

Sustainability of Rejang's Indigenous Law in Completion of Criminal Acts: Perspective of the Principle of Deliberation

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Abstract— The criminal justice system is a method chosen by a society, nation, state in resolving violations of criminal law, should be adapted from the culture and civilization of the nation. The method chosen must also occupy the parties, (perpetrators of victims, witnesses, the surrounding community), in the proper place, as an embodiment of the principle of procedural justice. The principle of deliberation and consensus contained in the meaning of the Fourth principle of Pancasila as a feature in the implementation of democracy in Indonesia, It should also be the basis for resolving criminal acts that occur in the community. The Rejang tribe, is the largest ethnic group in Bengkulu Province, most of which are domiciled in Lebong Regency, Rejang Lebong, Kepahyang North Bengkulu, Central Bengkulu and some in Bengkulu City, have their own way of resolving violations of several criminal acts stipulated in the Criminal Code. This article is written based on several studies conducted using empirical legal research methods. The results of the study show that the procession of resolving several criminal acts is carried out in several levels, namely at the family level and at the level of "Kutei". The completion of several criminal acts is carried out in stages, namely the first stage, pre-trial (reports from residents to the village head / *Ginde* / *Depatei*, which later by the village head / *Ginde* / *Depatei* reports to the customary functionaries / customary instruments and *syarak*, which then determines the deliberation day. In the second stage, there is a prescribed day of deliberation / deliberation conducted by the opening of the session by the customary chairperson, then the submission of the Position Case, followed by examination and question and answer with victims of witnesses and perpetrators, after being considered sufficient, the customary leader together with community leaders and devices *syarak* conducts deliberations to make decisions about the case including determining the number and type of customary reactions that must be carried out by the perpetrators or victims or their families and surrounding communities. After that, the customary apparatus returned to the consultative assembly to announce the deliberation decision. The third stage was held a traditional ceremony to carry out the decision.

Keywords— *Criminal Act; Criminal Law; Customary Criminal Law; Deliberation Principle*

I. INTRODUCTION

Currently, there has found a development of the regulation in the criminal justice process. The criminal justice process is not only carried out through the court but can also be done outside the court. The juvenile justice system Act recognizes the term diversion as a way of resolving criminal violations committed by children. Article 1 number 7 of Law no. 11 of 2012 explains why diversion is. "The transfer of the settlement of the case of the Child from the criminal justice process to the process outside the criminal justice". In line with this matter, in the field of investigation in general criminal acts, changes in case handling are also possible in accordance with the Telegram Letter of Head of Criminal Investigation Agency No: STR/583/VIII/2012 on August 8, 2012 about the Implementation of Restorative Justice, which is the basis of investigators in the resolutions of criminal cases with restorative justice, until the National Police Circular Letter No. 7 of 2018 (SE/8 /VII / 2018 on July 27, 2018) appeared on the Implementation of Restorative Justice in the Settlement of Criminal Cases. The Police Chief's circular regarding Restorative Justice is then used as a legal basis and guidelines for investigators and police investigators who carry out investigations, including as guarantees of legal protection and

control oversight, in applying the principles of restorative justice in the concept of investigating and criminal acts in order to aim the public interest and a sense of community justice, so as to achieve a universal understanding and implementation of restorative justice in the environment of Police of Republic of Indonesia.

Dispute resolution/customary violations/criminal acts carried out outside the court is a common thing that has been existed even before Indonesia was proclaimed, even long before Indonesia was invaded by the Dutch.

Customary court is a procedure that applies according to customary law in examining, considering, deciding and resolving a case of customary error. Customary law does not recognize police, prosecutors, courts, and prisons. The task of prosecution, prosecution, and justice is carried out by the customary *prowatin* program assisted by young people. The judicial system is conducted by a *prowatin* assembly which deliberates in a customary *hall* or at the house of customary head. The resolution's decision was taken on the basis of deliberation and consensus unanimously by a panel of judges, consisting of village leaders who were well aware of the situation of the population and their indigenous people.¹

¹ Nurnaningsih Amriani, *Alternative Mediation of Civil Dispute Resoluition in Courts*, Rajawali Pers, Jakarta, 2012, page. 106.

