

CUSTOMARY JUSTICE SYSTEM OF THE INDIGENOUS PEOPLE OF BIAK NUMFOR, PAPUA

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ABSTRACT

The article aims to reveal about the prevailing customary justice system in pursuant to the customary law of Biak Numfor Papua, in investigating, considering, deciding or resolving a case of customary wrongdoings, and to set up procedures for the settlement of a case, and to determine the legal decision of a case under the prevailing customary law in a particular region. Referring to Law No. 21 of 2001 on Special Autonomy for Papua Province of Article 51 paragraph (1) states that "customary justice is the justice of settlement within the community of customary law, which has the authority to investigate and adjudicate customary disputes and criminal cases among the customary law people ". Therefore, the customary justice and indigenous customary law community of Biak Numfor Papua should be described, which is fitting for recognition in the national legal system. The article will be presented through juridical empirical approach with a framework of Alternative Dispute Resolution (ADR) to disclose the problem of "Customary Justice System on Indigenous People of Biak Numfor, Papua". The study will project the problem of indigenous or customary justice system on (i) the type of customary offense of Biak Numfor and (ii) the types of customary sanctions of Biak Numfor Papua.

Keywords: customary justice, customary law, and Biak Numfor Papua.

INTRODUCTION

In the life of the nation, the law occupied the highest norms that can be used as guidance for people of what to do or not to do, to have legal consequences if the norms are not adhered to or violated.¹ Moreover, as the main guidelines in regulating the balance of life, for the creation of the order of harmony and harmonious life, the law can be used as regulatory keeper of social order, and the legal order among people, who get along in a society, to avoid all disasters and any possible danger or threat. Law that exists in the indigenous communities, no matter how simple and small the community is, that it has its own culture with its own style and character, then the law in every society, has its own style and character; i.e. the law of each local community is different.

As a great nation, Indonesia has a diverse ethnicity, cultures and customs with unique and diverse characteristics. To that end, every "law reform police" that supports the existence of customary law would receive the protection, respect and recognition in accordance with the system of development of national law that is based on "Pancasila" as the ideals of the values of national life, it is because each nation has a uniqueness of its own laws, and as with the language, then the law is alive and created by society because the law is the life of the nation itself.

¹Nyoman Serikat Putra Jaya, 2005, *Relevansi Hukum Adat Dalam Pembaharuan Hukum Pidana Nasional*, Citra Aditya Bakti, Bandung, h. 32

The above phenomenon is experienced by customary law communities of Biak Numfor in Papua Province. The Biak Numfor customary law community is one of ± 263 ethnicities that inhabit the Land of Papua. Anthropologically, customary law communities of Biak consist of one ethnicity "ethnic of Biak with their local language, namely language of Biak". Ethnic of Biak also known as migrants, so they spread out and inhabit a cluster of islands in the northern region of the island of Papua, which is in the bay area of Paradise, which the Dutch called Geelvink Baay. Geographically, the cluster of islands is located between 134°47'-136°045' East Longitude and 0055'-1027' South Latitude. Biak Numfor land area is 2.602 km² (or 0.62% of the area of Papua Province which covers 421,981 km²) consisting of two (2) major islands, namely the island of Biak of 1,796 km², 323 km² of Numfor island and the rest is a group of small islands of 38 islands with a total area of 483 km² that stretches across the Pacific Ocean. In addition, there are some areas of migrant communities of Biak Numfor, namely: Northern Yapen and the east end of the island of Yapen, Krudu, Ansus, the area of Wandamen, the northern coast of the peninsula coastal bird head of Papua: Sausapor, Saukorem, Mega, Makbon, and the islands of Raja Ampat and most residents of the Gulf of Dore.²

From the description above, then what becomes the focus of writing is "Sistem Peradilan Adat Pada Masyarakat Hukum Adat Biak Numfor, Papua". "the Indigenous Justice System on Indigenous People of Biak Numfor, Papua". The article will project the problem of indigenous justice system on (i) the type of customary offense of Biak Numfor and (ii) the types of traditional sanctions of Biak Numfor Papua.

Concepts

Indigenous Justice

The term *customary justice* or *customary courts* often overlapping in its use by indigenous peoples and other local communities, including the more commonly used term 'customary assembly, customary meeting, or *para-para adat* " that it depends on the characteristics of each particular custom. Meanwhile, according to Hilman Hadikusuma the term "justice" (*rechtspraak*) basically means "talks about law and justice conducted by the court system (consultative) to settle the case out of court or before the court. When the talks are based on customary law, then it is merely called "Justice of customary law" or "customary justice".

