in southern Papua which will be carried out for 2 (two) years. To

facilitate data tracing, a law enforcement approach is used based on the factors that influence it the type of data consists of primary data and secondary data, both of which complement and support each other (Fitria, 2020; Pasapan et al., 2022; Susylawati, 2009).

Primary data is obtained through information and explanations from communities who have the capacity and are suitable to be used as resource persons, including Heads of Indigenous Peoples' Institutions, traditional leaders/village heads, village Consultative Bodies, and traditional leaders. In addition, primary data information is also obtained from government officials from the subdistrict, district and provincial levels and experts in the field of customary law, activists of non-governmental organizations, and indigenous peoples are flexible with the principle of snowball sampling. The secondary data consists of primary, secondary and tertiary legal materials. This data is obtained through literature study, namely by studying books, laws and documents, opinions of legal experts, results of scientific activities and even public data related to writing.

RESULTS AND DISCUSSION

The Existence of Indigenous delict in the Indigenous Peoples of South Papua

The Constitution of the Republic of Indonesia in the Amendment of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as UUDNRI1945) has recognized the existence of customary law as a law that grows from indigenous values that live in Indonesian society. This explicit recognition is contained in Article 18B of the Constitution of the Republic of Indonesia Year 1945.

The recognition and respect of the unity of indigenous peoples and their traditional rights, or pseudo-recognition, philosophically has the consequence of recognizing and respecting all existing and institutional structures and institutions (including the judiciary) that exist and belong to indigenous peoples.

Savigny in his opinion sees law as historical, so that the existence of each law is different, depending on the circumstances of the place and the situation in which the law applies. Law should be viewed as the incarnation of the soul or spirit of a nation. With Saginy's opinion, Soepomo views the original law of the Indonesian nation as customary law as unwritten law consisting of mostly customary law and a small part of Islamic law, including law based on judges' decisions based on legal principles in the environment where he decides cases. Customary law is a living law, because it explains the real legal feeling of its people.

Delict Adat has led to an ongoing debate since the beginning of Indonesia's independence about whether adat can be one of the sources of law in the Indonesian constitution. According to legal experts, customary law delict (adat delicten recht) can also be called customary criminal law or customary violation law is customary law rules that regulate events or acts of error that result in disruption of the balance of society, so it needs to be resolved (punished) so that the balance in society can be controlled and not disturbed. Currently, many people are dissatisfied with law enforcement in Indonesia, especially justice issues, so people often use delict Adat or familial methods to resolve unlawful acts.

The concept of crime is a theory that always develops according to place and time. So that each community or indigenous people has their own perception of offense or criminal law. To be called a customary criminal offence, it must cause a shock in the balance sheet of society. The shock is not only found when the rule of law in a society is violated, but also when the norms of decency, religion, and manners in society are violated. Unlike the positive criminal law in force in Indonesia today, these events and acts are punished because of the written law that regulates them. As long as the events and deeds are not regulated in law, it cannot be said

to be delict. This is called the principle of legality contained in Article 1 paragraph (1) of the Criminal Code (KUHP), which reads: "An act cannot be criminalized, except based on the strength of existing criminal legislation provisions.

Meanwhile, customary criminal law emphasizes "disturbed balance". As long as the balance of an indigenous community is disturbed, it will be sanctioned. Customary criminal law does not recognize the principle of legality as well as positive law because in addition to simple legal provisions, customary criminal law does not recognize codification. In other words, customary criminal law does not recognize written law even though some indigenous peoples in Indonesia already recognize the codification of customary law.

Emergency Law Number 1 of 1951 has actually provided a solution to the problem of absorption of customary law into criminal law, with the unification of customary law provisions that still exist. Although the Swapraja Court has been abolished, the existing customary offense provisions need to be maintained, but technically the court that enforces the procedural law on the handling of the offense.

The problem that still arises in sanctioning customary offenses is an imbalance with the sanctions given by the Criminal Code. Andi Zainal Abidin in his research found that there are still Customary Courts that try customary cases and impose unknown types of crimes in Article 5 of Emergency Law Number 1 of 1951 explicitly. Even among them, the criminal threat to the perpetrators of criminal offenses of decency in the Criminal Code is felt to be too light compared to the previous criminal customary law sanctions.

