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# Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia

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## ABSTRACT

This study endeavors to examine the execution of adat obligation fulfillment within the Baduy adat society, specifically in cases involving the murder and rape of Baduy girls in 2019. The primary focus is on scrutinizing how the Baduy adat institution has undertaken the fulfillment of adat obligations in these cases and its alignment with the provisions outlined in the New Criminal Code. Employing a normative-sociological research methodology, both secondary and primary data were utilized, including a comprehensive literature review and field studies conducted through interviews with traditional leaders in Baduy. The imperative nature of this research lies in its investigation into the applicability of positive



law within the Baduy adat area, coupled with the implementation of adat obligations and the restoration of cosmic balance within Baduy society following the repercussions of crimes within the Baduy adat jurisdiction. The distinctive contribution of this research lies in its exploration of the fulfillment of adat obligations applicable in Baduy, particularly in cases involving the murder and rape of Baduy girls, and its correlation with the regulations of the New Criminal Code. The research findings underscore that perpetrators of the mentioned crimes are subject to penalties under both positive criminal law (imprisonment) and Baduy's adat law, where an adat obligation mandates them to marry the victim. Notably, the implementation of sanctions from both state and adat law occurs concurrently, despite originating from distinct institutional frameworks. In conclusion, the fulfillment of adat obligations, as orchestrated by Baduy's adat law, aligns with the regulations in the New Criminal Code. However, the execution of adat obligations in accordance with the New Criminal Code necessitates a court decision. Consequently, the role of the adat institution assumes critical importance concerning its relevance and authority in sanctioning within the implementation of adat obligations.

**Keywords:** Adat Obligation Fulfillment, Baduy, New Criminal Code

## INTRODUCTION

Baduy, characterized by its indigenous identity, boasts a notably low rate of violations and crimes. The distinctive attributes of the Baduy indigenous people, marked by their unpretentious, innocent, friendly, simple, and law-abiding nature, have long been recognized by those who have engaged with this community.<sup>1</sup> This has positioned them

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<sup>1</sup> Otom Mustomi, "Perubahan tatanan budaya hukum pada masyarakat adat Suku Baduy Provinsi Banten." *Jurnal Penelitian Hukum De Jure* 17, No. 3 (2017): 309-328. It is further explained that the Baduy community, comprising the Baduy Dalam

as exemplary in terms of legal awareness. However, the reputation for the virtuous conduct of the Baduy indigenous people did not shield them from an unfortunate incident involving one of their own citizens, resulting in a tragic loss of life.

In 2019, a disturbing event disrupted the equilibrium of the Baduy community when a shocking incident unfolded—the murder and rape of a Baduy girl, as reported by *KOMPAS*. The victim,

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and Baduy Luar subgroups, resides in the Banten Province of Indonesia and is renowned for its steadfast commitment to preserving traditional practices governed by adat law. The Baduy Dalam, living in secluded villages such as Cibeo, Cikertawana, and Cisondari, strictly adhere to traditional customs, symbolized by their distinctive white attire representing purity. In contrast, the Baduy Luar, while still upholding traditional values, have more interaction with the outside world from their surrounding areas. Central to the Baduy community's way of life is their adat law, a system that encompasses principles like "*Silih Asih, Silih Asah, Silih Asuh*" (*Silih Tresna*), emphasizing love, education, and nurturing within the community. Another significant aspect is "*Silih Hampura*," a conflict resolution method rooted in seeking mutual forgiveness to maintain harmony. Additionally, "*Pikukuh Karuhun*" comprises customary rules governing various facets of life, including social conduct, agriculture, and environmental preservation. The Baduy community's adat law serves as a guiding force in their daily lives, fostering social order and providing a framework for conflict resolution. It represents a harmonious integration of cultural, spiritual, and environmental values that have been transmitted across generations. The community's unwavering commitment to these traditions contributes to the uniqueness and resilience of their cultural heritage. *See also* Suprih Irma Anggraini, Yulia Ulfa, and Duddy Rivaldy. "Akulturasi Hukum Adat Baduy dengan Hukum Positif Indonesia." *Rechtsregel: Jurnal Ilmu Hukum* 3, No. 1 (2020): 13-39; M. Noor Fajar Al Arif Fitriana, et al. "Case Settlement Based on the Baduy Indigenous Law System as a Contribution to the National Criminal Law." *International Journal of Multicultural and Multireligious Understanding* 7, No. 7 (2020): 420-425; Leona Citra Maranatha, Stanley Kurniawan, and Jeane N. Selly. "Keberadaan Dan Penerapan Hukum Adat Di Tengah Sistem Pemerintahan Masyarakat Suku Baduy." *Jurnal Ilmiah Wahana Pendidikan* 9, No. 20 (2023): 447-452; Nirwamudin Nirwamudin. "Konsep Silih Hampura Pada Sistem Peradilan Pidana Masyarakat Adat Baduy (Studi Perbandingan Konsep Restorative Justice)". *Thesis* (Serang, Banten: Universitas Sultan Ageng Tirtayasa, 2015); Sidik Puryanto, "Persepsi Masyarakat Baduy terhadap Konflik: Pemeliharaan Budaya dan Penyelesaian Tradisional dalam Era Perubahan." *Ganaya: Jurnal Ilmu Sosial dan Humaniora* 6, No. 4 (2023): 936-943.

identified by the initials S, was a 13-year-old member of the Baduy indigenous community. S fell victim to three perpetrators, identified as E (19), F (19), and A (15), who not only took her life but also subjected her to a brutal assault within a hut. This incident, transgressing the bounds of humanity, was particularly distressing, considering the longstanding reputation of the Baduy people for their amicable relations with outsiders and their avoidance of conflicts, especially since the three perpetrators were external to the Baduy community, one of whom was a minor.<sup>2</sup>

Criminal law enforcement has been executed in accordance with prevailing positive legal provisions, resulting in the processing of the three perpetrators through the established criminal justice system. The judicial outcomes varied, with AMS receiving a death sentence, AR sentenced to 7 years and 6 months of imprisonment, and MF facing 15 years of imprisonment along with a fine of 3 billion rupiah, as opposed to the alternative of 6 months of imprisonment.

The indigenous community of Baduy maintains its distinct legal system, which has long been revered and adhered to by its members. This holds true for conflict resolution within the society, including instances such as the present case involving murder and rape. Despite the perpetrators having been subject to sentencing by the state's judicial apparatus, the Baduy's adat institution persistently engages in the process of criminal conflict resolution, upholding an ancestral legacy ingrained and preserved by the Baduy's adat community.

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<sup>2</sup> Acep Nazmudin, Aprillia Ika, "Pembunuh dan Pemeriksa Gadis 13 Tahun di Lebak Divonis Hukum Mati", *KOMPAS*, March 17 (2020). Retrieved from <https://regional.kompas.com/read/2020/03/17/21325721/pembunuh-dan-pemeriksa-gadis-13-tahun-di-lebak-divonis-hukum-mati?page=all>. See also Rasyid Ridho, Aprillia Ika, "MA Kuatkan Hukuman Mati Apung, Si Pembunuh dan Pemeriksa Gadis 13 Tahun di Lebak", *KOMPAS*, April 21 (2021). Retrieved from <https://regional.kompas.com/read/2021/04/21/203233478/ma-kuatkan-hukuman-mati-apung-si-pembunuh-dan-pemeriksa-gadis-13-tahun-di>; Farid Assifa, "Kisah Pilu Gadis 13 Tahun di Lebak: Usai Dibunuh, Mayatnya Diperiksa 3 Pemuda", *KOMPAS*, September 17 (2019). Retrieved from <https://regional.kompas.com/read/2019/09/17/06215641/kisah-pilu-gadis-13-tahun-di-lebak-usai-dibunuh-mayatnya-diperiksa-3-pemuda?page=all>.

The execution of adat sanctions against offenders in Baduy remains pending, despite the issuance of a court verdict. In instances of rape, the perpetrator incurs an adat obligation to marry the victim, notwithstanding the unfortunate circumstance where the rape victim has succumbed to the incident. Additionally, a ritual cleansing of the village where the heinous crimes occurred is mandated by adat obligations. It is imperative to note that these adat obligations must be fulfilled, even in cases where the perpetrator is not a member of the Baduy community.

Building upon the findings of prior research conducted by the authors, a conflict resolution model in Baduy's adat law is identified as *Silih Hampura*, denoting a process of mutual forgiveness. *Silih Hampura* serves as the foundational step in conflict resolution. If the conflict is deemed severe and cannot be amicably resolved through *Silih Hampura*, it progresses to the subsequent stage, known as the *Ngabokoran* adat ritual. This *Ngabokoran* process constitutes an integral facet of the Baduy adat criminal justice system, encompassing the implementation of the adat obligation process for the perpetrator.<sup>3</sup>

The exploration of Baduy's adat criminal law by previous researchers has predominantly focused on overarching themes. For instance, Ferry Fathurokhman's work, titled "*Baduy's Adat Criminal Law and its Relevance in Criminal Law Reform*," delves into the material aspects of criminal law within the Baduy adat system. In this context, Fathurokhman scrutinizes the prohibited criminal offenses within the Baduy community and advocates for reforms within the criminal law framework.<sup>4</sup>

Noteworthy contributions from scholars such as M. Noor Fajar Al-Arif and Ahmad Fauzi center on the subject of "*Note from Baduy about Learning to Sustain the Ecology of the Baduy Community*." Their research delves into environmental law within the Baduy adat system, elucidating how the indigenous people of Baduy adhere to

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<sup>3</sup> Rena Yulia and Aliyth Prakarsa, *Silih Hampura (Model Penyelesaian Konflik Dalam Hukum Adat Baduy)* (Depok: PT. Rajawali Buana Pusaka, 2021).

