

## THE PROCESS OF CUSTOMARY LEGAL SETTLEMENT OF HABANDUNG ACTORS BY THE KEDAMANGAN INSTITUTION IN SABANGU DISTRICT

**Thea Farina**

Lecture at Faculty of Law, Palangkaraya University,  
INDONESIA.

thea-embang@law.upr.ac.id

### ABSTRACT

*Divorces according to Customary Law is an extraordinary event, an important social and juridical problem in most areas. Regarding the meaning of marriage according to the Dayak Ngaju customary law above, it can be understood that divorce, although permitted, should be avoided, because divorce can break the marriage relationship that should be maintained by husband and wife. Divorce carries legal consequences as a consequence of the status of husband or wife and the position of the child, as well as regarding joint property obtained during the marriage. The purpose of this study is to find out how the legal settlement process of Adat against Perpetrators by the Kedamangan Institution of Sabangu sub-district. The research method used is Empirical Law research. The results showed that the process of settlement of customary law against the perpetrators of Habandung by the Kedamangan Kedamangan Institution. it still upholds the value of the "Belom Bahadat" life philosophy. Customary sanctions decided by the Customary Institution against Habandung perpetrators in the Sabangau Kedamangan area are sanctions in the form of singers.*

**Keywords:** Divorce, Indigenous Dayak Ngaju, Kedamangan Sabangau.

### INTRODUCTION

Today, many marriages must end in divorce. Marriage is no longer considered as something sacred, so that if there is divorce it is a common thing and is not a taboo, even among certain divorces can be used as a means to increase popularity. Therefore, divorce is increasingly happening not only among ordinary people but also among intellectual people. Divorces to Law Number 1 of 1974 concerning Marriage in Article 38 is the Termination of Marriage. As for what is meant by marriage is an inner and outer bond between a man and a woman as a husband and wife with the aim of building a happy and eternal family (household) based on the Godhead of the Almighty. So divorce is the breaking of the inner and outer bond between husband and wife resulting at the end of family (household) relations between the husband and wife. Article 39 of Law Number 1 of 1974 concerning Marriage contains provisions which force that divorce can only be carried out before a court after the court concerned is trying to reconcile the two parties.

Divorce according to the Dayak Ngaju Customary Law is an extraordinary event, an important social and juridical problem in most areas. Related to the meaning of marriage according to the Dayak Ngaju Customary Law above, it can be understood that divorce, although permitted, should be avoided, because divorce can break the marital relationship that should be maintained by husband and wife. Divorce brings legal consequences as a consequence of the status of husband or wife and the position of the child, as well as regarding joint property obtained during marriage.

By law the Dayak Ngaju custom, the bond of ties between a man and a woman, brings legal consequences in a customary engagement, such as regarding the position of the husband and the position of a wife, the rights and obligations of each party, as well as the position of the child. Violations of the marriage agreement are considered to be very embarrassing and should be avoided as much as possible, especially until divorce occurs. In the marriage agreement, the man has promised to take a woman to be made as to the only wife who is legitimate and loyal to him for the rest of his life. Conversely, the wife has also promised to accept the man.

As the only husband who is legitimate and loyal to him until death separates. If it turns out that one of them violated the agreement, for example, if someone had already been abused with another man or woman, the injured party could claim his rights to the party who had committed the violation in accordance with applicable law. Therefore, when a violation of a marriage agreement occurs, there are stages that must be carried out by the Village Adat Council or the District Adat Council. Based on the description above, this research aims to find out how the legal settlement process of Adat against abusers by the Kedamangan Institution of Sabangau District and what Customary sanctions are decided by the Adat Institution against the Habandung actors in the Kedamangan area of Sabangau District.

## **RESEARCH METHOD**

The research method used in this paper is Empirical Law research, which is legal research conducted on the real condition of the community or the community with the intent and purpose of finding facts, which then leads to the identification and ultimately leads to the completion of the discussion problem.

## **RESULTS AND DISCUSSION**

### **The process of resolving the legal custom of the perpetrators of Habandung by the Sabamau District Kedamangan Institute**

Dayak Ngaju Dayak Customary Dispute and Dispute Resolution Mechanism As a service institution that applies modern work procedures, in carrying out its functions to resolve disputes, Dayak Adat Basara also has a mechanism for grasping or phasing the case management, in order to achieve the best results. Of the three stages of treatment that are applied can be broken down into more specific segments, namely:

1. Pre-Conflict Stage
  - a. Negotiations, namely the peaceful resolution of disputes through negotiations between disputing parties.
  - b. Mediation, which is the process of resolving disputes by involving a third party in the resolution of a dispute as an advisor.
  - c. Reconciliation, namely the process of resolving disputes by revealing truth from the recognition.
2. Conflict Stage
  - a. Reporting
  - b. Case Inspection
  - c. Decision
3. Implementation phase of the decision
4. Decision Reading
  - a. Peace Ceremony/Reconciliation after the implementation of the decision.

