

Settlement of criminal matters through Malay customary institutions with the concept of restorative justice in Lipat Kain Kampar Kiri of Kampar regency

Elmayanti¹, Evi Deliana², Nurahim Rasudin³

Abstract

Customary law is religiously functional law, so that customary law fulfills a social function or social justice. Thus, the community and its members carry out these normative orders without seeing them as coercion, but because they assume they are as such. The aim of the law is justice, expediency and legal certainty, and these three elements constitute an inseparable unity. Justice is the moral foundation of the law and, at the same time, the benchmark for a positive legal system. In other words, justice has always been the basis of the law. Without justice, a rule can not be called a law. The highest possible justice to be achieved in the mediation of sanctions is the agreement of the parties involved in the criminal case.

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Author's Information:

¹Faculty of Law, University of Riau, Indonesia

(deliana.unri@gmail.com)

²Faculty of Law, University of Riau, Indonesia

³Faculty of Law, University of Riau, Indonesia

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1. Introduction

Law is a system that has its own features and characteristics as well as being a tool of regulating a person's existence in an organized way. Good law is a law that is in harmony with living law (living law) in a society that is still, or is a representation of, the principles that exist in that society.

Indonesian customary law has special characteristics and features distinct from other laws. Customary law should meet the needs of religiously based societies to serve a social purpose or social justice (Mustari Pide, 2014). Thus, the society and its leaders carry out these normative orders without seeing them as intimidation but because they are meant to be (Soemadiningrat, 2002).

Customary law is an organized human unit, settled in a certain region, with rulers and property, tangible and intangible, where the members of the unit experience every life in society as natural by nature, and none of these members have a thought or inclination to open the bonds that have formed or leave them in the sense of forever breaking them (Bahar, et al. 2005).

In customary law societies the practice of dispute resolution appears to use "adat patterns," but in other words it is also called "customs patterns." Indigenous and tribal people prioritize resolution of conflicts through negotiations aimed at achieving group peace. The judiciary as a judicial body is the last resort if dispute settlement can not be resolved by consensus. In the case of conflict settlement in Law No. 30 of 1999 about arbitration and alternative dispute resolution, as an operational basis in the life of Indonesian state law.

Any type of crime must be followed up by punishment or arbitration outside the court (penalty mediation), or by a term of restorative judgment. Justice, appropriateness and legal certainty are the object of law, these three elements form an inseparable unity.

Restauratory justice is a philosophy of thinking that reacts to the growth of the criminal justice system by stressing the need to include people and victims who are perceived to be exempt from current systems.

The treatment of criminal cases in an approach to restorative justice provides various viewpoints and strategies for understanding and coping with a crime. In the sense of restorative justice the concept of a crime is essentially the same as the view of criminal law, namely attacks on individuals, culture and social relations in general. While law is a process that needs to uphold the interest of justice, justice has a moral and constitutive aspect to the law. Justice is legal since it serves as a transcendental precondition defining all dignified law. Justice is the moral basis and a benchmark for a good legal system at the same time. In other words, the pillar of the law has always been justice. A statute can not be called a law without punishment.

Stuart M. Widman formulates criminal mediation as a process in which a mediator encourages contact and negotiation between parties to help them reach a voluntary agreement on their dispute, a process in which the mediator promotes communication and negotiation between the parties to help them reach voluntary agreement on their dispute. (Sudira, 2016).

The highest justice to achieve in mediating fines is the consent of the parties involved in the criminal case. The advantage of criminal mediation as an instrument for dealing with criminal cases is that criminal mediation can reduce the victim's feelings of revenge against criminal perpetrators and the procedure is more flexible because there is no obligation to follow the process established in the criminal justice system.

Communities in *lipat kain* Kampar Kiri of the Kampar Regency are committed to the creation of a civilized society in which all behaviors of all components of the community must be based on intelligent logic and respect and uphold the customs and values embraced and applicable in the Kampar District Community, including the settlement of cases within the Kampar District Community.