<sup>4</sup> Ferry Fathurokhman, "Hukum Pidana Adat Baduy dan Relevansinya dalam Pembaharuan Hukum Pidana", *Law Reform* 5, No. 2 (2010): 1-38.

adat law, specifically in the form of *pikukuh karuhun*, to uphold and preserve environmental ecology. This encompasses practices observed in agricultural systems and the conservation of forest resources.<sup>5</sup> In an additional study conducted by Nur Rochaeti et al, titled "A Restorative Justice System in Indonesia: A Close View from Indigenous People Practice," the research is centered on exploring the nuances of Restorative Justice within Baduy's adat law. The scholars closely examine the application of restorative justice principles as observed within the practices of the Baduy indigenous community.<sup>6</sup>

In a parallel study concerning Baduy Customary Criminal Law, Umi Rozah conducted research titled "Contribution of Restorative Justice Practice in Baduy's Culture Criminal Justice System Reform." Rozah's investigation focuses on the intrinsic values embedded in the practice of restorative justice within Baduy's culture. The research discerns that the victim and their family, alongside the offender, assume comparable roles in the adjudication process, collectively seeking resolutions that are mutually beneficial. Furthermore, the adjudication process in criminal cases within Baduy's culture is designed with the explicit goals of restoring damages and injuries, rehabilitating the inner state of the offender, and reinstating peace and social cohesion. The research concludes with an emphasis on restitution, forgiveness, and punishment, contingent upon the establishment of the offense and culpability of the offender through a conclusive conference.<sup>7</sup>

Yusuf Kurniawan's additional research, titled "Effectiveness of Implementing Customary Sanctions Against Violations in the Baduy

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<sup>5</sup> M. Noor Fajar Al Arif Fitriana, and Ahmad Fauzi. "Note from Baduy about Learning to Sustain the Ecology of the Baduy Community." *Nurani Hukum* 4, No. 2 (2021): 93-100

<sup>6</sup> Nur Rochaeti, et al. "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices". *Sriwijaya Law Review* 7, No. 1 (2023): 87-104.

<sup>7</sup> Umi Rozah, "Contribution of Restorative Justice Practice in Baduy's Culture Criminal Justice System Reform." *The First International Conference On Islamic Development Studies 2019, ICIDS 2019, 10 September 2019, Bandar Lampung, Indonesia.* 2019.



*Traditional Community*," delves into the application of Baduy customary law. Notably, the study observes the absence of explicit provisions for physical customary sanctions. It elucidates a distinctive feature in the regulatory framework, wherein community members receive sanctions distinct from those imposed on individuals external to the Baduy community. In such cases, the customary practice involves transferring violators from outside the Baduy community to local law enforcement authorities, ensuring that they receive sanctions as stipulated by prevailing legal provisions.<sup>8</sup>

Previously, researchers investigated conflict resolution within Baduy society under the title "*Restoring the Conflict Among Societies: How does Baduy Society Settle Criminal Cases Through Restorative Justice?*" This research highlighted the distinct Baduy method of conflict resolution, namely *Silih Hampura*, which deviates from the national criminal law in Indonesia. The conceptual foundations of *Silih Hampura* are deeply rooted in the norms of Pancasila, the paramount legal source in Indonesia, embodying foundational principles. This model from Baduy customary law encapsulates the principles and values of Pancasila, offering potential legal material for future criminal law reforms.<sup>9</sup>

In contrast to prior studies by five researchers, the current research diverges in its focus. This study delves into the enforcement of positive criminal law and the implementation of adat obligations in cases involving the murder and rape of a Baduy girl. The objective is to discern the application of living law within the community, manifested through the fulfillment of adat obligations, and the execution of positive law, evident in the imposition of criminal sanctions delineated in the Criminal Code.

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<sup>8</sup> Hari Purwadi, Anti Mayastuti, and Yusuf Kurniawan. "Penerapan Sanksi Adat Terhadap Pelanggaran Yang Terjadi di Territorial Masyarakat Adat Baduy." *Journal of Law, Society, and Islamic Civilization* 4, No. 2 (2016): 124-141.

<sup>9</sup> Rena Yulia, Aliyih Prakarsa, and Mahrus Ali, "Restoring the Conflict among Societies: How does baduy Society Settle the Criminal Cases through Restorative Justice?", *Academic Journal of Interdisiplanry Studies* 12, No. 3 (2023): 193-203.

This becomes important to study, considering that the promulgation of Law Number 1 of 2023 on the Criminal Code has been carried out and will be enacted in 2026. The fulfillment of adat obligation becomes one type of sanction in the New Criminal Code which is applied through positive criminal law. This murder case in Baduy uses Baduy's adat law to fulfill the adat obligation and uses positive law to punish the perpetrator with imprisonment. In Baduy's adat law, the implementation of adat obligation solely aims to restore the cosmic balance that has been disturbed due to the murder and rape. The settlement of this case in Baduy can be one of study case in the practices of fulfilling adat obligations required by the New Criminal Code.

This study employs a comprehensive approach, incorporating both normative and empirical research methodologies. Normative research involves an in-depth literature review of previous studies on Baduy's adat law, with a specific emphasis on adat criminal law. To complement this, an exhaustive examination of laws and regulations pertaining to adat norms within positive law is conducted.<sup>10</sup>

In contrast, the empirical dimension seeks primary data through a field study, utilizing the snowball technique for interviews with the elders and members of the Baduy community.<sup>11</sup> This method ensures the collection of accurate and comprehensive information. The primary data obtained through interviews and observations within the Baduy Adat Tribe, coupled with secondary data on positive criminal law, undergoes analysis through descriptive techniques. The findings are presented descriptively, offering insights into the implementation of adat obligations and the application of criminal sanctions against perpetrators involved in the murder and rape of Baduy girls. This analysis is contextualized with the imminent changes outlined in the New Criminal Code set to take effect in 2026.

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<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2016).

<sup>11</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2010).



## AN INSIGHT INTO THE ADAT LAW OF THE BADUY COMMUNITY

The existence of the indigenous Baduy community in Banten is still maintained today, there are two parts, known as the "*Baduy Dalam*" and "*Baduy Luar*". The population of Baduy, both Baduy Dalam and Baduy Luar, continues to grow every year. However, the number of villages in Inner Baduy cannot increase, only 3 villages, namely Cikeusik, Cibeo and Cikartawana Villages, in contrast to Outer Baduy which is allowed to add villages.

As an indigenous community, Baduy has an uncodified legal system. They still adhere to their unwritten law and preserve it by instilling the values of the law for generations through oral cultural practices and adat traditions.

Although unwritten, Baduy adat society has living law and obeyed by its citizens. Whether it contains adat advice, obligations, orders, prohibitions, or behaviour that must be carried out by its own community and the outsider, both towards fellow humans and nature. This includes adat violations or crimes that occur in adat areas. The applicable adat law is not only about rules of behaviour but also regulates conflict resolution that occurs in indigenous communities. Without separating civil or criminal conflicts.

The structure of Baduy society is a patrilineal structure, which, as can be understood, depends on and is closely related to morality, which is the basis of religion itself. The rules and implementation are very simple and strict like the rules of Sparta. The highest head of spirituality is led by Puun, while his authority only covers his own village; Cibeo, Cikeusik, and Cikartawana each have their own patrilineal structure.<sup>12</sup>

The persistence of adat criminal law in the community reflects the existence of adat law in their lives. Each indigenous community has its own adat criminal law, as well as the customs that apply in

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<sup>12</sup> Jul Jacobs, *Etnografi Jul Jacobs, Orang Baduy dari Banten*, trans. K. Judistira and Salam Hardjadilaga (Bandung: Primaco Akademika, 2012).

their respective indigenous communities. It should be remembered that the characteristic of adat law is that it is unwritten, therefore, it needs to receive more attention considering the concern of its existence.<sup>13</sup>

The existence of adat criminal law in the community is a reflection of the life of the community and in each region has a different adat criminal law in accordance with the customs that exist in the area with unwritten and codified characteristics.<sup>14</sup>

In Indonesian adat law, there are many adat institutions that symbolized as local's culture, which are used to resolve disputes, both civil and criminal. More concretely, the settlement of cases through adat institutions is carried out with the principle of deliberation/family to, on the one hand, uphold the law, and on the other hand completely eliminate the further consequences of a case. The ultimate goal is to maintain the balance along the community harmony.<sup>15</sup>

A life full of harmony and peaceful, is also the essence of every human being's life. However, given the many interests of each person in society, it is not impossible for conflicts or clashes to occur due to conflicting interests. This will disturb the balance of society. The disturbed balance of society must be restored to its original state (*restitutio in integrum*). Essentially, "sanctions" are needed which aim to restore the balance of the social order, which has been disturbed.<sup>16</sup>

Indigenous peoples have a long history of living in harmony with nature, as described by Dewa Gede Sudika Mangku et al, as follows;

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<sup>13</sup> Stevania Bella Kalengkongan, "Kajian Hukum Pidana Adat dalam Sistem Hukum Pidana Indonesia." *Lex Crimen* 6, No. 2 (2017): 29-35

<sup>14</sup> Fery Kurniawan, "Hukum Pidana Adat sebagai Sumber Pembaharuan Hukum Pidana Nasional." *EDUKA Jurnal Pendidikan, Hukum dan Bisnis* 2, No. 2 (2016): 10-31.

<sup>15</sup> Ali Abubakar, "Urgensi Penyelesaian Kasus Pidana dengan Hukum Adat." *Madania: Jurnal Kajian Keislaman* 18, No. 1 (2014): 57-66.

<sup>16</sup> Beniharmoni Harefa, "Peradilan Adat Nias dan Keadilan Restoratif." *Jurnal Komunikasi Hukum (JKH)* 3, No. 1 (2017): 40-49.

Environmental and cultural protection are critical for survival of indigenous peoples, since their traditional way of living is likely to have a closer relationship with surrounding environment and a higher dependency on nature. Indigenous people also have historical cultural knowledge about their community structures, beliefs and surrounding environment.<sup>17</sup>

The customs of Indonesian society have their own norms, some of which have sanctions commonly known as adat law. Such living law is certainly unwritten, in the sense that it does not become written law officially legalized by the state as well as laws. This indicates that the Indonesian people still uphold the adat law as unwritten law itself along with sanctions for violating the unwritten law. Thus, the position of adat law along with its adat sanctions is still intact and firmly maintained by the Indonesian people which should be a concern in terms of criminal law politics, especially the reform of national criminal law, both material criminal law and formal criminal law.<sup>18</sup>

The foundational structure of adat law emanates from the interconnectedness of individuals within their societal framework. Unlike the traditional concept of law, which posits individual freedom within defined limits, adat law diverges in its acknowledgment. Adat law does not recognize abstract rights for individuals; rather, it confers concrete legal powers upon them as integral members of a community.<sup>19</sup> In this legal framework, primacy

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<sup>17</sup> Dewa Gede Sudika Mangku, et al. "The Position of Indegenous People in the Culture and Tourism Developments: Comparing Indonesia and East Timor Tourism Laws and Policies." *Journal of Indonesian Legal Studies* 7, No. 1 (2022): 57-100.

<sup>18</sup> Rahmat Hidayat Abdullah, "Urgensi Hukum Adat dalam Pembaharuan Hukum Pidana Nasional." *Fiat Justisia: Jurnal Ilmu Hukum* 9, No. 2 (2015): 168-181.

