

# Settlement of Criminal Cases Through Customary Institutions Using the Concept of Restorative Justice

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**Abstract**—The customary law community prioritizes dispute resolution through discussion that aim to bring about peace in the community. The discussion is the first choice used by the customary law community in resolving disputes, because in the discussion a peace agreement can be made that benefits both parties. The purpose of this study was to determine the form of settlement of criminal cases through the Melayu Customary Institution with the concept of Restorative Justice in *lipat kain of Kampar Kiri*. This type of research is sociological juridical with emphasis on field research, this research is descriptive, because it intends to describe the reality under study clearly and systematically. Legislative power in the customs of *Andiko Nan 44*, namely the *Niniok Mamak* density consultation, which starts from the density of the internal level of the tribe, country, region and State/Government of *Andiko Nan 44* and the results of this density decision will be carried out by the community itself to regulate themselves by following the law and predetermined laws. The executive power is *niniok mamak* or ruler himself, whereas the ruler who carries out the law, he also makes laws that are determined later on through density, he also acts as a holder of judicial power to run a trial on a case on the basis of the report and he has the right to give legal advice or customary rules in order to enforce the law and other laws, but *Niniok Mamak* cannot give a decision without consultation/trial to be proven by witnesses and make decisions in order to achieve justice. So with the conclusion that every decision should not be made without deliberation in *Indigenous Andiko Nan 44*.

**Keywords:** *criminal cases, restorative justice*

## I. INTRODUCTION

Customary law in Indonesia has unique characteristics and features that are different from other laws. Customary law is able to meet the needs of communities that are religious functional so that customary law fulfils a social function or social justice [1]. As such, the community and its members carry out these normative commands without seeing them as coercion but because they assume that the commands are as such (deserved) [2].

Acts of civilization and modern way of life, apparently not able to eliminate the customs that live in society, which is seen in the process of advancing times is that these customs adapt to the circumstances and will of the times, so that customs

become eternal and remain fresh. Customary law is a law that grows in Indonesian society, its form is in the form of legal rules that arise and grow in and are caused by the association of human life. So the whole rules of customary law arise in the dynamics of human relations, in the form of human life relationships [3].

Customary law community is an organized human unit, settled in a certain area, has rulers and has wealth, tangible and intangible, where members of the unit each experience life in society as a natural thing according to nature and no one among the members have a mind or tendency to open the bond that has grown or leave it in the sense of releasing that bond forever [4].

Indigenous and tribal peoples prioritize dispute resolution through deliberations aimed at bringing about peace in the community. The deliberation channel is the main route used by the customary law community in resolving disputes, because in the deliberations a peace agreement can be made that benefits both parties. The parties forgive one another and are not in a hurry to bring disputes through the state court, so that good and harmonious relations between the parties are maintained, because in essence the balance sheet in a society that is disrupted by disputes or disputes can be restored to its original state.

The judiciary as a litigation institution becomes the final choice if dispute resolution cannot be resolved by consensus agreement. As an operational basis in the life of the Indonesian state law, in terms of dispute resolution realized in Undang-undang No. 30 Tahun 1999 concerning Arbitration and Alternative Dispute Resolution, as well as Undang-undang No 48 Tahun 2009 concerning Judicial Power which justifies the way of dispute resolution by a compromise approach or deliberation for consensus, one of which is through mediation procedures. It can be emphasized that the compromise approach or consensus agreement aims to find common ground between different interests until an agreement is reached [5].

The concept of Indonesian traditional law as a forum for customary justice institutions also has a concept that can be described as the root of restorative justice. In Indonesia, the characteristics of customary law in each region are generally very supportive of the application of restorative justice. This

can be seen from the general characteristics of the views on violations of adat/ adat offense as well as the model and method of settlement it offers Indonesian customary law. Restorative justice is an ideal about justice that assumes the generosity, empathy, supportive and rationality of the human soul, through group counselling involving victims and perpetrators, so that the vision is always based on values that care for individuals [6].

Restorative justice is a criminal justice design that takes into account the interests or needs of victims, families and communities who are affected on the basis of the responsibility of the perpetrators of crime. Thus, criminal justice is not solely aimed at punishing or holding perpetrators accountable, but the needs or interests of victims receive balanced attention in the judicial process that can be confirmed through court decisions.

Stuart M. Widman formulates criminal mediation as a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute, a process in which the mediator facilitates communication and negotiation between the parties to assist them in reaching agreement voluntarily regarding their dispute [7].

Communities in the Lipat Kain Kampar Kiri are committed to making a civilized society, where all the behaviours of all components of the community must be based on logical thinking that is intelligent, and respect and uphold the values of customs that are embraced and apply in the Kabupaten Kampar community, including also in the case of settlement of cases occurring within the community based on local customary law which is believed and based on applicable customary law. The problem in this paper is how is the form of settlement of criminal cases through the Melayu Customary Institution with the concept of Restorative Justice in the Lipat Kain Kampar Kiri Kabupaten Kampar.

## II. METHODS

The sampling method is Purposive Sampling. This type of research is sociological juridical with emphasis on field research. The sociological juridical approach is carried out because the problem under study revolves around how the application of law in society. Judging from its nature, this research is descriptive, because it intends to describe the reality under study clearly and systematically.

Data obtained by document study techniques in the form of seminar results, research results and literature that have relevance to the object of research and interviews, namely to those who are considered competent and authorized to answer the problem. Data obtained through this study were analysed using qualitative juridical methods, searching for living and unwritten laws.

