

Settlement Of Customary Crimes According To The Law That Lives In The Community In The City Of Bengkulu

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ABSTRACT

The promulgation of Law Number 1 of 2023 concerning the national Criminal Code (KUHP), replacing the Dutch Criminal Code, is a fundamental reform of Indonesian criminal law because of the recognition of laws that live in society. The purpose of this study is to find out and describe the position of customary criminal settlement in Indonesian laws and regulations and the process of resolving customary crimes according to the law that lives in the community in Bengkulu City. In Bengkulu City, the customs used are the Lembak custom, the Malay custom, the Serawai custom, and the Rejang custom. The enforcement of Bengkulu City customs was confirmed with the issuance of Regional Regulation Number 29 of 2003 concerning the Enforcement of Bengkulu City Customs. The method used in this study is an empirical legal research method, where data is obtained directly from the community. This research is important because there is no uniformity in the process of resolving customary crimes that occur in Bengkulu City. The contribution given will benefit law enforcement officials in resolving customary crimes in accordance with the laws that live in the community, especially in Bengkulu City as an effort to enforce the law.

Keywords: *Settlement, Customary Crime, Bengkulu City.*

INTRODUCTION

The re-recognition of the enactment of customary law since the issuance of Emergency Law No. 1 of 1951 (Law No.1 Drt/1951), the re-recognition that "living law" (unwritten customary law) can be a source of written criminal law, as long as there is no equivalent in the WvS (*Wetboek van Strafrecht*)/Criminal Code.¹ The existence of customary courts in judicial practice and jurisprudence is still recognized as referred to in the Decision of the Supreme Court of the Republic of

¹ Mardjono Reksodiputro, *Pembaharuan Hukum Pidana, Kumpulan Karangan Buku Keempat* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum, 2007) hlm.100.

Indonesia Number 1644 K/Pid/1988 dated May 15, 1991². The basis for the enactment of customary law is also contained in Article 18B paragraph (2) of the 1945 Constitution which explains that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law.

The promulgation of Law Number 1 of 2023 concerning the Criminal Code (KUHP) to replace the Dutch Criminal Code is a fundamental reform of Indonesian criminal law³ because of the recognition of the laws that live in society⁴. The elaboration of the principle of legality of the application of laws that live in society is expressly stated in Article 2 Paragraph (1) of the Criminal Code which states, "the provisions as referred to in Article 1 paragraph (1) do not reduce the validity of the law that lives in society which determines that a person deserves to be punished even though the act is not regulated in this Law". The law that lives in society applies where the law is alive and as long as it is not regulated in the Criminal Code and in accordance with the values contained in Pancasila⁵, the 1945 Constitution of the Republic of Indonesia, human rights, and general law principles recognized by the people of nations.

To strengthen the applicability of the law that lives in the community, Regional Regulations regulate the customary crimes. Among the regions that still enforce customary law is the City of Bengkulu in Bengkulu Province. The customary law of Bengkulu City began to be re-enforced since the issuance of Regional Regulation (Perda) of Bengkulu City No.29 of 2003 concerning the Enforcement of Customary Law, which was stipulated on December 15, 2003 (Regional Statute Book of Bengkulu City of 2003 Number 33)⁶.

² Herlambang, dkk., Hukum Pidana Adat (Depok:Rajawali Pers, 2024), hlm.93.

³ Mardjono Reksodiputro, Sistem Peradilan Pidana (Depok: Rajawali Pers, 2020), hlm.387.

⁴ The accommodation of customary law in the New Criminal Code on the one hand formally confirms the existence of customary criminal law as a separate part of the national criminal law. However, on the other hand, the formalization of customary law will raise various questions and implications related to its application. Yoserwan, " *Eksistensi Hukum Pidana Adat Dalam Hukum Pidana Nasional Setelah Pengesahan KUHP Baru*", UNES Law Review Vol. 5 No.4 (June 2023). <https://www.review-unes.com/index.php/law/article/view/577>

⁵ According to Mubiarto, customary law is the law of Pancasila. As far as law is concerned, Pancasila is a crystallization of customary law that is in accordance with the personality of the Indonesian nation. Hukum Adat (Depok: PT. Rajagrafindo Persada, 2017) p.157.

