**Application of Restorative Justice in the Settlement of Customary Criminal Cases in Central Moluccas**

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| ***Article Info*** |  | ***Abstract*** |
| ***Keywords:****Legal Protection; Restorative Justice, Costumary Crime, Central Moluccas* |  | ***Introduction****: The life of the Indonesian people, which consists of various backgrounds, national status, various ethnic groups, various cultural values, as well as various customary provisions, always shows a different pattern of life.****Purposes of the Research:*** *This fact shows a characteristic of Indonesian society as a pluralistic society due to different backgrounds, geographical conditions, and archipelagic characteristics in each region, so that in depth, each has diversity. This study aims to determine the extent of restoration justice in the settlement of customary crimes.****Methods of the Research:*** *This Research is descriptive analytical with a normative juridical type using primary, secondary and tertiary data from literature studies and other documents.****Results / Findings / Novelty of the Research:*** *The results obtained indicate that the settlement of customary criminal cases using restoration justice has been carried out since our ancestors and is still maintained by the indigenous people themselves.* |
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1. **INTRODUCTION**

In the current development of statutory regulations, the limits on criminal law acts or other fields of law are getting thinner and not just dishonorable. In general, the difference between a criminal act and a violation of civil or state administrative law lies in the severity of the act, the level of reprehensibility, and the size of the victim.

On the one hand, the Indonesian people have their normal system, and the state has its own legal system, which sometimes clashes. Disgraceful according to law is not necessarily disgraceful according to customary law or conversely disgraceful according to customary law is not necessarily disgraceful according to law.

Indonesian society is made up of a variety of backgrounds, nationalities, ethnic groups, cultural values, and customary provisions, all of which exhibit distinct patterns of life.Realities like this show a characteristic of Indonesian society as a pluralistic society due to differences in background, physical geographical conditions characterized by different islands in each region, so that in depth each has diversity.

The life of this plural Indonesian society includes those who live in urban areas with varying degrees of progress and have achieved modern life, as well as those who are isolated and face varying degrees of difficulty.[[1]](#footnote-1) In social life, law and society are two things that cannot be separated, such as in the adage ibi ius ibu societas, which means where there is society, there is law.

Customary law as a form of law that is recognized for its existence in the life and legal culture of the Indonesian people is listed in the 1945 Constitution of the Republic of Indonesia in Article 18B Paragraph (2), which stipulates "The state recognizes and respects the unity of the Indigenous Peoples 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, which are regulated in law".

An explanation regarding the recognition of customary law by the state is also found in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "All citizens have the same position before law and government and are obliged to uphold that law and government without exception”. Based on the formulation of these provisions, it can be concluded that both civilians and government officials without exception are required to uphold the laws that apply to the life and legal culture of Indonesian society, be it criminal law, civil law, or customary law.

Customary law is a form of unwritten law that is still alive in the lives of indigenous peoples in Indonesia. The existence of customary law as a component of legal substance must be given a reasonable place in the development of legal material in accordance with the socio-cultural diversity of society.[[2]](#footnote-2) In the concept of a rule of law, fair legal certainty is not only pursued by the arguments contained in the law, because Indonesia is not a state based on laws, but also looks at developments, values that live in society, such as customary law. Likewise, criminal law must be able to reflect the values that exist in society and be recognized for their existence. It should also be noted that customary law is a form of law that applies to the life and legal culture of Indonesian society which is still valid today.

Besides being recognized in national legal instruments, the existence of customary law is also regulated in international instruments. The provisions of Article 15 Paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) state that, “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations*”.* Then the recommendation from the United Nations (UN) Congress on "The Prevention of Crime and the Treatment of Offenders" stated that the criminal law system that had existed in several countries (especially those originating or imported from foreign law during the colonial era) was generally "obsolete and unjust" and "outmoded and unreal" (outdated and not in accordance with reality).

Customary criminal law is the original law of the Indonesian nation, which has existed for a long time and has been influenced by various religions. It has been followed and obeyed by the community continuously from one generation to the next. Customary criminal law still exists and is applied to the lives of indigenous peoples in the Mollucas region.