The concept of indigenous justice in this article refers to the opinion of Hilman Hadikusuma, and the Law on Special Autonomy for Papua Province, i.e. the procedure applicable under customary law to examine, consider, decide or resolve a dispute over customary wrongdoings; customary law rules governing what to do to resolve a case, and legal decisions or to establish a case under customary law. The process of implementation of the court decision is referred to as "customary justice". In addition, Law Number 21 of 2001 on Special Autonomy for Papua Province of Article 51 paragraph (1) states that "customary justice is justice for resolution in the customary law community, which has the authority to investigate and adjudicate customary civil disputes and criminal cases among the residents of indigenous communities concerned."

Customary offense

Customary offense, is an act or event that conflict with obedience, harmony, order, security, fairness, and the pertinent public awareness, whether it is as a result of acts committed by a

² Yustus Pondayar, 2007, *Cara Penyelesaian Delik Adat Biak Numfor-Papua*, Tesis Magister Hukum Pada Program Pascasarjana Universitas Udayana, Denpasar, h. 1 Lihat Hugo Warami, 2006, *Dou Sandik Guyub Tujur Biak Numfor-Papua*, Tesis Magister Linguistik Kebudayaan Program Pascasarja Universitas Udayana, Denpasar, h. 1

person, group of people, as well as traditional authorities themselves, of which action can cause turmoil that is seen as disturbing the balance of the cosmos as well as cause a reaction from the indigenous communities in the form of traditional sanctions; actions that should not be done ", despite the fact that the events or actions are only small or minor mistakes; a unilateral act of a person or group of individuals, threatening or offensive or disturbing the balance and the life of material communion to the people or to united society. Such actions or deeds would thus result in a customary reaction.⁴

Based on the above views, the customary offense in this article refers to all the actions of an event that is contrary to propriety, harmony, order, security, whether it is a result of one's actions and deeds or those committed by the chiefs of the indigenous people. The concept of customary offense refers to: (a) an event, as the actions of the parties in the community; (b) the action results in a disturbance of balance; (c) balance disorders cause a reaction; and (d) the reactions that occur, making the maintenance of a balance disorder back to its original state.

Customary Sanctions

Customary sanctions are part of measures aimed at restoring the disturbed living comfort and negate or neutralize an unlucky situation posed by a customary offense. Form of traditional sanctions can be summarized into six sections, namely (1) substitute the immaterial losses in various kinds such as coercion to marry a girl who has been defiled, (2) payment of customary money to the affected, in the form of magical objects as a substitute for the spiritual loss, (3) purification ceremony for victims; to rid the community of all occult dirt, (4) the avoidance of embarrassment, apology, (5) various form of corporal punishment to the death penalty, and (6) banishment from their society and putting people outside the legal system.⁵

THEORETICAL FRAMEWORK

One way that can be taken to resolve the dispute, other than through the judiciary, is through a method called Negotiation, Mediation, and Arbitration. Three main types of dispute resolution is an alternative of the court proceedings, and referred to as Alternative Dispute Resolution, abbreviated ADR). Basically, ADR is a concept that includes various forms of dispute resolution outside the court proceedings; arbitration is not included in this settlement, because arbitration is based on the adversarial approach (dispute), similar to the judicial process. When traced in the literature, there are two conceptual views of alternative dispute resolution, namely the form of dispute resolution, in addition to the judicial process, either by consensus or no consensus based approach, such as arbitration.

Types of Customary Offense of Biak Numfor

The type of offense customs still prevail and live in a community of indigenous Biak Numfor contained in the decision of the Council of Customary of *Kainkain Karkara* Biak Numfor (1948) and Decision of Principal Law of Customary Council of *Kainkain Karkara Biak Bar*

⁴ I Made Widnyana, 1992, *Eksistensi Delik Adat Dalam Pembangunan* 'Orasi Ilmiah dalam Pengukuhan Guru Besar Disampaikan Dihadapan Sidang Terbuka Senat Universitas Udayana Saat Peresmian Penerimaan Jabatan Guru Besar Tetap Dalam Ilmu Hukum Pidana pada Fakultas Hukum Universitas Udayana, Selasa, 2 Juli 1992, Fakultas Hukum UNUD, Denpasar, h.6 Lihat I Gede A.B. Wiranata, 2005, *Hukum Adat Indonesia Dari Masa ke Masa*, Citra Aditya Bakti, Bandung, h. 270, dan Bushar Muhammad, 1993, *Pokok-Pokok Hukum Adat*, Pradnya Paramita, Jakarta, h. 67.

