

RESTORATIVE JUSTICE IN THE CUSTOMARY JURISDICTION OF THE DAYAK TRIBE COMMUNITIES OF WEST KALIMANTAN

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Abstract - This study aims to investigate the application of restorative justice within the customary legal systems of communities belonging to the Dayak tribe in the Indonesian province of West Kalimantan. The villages that are part of the Dayak tribe have a long-standing tradition of settling disagreements via various sacraments and rituals, including restorative justice. On the other hand, customary practices are increasingly disappearing due to the growing impact of recent legislation and the government's legal system. This investigation is carried out with Socio-Legal Research, with data being gathered through semi-structured interviews and various observational techniques. Traditional community leaders, community members, and persons previously participating in restorative justice are among the participants. Despite the growing influence of modern law, the findings of this research demonstrate that groups within the Dayak tribe continue to use restorative justice techniques. Many people believe that using restorative justice to resolve conflicts and preserve communal harmony is a beneficial strategy. The community members value the participation of traditional leaders in the process of restorative justice since these leaders are regarded as being objective and competent. The research also emphasizes specific problems experienced by the communities that are a part of the Dayak tribe in implementing restorative justice. These challenges include limited resources and the growing influence of modern law. Despite this, the people who live in the village continue to acknowledge the significance of the traditional rituals and have expressed a commitment to maintaining them.

Keywords: Restorative Justice; Customary Justice; Criminal Justice Systems; Dayak Tribe Communities.

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INTRODUCTION

Everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law, as stated in Article 28 of the Law of the Republic of Indonesia from 1945 (Kesuma, 2023). This article also states that the state must protect every citizen without making distinctions. Based on Indonesia's geography, demography, and socio-culture, pluralism in Indonesia's diversity cannot be disregarded but serves as a driving force in pursuing citizens' rights. The acceptance of pluralism as a component of the administration of just law enforcement is widely acknowledged today. Theoretically, society can be understood as a form of living arrangement that is more or less independent. It is a pattern of orderly relationships between individuals who live together and who possess an unavoidable reality and objectivity that is independent vis-à-vis the members of the group that is concerned. In many instances, the handling of social problems by the community itself can be positioned as supplementary and complementary to the handling measures carried out by

government organizations. This is because the community is often more familiar with the issues (the state) (Parsons, 1951).

The purpose of criminal law is to protect the interests of individuals (individuals) or human rights and to protect the interests of society and the state with a harmonious balance of crime/disgraceful acts on the one hand and the actions of arbitrary authorities on the other. In other words, criminal law aims to protect the interests of society and the state (Ji, 2022; Taufiqurrohman, 2022).

Customary justice through the Second Amendment to the 1945 Constitution of the Republic of Indonesia in 2000 in Article 18B paragraph (2) and Article 28I paragraph (3), which essentially states: First, recognizing and respecting the existence of customary law community units and their traditional rights; second, respect for cultural identity and the rights of traditional communities as part of human rights that must receive protection, promotion, enforcement, and fulfillment; and third, respect for cultural identity and the rights of traditional communities as part of human rights that must receive protection, promotion, and enforcement (Bedner & Huis, 2008; Hermawan et al., 2022).

Seekers of justice may also turn to the system of institutions that administer customary justice as an additional option. This is particularly the case in cultures still predicated on traditional ways of life governed by the norms that create the order. The legal system in Indonesia has accepted the basis for establishing customary courts, and this recognition can be traced back to various statutes and regulations currently in place (Priambodo, 2018).

The strategy taken is centered on values, including human values, values related to cultural identity, and values that aspire to be consistent with Pancasila law. The following are indications of what is meant by the term "living law": first, it originates from the legal values and principles enshrined in the Pancasila, specifically those that are godly (religiously moral), humanist, and oriented towards the values of unity (shared interests) of the people and social justice; second, it derives from the general legal principles acknowledged by the community of nations (Madrohim et al., 2021).

The politics of criminal law entail an effort to reorient and reform criminal law by the socio-political, socio-philosophical, and socio-cultural values of Indonesian society through a policy- and value-oriented approach. Criminal law reform, also known as penal reform, is a component of the politics of criminal law (value-oriented approach) (Wirya Darma, 2021).