The existence of customary law can be seen to date through the existence of customary courts and instruments of customary law that are still maintained by indigenous and tribal peoples in Indonesia to resolve various disputes and offenses that cannot be handled by the police, courts, and correctional institutions. Customary law has been maintained to this day by customary law communities because they believe that decisions issued through customary courts against an offense being tried by customary courts can provide satisfaction with a sense of justice, as well as a return to balance in the lives of indigenous peoples over the spiritual shock that occurs due to the enactment of the offense. the custom.

1. **METHOD**

The use of research methods in this paper is a normative research method. A legal research method that is carried out by examining library materials or secondary data as the basic material for research by conducting a search of regulations and literature related to the problem of the researcher.[[3]](#footnote-3) The data used is secondary data, with the priority of collecting secondary and tertiary legal materials. The data obtained is then processed and presented in a descriptive analysis.

1. **RESULTS AND DISCUSSION**
	1. **Definition And Scope Of Restorative Justice**

Settlement of cases according to customary law is commonly known as a restorative justice approach, namely, justice that seeks to restore conditions to their original condition, is profitable, wins all parties, and is not confined to legal mechanisms.

Restorative justice is a term that has been known in Indonesian law since the 1960s as one of the stages in the conventional criminal justice system. In the beginning, restorative justice was a concept of settling cases that had been used by indigenous peoples in Indonesia as a method of settling cases that occurred within the respective indigenous peoples without involving state officials.

Many experts have proposed the concept of restorative justice. According to Howard Zehr, as quoted by Bambang Waluyo[[4]](#footnote-4), "Restorative justice is a process that involves using all possibilities, all related parties, and certain violations to identify and explain threats, needs, and obligations in order to heal and place these things as much as possible in accordance with place."

Therefore, restorative justice is a fair settlement involving perpetrators, victims, their families, and other parties involved in a crime, jointly seeking a solution to the crime and its implications, emphasizing recovery and not retaliation.[[5]](#footnote-5)

Restorative Justice aims to empower victims, perpetrators, families, and communities to correct an unlawful act by using awareness and conviction as a basis for improving social life, explaining that the concept of restorative justice is basically simple. Restorative justice is a theory of justice that emphasizes the recovery of losses caused by criminal acts.

Law Number 48 of 2009 concerning Judicial Powers, Article 5 paragraph (1), Article 10 paragraph (1), and Article 50 paragraph (1), explains that the position of customary criminal law in Indonesia has received recognition so that the application of customary sanctions imposed on perpetrators who commit crimes or violations does not conflict with the norms of the state. As long as the customary law is still alive and growing in the midst of society

The concept of restorative justice emphasizes justice based on peace, which, in solving a case, does not recognize justice based on revenge or punishment of the perpetrator. The application of this concept is a form of development in the criminal justice system that focuses on involvement between the perpetrator and the victim in the settlement of a case where this is not one of the mechanisms known in conventional criminal procedural law at this time.

The restorative justice approach to crime resolution allows the parties involved, particularly the perpetrators and victims, to participate in the resolution of cases, transferring the function of the perpetrators and victims, whereas in conventional criminal procedural law, the perpetrators and victims only function as witnesses in the settlement of cases involving law enforcement officials.

* 1. **Settlement of Customary Crimes Using a Restorative Justice Approach**

In many cases resolved according to the customary law system, there are also two possibilities: first, the customary law settlement by the community is recognized and legalized by state law through the courts. Second, the case is considered finished, and state law does not touch it.

Therefore, customary justice is an institution of peace justice between members of the customary law community within the existing customary law community.[[6]](#footnote-6) Customary justice is a normative term that is mentioned in various laws and regulations, especially in those that were issued after the reformation. However, this formal legal terminology is known by different terms in the community.

This form of settlement between the perpetrator and the victim, whether in a family manner or through customary justice institutions, is a form of settlement that aims to seek essential justice, which in reality is similar to the concept of restorative justice. The concept of restorative justice was initiated by perpetrators and victims to resolve problems peacefully by prioritizing the principles of deliberation and consensus. In the midst of society, peace is a symbol that is applied to customary justice in customary law community units in Indonesia. Commonly known as the terminology of "customary assembly," "traditional para-para," "customary pokara," or "customary meeting," as well as various expressions according to the peculiarities of the local language

In Indonesia, the concept of restorative justice has begun to develop and be applied as legislation since the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. According to restorative justice, the criminal justice system must support the creation of a peaceful and just society. The justice system should be aimed at creating peace, not punishing.[[7]](#footnote-7) If one pays attention, restorative justice has the same values as customary criminal law. Customary criminal law is imbued with the magical religious nature of kinship, where what is prioritized is not an individual sense of justice but rather a sense of family justice, so that the settlement of cases carried out peacefully is believed to bring harmony. Customary criminal law does not intend to indicate what law and punishment must be imposed in the event of a violation, but its aim is to restore the crippled law as a result of the violation.[[8]](#footnote-8) Therefore, punishment is not basic in customary law or in the concept of restorative justice.