Today, the resolution's mechanism outside the court which is based on norms and procedures formulated in customary law is still being conducted by the Rejang community in Bengkulu Province. Rejang Customary Law has started to become a legal expert's attention since 1783 when the publication of the book *History of Sumatra* by William Marsden. William Marsden emphasized that: "The tribe of Rejang, Aceh Ancient of Malay, Lampo, and Minangcabow, Batak"². " Rejang's customary law territory is included in the fourth order of customary environment (South Sumatra) with a branch of legal environment A. Bengkulu (Rejang)". Today, the Rejang Tribe has spread and immigrated to the Enggano region, Lampo, Pasemah, Pubutan, Rawas, Rabangan, Sameduyan in South Sumatra³. Whereas in Bengkulu Province, the Rejang domiciled dominantly in 5 out of 9 Regencies and 1 city, which are Lebong, Rejang Lebong, Kepahiang, Central Bengkulu, North Bengkulu, and Bengkulu City.⁴

The research about the norms and procedures for the customary resolutions towards violations in Rejang society especially performed in 2004 at the Rejang Lebong, has been now divided into three Regencies, such as; Lebong Regency, Rejang Lebong Regency and Kepahiang. Identifying several norms of customary law, including those related to decency, which are; *bemaling*, *menebo*, *sumbang*.⁵ Recent research regarding to customary law of Rejang in Central Bengkulu has found that there are some definitions of customary legal norms related to social ethics, such as; *Mengaem*, *Bemaling*, *Sumbang*, *Menebo*, *Praktek Salah Kripak Bido*, *Geduk Calen atau Kerap Gawi*, *Nyeleweng*, *Berzina Kering*, *Kinyiak Mediak*, *Upeak tuei*, *Menea Uleak Kidek*⁶.

In general, it can be seen that customary law is still well-known by the rejang community in Bengkulu Province. The up-coming challenge would be whether the customary law norms are still firmly upheld in social life of rejang community, especially in several places in Bengkulu Province.

II. RESEARCH METHOD

The data in this article is obtained from a number of empirical legal studies carried out on rejang community both since 2004 in Rejang Lebong Regency (Lebong, Rejang Lebong, Kepahiang) and Central Bengkulu Regency in 2018.

² Marsden, William, *History of Sumatra*, London. 1783. MDCCLXXXIII

³ Sidik, Abdulah. *Customary Law of Rejang*. Balai Pustaka District Court, Jakarta, 1986.

⁴ Feri Van Dalis, "Mengulang Kembali Secara Singkat Sejarah Suku Rejang", uploaded on February 8th 2018 from <http://reportaserakyat.com/umum/mengulang-kembali-secara-singkat-sejarah-suku-rejang/>

⁵ Herlambang, et al. the development of the 'Kutei' traditional deliberation model in the context of compiling the rejang customary criminal law as a guideline for the use of law enforcement discretion in the criminal justice process in Rejang Lebong district. Competitive Grant Report 2004

⁶ Reska, Herlita erike and Herlambang. "Inventory of Customary Violations relating to Crime of Decency on Rejang Communities in Bengkulu Tengah Regency. FH UNIB, 2018

III. RESULT AND DISCUSSION

A. NORM AND SANCTION OF REJANG CUSTOMARY LAW

Some norms of customary law that can be identified regarding to decency are:

1. *Bemaling* (equivalent to Article 332 of the Criminal Code)

Bemaling is a norm related to the actions of a man carrying a woman away without coercion (voluntarily) with the intention to marry without permission from her parents, which is carried out in certain procedures, such as:

- Before leaving with the intention to get married, the men leave a sign or message in the form of a *kris* wrapped in a sling which can be formed as a *headgear* (*Selepeak cuk ulew*) to the parents / relatives of the female party, and a message informing them of their departure and their destination go and where they go.
- The destination of the two couples must go to the home of their parents or close family member.
- Both partners did not commit disgraceful acts during the flight.
- Parents or close relatives or male kutei should treat properly the woman who was taken away (treated properly as a bride) and given a special place along with her host and must be separated from the man who escaped (to avoid despicable acts occurred).

Bemaling is usually only done by respected people, both social status and economic status in a particular village and the women do not come from one village, or must come from another village. The men who went *bemaling* girl must be able to fulfill all requests of women parties (*bald kinei*), both with regard to the cost of the event, as well as customary conditions and penalties inflicted upon him.⁷

2. *Menebo* (equivalent to Article 328/330 of the Criminal Code)

Menebo is a norm in customary law related to the actions of a man taking a woman away without the permission or knowledge of the parents or family and community of the woman he carries, either with the willingness or coercion of the woman, with the aim to married or not to get married or to do despicable and unknown acts of destination. Without leaving any message or sign to the woman's parents or kutei, and creating feelings of dislike for the community where the woman is domiciled⁸.