⁵ Imam Sudiyat, 1981, *Hukum Adat Sketsa*, Liberty, Yogyakarta, h. 180 Lihat H. Werdono Soewardi, 1979, *Hukum Adat Laut di Teluk Yos Sudarso dan Pengaruhnya Bagi Kehidupan Ekonomi*, Penerbit PT. Pradnya Paramita, Jakarta, hal. 60

(region) as found by Justus Pondayar, can be described as follows:⁶ (1) *wos bin* 'adultery with a woman' is a man who had sex with a woman who is not his wife, making customary violations. Customary offense of *wos bin* of indigenous society in Biak Numfor customary law can be divided into: (a) *snon befarbuk ma bin befarbuk* that is adultery happens between a married man with a married woman; (b) *snon befarbuk ma bi beyorsmonda* namely adultery happened between a married man to a girl; (c) *snon beyorsmonda ma bin befarbuk* namely adultery happened between an unmarried man with a married woman; and (d) *snon beyorsmonda ma bin beyorsmonda* namely adultery happened between a single man to a single woman; (2) *mamun* or *apyokem* 'murder' of customary offense in which someone intentionally take the life of another person; (3) *par mamun* 'to injure someone, namely a fight where someone gets injured by a sharp instrument; (4) *sasmer bin* 'a man coercively takes the girl as his wife' is an act against the customary norms. *Sasmer* this happened because: (a) the girl's parents do not approve of their daughter mated with the young man, and (b) the young man only wants the girl, so he will elope; (5) *bin beyaber snon* 'a woman elopes to the man's family', namely a woman fleeing to her future husband's house and settled there. This happens because there are other causes. As a result of the elopement, the man is forced to pay a fine plus the payment of dowry; (6) *anun karauw* 'theft' is an offense in which someone takes something belonging to other people's belongings with the intention to have it; (7) *rapakpik* 'fights', namely a fight that take place between a person / group of people that causes a person / group of people experience pain in the body; (8) *saksyuk* 'harass', namely a state where a man disturbing a married woman or widowed with malicious intent; (9) *anon kepen bin* 'pinch', i.e. one man with a woman accidentally pinching girls, or married women or widows with malicious intent; (10) *eksansin* 'stalking' i.e. customary offense where a person knowingly always stalking another person wherever that person goes. *Eksansin* consisting of: (a) *eksansin mamun* namely someone deliberately always stalking someone where he/she goes, with the malicious intent of wanting to kill him/her, and (b) *eksansin bin* i.e. a man who is stalking a woman wherever she goes with the intention to coercively takes the woman as wife or to rape her; (11) *fankoryaye* 'insult / scorn' i.e. customary offense in which someone jeered and insulted one another without respect for human values; (12) *safsof* 'accusation', namely accusing others on charges that are not proven. *Safsof* is divided into: (a) *safsof anun karauw* namely someone accuses another person for allegedly stealing, and (b) *safsof bin* namely a wife accuses her husband of adultery with another woman; (13) *embakbuk* 'seduction-compulsion', namely coercion seduction of a man against a woman by force and rape her; (14) *membadadir* 'jealousy' of custom events where a husband prejudiced (jealous) that his wife is having an affair with another man, or a wife who is jealous of her husband with another woman; (15) *anan karen* namely a father who had sex with his own child; (16) *ayabyober* 'deprivation of property rights of others arbitrarily; (17) *roprasris* namely customary offense where one male, one female pelted with the peel of betelnut or something with malicious intent; (18) *rakafkofen* 'gossip', namely a customary offense in which a person or group of people gossiping other people; (19) *sansan orwarek* 'sealing', a customary offense in which a person or group of people deliberately damaging the sign ban at once plundered the forbidden things; (20) *namarnai* 'manipulation', namely customary offense in which someone manipulate the property of his brothers. For example: arable land rights, the right to a plant belonging to the family and the right to shared heritage; (21) *namfores* 'oath', namely customary actions where someone swear in the name of God to defend himself from his mistakes; (22) *anggarkar* 'denial', namely customary offense in which someone always committing fraud against another person; (23) *mampayanyan* 'intermediaries', which is a customary offense in which a person is used as the intermediary

⁶ Yustus Pondayar, Loc.Cit, h. 94

for an act that violates the customs; (24) *farkarkir bin* 'peeping', namely customary offense in which a man is peeping women', namely customary offense in which a man is peeping women who are bathing naked or urinating; (25) *fanfadak* 'berate', namely customary offense in which someone berates others by referring to her/his sex organs; and (26) *aror manwen* 'call someone by *suanggi* / devil', namely customary offense in which someone is named by demons' name (black magic).

