



Dysfunction of the Role of State Law in Crime Resolution in West Manggarai Society

Syamsuddin Syamsuddin

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir. Sutami No. 36, Kec. Jebres, Kota Surakarta, Central Java, Indonesia, 57126
syamsuddin@student.uns.ac.id

Hartiwiningsih Hartiwiningsih

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir. Sutami No. 36, Kec. Jebres, Kota Surakarta, Central Java, Indonesia, 57126
hartiwiningsih@staff.uns.ac.id

Muhammad Rustamaji

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir. Sutami No. 36, Kec. Jebres, Kota Surakarta, Central Java, Indonesia, 57126
Muhammad_rustamaji@staff.uns.ac.id

Abstract— This article is going to explain the urge of the West Manggarai community to prioritise the use of living law over state law when solving crimes that occur in the West Manggarai community. This paper will examine why state law is ineffective in resolving crimes in the society of West Manggarai and the legal impact of crime settlement through the Tu'a Golo Customary Institution in the context of Indonesian criminal justice objectives. This method of writing employs non-doctrinal methods with an interdisciplinary, a cultural, and a legal pluralism approach. The results shows that, first, the dysfunction of the role of state law is caused by dissatisfaction and mistrust of the community towards state legal mechanisms that appear formal and procedural, complicated, and do not provide a sense of justice and peace for the community. Second; Criminal violation cases are resolved under the Tu'a Golo customary institution coherent with Indonesian Law, including reflecting the value of responsibility, the value of peace/tranquilly of the parties (perpetrators and victims), the justice value and utility, and bring legal certainty. Thus, not all criminal cases should be resolved through state legal mechanisms that require perpetrators to be incarcerated, but also through customary law mechanisms that emphasise recovery in order to create social harmony.

Keywords— *Crime; Dysfunction; Law; Settlement*

I. INTRODUCTION

Indonesia recognizes the existence of a criminal law settlement mechanism based on the Criminal Procedure Code (CPC). has not yet answered the needs of victims and perpetrators, whereas the current orientation and tendency of contemporary criminal law is not only directed at the offender (offender oriented) but also accommodates the needs of victims (victim oriented) including the community. Therefore, according to Mardjono Reksodipoetro.[1] Through a case resolution mechanism that is carried out based on the provisions of criminal law, it is hoped that the community will get justice. The use of an individualistic and formal criminal justice system is considered unsatisfactory by the public, giving rise to various alternatives to criminal dispute resolution that are easier, faster, and more reliable while protect the human rights and restore the economic loss. Alternative dispute resolution or out-of-court dispute resolution also known as Alternative Dispute Resolution (ADR) or non-litigation settlement.

ADR use to resolve disputes with cooperative manner in order to reach win-win solution. The advancement of dispute resolution options in the United States has been motivated by a desire to reduce judicial backlogs, the incorporation of citizen independence in the way cases are handled, the facilitation and expansion of access to equity, and the provision of opportunities to reach conflict resolutions that create happiness that can be obtained and relieved by all parties.

ADR will try to find solution that reflects the interests or needs of all parties. In the United States, the development of alternative dispute resolution is driven by the need to reduce the backlog of cases in the courts, the participation of community autonomy in the dispute resolution process, the facilitation and expansion of access to justice, and the provision of opportunities for achieving dispute resolution that produces acceptable satisfaction and satisfies all parties.[2] In Indonesia, the ADR concept is implemented peacefully through consensus deliberation, but its legal foundation is found in the Criminal Procedure Code; as a result, its implementation is considered arbitrary and unlawful because it has no basis in criminal law. Nonetheless, settlement through the mechanism of peace in the form of consensus is still practised by some Indonesians, particularly in the community of West Manggarai Regency, where the nuances of the laws that govern the community are more pronounced.

In the legal tradition of the West Manggarai community, there is a tendency for people to prefer and prioritize solving crimes using the laws that live in the community compared to state law. Every crime that occurs, especially minor crimes, is rarely resolved through the mechanism of state law, the community entrusts the settlement of crimes through the mechanism of customary law so that the role of the customary institution known as Tu'a Golo is so dominant and strong, overriding the role of state law. Tu'a Golo itself is an elder in the village or a leader at the village level who is tasked with leading and managing various customary affairs in the village, [1] including resolving community legal cases/disputes both civil and criminal.