3. *Sumbang*

Sumbang is a norm of Rejang customary law which related to the presence of someone who commits an act of a moral or prejudiced that there had been acts a moral or acts that are not feasible or not worth doing in view of the public, with regard to the relationship of men and women, who are not married, who are both still related (family with siblings and step-sisters, son-in-law and parents-in-law, between brothers and sisters-in-law of different types, between children

⁷ Herlambang, (et al), " Inventory of Rejang Customary Institutions in the Context of Compiling the Rejang Customary Law", downloaded on 8 February 2018 from <http://repository.unib.ac.id>

⁸ *Ibid*

and parents of different types). Unmarried men and women are sleep together. If the act of immorality is occurred between those of different types still have third-degree blood relations (one grandmother), then it is often referred to as *Sumbang Mecoa Tumbang*. If the relationship between the two is one grand-grand-grand parents (grandmother's father), then it is called *Sumbang Ngebeu*. If the relationship between the two is one *muning* (paternal father), then it is called *Sumbang Mecoak Koon*.⁹

Today in Bengkulu Regency, the norms of the Rejang beming and menebo customary law norms are still known and enforced when acts occur in accordance with these norms. In addition to these norms, there are a number of customary legal norms that can be identified in Central Bengkulu Regency, such as:

- a. *Melanoi* is a traditional violation carried out between young people who visit the residents' homes, whether the villagers or not, until late at night. The act was deemed inappropriate and it was feared it would lead to a bad thing.
- b. *Praktek Salah Kripak Bido* is a form of violation committed by a man who intentionally or unintentionally commits an unpleasant act towards a woman, who is either a girl or is married, such as:
 - 1) A man enters a woman's room and the woman does not like, feel objectionable and unhappy.
 - 2) A man is blocking a woman who is going to the river to take a bath and the woman is not happy.
- c. *Geduk Calen* or *Kerap Gawiiis* that if there is a woman without a husband giving birth to a baby. Or a woman who has been married but gave birth to a baby less than nine months and ten days after marriage, and before marriage is unknown that the woman is already pregnant, unless the baby is premature.
- d. *Mengaem* is when a girl or widow is known to be pregnant but she is not *married* yet.
- e. *Nyeleweng* is that if a partner does something wrong, that is having a relationship or having an affair with someone's wife or husband, either secretly or openly, but does not commit adultery.
- f. *Berzina Kering* is an act carried out by homosexual couples, both women and men who are related like a married couple. Regarding the offense of the custom of *Berzina Kering* when it is done by an adult, only one party or both parties are adult sanctions far heavier because adults are considered to have much more mature thoughts and can distinguish between good and bad. Whereas the perpetrators of one or both of the minors were slightly tolerated and the sanctions were lighter because they were considered unstable (regulated in KUHP article 292).
- g. *Kinyiak Mediak* is a woman who has immoral occupation like a prostitute (commercial sex workers), women who have bad habits often commit adultery which has become their livelihood by getting paid, exchanging partners and committing adultery without any marital bonds and unsettling the surrounding community.

- h. *Menea Uleak Kidek* is a person who provides or employs or owns and facilitates a place to make it easier to commit immoral, obscene and indecent acts such as night entertainment venues which contain elements of disgraceful actions leading to adultery and immoral acts.
- i. *Upeak tuei* is the despicable act of watching or showing pornographic videos or objects or paintings and obscene images which are considered to violate the outrage in front of the crowd by young people and adults who cause unrest in society.¹⁰

B. SANCTIONS OF REJANG CUSTOMARY LAW

Customary sanctions are a result of deviant acts in the customary community to force the person to obey the customary provisions in the community. Customary sanctions have the function and role of stabilizers to restore the balance between the natural world and the unseen world. If a violation occurs then the offender is required to make certain efforts aimed at restoring the cosmic balance in the magical power that feels disturbed. The aim is to bring a sense of peace between fellow citizens. Punishment must be fair to convicted suspect, victim, and community, so that disruption, imbalance and conflict will disappear.¹¹

Generally in Rejang customary law, there are some a kind of sanctions that are a reaction to the act of violation of customary law, which distract the social balance in society. The choice to use part or all of this type of sanction depends on the type of act carried out and the philosophy obtained by the community on the implementation of the sanction.