Initially, each case will be tried to be resolved in the pre-conflict stage, but if these efforts are not able to reconcile the parties to the dispute, then it will proceed to the next stage, in accordance with established mechanisms.

According to Damang Wawan Embang: "The density of the Mantir Adat only investigates in a case and makes a conclusion not to make and ratify a decision on a case and submit it to Damang as the person entitled to issue a decision". As a service institution that can be said to be the same age as its people, Basara Adat Dayak has a number of terms that have its own meaning, which is used in the Adat justice process. These terms are,

- a. Mandawa, namely, the party who sued because his rights have been violated or feel disadvantaged.
- b. Tandawa, the party that is sued or charged with violating or depriving others of their rights.
- c. Confession, which is a statement made by the parties that litigate consciously, that is, know and want, which means that they are not under the influence of alcohol, drugs, pressure/intimidation, deception, seduction or ways that are against the law and taste humanity.
- d. The witness is, a person who sees with his own eyes, hears with his own ears, feels with his own tongue, kisses with his own nose and touches with his own hands/skin, then the evidence data must be shown.
- e. Evidence that is, an object that becomes evidence that is used when an event takes place or goods that can strengthen a statement of a litigant.
- f. Letters namely, all forms of writing that can be read and interpreted that contain meaning. Letters as evidence need to be classified as, State Documents, Letters made by Authorized Officials, Stamped or sealed letters, letters with original signatures, books or writings intended for the public interest, newspapers, magazines and Customary Oaths., Customary Oath is an oath made with a special ceremony performed in the presence of Damang or Mantir Adat.
- g. Damang Decisions, Namely, Decisions at the Level of Kedangangan issued by Damang based on the results of Basara Adat and other considerations that are final and binding. If the decision cannot be implemented, Damang who leads the Basara Adat Dayak of Central Kalimantan has the authority to request the assistance of the Dayak Indigenous Peoples Defense Agency (BATMAD).

According to Damang Wawan Embang:

*"In the Dayak Ngaju Adat there are two decisions namely the Adat law decision and the Adat decision, where the Adat decision is only at the Damang mediation level as an intermediary and ratifies the Adat decision, while the Adat law decision is a decision that contains sanctions and Adat fines in the decision."*

In carrying out their duties, the Damang Adat chief and the Customary Peace Mantirs have the role and authority to administer, empower, develop and preserve customary law, customs, and culture. In connection with marriage the Damang Adat head has the right and authority to carry out the marriage in an Adat manner, issue a marriage certificate in an Adat, ratify a Customary marriage agreement, and issue a certificate of divorce in an Adat and other documents relating to Customary law as long as requested by parties in disputes One of the acts which pollute the noble value of marriage is Habandung's act which results in a divorce. Habandung can be used as a legal reason for a husband or wife who wishes to divorce. Habandung is one of the acts that betrays holiness and loyalty in marriage.

Procedures for resolving disputes, both those related to violations of adat/hadat such as the conduct of Habandung in Dayak Customary Law, one of the prerequisites for resolution is to be carried out in a spirit of togetherness and high honesty of the parties to the dispute. This spirit arises among those who uphold the philosophy of life "*Belom Bahadat*".

According to Henry Embang there are three images in the philosophy of life "*Belom Bahadat*" namely:

- a. The image of the attitude of worship, where humans come from God (the fruit of God's creation). So it is proper for humans to worship the creator. Worship in this case means to glorify/glorify, glory and glory is only given to God, not to others.
- b. The image of respect is related to the propriety of social development in the midst of social interaction. Preventing a grouping in social life as well as interpreting that humans need each other.
- c. The image of polite attitude, namely that worshipping God and respecting fellow human beings also have rules and regulations and still must uphold the values of the norms of life. For example religious norms, social norms, legal norms and customary norms.

In this philosophy, honesty, clean conscience, and loving peace between people are very important things so that life can go well. They believe, who does not want to admit his mistakes and ask for forgiveness, one day there will be a powerful force that reciprocates.

However, those who feel aggrieved also have a sincere intention to provide forgiveness and forgiveness to the perpetrators. Typically after Basara Adat, between perpetrators and victims, there is no longer any hostility or revenge. Therefore, after the decision of the Customary Mantir or Damang is issued and all decisions are made (the singer or customary fee is paid in full) then the next step is to conduct a peace event between the parties to the dispute.