Tu'a Golo customary institution have the role to resolve community cases or crimes is so dominant that in the tradition of the West Manggarai community it can be said that state law is dysfunctional. Dysfunction means that State law does not function as it should. In this case, state law can no longer control people's behavior so that social life does not run in an orderly manner. Apart from that, state law is also considered unable to be used to resolve conflicts that occur within social groups. The issue of the dysfunction of the role of state law certainly reflects the loss of public trust in the state law enforcement mechanism which is seen as failing to bring convenience, peace, justice, and provide benefits to the people in dispute so that the community believes more in the role of customary institutions as a channel for resolving various cases or disputes that arise in the midst of community life. Furthermore, the problems that will be discussed are: a) Why does state law experience dysfunction in crime resolution in West Manggarai society? b) What is the legal impact of crime resolution through the Tu'a Golo Customary Institution in the perspective of Indonesian criminal justice objectives?

II. LITERATURE REVIEW

The law enforcement process is an effort carried out by the government to ensure that the rights of its citizens are not violated, which is an urgent need. As social creatures, humans cannot live alone. In other words, the need for social interaction that must be met can lead to prolonged societal conflict. Based on these considerations, society needs the government to be present as law enforcement officers who ensure everyone has the same rights to be respected. This effort is a means for the government, whose aim is to ensure a peaceful life in society. By enforcing applicable laws, society can live side by side peacefully and orderly.

The effectiveness of law enforcement efforts then needs to be evaluated to realize the objectives of law formation. Indicators can be used in Lawrence M. Friedman's theory to understand where the weaknesses and strengths of the law enforcement process are in place. In this theory, the analysis must be based on the substance of the law enforced by the government as a basis for understanding the boundaries of actions that are permitted and prohibited according to the applicable legal rules. Apart from that, further review must be carried out on government agencies with the authority to implement these legal regulations. The success and failure of the public policy implementation process will be significantly influenced by the skills of the legal structure tasked with carrying out the mandate of statutory regulations. Finally, the effectiveness of a law will be influenced by the legal culture of the local community.

Legal culture is a part of culture in general. However, legal culture, in particular, will shape people's logic in responding to policies implemented by the government and when they have to resolve problems in their community. Citizens' rational choices in responding to these problems cannot be separated from the influence of the legal culture formed in their environment. Thus, implementing a policy nationally will vary significantly in results. All of this depends on the implementor's ability to innovate so that society can accept the restrictions imposed by the government.

III. METHOD

This writing is empirical or non-doctrinal legal writing using primary data. The classification of this type of research into empirical or non-doctrinal legal research, refers to Soetandyo Wignyosoebroto who conceptualizes law not merely as positive norms or judges' decisions, but law is also conceptualized as a form of institutionalized social behavior patterns and the symbolic meaning of social interaction of society.[3] The research use some approach, such as: interdisciplinary, cultural, and legal pluralism approach.[4] The research location was conducted in the community of West Manggarai Regency, East Nusa Tenggara Province. The types and sources of data used are primary data, namely data obtained and taken from various sources through direct interviews. The

data analysis technique used qualitative analysis in which legal materials are described comprehensively in the form of clear, logical and non-overlapping and effective sentences.

IV. DISCUSSIONS AND RESULTS

A. Dysfunction of the role of state law in crime resolution in West Manggarai Society

Legal development is carried out to provide a sense of security, justice and certainty for all citizens. The law tries to regulate the various interests of every human being in community life so as not to clash with the interests of other individuals or with the public interest, by determining an act in the form of orders, prohibitions and permits accompanied by threats of sanctions for those who violate it.[5] Based on the standards of effectiveness of a law put forward by Friedman, the legal implementation process should be used to resolve conflicts that occur in society.[6] In carrying out its function as a means of resolving conflicts or disputes, the law acts as a guide for people who are in dispute in resolving their disputes based on applicable regulatory provisions, accompanied by strict sanctions for violators. Thus the law has a role to invite people to act or behave correctly according to statutory regulations so as to create peace in life together.[7]

The main problem faced by the law is bad behavior or actions. It is said to be an evil act if an act is considered detrimental to society or individuals both materially, for example; stealing, killing, robbing, raping and so on. Paul Moedikdo Moeliono explains that crime is an act of violation of legal norms that is interpreted or should be interpreted by society as a detrimental, annoying act that should not be tolerated.[8] Meanwhile, from a sociological aspect, crime can be seen from the opinion of R. Soesilo who said that crime includes all human behavior even though it is not determined by law, but by members of the community it is felt or means that the action has the potential to hurt someone's feelings or economic condition. This clearly violates the standards of moral truth that apply in society.[9]

