

Harmonization of Customary Criminal Acts in Bengkulu within the National Legal System

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ABSTRACT

The existence of customary law in Indonesia, including in Bengkulu Province, is part of the legal pluralism that is still alive and thriving in society. However, in practice, the implementation of customary criminal acts often faces challenges in its integration with the national legal system, particularly regarding the dualism of case resolution, legal certainty, and protection of human rights. This condition raises the need for harmonization between customary criminal law and national law to create a just and effective legal system. This study aims to analyze the forms and characteristics of customary criminal acts in Bengkulu and formulate an appropriate harmonization model within the framework of the national legal system. The research method used is normative legal research with a statutory and conceptual approach, through a qualitative descriptive analysis of primary, secondary, and tertiary legal materials. The results show that customary criminal acts in Bengkulu have a communal and restorative character oriented towards restoring social relations. Harmonization can be achieved by strengthening the recognition of customary law in regulations, integrating the principles of restorative justice into the criminal justice system, and establishing limits on the types of cases that can be resolved through customary law. Thus, this harmonization is able to maintain a balance between the local values of indigenous communities and the principles of national law.

Keywords: Hukum Adat, Pidana Adat, Hukum Nasional.

INTRODUCTION

Indonesia is a country based on law that recognizes the diversity of legal systems that exist and develop within society. (Widharu & Sunaryo, 2025) In addition to national law derived from statutory regulations, customary law has long served as a guideline for regulating social life, including criminal law. The existence of customary criminal law is inseparable from the values of local wisdom that have developed and been passed down through generations by customary law communities. (Kuswicaksono, 2021)

In Bengkulu Province, customary criminal law still maintains a strong presence in resolving various issues related to violations of social norms. Customary sanctions serve not only as a

form of punishment but also as a means of restoring social balance, restoring interpersonal relationships, and maintaining societal harmony. This characteristic demonstrates that customary criminal law places greater emphasis on restorative aspects than the repressive approach recognized in the national criminal law system.

However, in the context of a modern constitutional state that adheres to the principles of legality and the supremacy of written law, questions arise regarding the position and binding power of customary criminal law, particularly customary sanctions, within the national legal system. On the one hand, the constitution, through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. On the other hand, the national criminal law system emphasizes the principle of legality, which requires that an act can only be punished based on the provisions of applicable laws and regulations. (Fitri et al., 2024)

This normative tension between the recognition of customary law and the dominance of national positive law is what makes the position of customary criminal law, particularly in Bengkulu, interesting to study. Furthermore, the practice of implementing customary sanctions in society often coexists with the formal criminal justice system. This situation raises questions about the limits of authority, legitimacy, and the relationship between customary criminal sanctions and criminal sanctions based on national law..

Based on this description, it is important to conduct a normative study of the concept and characteristics of sanctions in Bengkulu's customary criminal law, as well as to analyze its position within the framework of the national criminal law system. This research is expected to contribute to understanding the harmonization of customary law and national law, particularly in the context of criminal law reform in Indonesia.

METHOD

This research is a normative legal research, namely legal research with a normative doctrinal approach, or normative juridical legal research or normative legal research which is basically an activity that will examine the internal aspects (to solve problems that exist within) positive law. (Benuf & Azhar, 2020) using a legislative approach and a conceptual approach. The

legal sources consist of primary legal materials (the 1945 Constitution, the Criminal Code, laws and regulations related to indigenous communities), secondary legal materials (books, journals, and research results), and tertiary legal materials. The analysis was conducted qualitatively using a descriptive-analytical method.

This research employed several approaches, namely the statute approach, the case approach, and the comparative approach. The statute approach examined various regulations, such as the 1945 Constitution, the Criminal Code, and policies related to the recognition of indigenous communities. The case approach analyzed customary criminal law settlement practices in Bengkulu that could potentially conflict with national law. The comparative approach compared customary law practices in Bengkulu with those in other regions in Indonesia that had already integrated customary law into the formal legal system.

The legal sources used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and legal decisions. Secondary legal materials consist of scholarly literature such as books, journals, and previous research discussing customary law, legal pluralism, and legal harmonization. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used as supporting sources to clarify the terminology used in the research.

The legal material collection technique was carried out through systematic library research, exploring various sources, both print and digital. Furthermore, this research also considered concrete case studies that occurred in the indigenous communities of Bengkulu. One example is the resolution of a case of violation of morality in the Rejang indigenous community. This was resolved through customary fines and an open apology, but was still processed by law enforcement officials because it was deemed to meet the elements of a criminal offense under the Criminal Code. Another case is a customary land dispute in the Serawai region that was resolved through customary deliberation, but re-sparked conflict when one party took the case to the formal courts.

Furthermore, there were cases of insulting traditional figures in the Mukomuko region that were resolved through social sanctions and traditional rituals. However, law enforcement intervention arose due to a criminal report filed by a specific party. These cases demonstrate the potential for dualistic dispute resolution, leading to legal uncertainty and disharmony between traditional institutions and state law enforcement.

The legal material analysis techniques used in this study utilize systematic interpretation, legal argumentation, and vertical and horizontal synchronization. Systematic interpretation is used to understand the interrelationships between norms within the national legal system, particularly in relation to the recognition of customary law. Legal argumentation is used to establish a logical basis for formulating a harmonization model. Meanwhile, vertical and horizontal synchronization is conducted to examine the compatibility between various laws and customary law practices that exist within the community.

