

## The Existence of Customary Law: *Badamai* Customary Law

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### Abstract

*Adat badamai is one form of dispute resolution commonly carried out by the Banjar people. Adat Badamai is also meant as a result of the process of deliberation in the discussion together with the intention of achieving a decision as a solution to a problem. Adat Badamai is done in order to avoid disputes that can endanger the social order. This study aims to determine the existence of Badamai Customary Law in Banjar Community, Kalimantan. The study was conducted by using socio-legal approach in analyzing the role of modern regulation with the customary practices. results showed that the existence of customary law in South Kalimantan in the Banjar tribe community is a reality that can be found in the people of Banjar people in South Kalimantan, known as the Badamai custom. Adat Badamai is done in order to avoid disputes that can endanger the social order. The Badamai decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society. In the Banjar community if there is a dispute between residents or acts of persecution or violation of norms (adat) or fights or traffic violations, then the community tends to resolve in a customary-based manner.*

### Keywords

legal studies, customary law, Badamai, South Kalimantan

## 1. Introduction

The Banjar tribe is a name given to refer to Malay tribes who mainly come from the area of Javanese Hinduism which mostly reside on the coasts of South, Central, East and West Kalimantan (Wardani, 2007). The first concentration of Malay colonies was in the Tabalong area,

which later developed into the Banjar tribe. They migrated from Western Indonesia at the beginning of the first century (Saleh, 1981). They entered the eastern part of the Teluk Besar with the slopes of the Meratus Mountains as its coastline, and the lowlands were later called Banua Lima and Banua Lawas. It is in this old territory that this Malay group mingles with the Maanyan Olo group and the Bukit people, spawning the first core of the Banjar tribe which established the Tanjung Pura Kingdom with the capital city Tanjung Puri which is most likely located around Tanjung City (Tabalong Regency) now.

In the Banjar community, *adat badamai* has several terms and uses. In cases or civil cases, it is commonly referred to as *basuluh* or *ishlah*. *Badamai* is derived from the root words of the Banjar language which comes from the word *damai* which means peace, and prosperity. The word *badamai* is a formed word from the Banjar language. This term comes from the root of the word *damai* plus the additions *berdamai* to be *badamai*. In the Banjar language the word *badamai* is matched with words *berjalan* with *bajalan*, *bermain* with *bamain* (Hasan, 2007). In the Encyclopedia of Islamic Law, peaceful is commensurate with the word *as-sulh*, which means the contract to settle a dispute or dispute becomes peace.

However, in cases of moral violations or traffic violations and acts of violence, fights, persecution and problems involving criminality commonly known as *badamai*, *baparbaik* (*babaikan*), *baakuran*, *bapatut* or *mamatut* and settlement by means of torching. But in general the term used is referring to the customary term *badamai* (Kiptiah et al., 2018). This study aims to determine the existence of Badamai Customary Law in Banjar Community, Kalimantan. The study was conducted by using sociolegal approach in analyzing the role of modern regulation with the customary practices.

## 2. Literature Review

Etymologically, *adat badamai* is a compound word derived from the formation of *adat* words and *badamai*. Another customary term is *urf*, which is interpreted as language that is known and considered good and accepted by common sense (Abi Sinnah, 1947; Al-Zuhayli, 1986; Al-Zarqa, 1968). According to the Encyclopedia of Islamic law, customary means the habits or traditions of the people that have been carried out repeatedly for generations. The word *adat* here is commonly used without distinguishing which has sanctions, such as customary law, and which do not have sanctions such as *adat* only (Fletcher, 2007).

The *Badamai* Customary Law framework in the Banjar community consists of 3 (three) elements, namely (Kiptiah et al., 2018):

1. Unwritten elements, in the form of habits that grow and develop in the practice of social life in society. This includes everything that is used to be considered good by the community and will cause reactions from various levels of society if it is violated. Strictly speaking, the violation will get a minimum sanction in the form of reproach from the community. Such habits in the Banjar community differ from place to place, especially in terms of the size of the influence of education and modernization and other development activities carried out by the government.
2. Elements derived from Islamic law, which includes all provisions of Islamic law and *fiqh* laws that are maintained and adhered to by the community as a large part of their religious teachings. With regard to this, the determination of what constitutes the

teachings of religion is depending on the perceptions of the community in accordance with what was conveyed by scholars in this area since ancient times. Determination of something is mandatory, circumcision, *mubah*, *makruh* and *haram* are basically determined from the *ulamas* and remain held as an assessment criterion when a person faces certain facts that require judgment.

3. Elements from the era of the Kingdom of Banjar, for this matter contained in the Act of Sultan Adam (1835). Sultan Adam was a Sultan who was famous for his piety and respected by his people. The law which consists of several of these articles seems to be very depend on the Sultan, so that after the death of Sultan Adam received less attention except in the field of land law which was still adhered to by the community.

*Adat badamai* is a compound word which means a peace effort that is done once or done repeatedly and becomes a habit that institutionalizes the Banjar community. *Badamai* custom can be increased to customary law, when the community has considered the act of unjust as a matter that must be applied to the Banjar indigenous people, because that is something that must be done.

A form of courtesy that is first taught to a child in the Banjar community is how he should pay homage to adults in the wider family and other adults. This respect is continued until the child becomes an adult, aimed at parents, and generally the older generation, to his older siblings and to generally older relatives, aside from older relatives in the village and older people in general (Tyesta et al., 2020).

People who are elder in the community are usually the village people who are considered as figures, who are always included in every village activity, and are always the first to be contacted if there is an attempt by an outside party to hold peace (*babaikan*) with a group of relatives (*bubuhan*) or one of the residents of the village. In certain relatives there are usually citizens who hold prominent positions (such as suppliers, government employees, etc.) compared to other citizens in *bubuhan* or are considered wise after being proven in various events, so that they are elder and thus aligned with parents with *bubuhan* symbols.

