

A Renewal Attempt at a Bill in Indonesia's Criminal Law: A Study of the Development in the Norm of Rejang Customary Law



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ABSTRACT: The inventory of Rejang Customary Law norm, specifically in Bengkulu Tengah regency, in line with the Indonesia's Law Renewal Policies. All of the way to strengthen the local wisdom, including the case resolution mechanism within National political Law, are all been stated in National Policies, started when it was stated in the Presidential Regulation of the Republic of Indonesia No. 7 Year 2005 concerning the National Medium term development plan (RPJMN) in 2004-2009, which already written to reform the law system and politic in the next five years. Therefore its necessary to conduct research on customary court, especially on customary law in Rejang community whose domiciled in Bengkulu Tengah. Some of the question that needed to be answered in this research is which forms, term, norms and reaction are there that of the Rejang Customary Law that still apply in the communities that occurs in Bengkulu Tengah regency that related to crimes against one's dignity and life. This research is an empirical law research, which examines the law as a fact and the application of law in the Rejang society in Bengkulu Tengah regency. Regarding to crimes againts the dignity and life of a person, there are several institution of Customary Law norm with respective reaction/sanction, namely *Menggomboa*, *Tekleseng*, *Tekabeak*, *Ngabeak*, *Iram Coa Berdaleak*, *Cido Celako*, *Upet*, *Johong Pemayo*, *Begaseak*, *Bangun Kenyayo*, *Cempalo Tangan*, *Bangun mayo*, *Kerineak*. While customary reaction to violation of customary norms relating to the dignity and the life of a person are *Minai Maaf and or Tentok Kambing*, *and or Tepunjung*, *and or kedendo*, *and or Tepung Tabea (Setawar Sedingin)*, expulsion, or signing a letter of Peace Agreement.

KEYWORDS: Criminal Law, Customary, Indonesia, Norms, Rejang, Renewal

BACKGROUND

Currently, the Rejang Ethnic Nation, apart from living in Rejang Lebong Regency, also makes up the majority of Citizen that lives in Lebong Regency, Bengkulu Utara Regency, Kepahiang Regency, as well as Bengkulu Tengah Regency in Bengkulu Province. [1] The area of Bengkulu Tengah Regency which is the research location is a new regency that established in 2008, based on "Undang-Undang Nomor 24 Tahun 2008" that is a division of Bengkulu Utara Regency. [2]

The importance of this research used with Theoretical research is to anticipate the ratification of the Draft of Criminal Code (RKUHP) as a positive law in Indonesia. Section 2 of the (RKUHP) that translated into english stipulates that;

1. The provision as referred in Section 1 Article (1) did not reduce the enactment of the Law that lives in society that determine a person deserves to be punished even though the act does not regulated in the Law.
2. The law that use in society as reffered to in Article (1) applies in the place where the law exists and as long as it is not regulated in this law and is in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles that had been recognized by the society.[3]

Based on the norms of Section 2 of RKHUP, every ethnic group that has its customary law should immediately prepare a compilation of customary law with regard to customary criminal law norms, or theoretically known as "*Adat Delicten Recht*". [4] In addition of needing an inventory of the norm of Law for Rejang Customary Law that related to *Delicten Recht Custom*, its also necessary to take a certain action to the violation of the custom with customary reaction. In the Law language of the state, the reaction itself are sanctions. The Customary Reaction/Customary Sanction serves to restore the balance that has been disturbed due to the violation of the custom. [5] In addition, an inventory of reactions/Rejang Customary Law witnesses is also needed as an attempt to anticipate the ratification of the RKUHP, especially with regard to the formulation of criminal sanctions. As regulated in Section 66 of the Draft Criminal Code.

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1. Additional penalties as referred to in Section 64 letter b consist of revocation of certain rights, confiscation of certain goods and/or claims; announcement of judge's decision; compensation payment; revocation of certain permits, and fulfillment of local customary obligations.
2. Additional punishment as referred to in Article (1) may be imposed in event that the imposition of the principal sentence alone is not sufficient to achieve the purpose of the punishment.
3. Additional penalty as referred to in Article (1) may dropped 1(one) type or more.
4. Additional penalty for probation and assistance are the same as additional penalties for criminal acts.[6]

Additional sanction for fulfilling customary obligation must be adjusted to the provisions of the customary law for ethnic group in Indonesia, for example in Bengkulu Regency if the perpetrator and/or victim is a resident of Rejang ethnic group, the fulfillment of customary obligations should be according to Rejang Customary Law.