1. Paying the "Wake-Up"

Based on the history, the "wake-up" tradition was dropped to Sinatung Nata who killed Sinatung Bakas, because he wanted to take back his fiance who was run by Sinatung Nata. After Sinatung Nata confessed his murder to Sinatung Bakas and begged him not to be killed, the wise man and the ruling found Sinatung Bakas's corpse at that time determined his sanctions, called, "*Tik sagu Niti Ketipak ketipung labu, lamun kiula mati, bangun kiula duwo geti*". Based on what the wise man said, he began to look at the condition of Sinatung Natak's corpse, and to determine the size of the wake-up, each scar or punch in the body of Sinatung Bakas was affixed with rial money, after counting, the amount obtained was 80 Rials, also called full wake-up. From then on, the full wake equivalent is 80 Rial and if the equivalent wake-up is 40 Rial. Now the number of matching equivalents is relative and between regions gives different figures.¹²

2. Slaughtering animals

The slaughtering of this animal should be in accordance with how weight and quality of the perpetrators of violations of the Rejang norm, usually the type of animal slaughtered is, chicken for the lightest, goat and buffalo. Slaughtering animals

¹⁰ Reska, Herlita Erike, Herlambang. Op.cit

¹¹ Andri Harijanto et.al. *Customary Law*, Unib Faculty of Law Library, Bengkulu, 2007, p. 152 .

¹² Herlambang, 2018. Op.cit

⁹ *Ibid*

is usually part of arbor that must be handed over by the offender to the victim's family. In certain violations, the color of the chicken becomes important, *ayam putih* (white Chicken) call is *monok ceuw*, sedangkan *ayam hitam*, while the black chicken is called *monok cakingan*¹³

3. Arbor

Arbor is divulging type of food that is formed in such a manner and equipped with a variety of additional and at the top there is the roast chicken, to be taken and given to the families of the victims. Whereas *mateak arbor* is an ingredient used to make arbor, rice, sticky rice, brown sugar, coconut, chicken or goat and other spices, which the perpetrator gives to the victim, to be cooked then eaten by all the Kutei residents, when peace is made. *Sapodilla arbor* is sticky rice that is cooked and shaped in such a way, on which are placed grated coconut mixed with brown sugar is smaller than arbor rice¹⁴.

4. Setawar Sedingin

Setawar sedingin is a bargain that used in peace against traditional violations that makes one party injured, consisting of several parts such as, *Sedingin*, which is a type of plant, *setabea*, *pereluwang*, water, mixed in one container (bowl), usually white. The mixed water is splashed into an injured place¹⁵.

C. THE PROCESS OF RESOLVING VIOLATIONS OF THE NORMS OF REJANG CUSTOMARY LAW

1. The Process of resolving violations of the Norms of Rejang customary law "Bemaling"

The resolution of violations of Rejang customary norms, *bemaling* is conducted into several stages which are a series of events that are integral and comprehensive as a process of resolution. Since a *selepeak cuk uleu* was found left by a man who was traveling or there was a message left on one of his close relatives (female's aunts) to be conveyed to a woman's parents found or accepted by the woman's parents, the deliberation process began. There are some steps and process to resolve the problems concerning to this violation, as follows:

- a. The first stage, the female parents reports the events that occur to the head of the kutei and then the head of the kutei gathers a close family of women to hold a family discussion or a female kutei meeting. In the meeting, identification of the man who took the girl away, based on the messages and signs left by the man, after knowing the identity of the man who took the girl away, it was decided in the discussion that the men people assigned to tread. Usually the person who is appointed to tread is a tui kutei woman and also includes aunts or women from close family circles.
- b. *Menapak*, is an event of the departed people who had been determined in a female kutei meeting, traced the departure of her daughter and visited the residence of the

man who took the woman away to ensure the presence of her daughter in the place of the man.