Furthermore, theoretically, the parameters to determine the extent to which customary law has power, according to Tholib Setiady are as follows:

a. whether the structure of the indigenous community is still maintained or has changed;
b. whether the customary head and his customary law apparatus still continue to act as customary law officers;
c. whether there are still frequent settlements of cases with similar decisions;
d. whether the formal rules of customary law are still maintained or whether they have shifted and changed; and
e. whether customary law does not contradict Pancasila and the 1945 Constitution and national legal politics.

Papua is rich in customs and culture. Papuans with prominent physical features are black skin and curly hair. Other characteristics that can be seen based on cultural characteristics, seen in art, religious systems, social organization, traditional technological systems and language.

Currently, Papua Island has been divided into 6 provinces, namely Papua Province, West Papua Province, Mountain Papua Province, Central Papua Province, Southwest Province, and South Papua Province. South Papua Province has 4 districts. The districts are Asmat, Boven Digoel, Mappi, and Merauke. Criminal problems are not only known in modern criminal law. South Papuan customary law has recognized crime as an effort to tackle crime.

The area of South Papua Province, which was later better known as Bumi Anim Ha (true man), included Merauke, Boven Digoel, Asmat, and Mappi regencies. Anim Ha is also the largest area as well as the leading region of Indonesia which is directly adjacent to Papua New Guinea. Marind Anim is a tribe that hosts this flat land. They inhabit the four cardinal points with seven major clans, namely Gebze, Kaize, Samkakai, Ndiken, Mahuze, Balagaize, and Basik-basik.

The Malind-Anim are one of the "native" tribes in southern Papua. Generally, this tribe is concentrated and also spread in Merauke Regency. In addition, the Malind-Anim are the "indigenous" tribe with the highest population compared to other indigenous tribes in Merauke, such as the Yei, Kanum, Mandobo and Muyu tribes.

If some tribal identities in Papua are born from outsiders, such as the Dani tribe, this is not the case for Malind-Anim. It is thought that the Malind-Anim are names derived from the identification of the tribe itself, and derived from their own language. Anim is the plural form of Anem which means person (human). Although there is no literature that mentions the meaning of the word Malind, one of the Malind-Anim figures states that Malind is a word to identify the physical description of the ancestors of the Malind people. The ancestors of the Malind people were identified as having a tall physique, even exceeding the height of missionaries who were actually white people. They also have incomparable physical strength. Bows made of bamboo are so easily pulled that the rope is pulled, as if without energy involved in the work. The speed of Malind-Anim is undeniable. They have a running speed that can match the running speed of a deer. In addition to height, the Malind-Anim generation still inherits the genetics of speed and strength of its ancestors. So, it is not surprising that during the New Order many young Malind became athletes in the national and international arena.

One identity that is also closely attached to the Malind people is Anim-Ha. The word "Ha" is an adjective that in Indonesian means true. Thus Anim-Ha can be interpreted as a real human being. This identity also has various meanings or meanings. According to Boelaars (1986), this identity is a representation of Malind's male maturity. The representation of maturity appears in the form of physical strength, as well as customary jewelry (attributes) inherent in the body of Malind-Anim. Therefore, the identity of Anim-Ha is not just an identity that is carelessly attached or attached to individual Malind people. There are also those who translate Anim-Ha not only as Malind-Anim who has physical strength, but surpasses it is supernatural power. Some Malind people who live in the coastal village of Arafuru Sea, proudly told us about the supernatural powers of Malind-Anim. They believe every element or thing on earth has a soul and a name. By the name of the water, they have dominion over it; call the name of fire, they have dominion over it; Call the name of the wind, they have power over it.

The term Malind as it is known today is meant to be Malind anim-animha i.e. people / anim who have boan or traditional malind clans and have food or lands located between Kondo in the south to Bian river in the north and the mouth of the Digul River in the northwest as the traditional area of Malind Boan consists of clans such as: Gebze; Kaize; Ndikend; Samkakai; Balagaize; Mahuze and Basik-basik.