⁶ Customary law is outside the provisions of the MPR TAP Number III of 2000. If customary law material is regulated in Regional Regulations, it means that it is no longer customary law, but is a law whose enforcement is enforced by the police/investigators and is no longer a customary institution, so that customary law will lose its status and identity. Therefore, this Regional Regulation only contains the main point, namely enforcing customary law organized by Customary Institutions, while customary law material does not need to be regulated, because customary law is born and grows from the community. General explanation, *PERDA tentang Pemberlakuan Adat Kota Bengkulu, No.29 Tahun 2003, LD Kota Bengkulu No.33 Tahun 2003, TLD Kota Bengkulu No.38*.

The basis for the implementation of the Regional Regulation on Customs of the City of Bengkulu is based on Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia which reads "The Regional Government has the right to establish Regional Regulations and other regulations to carry out autonomy and assistance duties", another formulation is also listed in Article 28 I paragraph (3) which states "Cultural identity and the rights of traditional communities are respected in harmony with the development of the times and civilization". Furthermore, in Article 136 paragraph (2) of Law Number 32 of 2004 concerning Regional Government, it is stated that "Regional Regulations are formed in the context of the implementation of Provincial/Regency/City regional autonomy and Assistance Tasks". This provision is the material juridical basis for the implementation of customs in a region.

The Customary Law in question is the customs and customs that live, grow and develop and are obeyed by the indigenous people, which exist in the City of Bengkulu and cause sanctions (Dendo Adat) for those who violate it (Dapek Salah). In the people of Bengkulu City, a traditional institution is known as "Rajo Penghulu." Rajo Penghulu is an institution tasked with solving various problems contained in the daily lives of the people of Bengkulu City. Rajo Penghulu starts from the Kelurahan level.⁷

In indigenous peoples, the term customary criminal acts can also be called customary law or customary violation law, which are customary law rules that regulate events or wrongful acts that result in disturbing the balance of society, so it needs to be resolved (punished) so that the balance of the community is not disturbed⁸. The terminology of customary criminal law, customary crimes, and violation laws exist, actually derived from customary law⁹. For acts that violate these customary norms, the settlement is still based on the procedures carried out by each Rajo Penghulu, either based on the procedures that are inherited from generation to generation or the procedures obtained from the experience of the Rajo Penghulu, so that there is no similarity or uniformity in the procedures for their settlement. . This research is important to find out the position of customary criminal law settlement in Indonesian laws and regulations and to find out how to resolve customary crimes in Bengkulu City, because there is no uniformity in the process of resolving customary crimes in accordance with the laws that live in the community. Uniformity in the process of resolving customary crimes will be used as a guideline in resolving customary crimes that occur in Bengkulu City. The

⁷ *Ibid.* Explanation of Article 2.

⁸ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju, 2003),, p.230.

⁹ Erdianto Effendi, *Hukum Pidana Adat*, (PT. Refika Aditama, 2018) p. 7.

contribution that will be given is very beneficial for law enforcement officials, especially in the city of Bengkulu in law enforcement efforts.

RESEARCH METHODS

This research is an empirical legal research.¹⁰ Data is obtained from the community, so that data will be obtained that directly occurs in the community. The location of this research is in Bengkulu City with 9 (nine) existing sub-districts, namely: Muara Bangkahulu District, Selebar District, Gading Cempaka District, Teluk Segara District, Sungai Serut District, Kampung Melayu District, RatuAgung District, Ratu Samban District and Singaran Pati District¹¹. The determination of informants is carried out *purposively*, namely: a group of informants related to the people of Bengkulu City who are still implementing the rules of customary criminal law.