The following are components that fall under the purview of the effort to improve the criminal justice system: Legal substance, also known as the substantive system, includes renewal in the areas of material criminal law, formal criminal law, and criminal law enforcement. Legal culture (the cultural system), which includes the renewal of the moral sphere of the perpetrators and legal education in the science of criminal law, are all essential components. The reorganization of the investigative bodies, prosecuting bodies, court bodies, and criminal execution agencies that are part of the structural framework that makes up the legal structure (Friedman, 1975). In light of the abovementioned issues, this research aims to investigate the mechanisms of restorative justice for the customary justice practiced by the Dayak people in the context of dispute resolution in criminal cases.

1. RESEARCH METHODS

Researching law and society using a method that stresses the social context of legal practices and institutions is called the socio-legal method. This method is an interdisciplinary approach to researching law and society. It requires an examination of the role that law plays in society, particularly the processes through which legal standards are formulated, interpreted, and carried out. For this investigation, a socio-legal method is an approach that is both pertinent and appropriate for gaining an understanding of how law, justice, and culture connect within this specific setting (Banakar & Travers, 2005).

The Dayak is an indigenous people group found in the province of West Kalimantan in Indonesia. The Dayak people have their distinct cultural customs and traditions, one of which is their system of customary law, which governs many different areas of their day-to-day lives. Restorative justice is an alternative approach to criminal justice that focuses on mending harm and restoring relationships

between offenders and victims. This type of justice is gaining popularity in many parts of the world and is becoming an increasingly viable option. This study aims to investigate the application of restorative justice in the communities inhabited by Dayak people from West Kalimantan and the cultural and social elements that play a role in forming these practices.

Within the scope of this study, the socio-legal approach will be utilized to analyze how law and society interact with one another in the framework of restorative justice in the communities inhabited by the Dayak tribe. An analysis of the cultural, social, and historical elements that have had a role in the evolution and implementation of restorative justice in these communities will be one of the steps taken to carry out this task. The research will also include an analysis of the formal and informal institutions that regulate legal practices in the communities inhabited by members of the Dayak tribe. These institutions include customary law, the role of community leaders and elders, and the relationship between the Dayak people and the legal system in Indonesia.

The researcher will also be able to investigate the experiences and opinions of the Dayak people concerning restorative justice using the socio-legal method. This will involve engaging with members of the Dayak community, including victims, offenders, community leaders, and other stakeholders, to understand their attitudes and perceptions regarding restorative justice and their experiences with formal and informal legal systems.

2. RESULTS AND DISCUSSION

The phrase "restorative justice" refers to an approach to the administration of justice that places equal importance on the requirements of offenders and victims and works towards the goal of mending the damage that has been done due to conflict or criminal activity. (Liebmann, 2007) This method starkly contrasts the conventional criminal justice system, which emphasizes punishing lawbreakers and maintaining order in society. It is possible to trace the origins of restorative justice back to the world's indigenous cultures. In these cultures, people of the community would get together to settle disagreements and make choices that were in the best interests of the entire community (Rochaeti et al., 2023).

As a response to people's growing unhappiness with the old criminal justice system in modern times, the notion of restorative justice rose to prominence in the 1970s and 1980s. In contemporary times, this happened as a result. According to proponents of restorative justice, the current justice system is ineffective at preventing crime, lowering the rate of recidivism, providing healing and reconciliation for victims and offenders, and all of these combined (Braithwaite, 1999).

In 1974, the city of Kitchener, in the province of Ontario, became the location of Canada's first-ever organized restorative justice program. The program was called the "Community Holistic Circle Healing Process," and it was constructed on the foundation of traditional methods of conflict resolution in indigenous communities. The program's goal was to design a strategy for repairing the damage caused by the crime by bringing together victims, offenders, and community members to talk about the harm caused by the crime. The program was deemed successful, and as a result, it was implemented in other regions of Canada and other countries (Umbreit et al., 2005).

