

The Application of National Criminal Law in the Settlement of Criminal Cases in the Baduy Customary Law Community

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Abstract

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Indonesia is a country of law, but on the other hand, Indonesia is also rich in diversity of customs. In this case, the existence of national law is related to the existence of customary law, especially related to criminal cases. The scientific work of this journal aims to explain the application of national criminal law associated with the customary law of the Baduy community, especially in terms of resolving criminal cases. The research method used in this journal is qualitative descriptive, where the explanations listed are sourced from various literature related to the material of this journal. The result obtained from the explanation stated in this journal is that in the settlement of criminal cases, the indigenous Baduy prioritize mediation at the family level first, which then if it cannot be resolved at the family level, it will rise to a higher level by involving interested indigenous leaders. In criminal cases, the indigenous people of Baduy also know several principles in the national criminal law, as well as forms of criminal acts as embraced in the national criminal law.

Keywords: Criminal Law, Customary Law, Baduy Community

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INTRODUCTION

One of the countries with the most tribes in the world is Indonesia. A tribe is a group or group of people who based on their genealogy or lineage have similarities in terms of language, religion, culture, and also the biological characteristics they have in physical form. Each tribe in Indonesia has unique and different characteristics and traditions. These various differences in characteristics are what cause the diversity of customary law in Indonesia. Tribes in Indonesia are spread from the Sabang Islands to the Merauke Islands. Where the island of Java has the tribe with the largest community group in Indonesia.

One of the tribes on the island of Java is the Baduy Tribe. The Baduy community consists of two groups, namely the Outer Baduy group and the Inner Baduy group. They differ in terms of the strictness of customary rules that must be carried out. The customary rules of the Baduy Dalam people are stricter than the rules of the Adata people of the Baduy Luar community. The location of Baduy Luar is relatively close to the outside community. If you want to reach Baduy Dalam

from the location of Baduy Luar, you have to walk again towards the mountain. Therefore, the Baduy Luar people interact more often with people outside the Baduy tribe, especially in the surrounding village called Ciboleger Village. As a result, the culture of people outside the Baduy tribe easily enters into the life of the Baduy Luar people.

So it can be said that the Baduy Luar community is a little more able to adapt to the development of the times. This is also related to the settlement of criminal cases in the life of the Baduy customary law community. In resolving criminal cases, the Baduy community has several special provisions that can be said to be quite in accordance with the current application of national criminal law. Therefore, in this journal article, it will be discussed about the life of the Baduy people and the settlement of criminal cases of the Baduy customary law community associated with the application of national criminal law.

RESEARCH METHOD

Literature review is carried out with the following steps. First, looking for sources related to research topics using Google Scholar and electronic databases from several academic fields such as law and indigenous peoples, especially the Baduy indigenous people. This search focuses mainly on theoretical studies that are presented in a qualitative descriptive manner. Second, the abstract was read to filter the initial list of articles for topics that explain the application of national criminal law associated with the customary law of the Baduy community, especially in terms of the settlement of criminal cases. Third, each journal is read to identify the main viewpoints and research results. Finally, these various views and findings are combined and compiled in this journal.

RESULTS AND DISCUSSION

Life of The Baduy Indigenous People

The Baduy people are part of the Sundanese tribe, who live in West Java Province and the language used is Sundanese, and now they live in Banten Province. It is suspected that they moved to a remote area on Mount Kendeng in the 16th century, along with the collapse of the Pajajaran Kingdom. In 1579 Islam came in to destroy Pajajaran and the people there converted to Islam. However, there are community groups that refuse to join Islam. After a group of people refused to be included in Islam, they converted and formed a separate group known as the Baduy Tribe.

The Baduy people are scattered in the Kanekes area and live in groups in the villages. There are two large groups of Baduy settlements, namely Baduy Dalam and Baduy Luar. Because they live outside the Baduy area and help the Baduy Inner community, the group living in the Outer Baduy is referred to as "panamping", which means companion. While the Baduy Dalam people are known as "Kajeroan", which means deep, or "Girang", which means upstream. The Baduy Luar group lives in 50 villages, while the Baduy Dalam group is spread across three villages, namely Cikeusik, Cikartawana, and Cibeo.