2. Research Methods

This type of research is juridical sociological, with an emphasis on field research. The sociological legal method is adopted since the issue under review is how the application of law in society is concerned. This work, based on its purpose, is concise as it attempts to simply and systematically explain the reality under study.

3. Research Results and Discussion

3.1. Settlement of criminal cases through the Malay Customary Institution with the concept of Restorative Justice in *Lipat Kain* Kampar Kiri of Kampar Regency

From the point of view of constitutional law, the Andiko Nan Government 44 created a power organization to enforce the law, and the organization is a level of work procedures rather than state equipment in a large, intact component, where the royal system illustrates good relations in the division of tasks and obligations.

Andiko Nan 44 government working with the authority of power lies in finding a agreement that is also called *Penghulu seAndiko*, meaning the *Penghulu* agrees. In the case of *Penghulu* 's relationship with his full nephew, the *Penghulu* as the king of his nephew 's son and can not be arbitrary to his nephew 's son and his nephew 's son must respect his conqueror, as expressed in the traditional *Godangnyo mamak iyo dianjuong* 's statement of the son's nephew (his son's deck) with *Datuok Godang* interview.

There are 44 adat pucuok members in 44 countries in the Andiko region within this country. In these 44 traditional pucuoks they are “*samo ghodah, togak samo tinggi*” (sitting and standing equally) is high but some of them take precedence in a serantiong elevated phase, this is the highest density in Andiko Nan 44 government. There are 44 pucuoks in that case who support Andiko Pucuok's work directly according to their fields each. This customary clan or Andiko allows a combined density of many more countries to address territorial matters when there is a danger from outside or joint customs before continuing at level 44 Andiko will first be subordinated by the country, as for densities such as the territory of XIII Koto, V Koto, Kampar Kiri Density, Government, Rokan and other regions.

While the 44 usual Pucuok nan countries are delegates from each country to liaise, respectively, between domestic and foreign countries, or as an envoy to leave the Andiko region, it is called *Pucuok Adang Godang Keluar*. It is called *Penghulu Godang Kedalam*, for a position that is elevated to a degree and takes precedence over major domestic leaders. The Head of Godang Keluar and Godang Kedalam, in essence, takes precedence over one move and is raised higher than the other heads raised in other countries, but then the Headman remained tall and sat lower in the country (sitting in Balirong) with other mamaks raised in another. The (Datuok Godang Interview).

As for what is normally addressed in this density is the case trial in the society, the determination of state-level customs and other meetings that do not interfere with the center 's actual customary laws. Niniok mamak 's way of seating in Balairong is also called the ompek paghik suduik, which is four seat positions under a hall created by wind or river water flow, since the river is the most important thing in increasing the economy of indigenous peoples. The combination of niniok mamak bosau godang botuah in this state hall is called the country / area level seandiko head density. At this density, if he makes a decision, the head is at the same level as the region, then he must reconsider it to Malin, whether or not the decision is against Islamic law.

Beyond the density level in this country there is also a smaller relation, namely the tribe 's internal density, in this case the density chairmen are led into nephews by the kucuong kucuong and the prince who are the niniok major mammals in the region. Pucuok Kampuung in Koghong Kampuung density is called such a place in the custom of the elder sibungsu nan, meaning that the prince must humble one dignity and be equal in density to Koghong Kampuung.

Throughout traditional andiko governance, 44 have typically separated their duties by their level of office. Andiko 's government 44 distinguishes this power by means of the particular duties of his role and the role is expressly governed by statute or by special legislation for each of these positions so that each position can not be included in the scope of the work of other positions and if someone who has a position enters the field of work and becomes another place of duty, the mamak niniok was considered It is said to have been plural and maunte bushels for those who breach this mamak and they will fall and save themselves from being miniak mini immediately.