Based on the types of customary offenses of Biak Numfor above, it can be classified into four groups as follows:⁷ (1) customary offenses that concerning the safety of life, namely (a) *mamun / aipyokem* 'murder', (b) *parmamun* 'a person injured with a sharp instrument', (c) *rapakpik* 'fights', and (d) *eksansin mamun* 'stalking'; (2) customary offenses concerning morality, namely (a) *won bin* (adultery) consisting of: (i) *snon befarbuk ma bin befarbuk*, (ii) *snon befarbuk ma bin beyorsmonda*, (iii) *snon beyorsmonda ma bin befarbuk*, (iv) *snon beyorsmonda ma bin beyorsmonda*; (b) *sasmer bin*, (c) *embakbuk bin*, (d) *eksansin bin*, (e) *bin beyaber snon*, (f) *saksyuk*, (g) *mambadadir* 'jealous', (h) *anan Karen* 'father had sex with biological child', (i) *farkarkir bin*, (j) *safsof bin* 'allegations', (k) *roprasris bin* 'stoned', and (l) *anonkepen bin* 'pinching women'; (3) customary offenses involving property, namely (a) *nun karauw* 'theft', (b) *manarnai* 'manipulation', (c) *sawsawn orwarek* 'sealing', (d) *ayabyober* 'deprivation'; and (4) customary offenses that violate personal interests, namely (a) *rakrok* 'quarrel', (b) *fanfadak* 'invective', (c) *fankoryaye* 'insult', (d) *rakafkofen* 'gossip', (e) *aror manwen* 'call someone by *suanggi* / devil', (f) *namfores* 'oath' and (g) *anggarkar* 'denial'.

Customary offense *Ma'mun / ap yokem* 'murder', *wos bin* 'adultery', and *samer bin* 'carry off a girl or a wife' can be categorized as a severe customary offenses. However, in view of Biak that if the act that violates the three customary offenses above, then someone is called *mambri* 'strong man / great' and the attitude shown was considered to raise the dignity of the clan or *keret* so it can be respected, and revered as a hero, In addition, it can also be distinguished by the customary offenses of theft, for stealing is something very 'taboo' for the people of Biak customary law. Theft is an odious act that damages the good name of a person, family, *keret*, and the community, even the perpetrator can be expelled from their homes or killed.

Types of Customary Sanctions of Biak Numfor

Types of customary sanctions on customary community law of Biak Numfor consists of two types, namely (1) customary sanctions that are still maintained and enforced; and (2) customary sanctions that have been abandoned or are not enforced (see Pondayar, 2007). Both types of customary sanctions can be sorted as follows:⁸

The Customary sanctions that are Still Maintained and Enforced

Traditional sanctions that are still maintained and enforced on customary law community of Biak Numfor consists of four sub-types, namely: (1) *bin Babiak* 'women ransom', (2) *Sarak* 'silver bracelet', (3) *kumpang* or *pipi* 'money', and (4) *Papus-ben* 'solid objects such as plates'. The four sub-types of customary sanctions above can be described as the following. First, *bin Babiak* 'women ransom'. In Biak language etymology *bin* means that women and *Babiak* means penalties / compensation, it can be taken literally *bin Babiak* means 'women as ransom'. *Bin Babiak* is a form of customary reaction that can be imposed on the offender who did *apyokem* 'act of murder'. *Babiak bin* customary reaction specifically charged only to customary offenses of *apyokem* 'murder'. Women used as a means of payment for the murder case was a daughter of the girl who would be married to a man of the victim that would give

⁷ Ibid, h. 98-99

⁸ Ibid, h. 103-104

birth to a child to replace someone who has been killed by the perpetrator / woman used as this *Babiak*, when it gave birth to a first child to replace the one who died and the next child to be born, the men gather to pay dowry to the woman so that the position of women is no longer the child of *Babiak* but the same position with women being proposed through customary process of making a proposal. Secondly, *Sarak* 'silver bracelet'. A sub type of sanctions in providing *Sarak* for use as a fine, *Sarak* has a very high value so that in any customary sanctions *Sarak* is always requested by the victim to the perpetrator. Third, *kumpang* or *pipi* 'money'. This sub type of sanction is a form of action to pay the amount of money charged to the person who violated customary norms. Fourth, *Papus* 'solid objects such as plates'. This type of sub sanction is a form of action to redeem the act or offense by providing solid objects in the form of plates consisting of: (a) *Ben bepon* 'antique plates with dragon picture', (b) *ben resa-resa* 'antique plates with picture of rice leaves', (c) *Ben ayermer* 'big flat antique plates with floral picture', (d) *ben faramasi* 'antique brown plate', (e) *ben afar* 'plain white antique plates', (f) *ben more-more* 'urn plate', (g) *Ben anan* 'dinner plate', and (h) *ben dur* 'sauce plate'.