<sup>19</sup> Supomo Supomo, *Hubungan Individu dan Masyarakat dalam Hukum Adat* (Jakarta: Gita Karya, 1963). See also Sardjana Orba Manullang, "Understanding the sociology of customary law in the reformation era: complexity and diversity of society in Indonesia." *Linguistics and Culture Review* 5, No. S3 (2021): 16-26; Rudy Rudy, R. P. Ryzal Perdana, and Wijaya Rudi. "The Recognition of Customary Rights by Indonesian Constitutional Court." *Academic Journal of Interdisciplinary Studies* 10, No. 3 (2021): 308-318; Martitah Martitah, Slamet Sumarto, and Arif

is not accorded to the individual; instead, the community takes precedence. Society occupies a central position in the legal fabric, with individuals functioning as community members striving to fulfill communal objectives. This communal nature defines and distinguishes adat law, emphasizing its inherent focus on collective goals and the interconnectedness of its constituents.<sup>20</sup>

Settlement of adat offences that result in the disruption of the family or community balance, although sometimes the case is dealt

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Hidayat. "The Existence of Customary Law and Islamic Law in the Optics of the Indonesian Legal System in Indonesia." *ICILS 2020: Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*. European Alliance for Innovation, 2021.

<sup>20</sup> Supomo. It is also further emphasized that in Indonesia, the relationship between society and customary law is deeply interwoven, reflecting the nation's rich cultural diversity and historical context. Customary law, known as "*adat law*" in Indonesia, plays a significant role in governing various aspects of community life. It is often rooted in local traditions, values, and norms that have evolved over generations within specific ethnic or regional communities. The dynamic relationship between society and customary law is evident in the way these legal systems coexist alongside the national legal framework. While Indonesia has a centralized legal system based on enacted laws, customary law continues to hold relevance and influence, particularly in rural and indigenous communities. The Indonesian government recognizes the importance of accommodating diversity and has established mechanisms to integrate customary law into the national legal system, fostering a synergy that reflects both the unity and diversity of the nation. However, challenges arise due to the diverse nature of customary laws across Indonesia's vast archipelago. Striking a balance between national legal standards and respecting the autonomy of local customs remains an ongoing process. The relationship is dynamic, marked by ongoing dialogue and negotiation between societal practices and the legal framework, seeking to preserve cultural heritage while ensuring justice, equality, and compliance with broader legal principles. *See also* Ahmad Syaufi, and Aurora Fatimatuz Zahra. "The Criminal Settlement Through Customary Law from Restorative Justice Perspective." *Journal of Legal, Ethical and Regulatory Issues* 24, No. 6 (2021): 1-7; Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints." *Ahkam: Jurnal Ilmu Syariah* 23, No. 1 (2023): 25-48; Hamzah Hamzah, Haidarsyah Muhammad, and Zulkarnain Zulkarnain. "Customary Law Impact in the Development of Indonesia's Criminal Code." *Journal of Critical Reviews* 7, No. 3 (2020): 233-236.

with by state organs, can be pursued through the person and/or family concerned, or dealt with by the head of the relative, the adat head, the village head, the head of the association of organisations and state organs.<sup>21</sup>

Baduy Indigenous People is a adat community that still upholds adat law and maintains the harmony of its natural environment. A typical pattern of life, unpretentious, simple, mutual cooperation, obedient to adat law, and obedient to ancestral advice and close to nature, which is applied in daily life by the Baduy indigenous community. Law enforcement is not limited to maintaining the content of the rules but maintaining balance with nature.

The adat criminal law within the Baduy community is notably non-codified and lacks written documentation. As elucidated by Jaro Sami, a bi-monthly communal gathering transpires in the central fields of each village in *Baduy Dalam* (Cibeo, Cikertawana, Cikeusik). During these assemblies, the community collectively disseminates information concerning prohibitions within Baduy, along with their corresponding penalties. In tandem with these forums, the transmission of knowledge pertaining to Baduy's adat criminal law occurs through oral discourse integrated into daily life, ensuring the perpetuation of legal awareness across successive generations within Baduy.<sup>22</sup>

A congruent perspective is encapsulated in the assertion that Traditional Cultural Expressions embody immense cultural value as an enduring facet of global cultural heritage. The inherent nature of Traditional Cultural Expression, encapsulated by the term "*religio magis agraris rural*," denotes its continual evolution and decline across successive generations, eschewing novelty in favor of communal repetition within specific communities.<sup>23</sup> Notably, the communal

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<sup>21</sup> Kurniawan, "Hukum Pidana Adat Sebagai Sumber Pembaharuan Hukum Pidana Nasional."

<sup>22</sup> Fathurokhman, "Hukum Pidana Adat Baduy Dan Relevansinya Dalam Pembaharuan Hukum Pidana."

<sup>23</sup> "*Religio magis agraris rural*" encapsulates a profound connection between spiritual or cultural practices and the agrarian way of life. The term, rooted in Latin, suggests an emphasis on religious or cultural beliefs that are not only deeply

enactment of these expressions does not uniformly bear cultural significance or align with industrial conventions. Traditional culture, characterized as an integral element inseparable from individuals' lives, attests to the enduring legacy of cultural practices transmitted across generations.<sup>24</sup>

In conjunction with the formal bi-monthly forum, as outlined by Jaro Alim<sup>25</sup>, the transmission of Baduy's adat criminal law is also facilitated through an intimate familial mechanism. Notably, each parent plays a pivotal role in imparting this knowledge to their offspring, with a distinctive method of delivery designated by gender. Fathers undertake the responsibility of instructing their sons, while mothers assume the role of educators for their daughters. This unique and organized approach underscores a familial dynamic wherein fathers serve as mentors for their sons, and mothers fulfill a similar instructional role for their daughters. In essence, this familial structure ensures a personalized and gender-specific transfer of Baduy's adat criminal law within the Baduy community.

Baduy's adat law, also known as *Baduy Pikukuh*, has been adhered to from generation to generation and strongly animates the Baduy indigenous community. The *Pikukuh* are among others, *gunung teu meunang dilebur, lebak teu meunang diruksak, larangan teu meunang dirempak, buyut teu meunang dirobah, lojor teu meunang dipotong, pondok teu meunang disambung, nu lain kudu dilainkeun, nu ulah kudu diulahkeun, nu enya kudu dienyakeun, mipit kudu amit, ngala kudu menta.*

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intertwined with rural settings but are also considered more pronounced or significant in these environments. It conveys a sense of the heightened importance of certain traditions or expressions in the context of rural or agrarian communities, highlighting the integral relationship between spiritual or cultural practices and the agricultural landscape. This phrase implies a unique and intensified connection between the people's beliefs and their rural surroundings, emphasizing the cultural richness and significance embedded in the agrarian fabric of life.

<sup>24</sup> Rindia Fanny Kusmaningtyas, et al. "Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)." *Journal of Indonesian Legal Studies* 8, No. 1 (2023): 45-92.

<sup>25</sup> Personal Interview with Jaro Alim, Cikertawana, Baduy Dalam, 2017.



[Mountains must not be destroyed, valleys must not be damaged, prohibitions must not be violated, traditions must not be altered, length must not be cut, shortness must not be extended, what is not to be eradicated must be preserved, what is prohibited must be forbidden, what is true must be acknowledged, taking must be accompanied by permission, taking must be requested].

The aforementioned principle is rigorously upheld by the indigenous community of Baduy, resulting in a remarkably low incidence of violations or crimes, and one might even assert the absence of criminal activities. However, occasional transgressions of customs, which do not inflict harm on others, may still manifest. For instance, the prohibition against wearing sandals and vibrant-colored attire is at times breached by certain individuals. In response to such occurrences, Jaro Alim and several village leaders undertake customary interventions. The objective is to ensure that the indigenous people uphold their conduct in alignment with the enduring beliefs and traditions they have adhered to thus far.

Baduy's adat criminal law incorporates a noteworthy *ultimum remedium* principle, akin to the subsidiarity principle. This formal criminal law within the Baduy community adheres to the *ultimum remedium* principle, wherein the Baduy adat criminal justice system is invoked only if efforts to resolve a case at the familial level (involving both the perpetrator and victim) prove unsuccessful. The primary recourse is consistently directed towards resolving matters within the family sphere. Hence, viewed more broadly, the initial resolution stage within the family framework constitutes an integral facet of the Baduy adat criminal justice system. Should the familial resolution prove unattainable, Jaro Tangtu, in collaboration with other adat figures, undertakes an investigative process in the field. If the matter is deemed manageable by Jaro Tangtu, it is addressed accordingly. However, if resolution remains elusive, the case is then elevated to the comprehensive Baduy adat justice system for further adjudication.<sup>26</sup>

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<sup>26</sup> Fathurokhman, "Hukum Pidana Adat Baduy dan Relevansinya dalam Pembaharuan Hukum Pidana."

The operation of the Baduy adat criminal justice system is contingent upon the family's inability to resolve the conflict through customary means. The justice meted out is not solely derived from adat principles but is fundamentally rooted in individual conscience. Baduy's adat criminal law, emphasizing the equilibrium between nature and humanity, fosters a tranquility that permeates their way of life. It transcends individual interests, elevating the communal or common interest above personal considerations within the indigenous community.