The distribution of the Rejang ethnic group in Bengkulu Tengah Regency included, *Taba Penanjung* District, *Merigi Kelindang* District, *Merigi Sakti* District, *Bang Haji* District, and *Pematang Tiga* District. In addition, in other Sub-Districts such as *Talang Empat* and *Pondok Kubang*, the majority of the population comes from the *Lembak* ethnic group, while the *Karang Tinggi* Sub-District has the majority of the population from the *Serawai* ethnic group.[7]

The inventory of Rejang Customary Law also theoretically useful for finding alternative models of dispute resolution/criminal law violations, without the mean to use the state court facilities.[8] Developing alternate dispute resolution/traditional violations/violation of criminal law norm that are comparable to Rejang Customary Law Norms through customary court or outside state courts. Customary court are different from state courts, while the characteristic of customary court are;

By pulling the element of section 51 of Law Number 21 of 2001 above, the concept of customary justice is as follows:

1. Customary court is a judicial system that lives in customary law community units in Indonesia;
2. Customary court are based on customary law;
3. Customary court are not part of the state court system;
4. Customary court have the authority to adjudicate the customary cases, both in the form of disputes and violation of customary law;
5. Customary court have the authority to adjudicate cases between members of the customary law community units.[9]

Customary courts are one of the alternative dispute resolution mechanisms other than state courts. Dean G Pruitt and Jeffrey Z. Rubin, introduced a theory of dispute resolution called "The Theory of Dispute Resolution Strategies" namely *Contesting*, which is trying to apply a solution that is preferred by one of the other parties. The second one namely *Yielding*, which is lowering one's own aspirations and being willing to accept the shortcomings of what is actually desired. Third namely *Problem Solving*, which is to find a satisfactory alternative for both parties. Fourth namely *Withdrawing*, which is choosing to leave the dispute situation both physically and psychologically. And then Fifth namely *Inaction*, which is doing nothing [10]

Inventory of Rejang Customary Law Norms, especially for those in Bengkulu Tengah regency, is in line with the policy of law reform in Indonesia. The direction to strengthen local wisdom – including the mechanism for resolving cases, already stated in the Presidential Regulation of the Republic of Indonesia Number 7 of 2005 in national legal policies concerning the National Medium Term Development Plan (RPJMN) of 2004-2009. In this Regulation, the policy direction formulated to reform the law system and politics for the next five years. In accordance with the identified problems, the policy direction to reforming the law system and politics focuses on the three problems that have been described, namely improving the Law Substance (material), Law Structure (institutional), and Law Culture. In relation to improvement of Law Substance, the improvement are made through effort to reorganize through review and rearrangement of laws and regulations by taking into account the general principles and hierarchy of laws; and respect and strengthen local wisdom and customary law to enrich the law and regulatory system through the empowerment of Jurisprudence as part of efforts to reform national law. [11]

PROBLEM

Regarding to the need of conducting research on customary law, especially on customary law in Rejang community whose domiciled in Bengkulu Tengah regency, several questions need to be answered in this study, namely what are the forms, term, norm, and customary law reaction of Rejang ethnic in Bengkulu Tengah regency that are still in effect in the society that related to crime toward one's dignity and one's life ?

METHODS

This research is an empirical law research, which examines the law as a fact and the application of law in society in Rejang ethnic in Bengkulu Tengah regency. The data used in this research is primary data that obtained and collected from the informants/

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respondents whose been selected and determined. This people that have become sources of information are,

1. Customary Chief
2. Village Chief
3. Religious figures
4. Community Leader

In addition, secondary data also used from library resources, both literature and the result of research conducted by others as well as other's journal article. The primary data collection method was carried out by observation and in-depth interview with the informants. Meanwhile, secondary data collected by conducting a Law literature search. The data that has been collected then selected (editing) and the data that is still considered insufficient is re-collected. If the data is considered sufficient, then grouping is carried out according to the formulated problems. The conclusion which is the answer to the problem is formulated using inductive thinking.