In the normative and sociological point of view, crime is seen as a behavior that disturbs and harms society so that it must be prevented and eradicated so as not to cause public harm. One of the ways to deal with crime is through the mechanism of official state law by means of strict application of punishment, through a series of stages or processes of investigation, investigation, prosecution, trial to the implementation of criminal decisions that have the force of law. Law enforcement is a guarantee that repressive actions carried out by authorized officials are following applicable regulations. This condition is essential to ensure law enforcement officers do not carry out violence arbitrarily.[10] Moreover, Herbert L. Packer explained that the effort to control crime by using punishment on someone committing a violation of criminal law is an important effort to maintain legal certainty and protection.[11]

The process of criminal law enforcement in Indonesia is organized in a system known as the criminal justice system, including the stages or processes of investigation and investigation, prosecution, trial to the implementation of criminal decisions or execution, involving law enforcement officials or institutions including; police, prosecutors, advocates, courts, and correctional institutions as regulated in CPC Act. Enforcement of criminal law through official state institutions has caused boredom and pessimism in the community, considered too formal procedural and various other complaints. The problem of law enforcement is seen from selective, giving rise to assumptions as if official state law enforcement is sharp down and blunt up. the practice of criminal law enforcement seems to be experiencing an acute problem, which has become a culture. This can be seen when the law is reduced to procedural issues alone, without looking at other aspects.[12]

Such conditions of criminal law enforcement have caused public distrust, so that people have another tendency not to resolve various legal cases through official state legal instruments. It is interesting that most people in West Manggara Regency rarely use official state law in resolving their legal cases, they are more likely to entrust and prioritize local customary institutions known as the Tu'a Golo Customary Institution. Tu'a Golo itself is an elder in the village or a leader at the village level who is tasked with leading and managing various customary affairs in the village [13] including resolving any legal proceedings that occur in the community.

According to H. Ramang Ishaka (Interview result, July 31, 2023, 17.30 Wita in west Manggarai regency) as the Functionalist of Adat Nggorang of West Manggarai Regency explained that the legal habits of the people of West Manggarai have been that when litigating, they prioritize the Tu'a Golo customary leader as a place to resolve conflicts, both civil cases and criminal cases, especially minor crimes such as maltreatment, theft, abduction of girls, fights, and the like. Misdemeanor cases are rarely resolved through official state legal mechanisms. The existence and position of the customary leader (Tu'a Golo) for the people of West Manggarai from the past until now has an important role for the survival of the local community. In fact, if there is a complaint or report from the community regarding alleged criminal acts reported to the police, without passing through the customary stakeholder (tu'a golo), the legal process will not be followed up and will be returned to the local customary stakeholder (tu'a golo) to be resolved first through customary mechanisms.

This is reinforced by Muhammad Imran as an Investigator of the West Manggarai Police (Interview result, August 1, 2023, at 14.30 Wita in Kabupaten Manggarai Barat) explaining that specifically for minor crimes reported by victims so far, investigators usually confirm in advance the local customary leader (tu'a golo) about the case they receive, whether the case has been tried by the customary leader (tu'a golo). If the case has not been

heard by the adat leader, then the case is handed back to the adat leader to be heard, or if it has already been heard then the investigator asks for approval or some kind of recommendation from the adat leader (tu'a golo) so that the case can be processed further by the police investigator.

Although the position and role of the local customary institution has been legitimized by the West Manggarai community, the local community does not seem to believe that official state institutions are able to provide peace and justice for the disputing parties so that the role of state law has been ignored. The same thing was explained by Theo Urus as the customary leader (Tua Golo) of Lancang, Wae Kalambu Village, West Manggarai Regency, East Nusa Tenggara Province. (Interview result, July 31, 2023, at 14.00 Wita in Kabupaten Manggarai Barat) Explains that the community considers customary resolution to be easier and simpler than the state legal mechanism which seems complicated and the process is long.

According to the author, the tradition of legal settlement of the West Manggarai community that prioritizes the role of local law and local customary leaders reflects the neglect of state law or the role of state law experiencing dysfunction in resolving legal conflicts in the West Manggarai community. Various efforts to prevent and control crime by the state through officials or agencies of the police, prosecutors, courts and correctional institutions show unsatisfactory results, and there is even a tendency for the number of crimes to increase in some areas, both in quality and quantity.

B. The legal impact of crime resolution through the Tu'a Golo Customary Institution in the perspective of Indonesian criminal justice system.

Impact can simply be interpreted as the influence or effect of both positive and negative impacts. Furthermore, what is meant by legal impact in this paper is the positive impact arising from the mechanism for resolving legal cases by the Tu'a Golo customary institution. Settlement of criminal cases through the Tu'a Golo traditional institution is a legal process that has the same objective as the implementation of the CPC in Indonesia. The objectives of criminal law according to Mardjono Reksodiputro [14]:

- a) Minimize the incidence of crime victims that come from the society;
- b) serve as a guide for efforts to resolve conflicts;
- c) prevent the recurrence of crimes.