## THE ROLE OF BADUY'S ADAT INSTITUTION IN ADAT CRIMINAL CONFLICT RESOLUTION

The amicable resolution of cases is fundamentally rooted in the traditional adat law culture of the Indonesian nation. This cultural ethos serves not only as a regulator and organizer of societal and community life but also as a guide for harmonious relationships with the divine, the surrounding nature, and all living entities, including individuals who may not belong to the local indigenous community.<sup>27</sup>

Satjipto Rahardjo posits that modern law emerges through the transformation of the old or original order, achieved by organizing legal systems and processes in a structured and bureaucratic manner. The authentic, flexible, and established social relations inherent in the

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<sup>27</sup> See Kadek Oldy Rosy, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini. "Peran Mediasi dalam Penyelesaian Sengketa Tanah Adat Setra Karang Rupit di Pengadilan Negeri Singaraja Kelas 1B." *Ganesha Law Review* 2, No. 2 (2020): 155-166; Putra, Agus Ariana. "Konflik dan Penyelesaian Sengketa Tanah Pelaba di Desa Adat Kerobokan Kabupaten Badung Perspektif Hukum Adat Bali." *IJOLARES: Indonesian Journal of Law Research* 1, No. 1 (2023): 16-22; Herlina Manik, "Eksistensi Lembaga Adat Melayu Jambi dalam Penyelesaian Sengketa Masyarakat Adat." *Jurnal Selat* 6, No. 2 (2019): 145-246; Hazar Kusmayanti, Dede Kania, and Galuh Puspaningrum. "Praktik Beracara Penyelesaian Sengketa Adat Sumatera Barat Berdasarkan Asas Bajanjang Naiak Batanggo Turun." *Refleksi Hukum: Jurnal Ilmu Hukum* 6, No. 2 (2022): 185-202.

old order undergo a metamorphosis under modern law, manifesting as a structured, formal, rational, and rigid order.<sup>28</sup>

Within Indonesian adat law, the concept of restorative justice predates positive law, exemplifying the integral nature of adat justice within the adat law framework. Adat law, predominantly unwritten and deeply embedded in community practices, represents a distinctive legal system in Indonesia.<sup>29</sup> In contemporary times, the presence of adat justice has become imperative within the judicial system, offering a viable solution to alleviate the burden faced by conventional courts grappling with an overload of cases. Particularly in civil and minor criminal cases, such as juvenile offenses or complaint-related matters, the adoption of informal courts (adat courts) is envisioned to enhance effectiveness and efficiency, facilitating restorative justice. The underlying principle of restorative justice is rooted in holding offenders accountable for rectifying the harm caused by their actions. It provides a platform for offenders to showcase their capacity, address guilt constructively, and engage in the process of repairing the harm they inflicted.<sup>30</sup>

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<sup>28</sup> Desi Apriani, and Heni Susanti. "Diskresi Kepolisian dalam Penyelesaian Perkara Pidana Berbasis Kearifan Lokal." *Jurnal Ilmu Hukum* 7, No. 2 (2018): 119-138; Satjipto Rahardjo, *Penegakan Hukum Progresif*. (Jakarta: Penerbit Buku Kompas, 2010); Satjipto Rahardjo. "Hukum Progresif: Hukum yang Membebaskan." *Jurnal Hukum Progresif* 1, No. 1 (2005): 1-24; Satjipto Rahardjo, *Biarkan Hukum Mengalir: Catatan Kritis Tentang Pergulatan Manusia dan Hukum*. (Jakarta: Penerbit Buku Kompas, 2007).

<sup>29</sup> Dominikus Rato, "Revitalisasi Peradilan Adat Pada Masyarakat Ngada Berbasis Kearifan Lokal." *Yustisia Jurnal Hukum* 4, No. 2 (2015): 335-348; I. Ketut Sudantra, "Urgensi dan Strategi Pemberdayaan Peradilan Adat dalam Sistem Hukum Nasional." *Journal of Indonesian Adat Law (JIAL)* 2, No. 3 (2018): 122-146; Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum dalam Membangun Sistem Hukum Indonesia." *Jurnal Dinamika Hukum* 13, No. 2 (2013): 319-331.

<sup>30</sup> I Ketut Sudantra, "Pengakuan Peradilan Adat dalam Politik Hukum Kekuasaan Kehakiman". *Thesis* (Malang: Universitas Brawijaya, 2013); Samparisna Elwindri Mirando Kbarek, "Konstitusionalitas Kedudukan Pengadilan Adat dalam Peradilan Umum di Indonesia". *Thesis* (Salatiga: Universitas Kristen Satya Wacana, 2018).

Sukardi and Hadi Rahmat Purnama share a common perspective on restorative justice, emphasizing its dual focus on the victim's restoration and the imposition of moral responsibility on offenders. This approach strives for the restoration of the victim while concurrently holding offenders accountable through both restitution and sanctions. Consequently, this endeavor is encapsulated by the guiding principle: "*forgive but not forget*." Moreover, their viewpoint underscores a critical insight into the application of restorative justice in Indonesia. It highlights a perceptual inadequacy among law enforcement officials, as they grapple with the challenge of replacing imprisonment with the alternative approach of requiring perpetrators to assume responsibility for restoring the victim's conditions.<sup>31</sup>

The resolution of cases through traditional methods in adat courts, guided by local wisdom and collaborative deliberation, holds greater promise for restorative justice. Restorative justice, as an approach, necessitates specific conditions that position it as a foundational value in addressing criminal cases. It places emphasis on the interests of both perpetrators and victims while also considering the broader societal impact of the criminal case resolution. This holistic approach ensures a comprehensive focus on the restoration of individuals involved and acknowledges the broader implications within the community.

Within the Adat Law of Baduy, a conflict resolution process akin to restorative justice is recognized as *Silih Hampura*. This method aligns with local wisdom and the cultural essence of the nation, emphasizing the primacy of the victim's wishes and needs. Notably, this approach eschews revenge, requiring both the victim and the perpetrator to extend apologies. Once mutual forgiveness is achieved, the subsequent legal enforcement processes unfold smoothly and effectively. This process encapsulates the nuanced and culturally

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<sup>31</sup> Sukardi Sukardi, and Hadi Rahmat Purnama. "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia." *Journal of Indonesian Legal Studies* 7, No. 1 (2022): 155-190.

rooted dimensions of conflict resolution within the Baduy community.<sup>32</sup>

The indigenous people of Baduy still adhere to adat law and in their daily lives carry out traditions and culture consistently for centuries until now. They have values, the norms that must be implemented in their daily life. The adat law is passed down from generation to generation from the ancestors, passed on by the *Puun* and *Jaro* as adat leaders and taught in every family by the *kokolot*, although it is not written, but the entire Baduy indigenous people understand and know the rules that they must obey.

Beyond governing daily conduct, Baduy's adat law extends its purview to the framework of settling criminal conflicts within the Baduy community. In essence, it delineates the procedures for addressing legal issues that may arise among its people. The adat law of Baduy further prescribes the operational mechanisms employed in resolving conflicts or disputes within its societal framework. The pattern of conflict resolution, as outlined by Baduy's adat law, is contingent upon the nature of the offense committed. Some transgressions are deemed suitable for resolution within the family unit, while others necessitate the intervention of *Jaro* or the adat institution for resolution. This delineation underscores the meticulous consideration given to the categorization and resolution of various types of offenses within the Baduy adat society.<sup>33</sup>

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<sup>32</sup> Yulia, Prakarsa, and Ali, "Restoring The Conflict Among Societies: How Does Baduy Society Settle the Criminal Case Through Restorative Justice?"

<sup>33</sup> In the further discussion, it is highlighted that in the context of the Baduy community, "Jaro" refers to a respected figure or leader who plays a significant role in the administration of adat law and the resolution of conflicts within the community. The title "Jaro" is often bestowed upon an individual who possesses wisdom, experience, and a deep understanding of the Baduy traditions and customs. *Jaro* holds a crucial position in overseeing the implementation of adat law and ensuring that community members adhere to the established norms. They are instrumental in mediating disputes, settling conflicts, and maintaining harmony within the Baduy society. *Jaro*'s authority is derived from the community's recognition of their knowledge and moral standing. In the context of conflict resolution, *Jaro* often collaborates with other adat figures to investigate, adjudicate, and determine appropriate measures for restoring

However, when there is a problem of violation that falls into the category of violation resolved by the family, it does not rule out the possibility of rising to the stage that must be resolved by Jaro. Therefore, in Baduy's adat law, there are three stages passed in resolving conflicts. First, the conflict that occurs is resolved by the family first. For example, if it is a family problem, it is resolved by the head of the family himself. In every family, there is a person in charge, an authorised person. It can also be by parents or the most elders.

In the family resolution stage, advice and reprimands can be given to the offender. If it is not resolved at the family stage, even though it has been advised, it has been handled but the conflict has not been resolved either, then it can be resolved by the Jaro. The problem will also be resolved by the Jaro and further resolved by the Adat Institution.

An inherent characteristic of flexibility within adat criminal law lies in its openness and adaptability to incorporate new elements. This attribute, identified by Hilman Hadikusuma, is complemented by other distinctive features. Adat offenses are characterized by their general traditional magis religious nature, encompassing a comprehensive and unifying quality. They do not adhere to preexisting norms, avoiding generalizations, and instead, remain open and flexible to evolving circumstances and influences. This flexibility underscores the dynamic nature of adat criminal law, allowing it to assimilate and accommodate changing societal dynamics and contexts.<sup>34</sup>

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balance and order. The role of Jaro is integral to the preservation of the Baduy cultural heritage and the continuation of their traditional way of life. See Siti Nadroh. "Pikukuh Karuhun Baduy dinamika kearifan lokal di tengah modernitas zaman." *Pasupati* 5, No. 2 (2018): 196-216; Hasyim Asy'ari, and Syaripullah Syaripullah. "Peran Kepemimpinan Kepala Desa Kanekes (Jaro Pamarentah) Terhadap Pendidikanmasyarakat Baduy Luar." *Hijri* 8, No. 2 (2019): 13-23; Adi Purwanto. "Pamarentahan Baduy di Desa Kanekes: Perspektif Kekerabatan." *Sosiohumaniora* 4, No. 2 (2002): 104.

<sup>34</sup> Rena Yulia and Aliyth Prakarsa, *Hukum Pidana Adat Suatu Pengantar* (Jakarta: Kencana, 2021). See also Hilman Hadikusuma, *Hukum Pidana Adat* (Bandung: Alumni: 1979).



Offenses that surpass the capacity of familial resolution or specifically necessitate intervention from the Adat Institution are directly addressed by the institution. For instance, certain types of offenses fall under the purview of the Adat Court within Baduy's adat institution, applying exclusively within the adat jurisdiction of Baduy. This contrasts with the situation in South Africa, where the existence of adat institutions as organizers of adat courts has been officially acknowledged by the State and is even regulated in the *Traditional Court Bill*. Further clarification is provided in general legal provisions, outlining the scope of traditional courts as follows:

*“traditional court” means a court established as part of the traditional justice system, which –*

- (a) functions in terms of adat law and custom; and*
- (b) is presided over by a king, queen, senior traditional leader, headman, headwoman or a member of a royal family who has been designated as a presiding officer of a traditional court by the Minister in terms of section 4, and which includes a forum of community elders who meet to resolve any dispute which has arisen...<sup>35</sup>*

Traditional justice operates within the domain of adat and adat criminal law, overseen by appointed figures such as kings, adat leaders (*kasepuhan*), chiefs (both male and female), or royal relatives who have been officially designated as traditional justice implementing officers by the Ministry. This includes forums convened by *kasepuhan*, which assemble to collaboratively address and resolve conflicts that have arisen within the community.