With a sincere intention to reconcile the disputing parties to become "*Belom Bahadat*" human beings, then the Basara Adat against the perpetrators of Habandung by Damang will produce real peace. Therefore, in every settlement of the perpetrators of the Damage habandung, he first confirms to the parties to the dispute that the Basara Adat that will be held is based on the sincere intention that they want to become a human being who is "not yet committed". Without this sincere intention, the effectiveness of a settlement to make peace is difficult.

According to the customary damang of Sabangau Subdistrict, Wawan Embang, each settlement process in the Customary Law against the perpetrators of Habandung in the Dayak Ngaju customary law does not have to be resolved by divorce. Because the target of Customary law or the objective of the implementation of Basara Adat is "*Nantilang Shit Mampataduh Kawe/Mampatende Karidu Kalait*" (neutralize the bad luck aspect, creating magical tranquility). The process of resolving the Customary Law against the perpetrators of Habandung in the Dayak Ngaju customary law, the steps that need to be taken are as follows:

- a. Calling the parties to the dispute  
After the complaint, the traditional mantir immediately prepares a summons to the reported party. The summons is notified to the reporter and damang as a copy. The procedure for the summons is as follows:
  - i. Summon to the reported party is maximum (1) one week after receipt of the complaint. This call is the first call.
  - ii. If the first call is ignored by the reported party, then the second call will be delivered, the time is maximum (1) one month after the first call.

- iii. If the reported party still does not come to fulfill the second summons, then the third or final summons will be delivered, where in the last summons the settlement is confirmed or the Basara Adat will be carried out on the specified date and if in the relevant Basara Adat does not come, then all Damang decisions on the matter, are considered accepted by the person concerned.
  - iv. Each summons must be accompanied by a receipt of the call signed by the person concerned and if the person concerned is not present, the receipt must be signed by his family or parents.
- b. Determination of the Basara Adat date and notification to witnesses After the summoned party or its representative wants to come to the Indigenous customs, the customary party will set a trial date after obtaining the agreement of the reporting party. The trial date is set no later than one week after the reported party reports itself to Mantir Adat. This reported arrival must be made a self-report letter signed by Mantir Adat. The date of this hearing will later be notified by Mantir Adat in writing to the parties concerned. In the notification letter, the witnesses will be prepared to attend the hearing, which will be submitted by the disputing party directly to the witnesses respectively. This willingness letter must be brought in the first Basara Adat.
  - c. Implementation of the Basara Adat The implementation of the Basara Adat against the perpetrators of Habandung in Customary law is a maximum of three times carried out by the Customary Mantirs. Decisions must be made as soon as possible in the first or second Basara Adat. If a decision is not possible in the two Basara Adat, then in the third Basara Adat there must be a decision. The postponement of the decision on the first Basara Adat is usually done if the witnesses are not present. If the parties in the third Basara Adat still do not want to accept the draft decision made, then the case is handed over to the damang in the subdistrict, with the time of submission at most one week long. Submission of cases to Damang was delivered in writing by attaching various documents that had been included in the density of the traditional peace processors. However, the case submission to Damang can only be done if each party has strong evidence or witnesses. If it is only based on a hard-hearted attitude, insistent, do not want to hear the opinions of others, then the decision should be taken by the Customary Mantir no later than in the third trial.
  - d. Case Settlement by Traditional Head Damang The settlement time of the case by Traditional Head Damang is carried out a maximum of two months, in two sessions. The trial was held in the village of origin of the case which was attended by the Customary Mantir and witnesses who were present in the first to the third trial in the density of the Traditional Peace Mantir. The first trial was to hear the statements of the litigants and witnesses. If it turns out that no commission is needed (reviewing the object of the dispute/problem), then the decision must be taken in the first session.

The order of proceedings conducted by the traditional customs and damang is carried out as follows:

- a. The opening, namely a statement by Mantir Adat and or Damang regarding Basara Adat that will be held at that time. The things that will be delivered are:
  - i. The identity of the reporting party and the reported party.
  - ii. The object of the case/issue in question.
  - iii. Affirmation to the parties to the dispute and witnesses to be honest in Basara Adat, as an illustration of the ideals of being a "Belom Bahadat" human being.