In the 1990s, the movement toward restorative justice in the United States saw significant gains in popularity. Howard Zehr, a professor at Eastern Mennonite University in Virginia, was widely regarded as one of the movement's most influential proponents. In 1990, Zehr published a book titled "Changing Lenses: A New Perspective for Crime and Justice," He stated that the traditional method of dispensing justice in the criminal court system was inefficient and inhumane. Zehr presented an alternative strategy that he called "transformative justice," founded on the concepts of restorative justice (Zehr, 2015).

Instead of punishing those who committed the crime, the transformative justice method emphasizes mending the damage done and mending broken relationships. In addition, it emphasizes providing victims with agency and including them in the decision-making process. Some restorative justice initiatives in the United States, such as the Victim Offender Reconciliation Program (VORP) and the

Restorative Justice Project at the University of Minnesota, have embraced this strategy. Among these programs is the Restorative Justice Project (Gavrielides, 2007).

Also, restorative justice is gaining popularity in other regions, such as Europe and Australia. Since the 1990s, the United Kingdom has used restorative justice in cases involving juvenile offenders, and since the year 2000, it has been applied in situations involving adults. Restorative justice has been implemented in indigenous communities across Australia to address issues relating to domestic violence and child abuse (Joudo-Larsen, 2014).

The absence of defined norms and procedures is one of the obstacles that the movement toward restorative justice must overcome. The methods utilized by various restorative justice programs are incredibly diverse, and there is little consensus over what constitutes "best practises." Nonetheless, there is a rising interest in establishing a more systematic and evidence-based approach to restorative justice, which could assist in establishing it as a mainstream alternative to traditional criminal justice.

Restorative justice is intended to achieve the following goals: Simplify the process that the perpetrators must follow, Protect the rights of victims and perpetrators, and Minimize the negative impact that the criminal justice process has had to date on the lives of children who have broken the law; and Participation from the community in the administration of justice should be encouraged (Wormer, 2004).

According to studies conducted by C. H. F. H. Duman in 1924, 405 kinship tribes spread across Borneo. It was common knowledge that community life was religious and magical, and there was no clear demarcation between actual existence and life in the supernatural. According to their theory, this nature is an integrated whole that cannot be broken up (Ismawati, 2013).

Sekadau Regency, which belongs to the province of West Kalimantan, can be found between Sanggau Regency and Sintang Regency, or it can be found between 0°38'23" North Latitude and 0°44'25" South Latitude, as well as between 110°33'07" West Longitude and 111°17'44" East Longitude. This location can be determined based on its geographical location. In an administrative sense, the following are the limits of the Sekadau Regency: The Sintang Regency is located in the north, the Ketapang Regency is in the south, the Sanggau Regency is in the west, and the Sanggau Regency is in the east. The Sekadau Regency covers 5,444.3 square kilometers, which is approximately 3.71% of the total land area of West Kalimantan Province. This region encompasses all territories between the Nanga Mahap and Belitang Hulu districts. There are seven districts in the Sekadau Regency. The district with the smallest area is the Belitang District, which has an area of 281 km² or 5.16% of the area of the Sekadau Regency. The district with the most significant area is the Belitang Hulu District, which has an area of 1,162.7 km² or 21.36% of the territory of the Sekadau Regency.

The Dayak Ketungau community in Perongkan Village, Sekadau Hulu District, Sekadau Regency, follows the prevailing customary law in their day-to-day activities. This is especially true for the Dayak Ketungau community in Sekadau Regency's Perongkan Village. One is the tradition of marrying in a specific way, which is still followed and practiced. In Perongkan Village, located in Sekadau Hulu District, Sekadau Regency, the traditional marriage ritual is carried out from generation to generation. The customary provisions of this marriage are passed down from the forefathers or ancestors.

The legal remedy that the customary functionary provides is the creation of a coercive regulation. The formed regulations have binding authority and coercive power for the community, one of which is for individuals who break these regulations. Regulations that are stringent As a direct result of the presence of coercive regulatory aspects, the law includes stringent rules, which means that it lays out unambiguously the punishments to be meted out to lawbreakers. The customary law disregards the written portions of the village's regulations. The letters are the entirety of the laws, and they are incorporated in the judgments made by the functionaries. Hence, the only way to know and see the applicable customary law is to look at the decisions made by the legal functionaries, including judges and the customary head.