What is codified in South Africa shares certain functional, formal, and procedural similarities with the practices observed in the Baduy indigenous community. Conflict resolution within the Baduy community is a meticulous and considerate process guided by a foundational proverb: "Runtut raut rintih rapih beres roes." This proverb encapsulates the essence that all conflict resolution must

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<sup>35</sup> Traditional Court Bill, Republic of South Africa

adhere to predetermined stages. It commences with the involvement of all parties entangled in the conflict, spanning from the perpetrator's family to the victim's family. The process entails attentive consideration of the desires and perspectives of each party, culminating in the determination of a mutually agreeable resolution.

The proverb "*runtut raut rintih rapih beres roes*" unfolds as a systematic guide to conflict resolution, with each element contributing to a comprehensive process. "*Runtut*" underscores the necessity of adhering to predefined stages, ensuring a methodical progression. "*Raut*" signifies the acknowledgment and acceptance of stages traversed by all parties involved. "*Rintih*" implies the incremental resolution of conflicts through successive stages. "*Rapih*" denotes the conclusive end of the conflict, free from lingering grievances. "*Beres*" indicates the embrace or agreement upon a resolution by the parties. Lastly, "*Roes*" marks the ultimate resolution, signifying the conclusive and comprehensive resolution of the problem or conflict. This proverb encapsulates a thoughtful and structured approach to conflict resolution within the Baduy community, providing a clear framework for achieving harmony and agreement.

There is also another principle or saying in resolving conflicts, which is called *ngentep seureuh*. It means that all problems or conflicts must be resolved in accordance with the stages that have been arranged, no stages are skipped or skipped, all conditions are taken and implemented by the parties. Everything goes neatly, hand in hand and side by side like betel leaves that are neatly lined up without anything sticking out or denting inward. Thus, what is meant by the saying *runtut raut rintih rapih beres roes* is that all problems have been resolved by passing through the stages that should be without being skipped, without leaving grudges, and both parties have accepted the results of the joint decision in a state of consciousness and peace.

However, conflict resolution in Baduy's adat law can also be resolved without going through the stages referred to in *runtut raut*, for example, it has been resolved with the family only. Or it is also

resolved by passing through the stages of *runtut raut* because it is resolved by adat institutions.

This implies the unanimous acceptance of the decision reached. If any party perceives an issue, it is essential to communicate it during the meeting, either directly to the other party or through traditional leaders/adat institutions. This process involves both a settlement between the involved parties and an adat resolution.

The resolution of a conflict is contingent upon the nature of the act committed. If the matter can be adequately addressed within the family, it remains a familial concern, obviating the need for involvement in the adat system. Conversely, if the complexity of the issue necessitates the application of adat practices, it must be appropriately channeled. The determination of whether to involve the adat system hinges on the specific type or nature of the conflict or problem at hand. The conflicts requiring resolution through adat practices encompass a range of transgressions:

1. Acts Violating Adat Related to Nature or the Environment: This includes offenses such as forest destruction or trespassing into forbidden areas.
2. Non-participation in/Performance of Traditional Ritual Processes: Failure to engage in or perform essential traditional rituals, such as those associated with *ngahuma*, falls under this category.
3. Disrespect for Traditional Rituals: Any disregard for the sanctity of traditional rituals, particularly concerning the timing of *ngahuma*, *ngalaksa*, *kawalu*, and other ceremonies, constitutes a conflict.
4. Contempt for Adat Institutions: Acts of disdain towards adat institutions, including disrespect for *Puun*, *Jaro*, and other adat officials, are considered conflicts.
5. Adultery: Violations related to marital fidelity and acts of adultery are subject to adat resolution.
6. Murder: The gravest transgression, murder, also falls within the scope of conflicts necessitating resolution through adat practices. Each of these conflicts represents a distinctive category, and their

resolution involves adherence to the established adat processes and practices within the Baduy community.

Cases within the Baduy community can be addressed either within the family or through adat institutions. When family resolution is unsuccessful, the matter is then taken up by Jaro or adat institutions. Certain issues can only be resolved by adat institutions, and for these matters, the appropriate time must be identified to facilitate forgiveness and allow for "*silih hampura*." Following *silih hampura*, the process advances to subsequent stages.

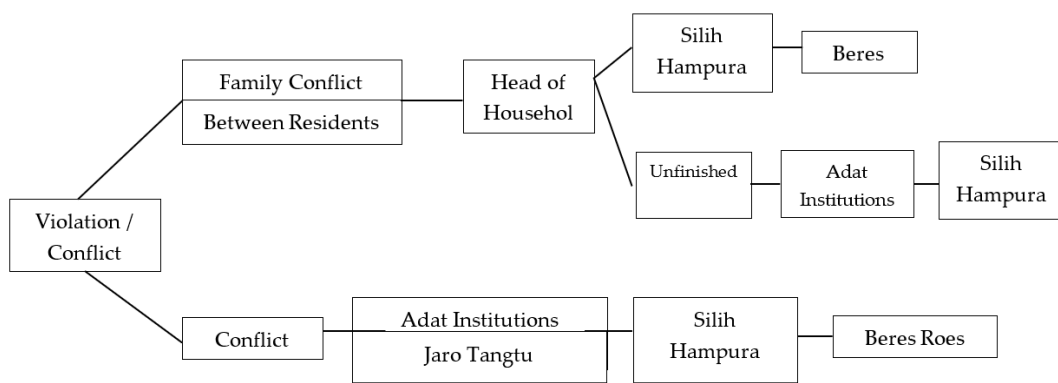
The initial step in conflict resolution involves tracing the violations, identifying the victim, and assessing the losses incurred. Evidence linking the violation to the perpetrator is crucial, considering the time and place of the incident. Once sufficient evidence is established, the perpetrator is summoned. If the perpetrator admits guilt, the victim must be present to grant forgiveness, marking the *silih hampura* stage.

After successfully navigating this stage, the adat institution hears the wishes of both parties, culminating in a joint agreement regarding the conflict resolution. However, if the perpetrator denies the actions despite evidence, an oath may be taken as a formal acknowledgment and acceptance of accountability for the alleged crime. The oath formulated as: "*Aing teu ngarasa ngalakukeun, saksikeun, poe ieu aing bersumpah teu ngalakukeun perbuatan, lamun aing ngalakukeun, maka endahna jang aing goreng na oge jang aing, aing sanggup nampan/narima sumpah kusabab aing teu ngalakukeun.*" [I solemnly declare that I do not acknowledge committing this act. I beseech you, witnesses, today I take this oath asserting my innocence. May the consequences, whether favorable or unfavorable, befall me truthfully, as I willingly accept this oath if indeed, I am innocent of the alleged act].

The oath is administered in the presence of the Guriang, Jaro Tangtu 7, ancestors, and the hyang widi. It pertains to an action denied by the perpetrator, aligning with the Baduy proverb that emphasizes the distinction between right and wrong actions, as expressed in the saying: "*lampah laku ieu, ulah pahili salah jeung bener.*"

This proverb underscores the importance of avoiding confusion between actions classified as good and bad.

As for the sound of the above oath, it is added with the following statements: “*Kaluhur ulah pucukan kahandap ulah jangkaran bajing disaksian ku*”. An oath is the final stage of a conflict resolution process when, in the case at hand, the perpetrator does not admit to committing the alleged act. The process of conflict resolution within the Baduy community as delineated in Figure 1.



**FIGURE 1.** Conflict Resolution Process in Baduy Community

As depicted in Figure 1, conflicts within the Baduy community can be categorized into family conflicts and adat conflicts. Family conflicts are initially addressed within the family unit before progressing to adat institutions. On the other hand, adat conflicts are resolved exclusively by adat institutions through the utilization of adat courts. The purpose of Adat Courts is to restore the balance and harmony of family relationships that will lead to peace and balance.

Peace will be pursued through deliberation forums at each level of adat court.<sup>36</sup>

The existence of adat courts is also required by the judicial system in order to help overcome the overload of the official (state) courts. Not a few minor criminal cases that come to court when it would be more effective and efficient to be resolved by informal justice (adat justice).

Adat courts resolve cases based on local wisdom that is based on deliberation. This is more promising for justice for both parties. It pays attention to the balance between the interests of perpetrators and victims and the impact of the settlement of criminal cases in the community.

Regarding criminal conflict resolution, Baduy's adat criminal law has its own law enforcement method. Family settlement is the main one. It means that the initial stage is resolved by the family. If it is not completed by the family, an investigation will be conducted by Jaro Tangtu and the case will be determined. If it is considered light then it is finished, then it is enough by Jaro Tangtu, but if it is not finished by Jaro Tangtu, then it is settled by the Adat Court.<sup>37</sup>

It should be noted that the conflict resolution of Baduy's adat law places the victim as the party who has the first opportunity to convey the suffering caused by the crime in front of the adat leader. the perpetrator is also present to be confirmed about the actions committed. At this stage, the perpetrator's apology to the victim will be sought and the victim forgives. After the victim forgives, and the perpetrator's apology is accompanied by compensation (if the victim

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<sup>36</sup> Mufidah Mufidah, Rizal Maulana, and Lia Fauziyyah Ahmad. "Peradilan Adat Sebagai Kerangka Restorative Justice dalam Penyelesaian Perkara Pidana di Indonesia." *Mizan: Journal of Islamic Law* 6, No. 2 (2022): 227-244. See also Hanafi Arief, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia." *Al-Adl: Jurnal Hukum* 10, No. 2 (2018): 173-190. For further discussion and comparing with other cases, please also see Citranu Citranu, "Penerapan Sanksi Tindak Pidana Adat Dayak (Singer/Denda) Terhadap Pelaku Pembakaran Hutan dan Lahan di Wilayah Kalimantan Tengah", *El-Mashlahah* 10, No. 1 (2022): 64-78

<sup>37</sup> Personal Interview with Ayah Mursyid, 4 September 2022



wishes), the process continues to the next stage. However, if forgiveness has not been given by the victim, then the adat leader will provide advice so that the victim realises and wants to forgive the perpetrator.<sup>38</sup> After the victim's forgiveness, the adat rituals that must be carried out by the perpetrator are led by the adat leader.