Legislative power in the customs of Andiko Nan 44, namely the Niniok Mamak density consultation, which begins with the density of the internal level of the tribe, country , region and State / Government of Andiko Nan 44 and the results of that density decision will be carried out by the community itself to regulate itself by following the law and predetermined laws. The executive power is niniok mamak or the ruler himself, where, as the ruler who executes the law, he also makes laws which are later determined by density, he also acts as the holder of the judiciary's power to

prosecute a case on the basis of a report, and has the right to give legal advice or customary rules to enforce laws and other laws, but Niniok Mamak was unable to give a decision So with the conclusion that every decision in Indigenous Andiko Nan 44 should not be made without deliberation.

Even though Niniok Mamak himself holds all the governmental powers, the stipulated legal position limits each governmental power to one another. To run the government, niniok mamak must know by its definition that in carrying out their daily duties it is law for them.

The level of customary density and high office often takes precedence over a step in the Andiko Nan 44 Indigenous Government, namely the Pemulu Pucuok Andiko has princes below as assistants in each area and besides that all princes also have assistants in their tribes such as the Kucuong Customs, Malin, Dubalang, staff / monti and other assistants (Koghong Kampuong) It is called Si-Ompu or Bundo Kanduong for the affairs of womanhood and being the mother of the tribe and elders of all the women in the tribe. All of these positions are called Niniok Mamak Bosau Godang botuah whose role is to execute and socialize the law in the community , especially in their tribe according to their dignity, which is to provide guidance or advice to their nephews.

Adat Andiko Nan 44 gives authority to each country in carrying out its administration, the tribes regulate themselves by not violating the basic values of the customs themselves as contained in the customary constitution and the rules set by niniok mamak Bosau Godang Botuah as Andiko thousands of years ago. This determination is carried out with considerable consideration for all the possibilities that will arise in the future because of the stipulated legislation. Because it is customary to make permanent law for Niniok Mamak 's office, so that it does not violate customary law arbitrarily.

Not every country must interfere with other countries' affairs because each country already has its own customs. If there is a war between nations or a war between tribes, participate in a country against another country.

Pucuok Andiko

Pucuok Andiko is a prince who takes precedence over one move and is lifted from Andiko 's head by a seranting. He is the head of the 44 indigenous government of Andiko that heads 44 federation areas led by 44 members of Andiko who are the country's customary guides. Of the 44 princes Andiko each have their own duties, the children in the lap are empowered by authority in their respective tribes and the duties for the country are performed in their density along with other mamak niniok. Pucuok Andiko with a sharp limbo ruciong named Niniok Datuok Maharaja Dibalai, the customary government's first chief, 44.

He also controls diplomatic ties with the state abroad as well as running the head of government in an authority and also operates customary laws that have been negotiated with niniok mamak as Andiko. Not only is Pucuok Andiko tasked with heading the government but he also heads his tribe as another headman.

Deputy Pucuok Andiko

This deputy of the pucuok of Andiko was an assistant to the pucuok of Andiko in maintaining the state government in the center and, besides, he was responsible for heading the ambai ax and the niece in his family. Andiko's Deputy is composed of two people. First, Datuok Sati Gunung Malelo is responsible for all the defense and security

of the entire Andiko region from threats outside the territory of the government by not interfering in the affairs of the land and tribes which were given authority by adat. The second is Datuok Bandaro Tanjuong, who is responsible as a state for the danger from outside parties to Andiko's territorial waters, and who is not interested in interfering with water affairs in any country that has been granted full authority by adat.

Indigenous Pucuok of Every Country in Andiko Nan 44

In both of these countries the practice pucuok is divided into two namely the Pucuok Indigenous Godang in and the Pucuok Indigenous Godang out. Indigenous Godang Pucuok acts as a position elevated by other prelates as well as leaders of all domestic affairs and welcomes the envoys' visit to other countries. Whereas from a nation Pucuok Godang Exit is a carrier of all foreign relations matters. Besides these two positions, the Ambai Ax and his nephew also functioned as leaders.