DISCUSSION

Based on the result of research conducted in the regency, there are several Rejang Customary Law Norms regarding violations of one's body, which are still known, valid and obeyed by the Rejang ethnic community in Bengkulu Tengah regency. These norms are known by certain names, which is;

1. *Menggomboa*
2. *Tekleseng*
3. *Tekabeak*
4. *Ngabeak*
5. *Iram Coa Berdaleak*
6. *Cido Celako*
7. *Upet*
8. *Johong Pemayo*
9. *Begaseak*
10. *Bangun Kenyayo*
11. *Cempalo Tangan*
12. *Bangun mayo*
13. *Kerineak*[12]

Menggomboa is an act of customary violation that occurs when a group of people who attack other people causing injuries to the victim or leaving scars in the form of swelling/bump in the body. *Tekleseng*, is an act of customary violation that occurs when a person accidentally pushes and/or makes other person fall, causing abrasions to a certain body part. *Tekabeak* is an act of customary violation that occurs when someone swinging a sharp weapon in the form of a machete or in the local language called "Pitat" which accidentally hits another person's body, causing injury or causing disability. If the act was on purpose in order to injure someone, then it called "Ngabeak". *Iram coa bedaleak* is an act of customary violation that occurs when someone hits other person using a blunt object in the form of iron or wood, in a fight or outside a fight, which causes bruises and rashes on the skin, causes forms a blood clots under the skin where the part that got hit. *Cido celako*, is an act of customary violation that occurs when someone beating other using a blunt object which results in a disability in one of the other's limb. *Kejujung tenggak*, is an act of customary violation that occurs when someone who hit other person using either sharp weapon or a blunt object, in a fight or not in a fight which result in defect in the five senses or scars that cannot be removed on the face. *Upet*, is an act of customary violation that occurs when someone has committed slander against each other, resulting the other person get excluded from association in society or the loss of people's trust in him. *Johong pemayo*, is an act of customary violation that occurs when someone uses magic power, mainly black magic and curses to make someone sick or die. *Begaseak*, is an act of customary violation that occurs when a fight between people, whether using tools or not, which causes bruises on the part that was hit. *Bangun Kenyayo*, is an act of customary violation that occurs when someone is crashing other people with a motorbike or car causing injuries or dies. *Cempalo tangan*, this term is not only known in the Rejang ethnic community but is widely known as a customary violation in Southern Sumatra, this term is used in the traditional lawbook of Southern Sumatra which was compiled by the Dutch colonialists. One's is said to have done *Cepalo tangan* when using his/her hand to hurt/hit other people. *Bangun mayo*, is an act of customary violation that occurs when someone hitting, using a sharp weapon, blunt object or just his/her hands, which leaves

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a rotting stab wound. *Kerineak*, is an act of customary violation that occurs when someone who is not known by a community or "Kutei" occurs because one's lives in a village without reporting to the village chief, and his/her behavior is suspicious.

The customary sanction or customary reaction [13] that are given to the perpetrators of an act violates customary law norms relating to the one's dignity and life in the Rejang ethnic in Bengkulu Tengah regency are; *Minai Maaf*, *Tentok Kambing*, *Punjung*, *Kedendo*, *tepung Tabea* (Setawar sedingin), expulsion from residence, signing a peace agreement. [14]

- a. Apologizing (*Minai maaf*), this asking for forgiveness act is the lightest form of sanction. Perpetrators who violate the customary laws are obliged to apologize to the victim and to the village community for causing uneasiness in the community.
- b. *Tentok kambing* (Butchering a goat). The sanction for slaughtering a goat includes sanction for violation of customary law which are quite severe, because if a goat subjected to *Tentok kambing* sanction, of course there is also a *Sedekeak* (entertaining community) sanction.
- c. *Kedendo* (Fine), this sanction applies to all customary violations. The amount of which is determined depending on the violation that has been committed, starting from 2 Rielas, 4 Rials, 6 Rials, 24 Rials, 40 Rials, and 80 Rials, which if converted equals to Rp. 25.000 per 1 Rials.
- d. *Punjung*, usually in the form of tumeric rice in a shape of cone, surrounded by side dishes according to the capabilities of the person concerned, usually there is one fried chicken on top or it can be replaced with other. This traditional sanction is usually given to perpetrator that are quite severe and up to serious customary violation.
- e. *Tepung Setawar* (*Tabea flour/Setawar Sedingin*) is a form of sanctions given to the perpetrator of customary violations with the aim of cooling back the hot situation due to the actions of the perpetrator with a ritual. This sanctions usually done by sprinkling water that has flower drowned in it, on places that are considered polluted or dirty, such as the scene, the house of the traditional leader, the village chief, or the other public places.
- f. Customary law sanction in form of expulsion from the perpetrator's place
- g. Letter of agreement, is a mandatory sanction for perpetrator who commit every violation from mild to severe. This letter contains the promise of perpetrator that he/she will not repeat the same action/mistake and signed by the parties and known by the village official and *Syarak apparatus*.