In the context of criminal conflict resolution within Baduy's adat law, two phases of forgiveness are discernible. Initially, forgiveness transpires when the victim pardons the perpetrator for their actions. Subsequently, the perpetrator engages in an adat sanction ritual as an apology to Baduy's nature. The overarching goal is the purification of the perpetrator from sins within the human community and in harmony with nature, encapsulated in the term "*silih hampura*".<sup>39</sup>

In a comparative analysis, examining adat conflict resolution processes in different regions, such as the Sabu Tribe in Kupang, Nusa Tenggara Timur, as scrutinized by Paulus, et.al, reveal intriguing contrasts. In this context, the provision of long-stored sugar water serves the dual purpose of commemorating past actions and reaffirming agreements established during traditional marriages (*kenoto*). The punitive measure for two individuals involved in adultery, confined in Dhara Roe, involves a sentence mandating the processing of adat land in Dhara Roe. Remarkably, the conventional method of using a *tajak* (*pengo'o*), employed by the local community for land cultivation, is eschewed in favor of an iron *gali* (*uda*), aligning with the traditional land processing practices specific to Dhara Roe. This punitive action is executed with the intent of fostering self-reflection and seeking forgiveness from ancestral spirits.<sup>40</sup> The purpose of conflict resolution in the Sabu Tribe is to allow the perpetrators to introspect on their actions and ask for forgiveness from their ancestors.

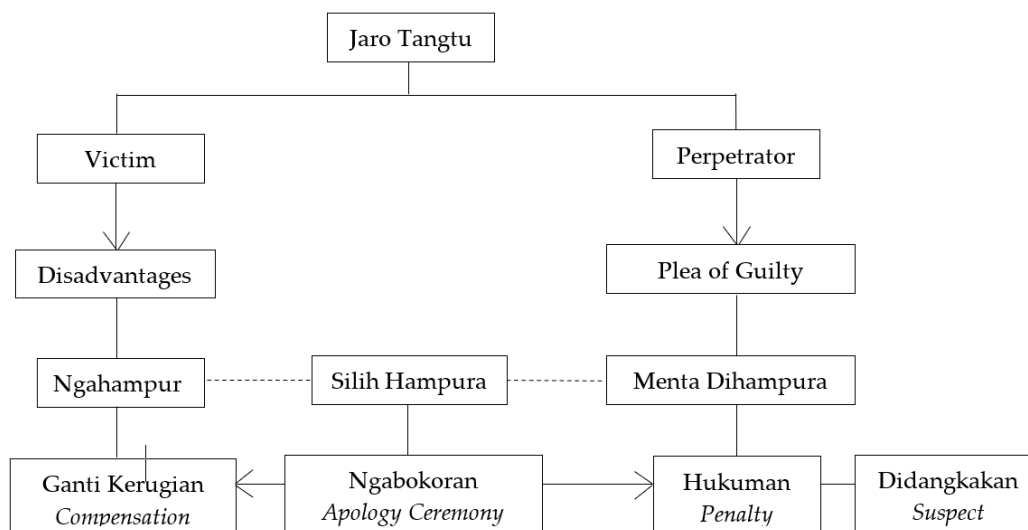
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<sup>38</sup> Personal Interview with Ayah Mursyid, 4 September 2022

<sup>39</sup> *Silih Hampura* is in Sundanese language and it means "mutual forgiveness."

<sup>40</sup> Gery Mario Paulus, Jimmy Pello, and Aksi Sinurat. "The Completion Pattern of Adultery Case Based on the Customary Law of Sabunese." *Journal of Indonesian Legal Studies* 4, No. 1 (2019): 89-102.

*Silih Hampura* method in the conflict resolution process in Baduy's adat law can be seen on Figure 2.



**FIGURE 2.** *Silih Hampura* Method

A "Jaro" is an adat figure vested with the authority to adjudicate cases or conflicts. In the resolution process, the Jaro convenes a deliberation meeting, bringing together the victim, perpetrator, and their respective families. The purpose of this meeting is to determine the subsequent steps, including the actions to be taken against the perpetrator and the victim. The victim is afforded the chance to articulate their suffering and express their needs, while the perpetrator is given the opportunity to state their opinion and intended course of action. Should an impasse occur, the Jaro or adat leader may counsel the victim to consider forgiveness towards the perpetrator.<sup>41</sup>

In addition to advice, the victim is given time to accept and forgive the perpetrator. In this stage, in addition to an apology, it is also sometimes accompanied by other actions, such as paying compensation or returning the victim's losses. This stage is considered

<sup>41</sup> Personal Interview with Ayah Mursyid, 4 September 2022

complete when the victim has apologized to the perpetrator. The conflict resolution process can continue to the next phase.

Compensation payment by the offender is an integral component linked to every offense that inflicts harm on other parties, encompassing both residents and customary norms. In the realm of Baduy adat criminal law, the provision of compensation to the victim constitutes a fundamental form of punishment mandated for fulfillment by the perpetrator. This approach facilitates recovery and the realization of "*silih hampura*." However, it should be noted that this obligation is waived if the victim chooses not to pursue compensation. Even in the absence of a compensation claim, "*Silih Hampura*" can be attained if the victim willingly accepts the loss without necessitating restitution by the perpetrator.

After the *silih hampura* process takes place, either with or without compensation for the victim, then the perpetrator is given a punishment. Baduy's adat law believes that punishment is a ritual to purify the sins that have been committed by the perpetrator. The ritual of this purification process is called *ngabokoran*. In the process of *ngabokoran*, Puun (Baduy adat leader), adat elders, jaro, perpetrator, perpetrator's family, victim and victim's family as well as juru basa are present. The indigenous people also witness the *ngabokoran* process. The *ngabokoran* ritual is carried out by calculating the auspicious day first, according to the Kolenjer Baduy. There are offerings that must be brought in accordance with customs.

The offender will be exiled (called *didangkakan*) for 40 days. The punishment itself consists of two types. External punishment and internal punishment. Physical punishment is carried out through physical rituals by the perpetrator witnessed by the adat institution, while the inner punishment will be experienced by the perpetrator himself.

The *ngabokoran* ritual and punishment in the form of *didangkakan* are a process of conflict resolution of *Silih Hampura* in Baduy's adat criminal law that can provide justice for both parties. The roles of the victim and the perpetrator are balanced, and the attention of adat law is balanced to both the victim and the perpetrator. The victim gets an

apology and some compensation, the perpetrator gets an apology and punishment to purify from the sin of violation.

*Silih hampura* in Baduy's adat criminal law aims to restore the balance of nature to its original state, as it was before the adat offence. The main goal to be achieved is peace without leaving a grudge. Restoring the inner and outer balance by restoring the nature and adat citizens. When observed, the concept of *silih hampura* has two stages of forgiveness. The first step, outward forgiveness, is when the victim forgives the perpetrator. The second step is to forgive inwardly, namely when performing the *ngabokoran* ritual which is considered as a way to restore the balance of nature by erasing the perpetrator's sins against the Creator and also customs.

Observing the process of *silih hampura* in resolving conflicts that occur in the Baduy indigenous community, the victim is the first party who has a role in determining the running of the conflict resolution process. The victim is involved and given space to convey his suffering, hopes and emotional feelings towards the perpetrator. It is done and witnessed in the presence of the adat head and Jaro. This illustrates how the victim's position is very important in the conflict resolution process in Baduy indigenous community.

Conflict resolution or law enforcement in Baduy adat society still uses adat institutions whose position is recognized in Baduy adat society. Those adat institutions have their own position and authority, so that if there is a violation, the adat institutions will resolve it according to the adat law in Baduy community.

## SANCTIONS FOR FULFILLMENT OF ADAT OBLIGATIONS IN THE NEW CRIMINAL CODE

Law Number 1 of 2023 on the Criminal Code has also included articles relating to the existence of adat law in Indonesia. Article 2 paragraphs (1) and (2) of the Draft Criminal Code regulates the recognition of the validity of laws that live in the community that determine that a

person should be punished even though the act is not regulated in the law. The law that lives in the community applies where the law lives and as long as it is not regulated in the law, in accordance with the values contained in the Pancasila of the 1945 Constitution, human rights, and general legal principles recognised by civilised society. This provision recognises the applicability of adat law in indigenous communities, where they grow up and live their lives by complying with the adat law that has been in force. One of the indigenous communities that still upholds its adat law is the Baduy Indigenous Community located in Banten Province.

This regulation is known as the principle of legality, which later developed into the principle of material legality by the recognition of laws that live in society. This means that the source of law or the basis of legality to declare an act as a criminal act is not only based on the principle of formal legality based on the law but also based on the principle of material legality, namely by giving place to living law / unwritten law. Thus, the principle of formal legal certainty is balanced with material legal certainty. In other words, the unlawfulness of the act must be based on a formal basis (formal legality), but does not reduce the existence of material unlawfulness (material legality).<sup>42</sup>

In relation to living law, the drafters of the Criminal Code have placed adat obligations into two functions. First, in line with Article 2 paragraph (1), adat obligations function to support the idea of Living Law as the basis for punishment for acts that are not regulated in statutory regulations. This first function also indicates that the "Living Law" referred to in Article 2 paragraph (1) is Adat Law. Second, adat obligations also function as additional sanctions for acts that violate statutory regulations. This second function no longer uses Living Law as the basis for punishment, but only places it as an additional punishment outside the punishment stipulated in the law.<sup>43</sup>

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<sup>42</sup> Nyoman Serikat Putra Jaya, "Hukum (Sanksi) Pidana Adat Dalam Pembaharuan Hukum Pidana Nasional." *Masalah-Masalah Hukum* 45, No. 2 (2016): 123-130.

<sup>43</sup> Tody Sasmitha Jiwa Utama, "'Hukum Yang Hidup' dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP): Antara Akomodasi dan Negasi." *Masalah-Masalah Hukum* 49, No. 1 (2020): 14-25.

In relation to adat obligations, the New Criminal Code places the fulfilment of local adat obligations in the additional punishment article. This additional punishment is imposed in the event that the imposition of main punishment is not sufficient to achieve the purpose of punishment. Additional punishment of local adat obligation is prioritised if the criminal offence committed fulfils the provisions of Article 2 paragraph (2) above. Even though it is not stated in the formulation of legislation, local adat obligation punishment can still be imposed.

Barda Nawawi Arief stated that additional punishment in the form of fulfilment of adat obligations is another aspect of community protection, which is related to the protection of victims and the restoration of the disturbed balance of values in society. In addition to the fulfilment of adat obligations, additional sanctions in the form of payment of compensation are also included in the aspect of community protection. In addition to the perpetrators of criminal offences receiving criminal sanctions, victims/society also receive attention and compensation in the criminal justice system.<sup>44</sup>

Furthermore, Barda Nawawi Arief argues that additional punishment in the form of fulfilment of local adat obligations or obligations according to the laws that live in the community in the Criminal Code is one aspect of protection against victims where this type of punishment can basically also be seen as a form of compensation to victims.<sup>45</sup>

Sudarto asserts that customary obligations must be fulfilled to restore balance within the community and to eliminate blemishes arising from disturbances caused by criminal acts. The manner of fulfillment adheres to local customary law, typically in the presence of the Adat leader or Village Head. Of utmost significance to the judge is the substantive content of the customary law. Interpreting the performance of customary obligations implies that the convicted

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<sup>44</sup> Arief, Barda Nawawi. *Kapita Selekta Hukum Pidana* (Bandung: Citra Aditya Bakti, 2003).