The Baduy Dalam group never increased the number of villages, its area consisted of only three villages, while the Baduy Luar group increased every year.

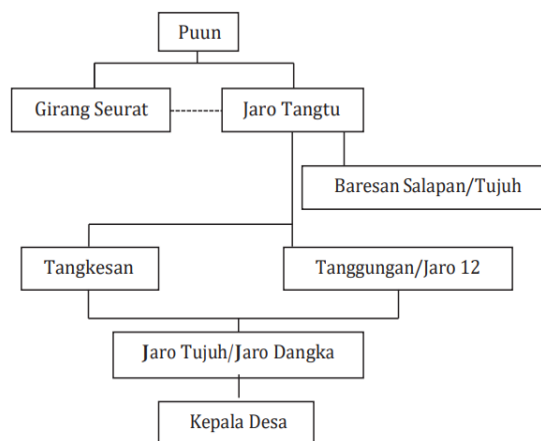
Along with the increase in the number of people living there, if the number of Baduy Dalam residents increases, then some of them will come out to live in the Baduy Luar area and belong to the Baduy Luar group, because it is no longer in accordance with the capacity of their village.

Dalam hal pendidikan, masyarakat Baduy lebih menekankan pendidikan informal, yang juga dikenal sebagai pendidikan keluarga. Pendidikan yang digunakan adalah pembelajaran lisan, serta pengetahuan yang diberikan oleh orang tua, kerabat, atau lembaga adat. Masyarakat Baduy diajarkan cara berladang dan bertahan hidup dengan memanfaatkan sumber daya alam secara efisien, juga diajarkan terkait instruksi tentang mantra yang akan digunakan ketika ingin menikah, berladang, menyembuhkan orang sakit, dan upacara adat lainnya.

In the Baduy indigenous people, puun is known. Puun, which is found in three villages in Baduy Dalam, namely Cikeusik, Cikartawana, and Cibeo, functions as the head of the Baduy traditional system. This position is hereditary. Although this position of puun does not automatically continue from father to son, other puun siblings who are considered capable of becoming leaders can inherit the position. There is no specific time limit for Puun to serve as the supreme leader of the Baduy people, his ability to lead is the only limit. In addition, there is also Jaro Tangtu who is responsible for the daily implementation of the customary system. While Jaro Tangtu focuses more on mundane matters, Puun's affairs are more concerned with the supernatural world.

In addition, Puun has an assistant called Girang Seurat and an advisor called Baresan. For health and chief shamans in the Baduy area, Tangkesan's care is taken care of. People who serve as ambassadors must be scholars, proficient in medicine, and good at predicting the future. Furthermore, there is also a Dependent/Jaro 12 who is similar to Tangkesan as an advisor to Jaro 7/Jaro Dangka, but acts more as a witness in the implementation of Jaro7 activities. Meanwhile, Jaro 7/Jaro Dangka is a traditional figure who is responsible for the implementation of customary law, including customary criminal law. Jaro 7 consists of 7 people spread across several villages. And the last is the village chief who serves as a means to connect Baduy with the outside world, including the problem of unsolvable crimes in Baduy involving state law.

The structure of the Baduy community can be described as follows:



Source: Book "Hukum Pidana Adat Baduy dan Pembaharuan Hukum Pidana" by Ferry Fathurokhman, S.H., M.H., Ph. D.

With this leadership system, because each village has an active control function, this system ensures that all villages in Kanekes Village are not neglected and continue to follow the existing customary rules. They also perform the Seba ceremony once a year to show appreciation and recognition for the existence of the national government. This ceremony was carried out by walking 120 km from Kanekes to the governor's office to bring various produce, such as rice and crops.

Settlement of Criminal Cases of Baduy Customary Law Community

There is not much research done on Baduy customary criminal law as a substantive criminal law system in the sense of material, formal, and criminal enforcement law. Basically, some literature only discusses some of the prohibitions and taboos that exist in the Baduy community. Some examples of these prohibitions include: not going to school, not traveling by vehicle, not allowed polygamy/polyandry, forbidden adultery and several other prohibitions.