In addition, there are subclans and sub-subclans, so that the Malind tribe knows the big clans and branch clans, all of which are known as boan only. If a person has traditional Malind clans and comes from the traditional Malind area, it is enough for that person to be called a real Malind or just a Malind tribe. Without either of these, the clan and the land, it greatly reduces the meaning of animha.

Indigenous Peoples' Institution (LMA) is an indigenous organization formed by a certain customary law community, has its own territory and property, and has the right and authority to regulate and manage and resolve matters related to custom. There are 2 (two) LMAs in Merauke Regency, namely LMA and District LMA. The District LMA concerns the problems of all Merauke indigenous peoples' territories, and if there are problems that cannot be resolved by the district LMA then it is handed over to the district LMA to take over and solve them. The LMA district area includes Merauke Regency and the LMA district area along the Maro River upwards to Papua New Guinea (PNG).

The malind indigenous people recognize the division of customary territories. The division of customary areas includes: Nggawil Anim malind customary area, Lahuk Anim malind customary area, Kanume Anim malind customary area, Marori Anim malind customary

area, Yeinan Anim malind customary area, Malind Anim customary area, Bian Anim malind customary territory.

In order to reform the criminal law, it is necessary to pay attention to some customary offenses that are still valid and live in the community, both expressed and implied in customary villages and in religious laws / teachings. The results of research in Merauke, showed that in Merauke four types of delicacy customs are known, namely: customary offenses involving decency; customary offenses involving property; customary offenses that violate personal interests; and customary offenses due to negligence or non-performance of obligations.

From the description above, the author emphasizes three main things about customary criminal law, namely: first, a series of rules of order made, followed and obeyed by the indigenous peoples concerned. Second, violations of these rules of order can cause shocks because they are considered to disturb the cosmic balance. Acts of violating these rules of conduct can be referred to as customary offenses. Third, perpetrators who commit such violations may be sanctioned by the community concerned.

Delict (Customary Crime) Still in Effect in Merauke

There is the highest institution in the Malind Tribe which consists of four groups, namely Mayo, Timo, Esang, and Sosong. These four groups will conduct negotiations to decide on the settlement of customary law disputes, especially customary offenses in the Salor Village area, Merauke Regency.

The Malind people always recognize, appreciate and respect the values of customary law that exist in the animha land, especially women because according to the Malind people women can be a conflict and also become peace. According to one of the leaders of the indigenous people of the Malind tribe, Mr. Kasimirus Kaize, for those who commit serious offenses, there is usually a pardon twice, forgiveness by advising the perpetrator not to repeat his mistake again and if the perpetrator still commits the offense and cannot be overcome, the punishment is the death penalty so that there is no grudge between two parties and usually this settlement is by ritual or traditional sitting.

If the process of resolving customary offenses has been carried out and decided by the customary council (four groups of customs), the government may not protest the results of the decision issued by the customary council because according to adat this is already a customary violation that must be punished.

The indigenous malind people know four types of crimes (customary offenses) that must be avoided, including murder, rape (immoral), theft, defamation. The four crimes are crimes that are classified as severe and minor to this crime, sanctions must be applied regardless of the condition of the perpetrator whether the perpetrator is memory sick or immature. Besides the crimes mentioned above, adultery committed by women and men is also the crime that is considered the most severe.

The offense of theft in the view of the Malind tribe if carried out then the punishment is only in the form of a fine, namely by planting wood or it could also be a fine to bring bananas (garden products). This is classified as a misdemeanor, in addition to theft there are also other cases such as insult. The offense of rape and murder (yalmam) is classified as a serious case, so if there is a trial, execution and death will be carried out in public or in person, and usually the punishment is carried out by beating with kupa (turkey stone).

From what has been described above, it can be seen that customary law also recognizes various kinds of offenses related to property, life, decency, and honor (good name). The settlement of every customary offense has sanctions in the form of fines, corporal punishment to the death penalty.