<sup>45</sup> Arief, Barda Nawawi. *Masalah Penegakan Hukum & Kebijakan Penanggulangan Kejahatan* (Bandung: PT. Citra Aditya Bakti, 2001).



individual must address the crime committed, as, in the perspective of customary law, committing an offense disrupts the cosmic balance (universal harmony), consequently disturbing the equilibrium within society.<sup>46</sup>

With the regulation on the law that lives in the community in the New Criminal Code, the consequence is also regulated on the sanction of adat fulfilment. The sanction regulated in the New Criminal Code is different from the old Criminal Code. The New Criminal Code differentiates the sanction by categorising Criminal and Action.

Penalties are regulated in Articles 64-102. Article 64 reads that punishment consists of main punishment, additional punishment and punishment that is special for certain criminal offences determined by law.

Then the Criminal Code divides the Principal Punishment (Article 65) into imprisonment, closure, supervision, fine, and community service. Then Article 66 regulates additional punishment into the fulfilment of local adat obligations. The complete additional punishment is as under:

1. Deprivation of certain rights
2. Deprivation of certain items
3. Announcement of the judge's decision
4. Compensation payment
5. Revocation of certain licences; and
6. Fulfillment of local adat obligations.

Fulfilment of local adat obligations is an additional punishment that can be imposed in the event that the imposition of the main punishment alone is not sufficient to achieve the objectives of punishment. This certainly applies to indigenous people who commit adat offences in their own regions.

Article 97 of the Criminal Code explains that additional punishment in the form of fulfilment of local adat obligations may be imposed even though it is not stated in the formulation of the criminal

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<sup>46</sup> Sudarto Sudarto, *Suatu Dilema dalam Pembaruan Sistim Pidana Indonesia, Guru Besar Undip Bicara Pembaruan Hukum Pidana*, ed. Pujiyono (Depok: Rajawali Pers, 2023).

offence with due observance of Article 2 paragraph (2) of the Criminal Code. This means that the formulation of the criminal offence in question is contained in the regional regulation that will be made later.

This additional punishment in the form of fulfilment of adat obligations also applies to the subject of juvenile offences (see articles 115 and 116 of the Criminal Code) and also applies to the subject of corporate offences (see the article 120 of the Criminal Code).

The imposition of additional punishment is facultative, in the sense that the judge does not always have to impose an additional punishment, when he imposes the main punishment for a defendant. It is the full authority of the judge, whether he/she will impose additional punishment in addition to the main punishment to a defendant. The type of punishment imposed can be adjusted to the regulations that have regulated, in this case there are types of punishment regulated in the Criminal Code and some are outside the Criminal Code.<sup>47</sup>

The issue then arises, do regional regulations have to contain adat sanctions as well? Is the enforceability of regional regulations that contain criminal sanctions binding and not problematic in its application.

The next thought is related to the sanctions for fulfilling adat obligations regulated in the Criminal Code and imposed by the court. This raises the question of the court's authority to adjudicate on acts that violate the living law of the community. Will this eliminate the basic concept of adat law which always resolves its cases with their adat legal system or in other words, trying criminal cases that violate the living law in the community by national courts instead makes criminal law the *primum remedium*. Adat offences that should have been resolved by adat courts are instead resolved by national courts. This also removes the judicial authority of the adat courts themselves.

In addition, there are also thoughts related to the existence of the adat justice system itself. This relates to the recognition of the law that

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<sup>47</sup> Topo Santoso, *Asas-Asas Hukum Pidana (Dilengkapi Dengan Uraian KUHP Nasional)* (Depok: Rajawali Pers, 2023).

lives in the community in the New Criminal Code whether *mutatis mutandis* it also recognises adat justice or instead takes the authority of adat justice in adjudicating acts that are considered violating the law that lives in the community.

This relates to when offences are committed in Adat territories, by non-indigenous perpetrators. Which legal instruments will handle it. Or when indigenous people commit violations of national law, who will handle the case. The position of law enforcement officials and adat officials should be included in the explanation of the Criminal Code so that their duties and authorities are clear. The application of adat sanctions is only by adat officials or can be by national law enforcement officials. This is also a thought that must be considered in the application of laws that live in society.

The law that lives in the community in the Criminal Code is one of the novelty sides of the Criminal Code and at the same time the novelty of criminal law principles. However, in fact, there is a shift in thinking towards the law that lives in the community formulated by the drafter of the Criminal Code. This can be seen in the formulation of the law that lives in the society which changes both the position of the article and the formulation of the article.

The provisions related to the applicability of adat law and the fulfilment of adat obligations stipulated in the New Criminal Code are a form of criminal law reform that originates from the values and norms of the Indonesian nation. The New Criminal Code recognises the existence of criminal offences based on laws that live in the community or previously known as adat criminal offences to fulfil the sense of justice that lives in the community. Considering that in various regions in Indonesia, there are still many provisions of unwritten laws that live and are recognised as laws in the area, which determine that the violation of the law should be punished. Baduy's adat criminal law is an unwritten law that is still alive and valid until now.

Thus, the implementation of adat obligations for the perpetrators of rape and murder of Baduy girls is a process of adat law enforcement that prioritises the goal of restoring the religious cosmic

balance, restoring the relationship between the victim and the perpetrator, as well as improving the condition of the Baduy community and nature itself. The working principle is called as Baduy style *restorative justice* model.

The fulfillment of local adat obligations must still be enforced to achieve the purpose of punishment in adat law. The regulation of local adat obligation punishment in the New Criminal Code is a necessity in the effort to reform criminal law based on local wisdom. However, whether the implementation should be through positive criminal court or can be through adat court as happened in Baduy before the New Criminal Code is enacted. Regarding this matter, there needs to be an affirmation in the form of special regulations governing the existence of adat institutions in indigenous communities that still use adat law as the applicable law in indigenous communities.

## IMPLEMENTATION OF ADAT OBLIGATION FULFILLMENT IN THE MURDER AND RAPE CASE OF BADUY GIRL

Homicide and rape are grave criminal offenses, necessitating resolution through adat institutions and adat rituals. In the instance of the murder of a Baduy girl, the offender, an outsider to the Baduy community, underwent legal proceedings under national criminal law and fulfilled adat obligations through the Baduy's customary institution.

The same case also happened in the murder case by Sadim, a resident of the Baduy Dalam indigenous community who killed a grandmother named Kamsinah and injured her son named Yadi the next day. The incident occurred in 2005. In this case, Sadim was sentenced to imprisonment under the national criminal law for 7 months and 8 days. However, after passing his sentence, Sadim also carried out the Baduy's adat criminal law in the form of social work

which would be fostered by the village head appointed by the adat institution called the *didangkakeun* process for 40 (forty) days.

During the guidance and supervision period of Jaro Dangka, the perpetrator is required to carry out activities ordered by Jaro Dangka, such as social work, such as cleaning, maintaining traditional fields, helping with traditional processions, looking for firewood or farming. This is aimed at mental development and inner awareness of the perpetrator. In addition, there is also the Serah Pati process, which is a ritual of inner cleansing for committing serious offences.

There is something different in the case of the murder of the Baduy girl with Sadim. The perpetrator of the murder and rape of the Baduy girl is an outsider of Baduy, so the national law still applies. Then, Baduy's adat law must still be implemented. Because the recovery of the victim, nature and cosmic balance is one of the goals of the implementation of Baduy's adat law. Based on the interview with Jaro Saija, the victim of rape in Baduy's adat law must be married by the perpetrator. It is an effort to restore the balance of nature that has been destroyed. In this case, the victim died, therefore the perpetrator must still carry out the adat obligation of marrying the dead victim.

The three perpetrators of the murder of the Baduy girl were not Baduy residents, therefore the perpetrators did not carry out the 40-day exile. However, the rape requires the perpetrators to marry the victim. Jaro Sami as one of the adat officials of Baduy Dalam explained that the marriage was carried out by calling representatives of the perpetrators to perform Ijab Kabul, this was due to the perpetrators who were serving sentences for the verdict of the panel of judges at the Rangkasbitung District Court. In addition, because the perpetrators are not members of the indigenous community and are also religiously different from the victim, the marriage procession is carried out with a penghulu from outside Baduy. The penghulu will marry one by one with the representatives of the perpetrators, after being legalised then the representative will undergo the *Ngabokoran* process by bringing several conditions in the form of Malaysian ringgit currency, lemongrass and seupah which are placed in a bokor

and then after that perform *Serah Pati*, which is a form of surrender for the purification of the victim and the perpetrator from the crime by asking for an apology from the perpetrator to the victim so that the spirit of the deceased victim can return to calm. When the whole procession is completed, the last thing is that the representative of the perpetrators to marry the victim immediately divorces or divorces the victim so that her spirit can return to freedom.<sup>48</sup>

In addition to marrying the perpetrator to the victim, which aims to reconcile the spirits of the victim and also the perpetrators, there is another adat obligation that must also be carried out, namely the ritual of purifying the scene of the crime. This procession is the same as *Ngabokoran* and *Serah Pati*, but it takes place at the scene of the crime. After the ritual is completed, the hut where the murder and rape of the victim took place is immediately burned to the ground, with the aim of eliminating the evil aura in the place and the hope that no more crimes will occur either in that place or in other parts of the village. Both processes are conducted in front of the Adat Institution of both Baduy Luar and Baduy Dalam.<sup>49</sup>

The purpose of adat obligations is to restore the cosmic balance that has been disturbed as a result of a adat offence. Therefore, the adat obligations that must be carried out by perpetrators of adat offences, not only aim to punish the perpetrators, but furthermore to restore the natural conditions that have been disturbed by the crime. In particular, to restore the condition of victims who have suffered as a result of the offence. This is certainly different from the purpose of sanctions in national criminal law. In addition to providing a deterrent effect, it also corrects the behaviour of the perpetrator.

In contrast to punishment in positive law, the application of sanctions in adat law is intended as an effort to restore the cosmos that has been disturbed due to acts committed that cross the boundaries of the cosmos. The application of adat sanctions is an effort to restore the

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<sup>48</sup> Personal Interview with Jaro Sami, 17 September 2021

<sup>49</sup> Personal Interview with Jaro Saija, 17 September 2021



disturbed balance. In it there is no element of coercion but only an obedience of adat citizens to their adat law.