CONCLUSIONS

Regarding to crimes against the dignity and life of oneself, there are several institutions of customary law norms along with customary reactions/sanctions, namely;

1. *Menggomboa*
2. *Tekleseng*
3. *Tekabeak*
4. *Ngabeak*
5. *Iram Coa Berdaleak*
6. *Cido Celako*
7. *Upet*
8. *Johong Pemayo*
9. *Begaseak*
10. *Bangun Kenyayo*
11. *Cempalo Tangan*
12. *Bangun mayo*
13. *Kerineak*

Customary reaction to violation of customary norms relating to dignity and life of oneself are; *Minai Maaf*, and/or *Tentok Kambing*, and/or *Punjung*, and/or *Kedendo*, and/or *tepung Tabea* (Setawar sedingin), and/or expulsion from residence, and/or signing a peace agreement.

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- 1) <https://www.rejanglebongkab.go.id>. Downloaded on Thursday 6 November 2021 at 11.32.
- 2) Bengkulu Tengah Regency Government. At a glance the history of Bengkulu Tengah Regency <https://bengkulutengahkab.go.id>. Downloaded on Tuesday 11 January 2022.

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- 3) Draft Criminal Law.pdf. <http://reformasikuhp.org>. Downloaded on Tuesday 2 November 2021 at 11.50
- 4) Ahdiana Yuni Lestari. Traditional law teaching materials, Muhammadiyah University of Yogyakarta, Faculty of Law. 2017. page 32. <http://repository.umi.ac.id>. Downloaded on 3 Januari 2021, at 11.06. as it is known that the term criminal law is a translation of the Dutch term "adat delicten recht" or the law of customary violations. The definition of customary offense law, according to Ter Haar, shows that there is a unilateral act which the other party expressly or secretly declares as an act that disturbs the balance. According to Van Vollenhoven, customary offenses are actions that should not be carried out even though in reality the event or act is only a small mistake.
- 5) Ibid, page 33. Reaction or correction actions in resolving the consequences of events that disturb the balance can not only be taken against the perpetrator, but also can be held accountable to the family or relatives of the perpetrator or the indigenous peoples.
- 6) Ibid
- 7) <https://bengkulutengahkab.go.id>. Downloaded on Thursday 6 November 2021 at 12.13.
- 8) the meaning of justice. <https://www.pn-tanahgrogot.go.id>. The court is the official state body or agency that implements the judicial system in the form of examining, adjudicating, and deciding cases. The form of the judicial system that is implemented in court is an official public forum and is carried out based on procedural law applicable in Indonesia to resolve disputes and seek justice in civil, labor, administrative and criminal cases. Everyone has the same right to bring their case to court, both to settle disputes and to seek protection in court for parties accused of committing a crime. Meanwhile, the judiciary is everything or a process carried out in the Court related to the task of examining, deciding and adjudicating cases by applying the law and/or finding the law "in concreto" (the judge applies legal regulations to real things that are brought before him for trial. and decided) to maintain and ensure compliance with material law, using the procedural methods established by formal law.
- 9) I Ketut Sudantra, Tjok Istri Putra Astiti, I Gusti Ngurah Dharma Laksana. The Customary Justice System in the Customary Law Community Units of the Pakraman Village in Bali. *Balinese Studies Journal* Volume 07, issue 01, April 2017. Page 85. <https://ojs.unud.ac.id>
- 10) [10] Dean G Pruitt, Jeffrey Z. Rubun, (2004). *Social Conflict*, Yogyakarta: Student Library, p. 84 quoted by La Syarifuddin. Customary Law System Against Criminal Case Settlement Efforts. *legal treatise*, Volume 15, issue 2, Desember 2019, page 3.
- 11) Ibid.page 137
- 12) Hesti Hanivon Berta, Herlambang. helda rahmasari. Inventory of Customary Violations Relating to Crimes Against People in the Rejang Community in Bengkulu Tengah Regency. Faculty of Law Bengkulu University. 2019. <http://repository.unib.ac.id>. Downloaded on Tuesday 21 Desember 2021. at 9.31
- 13) The customary reaction is a series of events that aim to restore (restore) the balance, which has been disturbed due to the act of violating the custom.
- 14) Loc. cit.



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