Prevention of the community becoming the object or victim of crime itself is not only done through the official state legal approach, but also in the form of enforcement of legal norms that live in society through other social institutions. In this context, the Tu'a Golo customary institution as a social institution is seen as a social crime control system or institution that is expected to make community members comply with agreed and applicable social norms so that the community is protected from all evil behavior/actions, then harmony will be created in community life. Thus it can be said that the Tu'a Golo customary institution has played an important role in protecting the community from victims of crime as well as the ultimate goal to be realized by the criminal justice system.

Although the procedure for resolving cases through customary institutions seems non-formal, which prioritizes deliberation to reach consensus of the parties in dispute, it is felt to be very effective in realizing the objectives of law as initiated. These legal objectives are reflected in the process and purpose of resolving legal cases practiced by the Tu'a Golo customary institution which prioritizes the consensus of the parties, which emphasizes an admission of guilt and mutual apology and the ability to pay a fine according to the agreement of the parties or the legal decision of the customary leader and also a statement not to repeat the same or similar actions. (Theo Urus as the customary leader (Tua Golo) of Lancang, Wae Kalambu Village, West Manggarai Regency, East Nusa Tenggara Province, interview, July 31, 2023, at 14.00 Wita in West Manggarai Regency). The admission of guilt and the ability to pay a fine reflect the value of responsibility of the perpetrator, and the request and granting of an apology reflect the value of peace/peace of the parties (perpetrator and victim), while the agreement on the amount of the fine reflects the value of justice and expediency, and the statement not to repeat the same or similar actions reflects the value of legal certainty. With regard to the legal decision of the Tu'a Golo customary leader, according to Sudisman, the West Manggarai community is usually implemented voluntarily by the parties and there is no defiance, because the West Manggarai community is more afraid of customary provisions than state legal sanctions. (Interview result, August 2, 2023, at 10.00 Wita in Kabupaten Manggarai Barat)

The procedure for resolving cases using the mechanism of customary institutions as stated above, juridically in Indonesia there are no legal provisions that explicitly regulate and provide opportunities for out-of-court settlement of criminal cases. However, in practice, the police often stop a criminal case through discretion. Meanwhile, this discretion was actually almost without basis before the issuance of National Police Chief Letter on Handling ADR and Chief of Police Regulation on basic guidelines for handling of criminal cases through ADR. This provision only applies to cases that cause minor losses. Apart from that, the parties must hold discussions to agree on a case resolution process without abandoning applicable social norms or customs. This way, the case is resolved under the ADR implementation mechanism, and the perpetrator is no longer subject to other criminal penalties.

The National Police Chief's letter regarding the mechanism for resolving cases through ADR requires the parties to involve local community leaders in discussions based on deliberation and consensus. Furthermore, the

requirement is that perpetrators who have resolved cases using the ADR mechanism must agree to follow applicable legal norms. This prerequisite is an essential condition to ensure that the perpetrator is no longer subject to sanctions based on other criminal provisions. If the offense only needs to be atoned for by paying a fine, then according to Article 82 of the CPC Act, the perpetrator can no longer be prosecuted when the fine and the costs of prosecuting the case have been paid. This provision is known as "afkoop" or "peaceful payment of fines." This action legally becomes the basis for canceling the right to sue. This concept also underlies the traditional law model of the West Manggarai community and the Tu'a Golo traditional institution.

V. CONCLUSION

The conclusions in this study are first; The dysfunction of the role of state law is due to public dissatisfaction and distrust of state legal mechanisms that seem formal and procedural, complicated, and do not provide a sense of justice and peace for the community so that the community diverts the settlement of legal cases through the Tu'a Golo customary institution because it is considered easier, faster and low cost. Second; The settlement of criminal cases through the Tu'a Golo customary institution is in line with the objectives of the Indonesian criminal justice system and the objectives of criminal law, including reflecting the value of responsibility, the value of peace/peace of the parties (perpetrators and victims), the value of justice and benefits, and reflecting the value of legal certainty. Thus, not all criminal cases should be resolved through state law mechanisms that force perpetrators to be imprisoned, but also through customary law mechanisms that emphasize recovery so to create harmony and harmonization in social life. At the end of this paper, recommendations can be submitted, first; law enforcement officials need to uphold law and justice professionally, independently and refrain from corruption, collusion and nepotism. Second, the government needs to encourage the institutionalization of customary institutions officially based on the criminal procedure code so that legal settlements using customary institutions are not seen as wild and get strong legal legitimacy.

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