In the case of murder and rape of Baduy girls, adat obligations are carried out with the aim of restoring cosmic balance, not merely punishing the perpetrators. The marriage that must be done to the rape victim is a principle of recognising the existence of the victim in conflict resolution. It is also an effort to restore the relationship damaged by the rape crime. Even when the victim dies, the marriage must still be performed as a adat obligation, because the goal is not merely to punish the perpetrator, but to restore the disturbed cosmic balance. Protection of the victim must still be done even after death.

The purpose of the implementation of Baduy's adat law obligations in resolving criminal conflicts is not to punish but to restore balance, both for victims and indigenous peoples and the environment polluted by crime. These principles indirectly can be said to be substantially similar to *Restorative Justice*. According to Howard Zehr, that Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligation in order to heal and put things as right as possible.<sup>50</sup>

Furthermore, Helen Cowie and Dawn Jeniffer have identified the following key aspects of restorative justice:

1. Rectification, which is not about gaining victory or accepting defeat, recriminations, or revenge, but about justice.
2. Rapprochement, which is not punitive in nature with criminals taking responsibility for wrongdoing and making it right in

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<sup>50</sup> Budiyanto Budiyanto. "Penerapan Keadilan Restoratif (Restorative Justice) dalam Penyelesaian Delik Adat." *Papua Law Journal* 1, No. 1 (2016): 81-100. See also Nur Rochaeti, and Rahmi Dwi Sutanti. "Kontribusi Peradilan Adat dan Keadilan Restoratif dalam Pembaruan Hukum Pidana di Indonesia." *Masalah-Masalah Hukum* 47, No. 3 (2018): 198-214; Hendri Pratama, "Penyelesaian Perkara Pidana Anak Secara Adat Lampung Megow Pak Tulang Bawang dalam Rangka Restorative Justice." *Fiat Justisia: Jurnal Ilmu Hukum* 10, No. 1 (2016); Erdianto Effendi, and Ageng Triganda Sayuti. "Penyelesaian Perkara Penganiayaan Secara Restoratif Justice Berdasarkan Hukum Adat Melayu Kecamatan Tungkal Ulu, Jambi." *Soumatara Law Review* 5, No. 1 (2022): 68-75.

some way, but through a process of open and direct communication, between victims and criminals, which has the potential to change the way they relate to each other.

3. Reintegration, at its broadest level, provides an arena where children and parents can have a fair process. This means that they learn about the consequences of violence and criminality and understand the impact of their behaviour on others.<sup>51</sup>

Considering the principle and working mechanism of restorative justice, it can be seen that the working principle of Baduy's adat criminal law in implementing adat obligations for perpetrators of adat violations both have the aim of repairing relationships, healing, restoring relationships and not only about revenge punishment but about justice. As restorative justice, the fulfilment of adat obligation will involve the perpetrator, the victim, and the community in an effort to restore the disturbed balance due to the violation of a legal interest in the community.

The imposition of two punishments at the same time, both national criminal law and adat criminal law in the case of the murder of the Baduy girl, at first glance, violates *Ne bis In Idem*, where a person cannot be prosecuted more than once for an event or action that has been decided by the judge. This principle regulates that a person cannot be prosecuted once again for an act or event that has been decided by the judge. This principle is a form of law enforcement for the defendant in creating legal certainty. Article 18 paragraph 5 of Law 39/1999 on Human Rights also confirms that every person cannot be prosecuted for the second time in the same case for an act that has obtained a court decision with permanent legal force.

The Indonesian Criminal Code regulates the prohibition of the application of *Ne bis in idem* which is regulated in Article 76 which reads:

1. Except in cases where the judgement may be repeated, no person shall be prosecuted twice for an offence for which an Indonesian judge has given a final judgement. In the sense of Indonesian

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<sup>51</sup> Budiyanto.

judges, this includes judges of the swapraja and adat courts, in places where such courts exist.

2. If the judgement that has become final comes from another judge, no prosecution shall be instituted against that person and on account of that criminal offence:
  - a. A judgement of acquittal or release from prosecution;
  - b. A judgment that is a conviction and has been fully served or has been remitted or the power to execute it has lapsed due to expiry.

Related to this, Muladi said that linking the principle of legality with adat criminal law in a haphazard manner would clearly not be suitable. Adat criminal law is based on the philosophy of harmony and communal morality, which would contradict the principle of legality, which is based on *legal definition of crime, punishment should fit the crime, doctrine of free will, death penalty for some offence, no empirical research, dan definite sentence* which is characteristic of the classical school. However, the principle of legality in the contemporary sense is in a different spirit from the original, namely by being more democratic through *forward looking, restorative justice, natural crime dan integrative*. Therefore, according to Barda Nawawi Arief, the application of the principle of legality is not solely interpreted as *nullum delictum sine lege but also as nullum delictum sine ius*, or it is also not seen as limited to formal legality but also material legality, namely by recognising adat criminal law as unwritten law as a source of law.<sup>52</sup>

The implementation of Baduy adat obligation in the case of murder and rape of Baduy girl is not *ne bis in idem*. It is because Baduy community has its own unwritten law that must be implemented and obeyed. Besides, Baduy's adat law is not integrated with national law, which is different from other adat societies in Indonesia. For example, in Balinese custom, if a case has been decided by the court, the adat institution has no right to decide again and vice versa. In Baduy's adat law, it is not like that. Baduy's adat law still applies even though the

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<sup>52</sup> Masril Masril, and Ade Kosasih. "Keberlakuan Asas Ne Bis In Idem Terhadap Putusan Pengadilan Adat dalam Tata Hukum Indonesia." *Al Ijarah: Jurnal Pemerintahan dan Politik Islam* 4, No. 1 (2019): 49-56.

national criminal law has been imposed if it is related to a crime that causes disruption of the cosmic balance of Baduy nature and involves Baduy residents both as perpetrators and victims.

The enforcement of adat law is actually also expressly recognised in Emergency Law No. 1 of 1951, especially in Article 5 paragraph (3) letter b, which actually shows an understanding of the applicable law in Indonesia, especially criminal law, not only laws but also adat laws that live and are recognised in the community. However, the implementation of this adat law is very different from the implementation of the Criminal Code. This difference concerns the nature and essence of punishment that applies in both criminal law systems. On the one hand, the Criminal Code bases its criminal threats on what is stated in the principle of legality, which emphasises the necessity of a statutory regulation that formulates in detail the acts that are prohibited and punishable. Meanwhile, adat criminal law does not see the need for provisions prohibiting acts in writing but is based on the fact that every citizen must know and realise the laws that live in the environment where he is a citizen. The second difference is seen in the expected purpose of criminal law, the Criminal Code provides prohibitions and sanctions with the aim that psychologically (*psychologische zwang*) every citizen will be afraid to commit prohibited acts so that it is preventive, while in adat criminal law, every citizen avoids existing prohibitions because of the self-awareness of each citizen.<sup>53</sup>

In the Regulation of the Minister of Home Affairs No. 3 of 1997 on Adat Institutions, it is formulated as a social organisation that is deliberately formed or has naturally grown and developed in the history of the community concerned or in a certain adat law community, and has the right and authority to regulate, manage and resolve various life problems related to and referring to applicable customs and adat law (Article 1 letter o). Article 9 paragraph (1) of this regulation states that adat institutions have the following rights and authorities:

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<sup>53</sup> Hwian Christianto, "Penemuan Hukum dalam Perkara Pidana Adat." *Jurnal Hukum dan Pembangunan* 42, No. 2 (2012): 272-285.

- a. Representing the community outward, i.e. in matters of adat interest and influence;
- b. Managing adat rights and/or adat assets to improve the progress and standard of living of the community towards a more decent and better life;
- c. To resolve disputes concerning matters of customs and customs of the community to the extent that such resolution does not conflict with the prevailing laws and regulations.<sup>54</sup>

Therefore, the implementation of adat obligations in cases of murder and rape of Baduy tribe girls cannot be seen as *Ne bis in idem*. Although the perpetrators are not only sentenced by the district court, but also have to carry out adat obligations from the Baduy's adat institution. The verdict from the district court is a law enforcement process carried out by the State against the perpetrators of criminal offences as the applicable law. In this case, it should be remembered that the perpetrators are not Baduy residents, so positive criminal law applies to the perpetrators. The representative of Baduy's adat institution has handed over the perpetrators to the authorities to be processed by national criminal law because the perpetrators are not members of Baduy adat community. This submission is a form of respect for national criminal law by Baduy adat society.

The implementation of adat obligation is a form of cosmic religious recovery and restoration of relationship between the perpetrator and the victim who are Baduy residents. This adat obligation is in the form of adat sanction given by adat institution to the perpetrators, aiming for spiritual tranquility for the victims and perpetrators as well as the peace of adat area in order to return to the original state and free from evil aura. It can be seen that the purpose of adat sanctions is more to restore to the original state of the parties, victims and indigenous peoples.

The purpose of recovery as in adat criminal law (Baduy) is different from the purpose of punishment in national criminal law. In

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<sup>54</sup> Erikson Sihotang, "Sanksi Adat dan Pidana Yang Berbarengan dalam Tindak Pidana Pencabulan Anak Kaitannya dengan Asas *Nebis In Idem*." *Mimbar Keadilan* 12, No. 2 (2019): 211-222.

the development of criminal law, it is precisely the purpose of restoration as in adat law that is the desired purpose of punishment today. This goal is then considered to be contained in the principles of *restorative justice*, which in fact originated from the West. If we see this, it can certainly be seen that the purpose of applying adat obligations in adat criminal law is a modern punishment goal that can be adopted in the reform of criminal law in Indonesia.

## CONCLUSION

The study highlighted and concluded that the implementation of adat obligations in the case of the murder and rape of the Baduy girl serves as a symbolic affirmation of the continued recognition and application of adat law within the Baduy indigenous community. Adat obligations persist even in the absence of a court sentence, coexisting seamlessly with potential court-imposed penalties such as imprisonment or the death penalty. This concurrent execution of state and adat sanctions is conducted in adherence to their respective regulations. The fulfillment of adat obligations serves the dual purpose of acting as a form of punishment for the perpetrator, facilitating the ritual process of marriage for the rape victim as a means of recovery, and conducting a village cleaning ceremony to restore the environment tainted by the crime. These actions collectively contribute to the restoration of the disrupted religious cosmic balance resulting from the criminal act. Importantly, the adat sanctions in Baduy explicitly emphasize a commitment to returning the perpetrator, the victim, and the adat area to their original state, characterized by the reinstatement of values rooted in goodness rather than seeking vengeance, thereby emphasizing purification as the primary objective of every adat sanction.



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