Based on some of these prohibitions, it is explained that Baduy people who commit adultery or immoral acts outside of marriage will be imprisoned and employed to manage agricultural land for forty days. Meanwhile, for Baduy people who marry more than one (polygamy/polyandry) will be heard and allowed to choose and leave one. Polygamy or polyandry perpetrators are not punished for land cultivation, but they are also sentenced to exile like adulterers. Because the Baduy customary criminal law is not made in writing, it can be justified that the prohibited acts or "criminal acts" are limited. However, this does not mean that the people living in Baduy and its community are unaware of the restrictions. Rather, they learned about these prohibitions through oral culture and customs.

In Baduy customary criminal law, there is the principle of subsidiarity, which is also known as *ultimum remedium*. If the settlement of the case at the family level of the perpetrator and the victim fails, then the formal criminal justice system of Baduy will be used. The family always tries to finish at an early stage. Therefore, the settlement stage at the family level is part of the Baduy customary criminal justice system. If at the stage the family cannot be resolved, Jaro Tangtu and other traditional leaders will conduct an investigation into the field. If there is a minor problem, Jaro Tangtu solves it, but if it is not successfully resolved, the problem is left to the Baduy customary justice system. In the case of serious crimes such as murder, settlement at the family level can be skipped and go directly to Jaro Tangtu and Jaro 7 or Jaro Dangka.

In principle, in the Baduy customary criminal law, a criminal offender must be cleansed physically and mentally as part of his responsibility to himself. Explicit segregation means that the perpetrator is responsible to his victim for his actions. Sanctions such as being reprimanded, reprimanded/advised, alternately reprimanded, compensated, and expelled from Baduy Inner to Outer Baduy Furthermore, the inner cleansing of the perpetrator is manifested in the *ngabokoran* or handover ceremony. The *ngabokoran* ceremony is carried out for a crime that is not too severe, while the handover of *pati* is used to cleanse the perpetrator's mind

from a serious crime. Ngabokoran and serah pati are also ways for villages to apologize to their ancestors, led by puun, for the crimes that have occurred.

The Relationship Between The Settlement of Criminal Cases of Baduy Indigenous People and The National Criminal Law

In relation to the national criminal law, there are several substances in the settlement of criminal cases of the Baduy indigenous people, including:

a. Principles of the Remedium Ultimum

Baduy is familiar with the principle of ultimum remedium and in the resolution of criminal acts. In other words, if there is a criminal act, the settlement can be done in the family stage, but when the parties are not satisfied, it is finally sent to the Baduy customary justice system.

b. Deliberation

The deliberations here prioritize what the victim and his family want to help recover the victim's condition due to the crime that has occurred, as well as what is done so that the perpetrator and his family are free from guilt and resolve the crime. The concept of deliberation in the settlement of criminal cases is almost similar to the concept of restorative justice in the settlement of criminal cases.

c. Principle of Personality/Active Nation

People, individuals, are the core of personality. National criminal law has always focused on people, regardless of their location. In the same way, all Baduy residents are subject to customary criminal law, wherever they go, even outside the Baduy region.

d. Principle of Protection/Passive Nation

The public interest is more important than personal interest in this regard. In the Baduy customary criminal law, the interests of the Baduy customary are also protected, as is done by the national criminal law.

Furthermore, there are also forms of criminal acts, including the following:

a. Gathering

The arrangement of concurrent law in the Baduy customary criminal law is not as complex and strict as the concept of national criminal law. In Baduy customary criminal law, the application of criminal acts in the form of concurrent criminal acts is very important for the settlement of cases because it prioritizes the interests of the victim and the perpetrator.

b. Experiment

It is very important to consider the intention in the Baduy customary crime. So, in cases where someone has the intention to steal, the intention itself must be considered. So, the Baduy customary criminal law does not consider whether a criminal act has been completed or not.