- b. The taking of customary oaths (not religious oaths) from the disputing parties and witnesses. In this Indigenous oath it is necessary to do the *tawur/pisur* who first summon the spirits to give strength and the ability to speak honestly.
- c. Retrieval of information from parties to the dispute and also information from witnesses.
- d. The reading of conclusions by Mantir Adat or Damang on the statements of the parties to the dispute and also witnesses. In the event that a commission has been carried out, the results of the review of the object of the case/problem are also submitted, or if there will be a review then the matter will also be submitted/negotiated, with a maximum period of three days.
- e. Dismissal of Basara Adat for some time (maximum one hour) by Mantir Adat or Damang, to give them an opportunity to negotiate the draft decision. In this negotiation also discussed the article of Customary law violated by the parties who litigate especially those who are considered to violate Customary law by referring to 96 articles of Customary law resulting from the Tumbang Anoi agreement.
- f. Submitting the draft decision, on this occasion also discussed articles of customary law that have been violated and sanctions Singer (customary fines) to be paid by parties who have violated the provisions in Dayak Ngaju Customary Law
- g. Submission of responses from the disputing parties to the draft decision submitted by Mantir Adat or Damang in the settlement of the case.
- h. Decision making by Mantir Adat or Damang over the case that occurred as well as making the minutes of the trial of the settlement of the case and the signing of the decision issued on the case.
- i. The peace ceremony is in the form of bargaining capacity, slaughtering animals, parties and or Hasapa. In the case of hasapa this is only done at the level of cases handled by Damang and if in a case no one is telling the truth to admit his mistakes so that the problem does not find a solution.

### **Customary Sanctions Decided By Customary Institutions Against Habandung Perpetrators in the Kedamangan Region of Sabangau District**

Sanctions imposed by Indigenous stakeholders in the Dayak Ngaju community are in the form of Customary singers or fines intended as an effort to restore as well as to maintain community balance with violations of marital, adultery, ethical, moral, beliefs and beliefs, social responsibility, agreements, environmental responsibilities, appointment of relatives, property, accusations, theft of fights and murder.

Singer not only regulates the matter of how a person maintains behavior within the scope of Adat, but also the medium of peaceful settlement of Adat violations that occur. This is intended so that the violation does not occur again. In marital singers, such as the limbs (customary fines of robbing other people's wives) are imposed on anyone who dares to persuade, depriving others of their wives/husbands so that the man/woman divorces from the previous husband and wife and marries a new woman/man who bows. Related to adultery, the singer who is determined is Singer *tih sarau* discordant plagues (fines resulting from illicit relations or discordant plagues). Singer is valid in conditions when woman A is pregnant illegally (*sarau*) due to adultery with male B who is at the wrong level or (*hurui tamput*) or because of the family tree that is not bloodline due to adultery.

In the 96 articles of the Anoi Tumbang Anoi Agreement, there are several articles regulating violations of marriage in this case, namely Habandung and divorce. Where in the Dayak

Ngaju Indigenous community states that Habandung and divorce is a despicable act that destroys the sanctity of a marriage. The several articles are:

Article 1 Singer Tungkun (fine for taking someone else's wife) Where this customary law will be imposed on someone who

who dares to persuade, seizes another person's wife or husband so that as a result the man/woman divorces from the previous husband/wife and marries the man/woman who is lying down.

Article 2 regulates sanctions for failing to seize another person's wife/husband but committing adultery (*Singer Tungkun Balang, Sin Palus*).

In the marriage of the Dayak Ngaju Indigenous people there is also a marriage agreement that serves as a guide for married couples not to commit acts that are not in accordance with Adat, and not divorced because it contains rules that must be obeyed along with the sanctions and conditions marriage which must be fulfilled by a man is called as the Customary way. The importance of customary marriage ceremonies is as part of a Ngaju Dayak Indigenous marriage which is felt by the Ngaju Dayak Indigenous people because:

### **1. As Customs**

Because the traditional marriage agreement is one of the important components in the traditional ceremonies that have become a tradition for Dayaks who will do a marriage, because the Dayak Ngaju people consider the marriage as a noble and holy, usually want the marriage to last a lifetime for husband and wife and only death can break a bond.

### **2. Guarantor of justice in the distribution of assets**

This marriage agreement is also needed to guarantee the distribution of assets during a divorce. In accordance with the results of an interview with Damang Sabangau, said that if a divorce occurs with the existence of a marriage agreement, it can guarantee the rights of the woman (wife) to a Palaku (dowry) will remain the right of the woman (wife). In addition, the guilty party is required to pay a fine to the innocent party in accordance with the value specified in the agreement.

### **3. Sanctions as part of the agreement**

The witness's clarity for the guilty party and the cause of the divorce became an important factor in the Ngaju Dayak Indigenous marriage agreement. This clear sanction is referred to as a way that can prevent husband and wife divorced. The sanction factor in the form of fines for both money and gold that is material in nature makes both parties to an agreement may think not to violate what has been agreed in the marriage agreement.