Delict (Customary Crime) Still in Effect in Boven Digoel

In the indigenous community of Boven Digoel there are 5 (five) large tribes and 2 (two) subs. Muyu tribe, Mandobo tribe, Awyu tribe, Kombay tribe, Koroway tribe and two sub tribes, namely: Wanggom Sub Tribe (Sub of Kombay Tribe) and Wambon Sub Tribe (Sub of Mandobo Tribe). Where the seven tribes have tribal boundaries according to the mapping results of Dutch missionaries at the beginning of the opening of regional isolation along with the spread of Catholicism and Reformed Christianity.

According to LMA Chairman Boven Digoel, before the massive globalization flow, there was still the enforcement of customary law in each tribe, of the seven tribes mentioned above almost the same, which was resolved through a meeting of traditional elders to decide a problem by producing legal sanctions, among others. The fines according to the agreement are in the form of pigs, heirloom money, women and a piece of land. If the customary sanction cannot be fulfilled then the final bet is Lives.

The same thing was also conveyed by LMA Secretary Boven Digoel that the existence of customary law after being contaminated by globalization flows is:

a. We cannot find the top leaders (chiefs) of the seven tribes mentioned above so that many legal problems must lead to positive laws or in other words resolved on the part of the police, so that customary spirits seem castrated which has an impact on actualizing problem solving by Customary Law instead of being the main role model as a community that has customs.
b. The existence of customary law in Boven Digoel at this time, only exists in the issue of customary rights or customary land which is described ownership through mythical stories for generations, but we must admit that there has been a lot of increasing lack of mythical stories in order to control hamlet rights or customary land rights, so that there is a potential for conflict between clans, this is triggered by the presence of investors who in planning and licensing do not involve local Indigenous peoples so that they open Space for you intellectuals to sue the investor, but it becomes a prolonged story because the validity of the mythical story of customary rights ownership has undergone many changes in the version of the individual.

Before the enactment of church law and positive law, customary law was still enforced such as thieves were considered suanggi (black magic) then the sanction was the life of the perpetrator, adultery was at stake, marriage was publicly notified to carry out a customary procession by fulfilling the customary demand of paying dowry, if no delivery was made as required then it was considered adultery. While rape is considered adultery and fraud is considered a pest that disturbs the peace of the environment, the sanction is the life of the perpetrator (killed).

Indigenous people in Boven Digoel actually still respect the values of customary law, but it is dominated by Church law and positive law so that lately some legal cases are always resolved in the police or specifically criminal law of murder, rape, while for customary rights / customary land issues are always resolved by civil law. So that the process of customary law sanctions in the Boven Digoel customary territory cannot be optimal because it is more dominant in the face of Church law and positive law based on applicable laws and regulations.

Delict (Customary Crime) Still in Effect in Asmat

The Asmat Indigenous Peoples have customary law that actually still exists although currently in its implementation it is rarely applied in total. Now what is done is more especially related to the celebration of rituals / traditional parties commemorating certain moments. The Asmat indigenous people believe customary law exists to provide balance to the cosmos in spirit/nature/man.

The Asmat tribe consists of 12 groups, although the customary law is the same which distinguishes only dialects / languages and carving arts. Asmat people in general never hold grudges, problems that have been resolved will be seen as resolved forever without question. In indigenous people's people are not about chieftains/kings. There is leadership, where everyone is equal and can become a leader according to their talents / abilities. In addition, the leader in question is of various forms, there as a chairman, as a war chief, as a carving artist and others all according to his talent / expertise. The central of the asmat person is known as jew. Jew as a traditional house as well as central in dispute resolution and any discussion. There are several prohibited acts in the Asmat community, including theft (OSOM), theft in question whether committed by 1 person or several people, generally theft committed is taking other people's property / produce outside the lordship / ulayat concerned. This means that in addition to taking crops while violating the customary boundaries of other villages. (2) Harassment (okora), intended as a crime against women generally, whether in the form of harassment, rape, seizing someone else's wife or domestic violence. (3) persecution/killing/war resulting in loss of life, generally in the Asmat community Murder or beheading is common. But now it is a forbidden act.