The restorative settlement of criminal cases outside the criminal justice system in the Maluku region also applies to a number of other regions, although with different names. It is known as the Law of Sea Sasi in Maluku.[[9]](#footnote-9) Sasi is a form of traditional tradition that lives among the people of Central Moluccas Regency. In addition, based on research conducted by us, the customary law of the people of Nua Nea Village, Central Moluccas Regency, the concept of restorative justice is also known to create peace. As for criminal cases that occurred in the village of Nua Nea and were resolved according to customary law, such as murder cases, cases of theft committed by children and adolescents, domestic violence, and cases of not wanting to be responsible for a pregnant girl. Basically, when the customary government of Nua Nea Village hears directly from victims or receives reports regarding criminal cases that have occurred, they will approach the victims and perpetrators to resolve the problem. However,  despite the settlement efforts carried out by the customary government, if the perpetrator himself does not admit mistakes, then at some point the perpetrator will definitely get karma for the actions he has committed.

The customary settlements related to criminal cases in Nua Nea Village are as follows:

1. In 2015, a member of the Nua Nea community accidentally committed murder, in which people or perpetrators made traps to catch animals in the forest, but the traps they made unexpectedly caused casualties to other people who were temporarily on the scene.This perpetrator was subject to a positive sentence of 5 years in prison, and the perpetrator's family underwent the customary criminal sanctions committed by the perpetrator because a member of the perpetrator's family had an accident.
2. For cases of chicken theft, which are usually carried out by children or adolescents, the customary government imposes sanctions by hitting the hands of the children or adolescents who steal them so they don't repeat their actions again.
3. As for cases of domestic violence and cases of not wanting to take responsibility for a pregnant daughter, a family approach is usually used and as a sanction, the victim must give a piece of land to the victim or the victim's family.

In addition, the settlement of criminal cases that occurred in Nua Nea Village can be resolved according to customary criminal law and positive law in certain cases, such as the murder case that occurred in 2015. Apart from research conducted by Nua Nea Village, there is also research in Akoon Village, Central Moluccas Regency. Customary criminal cases that occurred in the village included cases of theft, physical fights between young men and women, verbal fights between parents, and cases of infidelity, both committed by those who already had partners and by young people who were still at school with their husbands or someone else's wife in Akoon Village. The form of problem solving in Akoon Village can be resolved amicably between the conflicting parties by involving the customary government and the police as mediators.

When a child who is still at school is caught red-handed committing theft, the customary government gives a sanction, namely "getting on the black bench." The term "riding a black bench" itself is like whipping, where the child sleeps on his stomach on a bench and is beaten from the buttocks using a rattan. When it comes to fights between parents, they are usually resolved through their kinship.

It is different from the sanctions given by the customary government to people who violate sea sasi (gorita and sia-sia sasi, or sea worms), usually for 6 months. The case on April 12, 2022, when a community member violated the sea sasi, was given a sanction in the form of paying a fine by purchasing one ret each of stones and sand for the development of the country.

In addition, for cases of adultery committed by one of those who already have a partner, both husband and wife, the penalty of caning is applied. In addition to caning, there are other forms of punishment known as "Bailele Dalam Negri," such as a procession walking through the village and being expelled from or leaving the village. In 2010–2022, there have been four cases of adultery that have occurred in Akoon village. The criminal sanction given by the customary government to the two lovebirds/couples is “bailele dalam negeri”, where the two couples were paraded around the vilagge by hitting Tifa and walking while shouting "don't be like me.

1. **CONCLUSION**

Based on the description above, it can be concluded that restorative justice in the settlement of customary criminal cases in Central Moluccas has been carried out since ancient times and, until now, has been maintained by the traditional governments in each village. However, it cannot be denied that under positive law, along with the times, it is also used as a mediator in solving criminal cases. It is undeniable that restoration justice carried out by the customary government has had a positive impact on people's lives.

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