In a critical analysis, this study highlights the conflict between the principle of legality in national criminal law and the concept of living law in customary law. The principle of legality emphasizes that an act can only be punished if it is regulated by law, while customary law is often unwritten but remains alive and recognized by society. Furthermore, there is potential for abuse in the application of customary sanctions, such as excessive or disproportionate social sanctions, which have the potential to violate human rights. Examples include prolonged social exclusion or customary fines that are disproportionate to the severity of the violation.

Based on this analysis, this study develops a conceptual harmonization model called the integrative-restorative model. This model emphasizes the integration of customary law values with the national legal system through a restorative justice approach. This model establishes the limitation that minor and communal crimes can be resolved through customary mechanisms, while serious crimes remain the jurisdiction of national law. Furthermore, a formal coordination mechanism is required between customary institutions and law enforcement officials, such as recognizing the results of customary deliberations as part of the legal considerations in the judicial process. With this model, it is hoped that a balanced harmonization of legal certainty, justice, and the preservation of local values will be created.

RESULTS

The existence of customary crimes in Bengkulu cannot be separated from the character of its people, who still firmly uphold traditional values. Within the social structures of indigenous communities such as the Rejang, Serawai, and Mukomuko, customary law serves as an instrument of social control, maintaining balance in relationships between individuals and between individuals and their communities. Customary crimes are fundamentally understood not merely as violations of written norms, but as actions that disrupt the harmony and social

order of society. Therefore, the orientation of their resolution emphasizes restoring balance (restorative) rather than retaliation (retributive).

Substantively, customary crimes in Bengkulu generally involve violations of morality, insults to traditional figures, disputes over customary land, violations of marriage rites, and actions deemed to defame a family or community. In the context of indigenous communities, these violations impact not only the individual victim but also collective honor. (N. Afifah, 2024) Therefore, the resolution process involves traditional officials and community leaders through deliberation and consensus. Sanctions imposed can include customary fines, livestock, traditional clothing, certain traditional rituals, or public apologies before the community. (Syam et al., 2023)

This communal and restorative character demonstrates that customary criminal law has a different philosophy than national criminal law, which is rooted in Continental European legal traditions. In national criminal law, as reflected in the Criminal Code (KUHP), a crime is viewed as a violation against the state. The state acts as the injured party and has full authority to prosecute and impose sanctions. In contrast, in customary law, violations are viewed more as disturbances to the social balance that must be restored. (Saravistha et al., 2022) through mutual agreement. This is where the potential for tension between the two legal systems arises.

The main challenge in harmonizing customary criminal acts in Bengkulu with the national legal system lies in the dual nature of case handling. In practice, some cases have been resolved through customary mechanisms, but are still processed legally by law enforcement officials. This situation creates legal uncertainty and a double burden for perpetrators. From the perspective of indigenous communities, the customary settlement is considered to have restored balance, making further proceedings through the state justice system no longer relevant. However, from a national legal perspective, the principles of legality and the public interest require that every criminal act that meets the elements of a crime be processed according to statutory regulations.

Furthermore, the largely unwritten nature of customary law also raises issues regarding legal certainty. Variations in norms and sanctions across customary areas in Bengkulu have the potential to lead to differential treatment of similar violations. In the context of a state governed by the rule of law, certainty and uniformity in the application of law are crucial

principles. Therefore, codification, or at least documentation, of customary norms is necessary to provide clearer references without eliminating their flexibility.

Another equally important issue is the protection of human rights. While most customary sanctions are social and economic in nature, there is the potential for degrading or disproportionate sanctions to emerge if not properly monitored. (Auria et al., 2024) Harmonization with the national legal system must ensure that the implementation of customary law remains within the constitutional framework and human rights principles. This means that recognition of customary law is not absolute, but rather conditional, as long as it does not conflict with existing laws and human rights values.

In the context of harmonization, an integrative approach is the most realistic choice. (Junaidin, 2023) Harmonization does not mean standardizing customary law into national law, but rather seeking common ground between the two. One relevant approach is strengthening the concept of restorative justice within the national criminal justice system. Long-standing values within Bengkulu customary law, such as deliberation, peace, and social restoration, align with the principles of restorative justice currently emerging in Indonesian law enforcement policy. Through this mechanism, the resolution of certain criminal cases can be carried out by considering amicable agreements between the perpetrator and the victim, thereby reducing reliance on formal criminal justice.

In addition, strengthening regional regulations is a strategic step in supporting harmonization. (Elcaputera, 2022) Regional governments can develop regional regulations governing the recognition and protection of customary law communities and mechanisms for resolving customary disputes. These regulations can bridge the gap between customary law and national law, while also providing formal legitimacy to customary institutions within specific jurisdictions. Clear regulations can facilitate more effective coordination between customary institutions and law enforcement officials.

It is also important to establish limits on the types of crimes that can be resolved through customary mechanisms. Not all crimes can be transferred to the customary realm, especially serious crimes such as murder, sexual violence, or crimes that have a broad impact on the public interest. These limitations are necessary to uphold the principle of the rule of law and protect the interests of society in general. Thus, customary law serves as a complement to the national legal system, not a complete replacement.

Overall, harmonizing customary criminal acts in Bengkulu within the national legal system requires an approach that is sensitive to local values while being consistent with the principles of the rule of law. Constitutional recognition of indigenous communities must be implemented concretely through policies that support the integration of customary values into judicial practice. At the same time, the principles of legal certainty, justice, and the protection of human rights remain the primary foundation. With this balance, legal pluralism in Indonesia will not become a source of normative conflict, but rather a wealth that strengthens the national legal system as a whole.

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