The sanctions in the form of the crimes above are retaliation committed by the victim to the perpetrator even sometimes until war occurs. Revenge can also be interpreted to retaliate physically or otherwise for the events that the victim experienced. In addition, sanctions can also be in the form of compensation, in the past compensation was carried out in the form of stone axes, dog teeth, shells / large bia. But for now, the compensation made is in the form of money, groceries / foodstuffs, agricultural equipment and so on. If compensation has been made as agreed, the case is declared over and the case is closed because for Asmat people there should be no grudge when the case / peace has been completed. However, along with the current development, not a few crimes in indigenous peoples are actually solved through state law.

One of the prohibitions in indigenous asmat communities that is often found is the crime of domestic violence, usually from the wife as the victim suing with a request for compensation such as money, umpak poles, stone axes, bia and others. It's just that what is found is precisely the implementation of the implementation of compensation sometimes not carried out by the perpetrators (there is no coercive nature).

Leaders in the asmat indigenous community are known as cesivit or leaders, under which there are ceso, deputy leaders, and aices as people who carry out the orders of the leader. To Ceso and AICES they are also at the same time as prospective leaders (cesivit) of indigenous peoples The community highly respects adat because it is part of the cosmic balance Some things forbidden in the Asmat indigenous community include: (1) Murder = This is part of the head for a head, murder cannot be separated from the life of the Asmat people known as "cannibals". (2) theft, i.e., entering another person's territorial boundaries and then taking produce without permission or without rights. (3) cases involving women, such as harassment, domestic violence, seizing people's wives. For Asmat people women are gold. Not a few wars occur because they are motivated by the female factor as the main trigger. (4) There is a seizure or annexation of customary boundaries.

Of these various prohibited things, sanctions can be up to head change (revenge) if killing the victim, murder retaliation is usually directed at the nephew of the perpetrator who kills must also be killed, sometimes there is even "vengeance through the spirit" for example suddenly illness / death of the perpetrator". Sometimes there is also a violation / crime as mentioned above in indigenous peoples, there is a reaction that occurs, for example, there is an attack from the victim to the perpetrator until war occurs and so on. This was in response to violations committed after the war occurred and anger began to subside, then efforts were made to settle/peace in the Jew traditional house, whether by compensation and so on, after that the case was declared over and there was no grudge. Regarding the reaction of the victim-perpetrators until the "war" occurs, sometimes people see it as a negative thing, even though when viewed as a whole, it is actually a form of defense and recognition of the existence / identity / dignity as a victim / male party in the Asmat indigenous people. "Here most solutions are no longer oriented towards the initial cause of the conflict, but rather focus on resolving the dispute, conflict/or effect after the first cause". In addition, there are even other cases encountered from the victim who kind of "slam themselves" regretting the violation of the victim/family. Only then was it settled peacefully. As for the forms of compensation, for example, providing foodstuffs, sago palms, farming tools, stone axes, money.

It is also recognized that currently customary law is beginning to diminish its role in the asmat community. In fact, it is no longer often found that is seen forever, especially only at the celebration of traditional (ceremonial) feasts. In fact, in many cases, especially customary criminal/civil violations, are resolved through state law.

The essence of asmat customary law is one of the cosmic balances / cosmoses in the asmat indigenous community which is illustrated from the term ja asaman apcamar which is the overall balance between spirit, nature, and fellow humans. The community recognizes prohibited things that should not be done, including: (1) tribal wars, (2) domestic violence/angry fighting, (3) juvenile/child delinquency. Usually this is special if the victim in a group approaches the perpetrator / family of the perpetrator then immediately attacked and so on after that peace and the like are carried out.

Delict (Customary Crime) Still Valid on Mappi

The Mappi tribe is nicknamed "A Million Rawah" because Mappi Regency is surrounded by swamps and large and small rivers. Mappi Regency is flanked by two rivers including: Digul River and Elander Fir River. Digul River to the south is bordered by Merauke and Boven Digul. While the Elanden Fir River is located in the north bordering Asmat Regency and Yahukimo Regency. Mappi Regency is inhabited by six (6) major tribes including: Yaqhai Tribe, Susku Awuyu, Kawu Tribe (Koroway Kombay), Wiyagar Tribe, Asmat Tribe, Tacmaridjo Tribe from the Six (6) major tribes abbreviated to "Yakwat" all existing tribes are sheltered by the Yakwat Regional Traditional Council of Mappi Regency. Not only the heads of indigenous tribes but all groups and family ties of the archipelago were also approved by the chairman of the regional customary council of mappi regency.