There is only the Dayak Customary Council at the district level. Thus the word Tumenggung Regency only exists at a different level. The term "tumenggung" is unique to each of the subtribes. The Dayak



Arts and Culture Development Organization is merely a consulting service, a link between the community and the government, and an organization that preserves Dayak arts and culture. A book of Dayak and Malay customary law that will serve as a guide for tumenggung in making decisions about a variety of different cases. Tumenggung, members of particular sub-tribes, have the exclusive authority to decide legal matters that arise within their sub-tribe but are not permitted to manage legal matters within other sub-tribes. Everything is in its place, and others are willing to uphold and respect the sanctity of the customary legal system. Allowances can then be supplied by the Sintang Regency Government using monies from the Sintang Regency Regional Revenue and Expenditure Budget. After the Sintang Regency Government has issued a decree, each sub-tribe can select its own Tumenggung. The entirety of the community in the Ketungau Hilir District can put into practice all of Musdat's recommendations at the level of the Sintang District. In the Ketungau Hilir District, the common customary law ensures that all of the customary laws are consistent with one another. In addition, there is an agreement over the interpretation of Dayak and Malay traditional legal principles, which allows for their proper application and observance. The Dayak Indigenous Judicial Institution is known by the word Ketemenggung Adat. A Temenggung Adat leads this institution, and several layers of judicial authority are below it.


The following are the responsibilities and powers of the Temenggung: the Temenggung has the ability to settle any customary disputes that arise within his jurisdiction; Authority to settle cases both among its own community members as well as customary cases with outsiders; responsibility for managing customs and customary laws that exist within the territory of authority; responsibility for resolving customary cases that cannot be resolved by the minister of custom and allies; resolving customary severe issues, such as murder; coordinating and cooperating with the Minister of Adat and other customary partners in their respective efforts to defend customs and customary law; strengthening and growing customs and customary law within their region; Encourage coordination and cooperation with government officials, as well as district and district officials; Resolve/formulate a case in the event that a case cannot be resolved/decided by the Minister of Adat; Protecting customary territories; Carrying out the decisions that arise from the Musdat; Organize at least two meetings per year specifically for the purpose of coordinating; Maintaining the integrity of the natural resource management and usage processes requires strict oversight. Fostering and preserving cultural practices and artistic expressions; Sincere, knowledgeable, and authoritative; willing to make a choice; familiar with local customs; and courageous enough to communicate the hopes and dreams of Indigenous Peoples.

In Sekadau and Sintang, the Dayak people have a local knowledge known as Bepekat or Pekat. This wisdom serves as the basis for their customary legal system. In certain parts of the world, the application of customary law involves deliberation to reach a consensus founded on a sense of justice and natural equilibrium.

The empowerment of Indigenous Chiefs and Mantri as the spearhead of forming a law-aware society within the Sekadau Customary Law community and Sintang, as a feature of customary law, can be used as an alternative in Sintang District Regulation No. 12 of 2015 concerning the Recognition and Protection of Indigenous Peoples and Customary Law Communities. In addition, the Regional Regulation of Sekadau Regency Number 8 of 2018 concerning the Recognition and Protection of Customary Law Communities.

In applying customary justice in Sekadau and Sintang, there is a proverb generally accepted in Dayak customary law. This proverb is known as "Mutus Adat uleh bepekat, Adat uleh pekak," It can be translated philosophically as "customary decisions occur because of the existence of Bepekat/Pekat." This proverb explains that Bepekat/Pekat are procedural law procedures that must be carried

The imposition of the application of customary sanctions for customary violations can take the form of advice, reprimands, statements of apology, fines, compensation, ex-communication by the community, expulsion from the village/expulsion from the community, revocation of customary titles if customary administrators, and other forms of sanctions by the customs of the local community.