c. Repetition

There is no penalty for repetition of criminal acts (recidivism) in the Baduy customary criminal law, as stated in the Criminal Code. However, for criminal offenders who repeat criminal acts, the completion process is increased by one level. For example, theft is usually settled between family members with compensation claims and so on. However, if the same case is repeated, the case will be resolved by jaro tangtu (jaro di Baduy Dalam).

d. Participation

Role punishment is not differentiated in the Baduy customary criminal law. The punishment for the perpetrator (dader), doenpleger, persuader (uitlokker), and helper (medeplichtige) is the same. However, the various roles mentioned above are also known in Baduy customary criminal law only to distinguish the roles performed in a criminal act and the punishment is generalized according to the intended criminal act.

e. Malicious Conspiracy

In Baduy customary criminal law, malicious conspiracy is a type of criminal act that must be held accountable if it is known by others. This is in line with the rules of the Criminal Code.

Furthermore, in relation to the national criminal law, the criminal law of the Baduy indigenous people also recognizes the basics of the elimination of criminal acts, namely:

a. Psychic disorders

In Baduy, psychic disorders are referred to as "crazy" or "crazy". They do not distinguish psychic disorders from the Criminal Code, which defines psychic disorders as "the soul is disabled in its growth, defective in development, and disturbed by disease or health disorder." Crazy people who commit criminal acts cannot be held accountable according to the Baduy customary criminal law. However, this does not mean that criminal liability is lost or no longer exists. Instead, the family of the madman will be responsible for the crime he committed.

b. Not old enough

According to the Baduy customary criminal law, a person who commits a criminal act who is not old enough cannot be punished. Usually, the child is returned to his parents unless the parents give up, cannot educate him, or are handed over to the Baduy customary criminal law.

c. Forced defence

The Baduy customary criminal law has regulations on forced defense (noodwer) as known in the Criminal Code. By the same token, the rule also covers forced defenses that go beyond the limits.

The Baduy Customary Criminal Punishment does not explicitly distinguish between crime and offense. However, the Baduy customary criminal law also recognizes criminal acts based on the severity and lightness of the deed. Submission of starch is used for mental cleansing of serious crimes, while ngabokoran is used for minor crimes. Some of the qualifications for criminal acts are regulated in the Baduy customary criminal law, namely such as defamation, adultery, rape, theft, fraud, persecution, murder, witchcraft, land disputes, as well as several other prohibitions such as the prohibition of photos and taking audio visuals, the prohibition of polygamy/polyandry, the prohibition of drinking alcohol, the prohibition of using toiletries, and several other prohibitions.

CONCLUSION

The Baduy tribe is one of the indigenous tribes in Indonesia that still continues to maintain its regional nature. The Baduy Tribe Community is a term for a community group living in Kenakes Village, Banten Province. There are 2 Baduy

community groups, namely the Baduy Dalam group and the Baduy Luar group. The Baduy people have their own social structure, in which there is a "Puun" which is the highest position in the structure of the Baduy indigenous people.

In the life of the Baduy people, there are various unwritten prohibitions. Although it is not written, this does not mean that the Baduy people are not aware of these prohibitions, but rather that the prohibitions are known from generation to generation. In the process of resolving criminal cases in the Baduy community, mediation is prioritized first at the family level between the perpetrator and the victim. If the settlement at the family level cannot find a solution to a criminal case, then the settlement process will involve traditional leaders. In addition, there are also several sanctions for perpetrators of crimes committed by the Baduy customary law community, including sanctions such as being reprimanded, being detained/advised, alternately ngahampura, compensation, and being expelled from Baduy Dalam to Baduy Luar.

In the settlement of criminal cases of the indigenous people of the Baduy tribe, there are several substances related to the application of national criminal law, such as several principles, namely the principle of *Ultimatum Remedium*, the principle of personality, and the principle of protection. In addition, there are also forms of criminal acts and reasons for the elimination of criminal acts. Therefore, there is harmony between the settlement of criminal cases of the Baduy indigenous people and the applicable national criminal law. So it can be concluded that national criminal law and customary law support each other's existence.

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