Cases of Disturbing Women or Rape Must be men who rape on the part of women who give blood wounds or can be killed or replaced with hamlets. What if a woman's family seeks a mate to the male side (or vice versa as well) the demand is intermarriage with Yaghai language is "Amar" exchange marriage. Example: I want to marry someone who has a daughter means I have to prepare I have a sister to marry to a future wife I have a brother. That is what is termed interbreeding or intermarriage with women (Amar Positive). If there is no exchange of women, it means being given with sago hamlets or stone axes and birds of paradise.

The problem of territorial rights (forest, sago hamlet, swamp / child boundaries, if someone violates or crosses the boundary of the hamlet / customary land between A or B should first be resolved familially or can only be resolved in one village between clan and clan. If the opportunity is ignored by both sides until the violation recurs, it means a civil war in the village. The punishment was that the family had to be driven out of the village or to death. Because the family is considered a bad family (a family that is a thief and likes to usurp the rights of others).

If there is a violation of the boundary between the village and other villages, customary law must occur a conflict between village and village war, if there is a murder, it means that you have to avenge the killing, called "Amar Negative" means that the problem can be solved by sitting customarily between the two villages to resolve the boundaries of territorial rights, land, hamlets, swamps / children.

There is a murder victim from only one (1) village without any retaliation kornam or "Amar" revenge for the murder finally prosecuted by another customary law, namely: the perpetrator who kills must prepare a woman to be given marriage to the victim's family from the village.

Based on the results of interviews that have been conducted with the Chairman of LMA, Mappi said that theft cases used to be actually in the 6 major tribes, there was no term thief, if violations of land and hamlet boundary rights were due to the past property rights of goods, the term if there was a forgotten owner of goods at work or where people's goods were found, it must be reported to clan / fam leaders that this is whose goods can be returned to those who have. The term thief in the age of religion and government entered only the younger generation now committing the offense of theft is finally punished by criminal law, if the customary law the perpetrator of the thief must be killed because these seeds are not, which God has forbidden.

From what has been said above, it can be seen that it is important that we respect the values of customary law that are still alive and applicable in the customary territory of anim ha (South Papua). Likewise, the existence of customary offenses in South Papua at that time was highly respected and obeyed every sanction decided. This is understandable because at that time customary law was the only legal basis found in the anim ha customary territory, which according to indigenous peoples was a place for justice seekers in resolving all disputes and crimes that arose in the community.

The types of Customary delict according to Hilman Hadikusumo are as follows:

a. The gravest offenses are all offenses that rape the balance between the innate world and the unseen world and all offenses that rape the fabric of society.
b. Offense to oneself, the traditional head as well as the community as a whole, because the traditional head is the incarnation of the community.
c. delict involving acts of magic or magic.
d. All acts and forces that interfere with the inner workings of society, and tarnish the inner atmosphere of society.
e. Offenses that damage the basic structure of society, such as incest.
f. delict who opposes the public interest of society and opposes the legal interests of a family group.
g. Offenses that violate the honor of the family and violate the legal interests of a person as a husband.
h. Offense on a person's body, for example, injury.

With various descriptions of customary offenses (crimes) found in the anim ha customary area, it is hoped that community members will be more careful in bad associations. Thus, crime can be prevented. Likewise, sanctions imposed on anyone who commits a crime according to customary law are known as customary reactions.

As explained above, the purpose of this customary sanction is to restore the balance disturbed due to customary violations. Because customary violations (customary delicacies) can cause balance disturbances in real and unreal life, customary law in South Papua is known as customary sanctions groups that concern the improvement of real and unreal natural life. There are three classes of customary sanctions that are within indigenous peoples. Three classes of sanctions, consisting of: legal action in the form of imposing fines (objects or goods); legal action in the form of imposition of physical and spiritual suffering for offenders (physical and psychological punishment); in the form of legal actions to restore magical balance (punishment in the form of performing traditional ceremonies / rituals).