There is a tendency that the figures revealed in this particular program will also appear in the village community, especially if the group of relatives who support them is influential or large. In the village there are also people who are elder because he is considered wise and is a community trust, because it is always invited to solve the problems faced by the village (Cryer, 2006). Someone who is respected because of his extensive experience or because he is considered brave (figure of warrior) is the last category. Likewise, certain village officials included respected people, namely the village head (*pembekal*), the head of the RK (formerly the activist, lately the head of the hamlet), the head of the padang (head of agrarian affairs), and the deputy village head, and also the village head who has given up his position. A respected figure in a village or in certain circles appears prominent when there is a dispute in the community and there are efforts by one of the parties to invite the other party to *badamai* (Chirayath et al., 2005).

### 3. Results

The existence of state law which is considered unfair to certain parties, the community considers the positive law contained in the law of peace to have a high value of justice and can guarantee their rights (Meron, 2005). In fact, it can be seen from example from the case of cocoa

theft by Minah (55 years) a resident of Darma Kradenan Village, Ajibarang Banyumas District, Central Java, who plucked three cocoa seeds on PT. Sari Antan Clump (RSA). After picking, the 3 cocoa fruits were not hidden but just laid under the cacao tree. Then, through a PT RSA cocoa plantation foreman, the foreman asked who was picking the cocoa fruit. With innocence, Minah admitted her actions. Realizing that her actions were wrong, Minah apologized to the foreman and promised not to do it again. He gave three cocoa fruits to the foreman. Minah thinks everything is over and she returns to work. But his suspicion missed, the small incident turned out to be long, because a week later he got a call from the police. Finally, the Purwokerto District Court Panel of Judges sentenced her to 1 month and 15 days with a 30-day probation because she violated the Article 362 of the Criminal Code (Detiknews, 2009).

Another case was also judged that the punishment was not commensurate with the amount of loss suffered by two residents of Bujel Village, Mojojoto Subdistrict, Kediri City, namely Basar and Kholil, were charged with criminal acts of theft of a neighbor's watermelon. They were caught when they had not yet eaten the watermelon, the legal process continued and both were charged under Article 362 of the Criminal Code with a sentence of 5 years imprisonment. Then, there is also the case of Prita Mulyasari who was accused of defamation by e-mail to the Omni International Hospital in Jakarta, the case of theft of 2 kilograms of cotton in Batang (Central Java) by her mother and two children was underage, 7 years in prison, and Parto (50 years) Asembagus Situbondo residents were sentenced to 5 years in prison at the Situbondo District Court for stealing 5 of their neighbors' corn, and many other similar cases.

Community members are not willing to settle the dispute through a litigation institution (the judicial institution). This rhetorical custom is recognized as effective in resolving disputes. As well as being able to get rid of feelings of resentment play a role in creating law and order and peace (Menkel-Meadow, 2021).

The *Badamai* Customary Arrangement has been stated in the Act of Sultan Adam on Article 21 which states: “*Tiap kampung kalau ada perbantahan isi kampungnja ija itu tetuha kampungnja kusuruhkan membitjarakan mupaqat-mupaqat lawan jang tuha-tuha kampungnja itu lamun tiada djuga dapat membitjarakan ikam bawa kepada hakim*”. (Meaning: Each village when there is a dispute, it is ordered to reconcile (*mamatut*) with the elder villager, if it is not successful then it is brought to the judge) (Hasan, 2015).

Article 21 of the Act of Sultan Adam is used as the basis for the implementation of the *badamai* customary law which until now remains the basis of norms and behavior in the Banjar community. Even now it is still a *mamatut* tradition. The tradition of resolving disputes that have been institutionalized to reconcile each dispute, so there is no feeling of resentment between the two parties.

If there is a conflict or dispute between the people and the custom is not carried out, it is believed that it will damage the order of harmony which is a violation of traditional wisdom. If the conflict happens especially related to criminal events, then community leaders (*tetuha kampung*) have an initiative to reconcile the parties to the dispute. A family meeting is held, followed by a salvation event, with forgiveness and sometimes accompanied by an agreement that will not prolong the dispute and hostility. Even between the two parties is bound in a brotherhood which is commonly referred to as *baangkat dangsanak* (brotherhood) or *baangkat*

*kuitan* (being parents and adopted children). The distinctive characteristics that distinguish *adat badamai* from peaceful settlement in other societies are (Suprpto et al., 2021):

1. The existence of values or norms that must be obeyed;
2. The existence of an irregular ceremony as a symbol of the completion of a dispute or dispute;

There is an event *maangkat dangsanak* or *maangkat kuitan* (adopted) which is full of elements of religious rituals, such as the *batapung tawar* ceremony which is equipped with sticky rice dishes and grated coconut mixed with brown sugar.

#### 4. Conclusion

The existence of customary law in South Kalimantan in the Banjar tribe community is a reality that can be found in the people of Banjar people in South Kalimantan, known as the *Badamai* custom. *Adat badamai* is one form of dispute resolution commonly carried out by Banjar people. *Adat Badamai* is also meant as a result of the process of deliberatio in the discussion together with the intention of achieving a decision as a solution to a problem. *Adat Badamai* is done in order to avoid disputes that can endanger the social order. The *Badamai* decision produced through the mechanism of deliberation is an alternative effort in finding a way out to solve problems that occur in society. In the Banjar community if there is a dispute between residents or acts of persecution or violation of norms (*adat*) or fights or traffic violations, then the community tends to resolve in a bad manner.

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