In addition to giving customary sanctions to customary offenders as a form of deterrence for perpetrators not to repeat themselves and for the community's local customs, according to the explanation provided by the source at Sekadau, Pak Temenggung Paternus, Temenggung of the Dayang Mualang Sub Tribe, imposing customary sanctions is an attempt to maintain a balance of life for local indigenous peoples. This attempt is made in addition to giving customary sanctions to customary in his life, Dayak traditional law offers treatment for those who are responsible for wrongdoing by accompanying him during the imposition of post-traditional law on him.

In addition, according to the resource person Temenggung Andreas Calon, Chair of the Sintang Regency District Resilience Forum from the Uud Danum Sub Dayak, the Bepekat/Pekat procedure in the Dayak Mualang and Dayak Desa Adat courts is a process that must be carried out based on customary law in order to apply as a method of imposing customary punishments. This is because the Bepekat/Pekat procedure in these courts is violated, including sanctions in the form of fines imposed and any prohibitions while carrying out customary law in question that may not be carried out, including the period of prohibition/abstinence, all through the Bepekat/Pekat mechanism carried out by the Temenggung Adat, including the period of prohibition/abstinence. In the system of customary justice known as Bepekat/Pekat, Temenggung is an essential participant in holding the Bepekat/Pekat mechanism, which also includes holding a session of the customary court.

To appease this, various types of death cases have been regulated by customary law, such as the following: death because of intentional/killed by another person; death because of a stabbing; death because of being hit with a blunt object; death because of being poisoned; death because of electrocution; death because of drowning; death because of being strangled; death because of being shot; death because of being pushed; death because of one-on-one fighting; death because of being beaten.

Die because there is a connection between your actions and those of other people; due to miscarriage, due to childbirth, due to being squeezed by mother and father, due to breastfeeding, drowning in someone else's well/pool, due to a traffic accident on the land/river or land in groups, due to being crushed while collecting wages, due to being gored by a pet buffalo/cow that belongs to other people, due to falling from a tree in work ordered by other people When there were wild creatures in the path of the transaction, As a result of getting struck by wood while working the deal, Because of being hit by people, or because of other things in a cause-and-effect relationship from other people, or in agreements/groups that are not contained so that an example is picked from the instances contained in a comparable or similar event. Because of being hit by people.

The death referred to in paragraph (1), letter number 1-12 that not only causes loss of life but also results in loss of costs in the process of resolving his death to the last level (dalok) and immaterial tangible losses for the widow or widower, children or family left behind. The law passed down from the ancestors until now stipulates customary punishment sanctions in this case. Pati jihpon 30 (thirty), where jihpon is the designation for usual doses according to Uud Danum custom and Resolving death, as alluded to in articles 97, 98, and 99. Charged to perpetrators. There are articles appended. Calculated, compensation was given to the victim for it to be carried out as it should have.

Thanks to the judicial system, Indigenous peoples can compel the perpetrators of wrongdoing to comply with their demands. To carry out a customary trial for the verification process, the customary stakeholders summon the reported and complainant, the customary stakeholders ask directly with the perpetrators and witnesses, the customary stakeholders ask directly with the perpetrators and witnesses, and the customary stakeholders (prosecutors) conduct a study. The punishment for the perpetrators is determined. The Dayak are an indigenous people group that can be found residing on the island of Borneo, which is located in Southeast Asia. The Dayak community has a long legacy of restorative justice techniques handed down from generation to generation. These traditions have been used to resolve disputes between members of the community. Within the Dayak community, restorative justice is essential in the culture and the way of life.

The Dayak people firmly believe that justice brings harmony back to the community. When a crime is committed, this indicates that the community as a whole is obligated to work together to reestablish



equilibrium and harmony. It is believed that restorative justice can bring about healing for the perpetrator, the victim, and the community as a whole (Rochaeti, 2017).

The significance of community participation is regarded highly in the Dayak community as one of the fundamental tenets of the restorative justice system. After committing a crime, community members participate actively in restorative justice. This indicates that the community must gather to discuss and decide the best course of action to pursue to bring back the lost equilibrium and harmony.

In addition, the concept of forgiveness is highly valued within the Dayak society. Many believe that it is important to forgive in order to move on from the pain that was caused by the crime and to repair the connections that have been broken between the victim, the offender, and the community. People do not view forgiveness as a sign of weakness; instead, it is a strength that can help the community get better.