An Ideal Concept in the Implementation of Customary delict Law in South Papua

Criminal law as a coercive law is often used to make social changes in society. Starting from the two functions of law above, in relation to social change there are two possibilities that will occur, namely first, the law will be behind social change, second, the law actually makes social change.

Customary law does not distinguish between violations of law that are required to be prosecuted to improve the law in the field of criminal law and violations of legal law that can only be prosecuted in civil law. Therefore, the customary law system only recognizes procedures for both civil prosecution and criminal prosecution. This means that customary law officers are authorized to take concrete actions (customary reactions), in order to correct the violated law, not up to western law, namely criminal judges for criminal cases and civil judges for civil cases, but only one official, namely the traditional chief, village peace judge or state control judge for all kinds of customary violations.

The terminology of customary criminal law, delict Adat or customary criminal law is actually derived from customary law which consists of customary criminal law and customary civil law. The terminology of customary law is studied from the perspective of principles, norms, theoretical and practice known as "law that lives in society", "living law", "legal values and a sense of justice that lives in society", "unwritten law", "customary law", and so on.

Overcoming the gap between customary law as a living law and positive criminal law imposed by the state can be done in several ways, namely: First, by the establishment of law. Ideally, although positive law is formed and drafted in a planned manner, the value of legal substance rests on the value of propriety and the value of reproach formulated in customary law. The function of law in this case, except for the role of law as social engineering, is to formalize values that customary law communities see as reprehensible acts into criminal acts. So despicable according to society is despicable is also he in criminal law. Thus, there will be no conflict between the living law and the applicable law. For this reason, research by legal experts is needed as a basic material for the formation and formulation of criminal law laws. Second, through legal discovery. Although the value of living law is not in line with applicable law, it can be overcome by applying applicable law as a basis for judges to decide a case. In legal discovery, written law is not the only one. If judges have limitations in examining living values, the task of legal discovery by judges can be taken over by jurists through the provision of expert testimony in judicial proceedings. The imposition of judges' decisions in criminal cases based on the degree of reproach of an act. Third, by enacting legal pluralism, which is imposing different legal systems based on community groups. This pattern followed the legal system of the Dutch East Indies where written criminal law applied to European groups, while customary law applied to indigenous peoples.

Against the idea of pluralism in criminal law, the harsh challenge is in which customary law can be applied? The social situation of our society today is different from the society during the Dutch East Indies era. Today's society is no longer homogeneous, but consists of various ethnicities and religions so that it will be difficult which customary laws can be applied.

The scope of Customary delict includes the scope of customary civil law, namely personal law, property law, family law and inheritance law. In every society there will be a measure of what is good and what is bad. Anything bad or an attitude that is considered very reprehensible will get a negative reward. Soepomo stated that Customary delict is all actions or events that greatly disturb the inner strength of society, all actions or events that pollute the inner atmosphere, which oppose the sanctity of society, are offenses against society as a whole and the most serious offenses are all violations that rape the balance between the birth world and the supernatural world, as well as violations that rape the basic structure of society.

In communities where customs are still strong such as in Merauke, Boven Digoel, Asmat, Mappi and other regions, the application of customary law as an alternative to the use of criminal law is certainly not difficult. However, in areas where the community is no longer dominant such as in Riau, Lampung, Jakarta, and other provinces, the application of customary law is not easy. When the idea of establishing customary villages in Papua Province was rolled out, the empirical difficulty faced by the team forming the Regional Regulation was whether Papuan customary law could be applied with customary principles "where the earth is footed where the sky is upheld in Merauke Regency for example it is still dominated by ethnicities such as Javanese, Bugis, Maluku and others. If customary law is imposed where they originate, then the enactment ignores the principle of "where the earth stands where the sky is upheld".

Indigenous peoples in the anim ha customary territory still hold strong customs and legal norms left by their ancestors until now, although there is little change that has occurred in society because since the establishment of a community called the state, and the country produces formal national laws to unify, there is a coercion from a ruler / state so that the community including indigenous peoples to subject to formal rules produced or produced by the state/authority, namely the Criminal Code (KUHP).