- c. On the other hand, when the man who brought the *bemalinghas* arrived to his parents' house or to his tui kutei's house, the parents of the two men told his boss about the incident. Then a meeting is held to welcome the arrival of a family group or a female kutei who tread, as well as preparing a place and host for women who come along with the groom like a bride.
- d. After the group of kutei or close family of the woman has arrived to the residence of the man who took his daughter away, usually held a discussion between the two kutei. Before the deliberation began, the man slaughtered a chicken called a chicken cock, as a substitute symbol for bloodshed because of the anger of the female kutei to male kutei family.
- e. Deliberation between female kutei and male kutei in the parents' house is usually led by an inner chair in the male area, with the following stages:
 - 1) Deliberation is opened by the inner chairman by presenting *cerano* (betel / areca nut) as an appreciation and welcome to the men.
 - 2) Give a drink of *nyoa sapodilla* (Coconut Serawo and Coconut water).
 - 3) Man's guilty confession and willingness to take responsibility for the burdens and sentences placed.
 - 4) Men are reunited with women who are being rushed and ask that they do not commit disgraceful acts and willingness to be stolen on a voluntary basis, and are encouraged to return to their parents' homes.
 - 5) Usually, the woman does not want to go home before being married to the male running partner. So rarely did the woman go home with her turtle.
 - 6) Negotiations between the men and women will continue, and the woman will deliver the woman's answer to her family and the chair of the kutei in her village.
 - 7) Penalty fines are then imposed on men to be handed over to women delegates who search and find the woman.
- g. After returning home and arriving in the village or at the residence of the woman, a kutei discussion was held to decide whether to accept or reject the desire of his daughter to marry. Usually, if the girl stays at the male residence, the female kutei meeting decides to accept the girl's request. After that, the discussion was continued to discuss the issue of demand (*pitak kinei*) from the women's family in relation to the marriage to be held. In the event that the woman has returned to her parents' house then the deliberation may decide to reject the woman's desire to get married.

The act of a *bemaling* is generally continued with marriage, because before the act of a plot, the man has measured his ability to fulfill all requests (*pitakKinei*) of any size and number of female kutei. It is a shame if someone who is a thief but is unable to meet the *female* family members. As a consequence of the deeds of the pairing propels, the two and their respective curriculum are willing to be sanctioned by the chief of the kutei or village official where they reside. In the event that one party is engaged to another person, the

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

engagement law applies to both. Specifically for women who are engaged, all the fiance's rights must be returned by the man who took him to go to the propeller.¹⁶

2. *The Process of resolving violations of the Norms of Rejang customary law "Menebo"*

The Rejang Menebo customary law is usually completed in stages which are one unit and one stage is a prerequisite for the next stage or a stage is hung at another stage. These stages are as follows:

- a. Both parents or close relatives of the missing woman try to find out the whereabouts of their daughters to their girl friends or are confined to close relatives.
- b. If not found, the woman's parents report the loss of their child to Tuei Kutei.
- c. Tuei Kutei gathered her kutei members to hold a discussion then a kutei discussion was held to find out the problem of the girl's disappearance and to carry out the division of search tasks.
- d. If in the search it is known that the woman is confirmed to have been invited to menebo, then reported to a male kutei. In the case of the two different kutei or different villages, the female kutei told the male kutei. The male kutei calls out to the family of the man who carried the run to inform the deed of his son or family member, looking for the perpetrator's whereabouts.
- e. Kutei both parties and families looking for a partner menebo fled, after discovered then picked up by the second Kutei Tuei and under the return to their homes.
- f. Once known, each Kutei calling the perpetrator's family and the victim to be reconciled and dropped sanksi- sanctions customary to wear¹⁷.

D. THE PROCESS OF RESOLVING VIOLATIONS OF THE NORMS OF REJANG CUSTOMARY LAW "SUMBANG"

The procedure for resolving violations of the Rejang *Sumbang* customary norm has its own uniqueness, because it is different from the normalization of other Rejang norms, where the report is a victim, then violations of this norm are not victims, because in general in violation of this norm the "victims" are kutei citizens where the deed was done. The steps taken to resolve this violation are as follows:

- a. Kutei residents who see or feel uncomfortable with the actions of the perpetrators, generally directly report the matter to Tuei Kutei where the perpetrators reside
- b. Based on the report from the kuteinya members, then tuei kutei calls the perpetrators of incestuous acts, parents or close relatives of the perpetrators to be heard.
- c. In the event that the perpetrators have committed acts of incest, a traditional kutei consultation is held to resolve the issue.
- d. The perpetrators are placed as people who must accept the results of the customary kutei deliberations.

¹⁶ *Ibid*

¹⁷ *Ibid*

- e. Kutei culture meetings can be attended by village officials if it is deemed that the act has damaged the order and / or polluted the village as a whole. In general, the actions carried out not only violate the courtesy and the feasibility of social life but have led to acts of immorality, such as extramarital relations.¹⁸

E. THE PROCESS OF RESOLVING VIOLATIONS OF THE NORMS OF CONTEMPORER REJANG CUSTOMARY LAW THAT IS RELATED TO SOCIAL ETHIC IN CENTRAL BENGKULU REGENCY

The settlement of customary violations, especially for acts that violate customary related to decency, has now become simpler. The results of research on the settlement of violations of customary law norms at this time (2018), especially in Central Bengkulu Regency. All types of customary violations related to decency that can be identified in Central Bengkulu Regency, are resolved by certain procedures and procedures.