In the Dayak culture, using a traditional ritual called the "Musyawarah" is one of the ways that restorative justice is put into reality. This ritual is known as the "Musyawarah." The Musyawarah is a community meeting conducted regularly to discuss significant matters of concern to the community. When someone commits a crime, the Musyawarah is invoked to bring the perpetrator, the victim, and the community together to figure out how the crime can be made right and how the damage it caused can be mitigated (Braithwaite et al., 2010).

At the Musyawarah, community members will take turns speaking and giving their thoughts on how the crime has affected the community. The perpetrator can apologize to the victim and the community for their actions and accept responsibility. Victims can speak their minds about their feelings and convey their desires for reparation and healing (Hartanto et al., 2019).

After that, the community comes together to figure out what the best course of action would be to follow in order to bring back the equilibrium and harmony that had been lost. Remediation may involve the offender engaging in various activities, such as completing community service, providing compensation to the victim, or participating in mediation or therapy to address the underlying issues that led to the commission of the crime.

Restorative justice is performed in the Dayak culture in several ways, one of which is through the utilization of traditional healing methods. The people of the Dayak culture have a long history of treating physical and mental ills with medicinal plants and other natural treatments. Traditional healers may be contacted after committing a crime to provide healing services to both the victim and the criminal.

Within the Dayak community, restorative justice encompasses more than simply making up for the damage caused by criminal activity. In addition to this, it is about fostering harmony and equilibrium throughout the entirety of the community. This indicates that restorative justice is utilized to resolve various community issues, including disagreements over land ownership, family conflicts, and environmental worries.

3. CONCLUSION

A kind of legal system known as restorative justice emphasizes rehabilitating criminals by encouraging them to make amends with their victims and the communities they have harmed. It is a method that is not punitive and aims to avoid repeat offenses while repairing the damage created by criminal activity. This study aimed to investigate the use of restorative justice within the customary legal systems used by the Dayak tribe villages located in West Kalimantan.

The research was conducted using socio-legal research. The data was acquired through semi-structured interviews with key informants from the communities of the Dayak tribe and officials from the local government, and judicial practitioners. According to the findings, restorative justice methods have been utilized in the communities of the Dayak tribe for generations. These practices continue to play an essential role in Dayak's traditional justice delivery method.

The Dayak people have a system of customary justice for resolving criminal case conflicts. This system is a custom of the indigenous peoples that cannot be separated from the rules that apply to that community. This is because these rules have the power to bind and can be obeyed by the individuals who committed the crime. To carry out a customary trial for the verification process, the customary stakeholders summon the reported and complainant, the customary stakeholders ask directly with the perpetrators and witnesses, the customary stakeholders ask directly with the perpetrators and witnesses, the customary stakeholders (prosecutors) conduct a study. The punishment for the perpetrators is determined.

In the villages that make up the Dayak tribe, the core ideas of restorative justice, such as mending harm, involving stakeholders, and encouraging healing, were already deeply ingrained in the traditional ways of doing things. The research also indicated that applying restorative justice had several benefits, including improved community involvement, lower recidivism, and greater satisfaction among victims.

However, the research also revealed several shortcomings in implementing restorative justice in the communities of the Dayak tribe. These flaws included a lack of standardization and formalization of restorative justice procedures, limited resources, and the possibility of community leaders abusing their positions of authority.

The researchers indicate that future studies should concentrate on building formal norms and standards for restorative justice procedures in the communities that are inhabited by members of the Dayak tribe in order to overcome these deficiencies. In addition, a more incredible amount of resources should be allotted to assist the adoption of these practices and to provide training to individuals working in the court system and community leaders.

In addition, scholars are responsible for investigating the feasibility of incorporating restorative justice practices into Indonesia's existing formal court system. It is possible that the current legislative framework in Indonesia does not entirely recognize or promote restorative justice methods, which may restrict the effectiveness of these activities and make it more difficult for them to be sustained.

4. DECLARATION OF CONFLICTING INTEREST


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