Overcoming the classic weaknesses of modern criminal law that is positivistic, today among criminal law academics has re-emerged the idea of enacting customary law as a solution to problems in the community that is expected to overcome the weaknesses of criminal law, especially related to the overcapacity of prisons and the accumulation of cases in courts, prosecutors, and police.

In order to implement this idea, today the exploration of legal values that live in the midst of society needs to be done again. Various efforts to find living law as part of sociological legal research are constantly being improved. In time, the re-enactment of customary law as a solution to problems equivalent to criminal acts requires as many references as possible to the laws that apply and live in the community.

This idea is in line with the latest Criminal Code which accommodates the enactment of customary law and reduces the absoluteness of the principle of legality. In the discourse on the role of law in society, there are three major groups of thinking about law, namely (1) natural law madzhab that believes law comes from God, the task of humans (in this case the state) is only to carry out the law of God, (2) legal positivism school that believes that the law that applies in society must be formed by the state, and (3) community law school that believes that law does not need to be formed because in society it already exists Social systems and norm systems themselves have been sufficient to regulate themselves. The state does not need to interfere by forming its own laws that are not necessarily in accordance with the laws that are considered correct by a particular society.

The application of the principle of legality in Indonesia, poses a major problem for criminal law enforcement which revolves around at least two things, namely the large backlog of cases that cannot be resolved by the criminal justice subsystem and the existence of overcapacity in prisons throughout Indonesia. The problem of overcapacity has become a common phenomenon in all prisons in Indonesia and has been the result of research and studies by many experts.

To overcome these problems, today the idea arises to re-enact the settlement of criminal cases in a way that is common among the community concerned. That is what is often referred to as local-wisdom. Experts also often call it local-knowledge." In the Turning Point of Civilization, Fritjof Capra favored Eastern thought over Western thought and therefore proposed the need to re-explore the values of Eastern civilization.

The basic conclusion of what has been explained in the context above can be stated that customary criminal law is an act that violates the sense of justice and decency that lives in the community so as to cause a disturbance in the peace and balance of the community concerned. Therefore, to restore peace and balance, customary reactions occur as a form of restoring disturbed magical peace with the intention of negating or neutralizing an unlucky situation due to a violation of custom. From the series of understandings above, it can be concluded that Customary delict is an event or action that disturbs the balance of society and due to the reaction of the community, the balance must be restored.

In customary law communities in South Papua, the implementation of customary offenses (dispute resolution) has a philosophical basis, namely "peace". This philosophy guarantees a balance between the application of customary sanctions/law on the one hand and the harmony of peace and tranquility on the other. The application of customary sanctions or reactions aims to maintain and/or realize communal balance.

CONCLUSION

In customary offenses, there are basically four important elements, namely there are actions committed by individuals, groups or customary administrators themselves, the act is contrary to the norms of customary law, the act is considered to cause shock because it disturbs the balance in society, and for that action there is a reaction from the community in the form of customary sanctions/obligations. In South Papua, there are still four types of customary crimes/customary violations/customary offenses, namely customary crimes involving decency, customary crimes involving property, crimes related to personal interests and customary violations involving life. Similarly, regarding customary sanctions, in South Papua there are three types of customary sanctions, namely legal action in the form of imposing fines (objects or goods), legal action in the form of imposing physical and spiritual suffering for violators (physical and psychological punishment), in the form of legal action to restore magical balance (punishment in the form of performing traditional ceremonies / rituals).

Indigenous peoples in the anim ha customary territory not only have uniqueness in the social and cultural fields, but also in legal life are also very unique. From various tribe’s various tribes and have their own regional languages. Each tribe has its own customary law that still survives today, so that in the customary law community in South Papua in reality even though state law is applied the principle of legal centralism, customary law is more dominant in regulating community life because it is considered more beneficial to the parties in resolving cases or disputes than positive law. So that the legal concept of implementing customary offenses needs to be resolved by local wisdom based on deliberations that promise to get restorative justice.

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