Pucuak Tribe of Each Country

This tribal pucuok has the same position in the eyes of adat in the hall with the adat pucuok, andiko pucuok because both are the prince for his tribe that is frequently mentioned in the penghulu custom as Andiko. The difference is that they are elevated just one step ahead of adat, because the headman has a special task in the country's density from the agreement of other headmen. This tribal pucuok served as his tribe's ruler namely the head of his ambai ax and his tribal leader made up of the ambai ax and his nephew. Besides that, he is also the duty to leave, namely as a representative of the community facing people who enter his area of work and as a regulator of the community, especially in his tribe.

The ambai ax, which is a traditional stakeholder, helps the domestically raised ruler by having their respective duties according to their job functions. The axes are Dubalang, Malin, workers / monti, pucuok kampuong and other koghong kampuong.

a. Dubalang

Dubalang is a security steward, meaning Dubalang is the customary police officer who has the duty of manakiok nan koghe, panyudu nan lambuik and a kato mandoghe according to his courageous, brave, true and straight character.

b. Malin

Malin is a suluoh dam in nagoghi, palito indah ponah extinguished, iduik day and night jo, pie tompek batanyo, go home tompek babarghito deck ughang nan lot about halal jo haram, osah jo null sodo law about syar'i, with the meaning that Malin is a place to ask bataro tompek deck ughang deck ughang nan lot about halal jo haram, osah jo aborted sodo law about syar'i, meaning that Malin is a place to ask questions by the Customary Authority in making a decision whether it is against Syar'i or not so that a decision does not deviate from the Bapilin Tigo's Tali Nan Adat concept.

c. Employee / Monti

The employee is in charge of manjopuik nan jawuoh, paimbau nan dokek in the sense of being a person to deliver the invitation from the Penghulu to all customary devices in his tribe from the ambai ax to the nephew's child such as sending news invitations from inside the country to his nephews, picking up relatives in the family tribe with the calling system. Monti can also be said as a bookkeeper or businessman in a traditional apparatus, namely recording all invitations for invited

people and other bookkeeping issues. Besides that, monti also prepares all preliminary work such as inviting what has been discussed earlier and conveying the results of deliberations to the ambai ax and niece.

Pucuok Kampuong

In Adat the Youngest brother nan tuo, Kucuong Pucuok is frequently listed, indicating that Pucuok Kmpuong is a mamak rather than the prince in koghong kampuong. After that, with all his nephews at Karang Kampuong, he was a mamak, in other words, it was the pucuok kampuong who had a nephew in that country's tribe. Pucuok Kampuong has a duty position to lead together with the ompu / kanduong bundo the density of tribes in the Kampuong reef. Pucuok Kampuong is required to have a straight and true niniok character when performing everyday tasks.

The customary lead in all of his acts and he still pays attention to adjustments in maintaining the tradition. The existence of legal growth, so that the work in the field or as a village peace judge under the leadership and oversight of the traditional head is very important. The customary head acts to restore adat peace, restore balance in the village atmosphere, and restore the law when there are disputes or actions that are contrary to customary law.

The function of the customary community head is not much different from the function of customary law, since the function of the customary community head is as follows (Interview with Datuok Jalelo):

1. Providing group members with guidance on how they will act in social life and is the basis of these behavior is normative habits, namely adat and adat rule.
2. Maintaining the community 's integrity in the community, so that the community is maintained and not damaged by actions of various community members that do not conform to adat and customary law.
3. Give the community leaders a hand to create a system of social control. Social regulation is more a monitoring of group behaviour, in order to sustain group life as much as possible
4. Pay attention to each of the decisions stipulated in customary law, so that the decision is authoritative and can provide binding legal certainty for all members of the community.
5. This is a position where community members depend on addressing, defending, maintaining harmony, so that if a conflict occurs the traditional head is the only position where community members depend on solving the issue. When the role of customary leaders in the society has been studied, many also call for the participation of customary leaders in solving problems, whether those related to life issues or those related to death. But more importantly, the role of the customary head is to maintain the equilibrium of the environment with each other, so that harmony and peace will exist in society.