## III. RESEARCH RESULTS AND DISCUSSION

The customary head in all his actions and in holding the custom he always pays attention to changes. The existence of legal growth, so that under the leadership and supervision of the traditional head is very important is the work in the field or as a village peace judge. If there are disputes or actions that are

contrary to customary law, the customary head acts to restore adat peace, restore balance in the village atmosphere and restore the law.

The function of the customary head in the community is not much different from the function of customary law because the function of the customary head in the community is as follows:

- Providing guidelines to community members, how they should behave in social life and is the basis of such behaviour is normative habits namely adat and adat law.
- Maintain the integrity of the community in the community, so that the community is maintained and not damaged by various actions of community members that are not in accordance with adat and customary law.
- Providing guidance to community members to establish a social control system. The social control is more a supervision of community behaviour so that community life can be maintained as well as possible.
- Paying attention to each of the decisions stipulated in customary law, so that the decision has the authority and can provide legal certainty that is binding on all members of the community.
- Is a place where community members rely on to resolve, protect, guarantee peace, so that whenever there is a dispute the customary head is the only place where community members rely on to solve the problem. If investigated the role of customary leaders in the community indeed many ask for the involvement of customary leaders to solve problems, both those related to life problems or those related to death. But more importantly the role of the customary head is to maintain the balance of the environment with each other, so that in society there will be harmony and peace.

The existence of a leader is highly respected and respected, the leader is a figure who has considerable influence on the community, so the role of the leader in mediating any disputes and problems that occur in the community is quite large, the figure of the head is a leader who has a high enough authority in the eyes of the people of Lipat Kain. Therefore, every problem often involves the headman in an effort to solve it, this is what makes the atmosphere of adat deliberations still very thick and the traditional values are still felt in Lipat Kain communities.

Indigenous peoples in the area of Lipat Kain, always prioritize deliberation in every activity, especially in matters relating to the resolution of disputes or disputes, so that every problem that occurs in the community always involves the role of the leader in its resolution, this is a reflection of the customs that they had previously applied, where every dispute always uses peace efforts with mediation and is followed by customary sanctions that must be met by actors who have violated customary provisions. This customary sanction is highly valued and its implementation is also monitored, so that it makes the community comply with every applicable sanction and customary provisions. Therefore, it can be understood that the headman as the head of the village and as the organizer of the

government has an important enough role for the creation of peace efforts in the resolution of disputes that occur in the community, one of which is through the resolution of criminal cases with mediation of the penalties.

Penal mediation is closely related to the idea and transfer policy that is used as an instrument to handle light cases and not for severe cases. Penal mediation is more focused on the mistakes made. In mediation involving both parties, so there is a joint explanation of the existing problems. Penal mediation aims to make the perpetrators aware that the crime committed was wrong and also to realize that the victim needs to be compensated or restored his rights due to acts committed by the perpetrator. When connected with the definition of punishment, in essence criminal mediation is also as a deliberately burdensome and hurtful imposed on the offender for the criminal actions he has committed.

In mediating penalties, the highest justice to be achieved is the agreement of the parties involved in the criminal case, namely the perpetrator and the victim. Both are expected to find and achieve the best solutions and alternatives to resolve the case being faced. Through mediation of penalties, judicial philosophy is fast, simple and low cost can be achieved compared to the settlement of cases based on the components of the criminal justice system.

Penal mediation is essentially in accordance with the paradigm of modern criminal law which is no longer oriented towards retributive or retaliatory aspects but rather emphasizes corrective, rehabilitative and restorative aspects. Corrective related to the wrongdoers that must be corrected, while rehabilitative is in order to improve the perpetrators so they no longer repeat their actions in the future. Whereas the restorative focuses on the recovery of victims of crime. Restorative justice is a process where all victims and the offender in a particular offence get together to negotiate the offence and its implications in the future [8].

Although in general the settlement of disputes out of court only in civil disputes, but in practice often be solved criminal cases out of court through the discretion of law enforcement agencies or through consultation mechanisms / peace or remission of existing institutions in society (family council meetings and consultation, deliberation customs). The existence of the penal mediation as an alternative for settling disputes in the field of criminal law through restitution in criminal proceedings shows that the difference between criminal and civil law, and the difference is not so big it does not function [9].

The restorative justice approach is a paradigm that is used as a frame of the strategy of handling criminal cases aimed at answering dissatisfaction over the operation of the existing criminal justice system, where the conventional criminal case settlement process is very complicated, takes a long time to arrive at a decision by a judge, even not necessarily get the justice or satisfaction expected by litigants.

Restorative justice processes, as forms of best practice, are typically those that involve the direct participation of victims (with the caveat of using a 'surrogate' if desired). This approach can be understood to position victims as 'active agents' rather than 'passive objects' of justice processes [10].

Resolution of criminal offenses with mild motives can be achieved with mediation of the so-called restorative justice approach, which emphasizes the direct participation of perpetrators, victims and the community by interpreting criminal acts as basically attacks on individuals and the community and social relations, so justice is interpreted as a search for problem solving what happens in a mildly motivated criminal case with the involvement of victims, the community and perpetrators becomes important in the efforts to repair, reconcile and guarantee the continuity of the improvement effort.

#### IV. CONCLUSION

The head of the community in the Lipat Kain Kabupaten Kampar is a place where community members rely on to resolve, protect, guarantee peace, so that whenever there is a dispute, the customary head is the only place where community members rely on to solve their problems. The role of customary leaders in the community is needed to solve problems, maintain the balance of the environment with one another, so that the community will continue to create harmony and peace.

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