Not Enforced or non-applicable Customary Sanctions.

Customary sanctions that are not imposed or removed in customary law communities of Biak Numfor consist of eight subtypes, namely: (1) *sanfar* 'bracelets of shells'. *Sanfar* itself is divided into: (a) *sanfar snon* 'men bracelet', (b) *sanfar bin* 'women bracelet', and (c) *sanfar mgamor* 'bejewelled bracelet', (2) *robena* 'black Chinese fabric', (3) *ben more-more* 'tempayan/ large pottery water jar', (4) *way* 'boat', (5) *ransun* 'Tuman sago', (6) *Bayram knam* 'sago', (7) *siauwi* 'expulsion / exclusion', (8) *smuni* 'murder'.

Based on the sub-type of traditional sanctions above, there are several types of customary sanctions that need additional explanation. For example, *sanfar* is still considered high value that is used as *Babiak*, although the frequency of its application is very rare. Usually the number of *Babiak* can be adapted to the demands or requests of the victims and the ability of the offender. The victim may request *babiak kuper oser/kuper samfar di suru*. *Kuper* is the name of the type of cork wood very familiar by customary law communities of Biak Numfor; *Oser* is a number one; *suru* is number two. So in the sanctions system, which is meant is one *kuper* contains ten pieces of *sanfar*, so that the two *kuper* requested, means there are twenty pieces of *sanfar*. In addition *robena*, *more-more*, *way*, *ransun*, *Bayram knam*, *siauwi*, and *smuni* are considered as the type of sanctions which are no longer relevant and are not in accordance with the times so that the types of sanctions has been negated by the customary law community of Biak Numfor, Papua.

In customary law, if the person is committing the offense, hence to be able to account for his actions he must have a common sense, because on the basis of common sense, he is he able to distinguish what is prohibited by the customary law. This principle is in line with the principles of the Criminal Law that has been the issue of criminal responsibility, namely: do not be convicted if there is no mistake (*geen straf zonder Schuld or actus non facit reum nis mens sit rea*). This means that in order to be convicted of a crime, someone who has committed a crime must have been committing an element of mistake. In addition to that, "people can also be criticized for doing things (crinal acts). If he did not do it intentionally, but the occurrence of such acts was possible because he was inattentive and negligent of the obligations by the public that should be complied with."⁹

The conviction of every indigenous people who have common sense must know which actions are prohibited and the actions which, if it is broken, they already know the sanctions

⁹ Moeljatno, 1997, *Asas-Asas Hukum Pidana*, Bina Aksara, Jakarta, h. 20

will be. In a society that has not been mixed with the outside community, the social relationship with each other is so close that the teachings of good behaviours must be passed on from generation to generation. Because also the teachings of the sanctions, in the form of physical and spiritual suffering, for violation patterns of life will be maintained from one generation to generation. Only the types of sanctions will always adapt to the development of the indigenous people themselves, and it shall no be in conflict with the state's applicable statutory provisions.

Closing

Based on the descriptions above, the court system and indigenous customary law community of Biak Numfor, Papua can be summarized as the following: First, the customary court in the customary law community must serve as a mediator, negotiator and reconciler on any customary law in Papua, including Biak Numfor. Secondly, customary law court system became a strategic and gained recognition in customary law community of Biak Numfor. Third, the type of offenses of indigenous customary law community of Biak Numfor can generally be categorized into two types, namely (1) severe offenses like: *wos bin* (adultery), *mamun / aipyokem* (murder), and (2) minor offenses such as customary offense of *bin bebur* up to the customary offense of *aror manwen*. Fourth, customary law community of Biak Numfor looked the type of offenses of indigenous customary law as an offenses of Biak Numfor indigenous customary law as the existing general offenses in the Criminal Code. If the offenses were violated, the offenders will be held accountable by *mananwir*, as customary judges through Tribal Council *Kain-kain Karkara of Biak Numfor*. Fifth, local governments need to make regulations governing the recognition of customary justice processes that already exist and live in a society of law can refer to the special autonomy law for Papua Province. Sixth, the customary community justice law should be used as reference for the process of national laws as well as a legal system to solve problems their own customary law.

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