A leader's existence is highly respected and honourable. The leader has considerable influence on the community, so the leader's role in mediating any disputes and problems within the society is quite broad, the leader's figure is a leader with sufficient authority in the eyes of cloth folding individuals. Hence, each question always includes the headman in an attempt to solve it, that's what makes the atmosphere of adat deliberations still very thick and the traditional principles are still felt in the fabric-folding culture.

Indigenous peoples in the area of clothing folding always give priority to deliberation in any operation, particularly in matters relating to the resolution of conflicts or conflicts, so that any conflict that arises in the community always involves the leader's position in resolving it, reflecting the customs that they had previously applied, where each dispute always uses peace efforts. This customary sanction is highly valued and its implementation is also monitored, so that all applicable sanctions and customary provisions (the results of an interview with Datuok Godang) are met by the Community. It can therefore be understood that the village head as the village head and as the government organizer has a sufficiently important role to play in creating peace efforts to resolve disputes that arise within the community, one of which is through the resolution of criminal cases with the mediation of penalties.

Penal mediation is closely related to the policy of idea and transfer which is used as a tool for handling light cases and not for serious cases. Penal counseling focuses mainly on the crimes made. Then there is a shared clarification of the current issues of mediation between both parties. Penal therapy seeks to make the perpetrators know that the crime committed was incorrect, and also to understand that the offenders ought to pay or regain their rights because of the crimes committed. When per the concept of retribution, criminal prosecution is often in fact a purposely burdensome and humiliating act imposed on the victims for the illegal acts they have performed.

The highest justice to be obtained in mediating sentences is the consent of the parties involved in the court case, including the perpetrators and the victims. It is anticipated that each will consider and achieve the best options and alternatives to address the case before them. Through penalty mediation, the philosophy of the judiciary is quick, easy and low cost compared with the resolution of cases based on the components of the criminal justice system.

Penal counseling is largely in line with the framework of contemporary criminal law that no longer focuses on retributive or retaliatory elements but stresses the punitive, rehabilitative, and restorative elements. Corrective concerning the wrongdoers that need to be corrected, while rehabilitative is to improve the perpetrators so that they will no longer repeat their actions in the future. Whereas the restorative focuses on recovering victims of crime.

The approach to restorative justice is a model that is used as a basis for the method of addressing criminal cases aimed at responding to frustration with the workings of the current criminal justice system, where the traditional criminal case resolution process is quite complex, takes a long time to meet a judge's decision, even though the justice or satisfaction desired is not automatically obtained.

The resolution of criminal offences with mild intent can be achieved by the implementation of the so-called restorative justice approach, which stresses the active participation of offenders, victims and the community through the understanding of criminal actions as fundamental assaults on persons and societies and social relations, such that justice is viewed as a method of seeking solutions to issues that arise.

3.2. Constraints Faced in the Settlement of Criminal Cases through Malay Customary Institutions with the Concept of Restorative Justice in Kampar Left Cloth Area of Kampar Regency

The pattern of dispute resolution in Indonesia generally applies two available dispute resolution systems, namely the use of the court and arbitration adjudication

pathway system, which is often known as "litigation" and the use of the path outside the court or people know it by the term "non adjudication" (Astarini, 2013).

Settlement of adjudicative conflicts can be divided into two, namely adjudicative public and adjudicative private. Legal adjudication is conducted by institutions of the State court (litigation). In this situation, the third party is unintended, as the court has chosen the judge, and the parties can not pick and decide their own judge. Whereas private adjudications are generally performed by arbitration. The third party here is voluntary, since the parties to the dispute can appoint the arbitrator and decide him.

This can be assumed that arbitration institutions are the highest standard or process for resolving different dispute resolution processes outside the courts. In the other side , in order to achieve a win-win solution, the consensus settlement process is characterized by cooperative / compromise dispute resolution. The presence, if any, of a third party has no decision-making power. Negotiation, mediation, and conciliation are part of this group.