- a. *The first stage*, in the event of a violation of one of the norms, either due to a community report or a report from one of the perpetrators 'or victims' families, the customary violation is reported to the hamlet head.
- b. *Second Stage*, the hamlet head informs the village head (Depatei) and the customary apparatus, including the syarak device, the violation of the custome and asks the customary apparatus and the solution to solve it.
- c. *Third Stage*, the customary apparatus consisting of (village head, *BPD* chair, customary head, priest) deliberates to determine the time when the customary consultation takes place to resolve the customary ceremony.
- d. *Fourth Stage*, the implementation of the traditional session. At the stipulated time, the customary apparatus conducts a customary hearing by presenting the perpetrators and / or reporters along with the families of both parties. The traditional assembly is carried out with the following procedure;
 - 1) Opening of a hearing. The customary apparatus chaired by the customary leader opens a hearing.
 - 2) The hamlet head tells about the location (Position Case) of the act carried out by the perpetrator / victim who is considered to violate the customary law.
 - 3) The hearing requests information from the perpetrators, victims, witnesses and their families
 - 4) Deliberation custom devices to determine the reaction will be taken to complete the customs offense.
 - 5) Determination of the customary court's decision in front of the customary court assembly
 - 6) Closing of the hearing
- e. Implementation of customary sanctions.

It is conducted in a gathering banquet, which usually begins with *pengatar* of the prince syarak (priests) about the purpose of the banquet by reading out the verdict traditional siding and fulfill the ruling, which ended with a prayer safely.

¹⁸ *Ibid*

Visualization of the Stages can be seen more clearly in a flowchart as illustrated as on Figure 1.

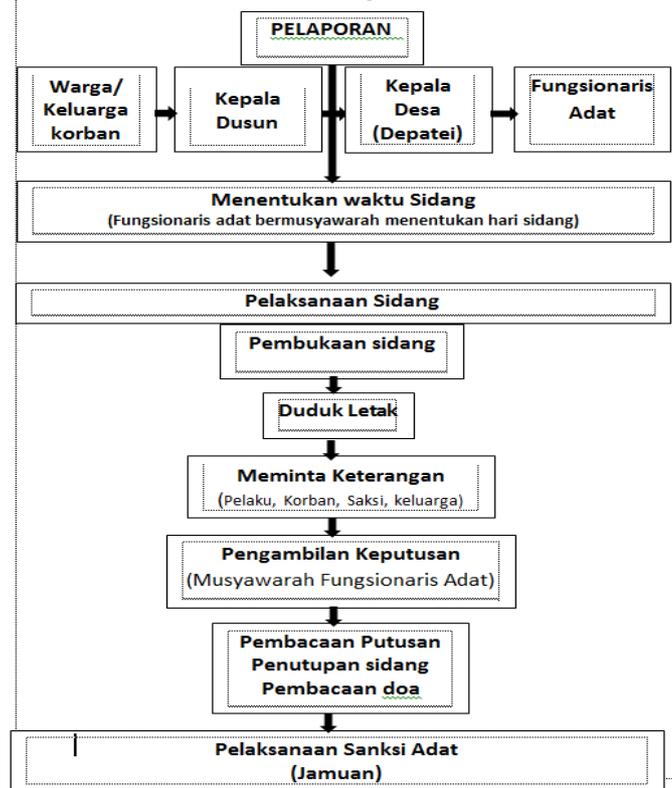


Figure 1 Process and Steps on Resolving Criminal Cases in Rejang Customary Law

IV. CONCLUSION

The results showed that some customary law norms regarding morality were still recognized by the rejang community both in Rejang Lebong Regency (Lebong, Rejang Lebong and Kepahiang) and in Central Bengkulu Regency, such as; *Mengaem, Bemaling, Sumbang, Menebo, Praktek Salah Kripak Bido, Geduk Calen* atau *Kerap Gawi, Nyeleweng, Berzina Kering, Kinyiak Mediak, Upeak tuei, Menea Uleak Kidek*.

Violations of the Rejang customary law norms cause a reaction from the reorder community where the violation occurred. The reaction to violations of the customary law norms of the regime regarding morality has changed.

Process of resolving violations of customary law norms relating to decency especially in Central Bengkulu Regency has undergone a simplification, which consists of the reporting stage, the stage of determining the day of the trial, the stage of the implementation of the hearing, and the stage of implementing customary sanctions.

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