### **4. Prevention of divorce**

The reason for preventing this divorce is actually something that is real in the Ngaju Dayak Indigenous marriage agreement as said by Damang Wawan Embang at the time of the interview that "With the Customary marriage agreement, it is expected that the couple will always remember the faithful promise not only of the their partners, but also the relatives of the ancestors.

Customary fines applied in the Dayak Ngaju Adat law are clearly a form of local wisdom that has become part of the Dayak Ngaju Adat law. The position of customary sanctions and fines from this customary law certainly shows the entire legal system that lives in a strong Ngaju Dayak Indigenous culture. The importance of customary sanctions and fines can also be seen from the concept of implementation carried out through the Customary mechanism.

In every Damang/Mantir decision related to a custom case, it is always sent to the local police and district head. Even though the security structure does not include elements of the police,

in terms of maintaining the peace of the Indigenous community, the police are prioritized. Vice versa, the police also utilize this Indigenous institution in terms of order and order of the Indigenous people. In addition to police institutions, judicial institutions such as District Courts and Religious Courts still apply and are respected by Indigenous people.

## **CONCLUSION**

The process of legal settlement of Adat against the perpetrators of Habandung by the Kedamangan Kedamangan Institution. it still upholds the value of the philosophy of life "*Belom Bahadat*" which is always carried out in a spirit of togetherness with priority to the high honesty of the disputing parties. Then in Ngaju Dayak customary law any settlement of customary law against the perpetrators of Habandung does not have to be resolved by divorce because the purpose of doing Basara Adat among the Dayak Ngaju Indigenous people is to regulate and create peace in the social life of the community and good relations between the Dayak Indigenous people both with fellow humans, humans with God, and humans with Nature.

Customary sanctions decided by the Customary Institution against Habandung perpetrators in the Sabangau Kedamangan area are sanctions in the form of singers (traditional fines), namely Singer Tungkun (traditional fines taking away the wives of others) in article 1 contained in 96 articles of the Tumbang Anoi agreement. Where customary sanctions are the main sanctions for someone who dares to persuade, rob someone else's wife/husband. And also the singer Tekap Bau Mate in article 68 which is an adat fine for giving shame to the victim. If there is a resistance or sanctions and penalties that have not been implemented, Damang within the scope of the Dayak Indigenous institutions has the authority to ask the Dayak Indigenous Peoples Defense Front as a force from an institution that is forced to make the decisions made by the party sanctioned. in accordance with the function of BATAMAD itself mandated in Local Regulation Number 16 of 2008, namely as guarantor for compliance with the stipulated Customary sanctions.

## **SUGGESTION**

The Government and Customary Institutions need to strengthen the legal and governance foundation of the Customary Judicial Institution in the implementation and mechanism of the Customary Basara so that the community can better respect and use the settlement of cases in a manner that upholds the value of togetherness and high honesty carried out by the Damang and the Traditional Peace Peace Coordinator.



## REFERENCES

- [1]. Achmad, S. and Elmalia, T. E. (2016). *Eksistensi Peradilan Adat – Pengalaman Kalimantan Tengah*. Palangkaraya.
- [2]. Hadikusuma, H. H. (2007). *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*. Bandung: CV. Mandar Maju.
- [3]. National Dayak Customary Assembly. (2014). *Melihat Kembali 96 Pasal Hukum Adat dan Praktinya dalam Kehidupan Masyarakat Adat Dayak*. HADAT 1894.
- [4]. Murhaini, Suriansyah. (2016). *Singer dalam Pusaran Perubahan Masyarakat Dayak Ngaju*. Palangkaraya: Lembaga Literasi Dayak (LLD).
- [5]. Ramon, T. (2009). *Pengantar Ilmu Hukum*. Available at <https://tiarramon.wordpress.com/category/bahan-kuliah/pengantar-ilmu-hukum/> accessed on January, 10<sup>th</sup> 2018.
- [6]. Republic of Indonesia, Law Number 1 of 1974 Concerning Marriage.
- [7]. Republic of Indonesia, Central Kalimantan Provincial Regulation No. 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan.
- [8]. Riwut, N. (2015). *Maneser Panatau Tatu Hiang*. Palangkaraya: NR Publishing.
- [9]. Telhalia. (2016). *Teologi Konteksual Pemenuhan Hukum Adat Dalam Perkawinan Adat Dayak Ngaju*. Palangkaraya: Lembaga Literasi Dayak (LLD).
- [10]. The Dayak Council of Central Kalimantan Province. (2015). *Pedoman Peradilan Adat Dayak Kalimantan Tengah*. Palangkaraya.