Litigation is the final resort if there is no common ground or solution to the family dispute settlement or to peace outside the case. On the contrary, non-litigation dispute resolution is an out-of-court dispute resolution mechanism that uses a mechanism that lives in deliberation, peace, parentage, customary settlement and so on.

Mediation is one of the efforts to resolve disputes outside the tribunal. Mediation is a negotiated mechanism in which the parties to the dispute send a settlement to a mediator or someone who arranges a meeting between two or more parties to the dispute, so that all parties can jointly negotiate a fair and completely appropriate outcome.

Alternative dispute resolution efforts (Alternative Dispute Resolution) are not only known in the methods of civil law, but are also beginning to be recognized and developed in the method of criminal law, one type of ADR that has begun to develop in criminal law is in the form of mediation or known as 'penal mediation.'

Alternative resolution of criminal cases by taking the path of law mediation is seen as one of the options for restoring and reorganizing the Indonesian judiciary in its fundamental role and characteristics, in addition to mediating the law, the parties involved in the negotiation process may also be involved. That conflict is what the punishment mediation process is aiming for. Penal mediation is more oriented towards the quality of the process than towards the outcome, which is to make the perpetrators of the crimes aware of their mistakes, to resolve the needs of the conflicts and to be calm and free from the victim's fear.

Although dispute resolution through mediation efforts has many benefits, its implementation is not free from various obstacles. There are several obstacles to conflict resolution through the mediation of group penalties in the field of folding fabric, including, inter alia (Datuok Godang interview results):

There is no specific law governing mediation

Mediation has not yet acquired a meaningful place for lawmakers or aspirants to justice as an effective way of resolving disputes. This can be seen from the mediation rules which are not specifically regulated yet. To date, mediation is mentioned only in the Arbitration and Alternative Dispute Resolution Act No. 30 Year 1999. Implementation of customary law through mediation should also be supported by the

existence of positive legal regulations, so that they are more certain and have greater legal force.

The lack of facilities and infrastructure in conducting mediation

The problem faced is the small budget to build a suitable space for mediation, so it can provide comfort to the mediating parties. In addition, facilities for equipment are also necessary in an effort to facilitate peace on the parties to the litigation. This is a sufficiently significant factor to be regarded in developing peace attempts on both sides of the case for the success.

Lack of mediator skills for adat leaders in reconciling parties to the dispute.

Although the headman is a known and respected figure, never before has the experience and skills to do mediation efforts been given to the headman, so he sometimes seems to find it difficult to seek peace efforts from the parties. The headman is vital to mediation success and that the headman plays an significant role in ensuring the smoothness of the mediation process, a headman not only serves as an advisor who only organizes and directs the mediation process but must also assist the parties in arranging conflict resolution such that substantive agreement can be reached. In this case, a headman must also have the capacity to collect as much knowledge as possible that can then be used as material to collect and provide various approaches to the issue that occurs.

There are differences of opinion among law enforcement officials on the concept of restorative justice through the mediation of penalties, sometimes cases or cases that have been resolved through efforts to mediate penalties are still being prosecuted through the existing criminal justice system , which means that they remain convicted on the basis of positive legal provisions which should have been resolved With the settlement of fines through the concept of restorative justice with local customary law, the case is deemed resolved and does not need to be taken to the courts because it has obtained punishments based on customary law, this will attract the attention of law enforcement authorities, so that what is anticipated by the concept of restorative justice can be done well.

4. Conclusions

The community head in Kampar Regency folded cloth is a place where community members rely on resolving, defending, maintaining stability, so that if a conflict occurs, the customary head is the only place where community members rely on solving the issue. Customary leadership positions in the group are required to solve issues, maintain the environmental balance with each other, so that the society can continue to create harmony and peace. Constraints faced by the Prince in dispute resolution through mediation in the Kampar Regency clothing folding community, namely the absence of specific laws governing mediation, the lack of means and infrastructure for mediation, the lack of mediation skills for adat leaders in reconciling the parties in dispute.

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