RESULTS AND DISCUSSION

The Position of Indigenous Crime Settlement in Laws and Regulations in Indonesia

1. Emergency Law No.1 of 1951

The re-recognition that "living law" (unwritten customary law) can be the source of written criminal law, as long as there is no equivalent in the WvS (*Wetboek van Strafrecht*)/Criminal Code. This is contained in Article 5 paragraph (3) b namely:

The civil substantive law and even for a time the civil criminal material law which until now has been applicable to the people of the Swapraja area and the people who have been tried by the Customary Court, still applies to the people and the person, with the understanding that an act which according to living law must be considered a criminal act, but has no appeal in the Civil Criminal Code, then it is considered threatened with a sentence of not more than three months imprisonment and/or a fine of five hundred rupiah, namely as a substitute punishment if the customary sentence imposed is not followed by the convicted party and the substitution in question is considered commensurate by the judge with the amount of the offence sentenced, that, if the customary punishment imposed in the judge's opinion exceeds him with the sentence of imprisonment or fine referred to above, Therefore, for the defendant's fault, a substitute sentence of up to 10 years in prison can be imposed, with the understanding that the customary punishment that according to the judge's understanding is no longer in line with the times must

¹⁰ Ade, Saptomo. *Pokok-pokok Metodologi Penelitian Hukum Empiris Murni Sebuah Alternatif*, (Jakarta:Universitas Trisakti, 2009), p. 42.

¹¹ List of Districts, <https://bengkulukota.go.id/kecamatan>. Retrieved 2 March 2023.

always be replaced as mentioned above, and that an act that according to living law must be considered a criminal act and that there is an appeal in the Civil Criminal Code, is considered to be threatened with the same punishment as the appeal sentence which is most similar to the criminal act that.

2. Law Number 48 of 2009 concerning Judicial Power

The Law of Judicial power has undergone several changes. The first Judicial Power Law was Law Number 19 of 1964. In article 3 of Law Number 19 of 1964, it is emphasized that the law used by the judiciary is a law based on Pancasila, namely a law whose properties are rooted in the personality of the nation. Meanwhile, article 17 paragraph (2) states the validity of written and unwritten laws. The amendment is regulated in Law No. 14 of 1970 concerning the Principal Provisions of Judicial Power. Article 23 paragraph (1) juncto article 27 paragraph (1) of Law No. 14 of 1970.

The Judicial Power Law was renewed again in 2004 with Law Number 4 of 2004 concerning Judicial Power. In article 25 of this Law, it is explained that all court decisions must contain the reasons and basis for the decision, but also contain certain articles of the relevant laws and regulations or unwritten legal sources that are used as the basis for adjudication. In 2009, this law was updated with Law No. 28 of 2009 concerning Judicial Power. Article 50 of this Law states that a court decision must not only contain the reasons and basis for the decision, but must also contain certain articles from the relevant laws and regulations or unwritten legal sources that are used as a basis for adjudication. In the above articles, it is mentioned about unwritten legal sources. The source of unwritten law in question is none other than customary law.¹²

3. Law Number 39 of 1999 concerning Human Rights

The recognition of customary law communities is explicitly contained in Law No. 39 of 1999 concerning Human Rights. In article 6 paragraph (1) it is clearly stated "In the context of the enforcement of human rights, differences and needs in customary law communities must be considered and protected by the law, society, and government" and in article (2) it is stated "The cultural identity of customary law communities, including the right to customary land is protected, in line with the development of the times."

4. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court

¹² *Ibid.*

This law guarantees the right of customary law communities to be able to apply for the Law's test of the Constitution. In article 51, it is explained that the parties who may apply for a legal test are one of the units of customary law communities as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the law.

5. Law No. 20 of 2003 concerning the National Education System

This law guarantees the right of indigenous peoples to education. In article 5 which regulates the rights and obligations of citizens, it is stated in paragraph (3) "Citizens in remote or underdeveloped areas and remote indigenous peoples have the right to receive special service education". Furthermore, in article 32, it is stated in paragraph (2) "Special service education is education for students in remote or underdeveloped areas, remote indigenous peoples, and/or experiencing natural disasters, social disasters, and economic incapacitation."

6. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles

Article 2 paragraph (4) states that the right to control the state can be exercised to the Swatantra regions and customary law communities, only as necessary and not contrary to the national interest according to the provisions of Government Regulations. Article 3 explains that the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way that it is in accordance with the national and state interests, which are based on national unity and must not conflict with other higher laws and regulations.

Clearer rules are needed and can better guarantee the existence of customary law and customary law communities because after all, the original law of Indonesia is customary law. Customary law and customary law communities are national identities that need to be preserved. The existence of Rajo Penghulu which is only based on the Regional Regulation, when reviewed in the Criminal Code, on the one hand the actions taken by Rajo Penghulu in enforcing customary law are contrary to criminal law, because criminal law adheres to the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code which reads "no act can be punished, but on the strength of criminal provisions in the legislation that existed before the act occurred.

This article is called "*ne bis in idem*"¹³ which means, a person should not be prosecuted again for committing a criminal act that has been decided by a judge. The purpose of this principle is to ensure legal certainty for justice-seeking communities. This means that it is still recognized that

¹³R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta komentar-komentarnya lengkap Pasal Demi Pasal*, (Bogor: Politea, 1996), p. 90.

customary judges and swapraja in deciding a criminal case indirectly according to the principle of *nebis in idem* customary law can still apply

Regarding the settlement of cases that are resolved repeatedly, it is necessary to receive serious handling and therefore it is necessary to strive for adjustment and harmonization between customary law and criminal law to ensure legal certainty, so that cases that have been prosecuted and tried and decided according to customary law can no longer be tried according to criminal law.

After the amendment, the State of Indonesia recognizes the existence of customary law communities. As contained in Article 18B paragraph (2) of the 1945 Constitution which reads: The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

The issuance of Law Number 1 of 2023 concerning the Criminal Code which recognizes the enactment of laws that live in society makes legal choices for the community. The community can choose to solve their legal problems with the criminal justice system or the law that lives in the community. The absence of implementing rules and elaboration of legal norms that live in society makes many interpretations occur, hopefully before the enactment of Law Number 1 of 2023 concerning the Criminal Code, the implementation rules will be issued.

Settlement of Customary Crimes According to the Law Living in the Community in Bengkulu City

In a simple society, the ideal assumption is a calm society and a harmonious arrangement. The most important assumption is to maintain harmony between the innate world and the supernatural world, between society and its citizens, and between a person and his peers in society¹⁴. The settlement of criminal cases through customary law is generally familial and focuses on the restoration of social relations in the community¹⁵.

A. Ratu Agung District

The dispute resolution process through traditional functionaries in Ratu Agung sub-district is:

¹⁴ Soerjono Soekanto, *Hukum Adat Indonesia* (Depok: Rajawali Pers, 2021), p.341.

¹⁵ Yakub Biyagi Panjaitan and Dewi Ayu Rahayu, "Customary Law as an Alternative to Criminal Case Resolution in a Restorative Justice Approach", *Merdeka Law journal* Volume 5 Number 2 (November 2024) <https://jurnal.unmer.ac.id/index.php/mlj/article/view/15349>.

1. There are reports from residents that there has been a violation of customs;
2. The Chairman of the Neighborhood Circle (RT) summoned both parties to the dispute;
3. The Head of RT reports the problem to the Traditional Head
4. The Customary Chairman and the customary functionaries conduct deliberations to choose a dispute resolution place, usually the place chosen is a neutral place or agreed upon by both parties, one of the places that is often used is Balat Adat;
5. The traditional functionaries, the Chairman of the RT, and the two parties to the dispute held deliberations;
6. The Traditional Chairman determines the results of the deliberative decision;
7. Implementation of the results of deliberative decisions.

B. Muara Bangkahulu District

The settlement of customary crimes in Kandang Limun Village, Muara Bangkahulu District is as follows:

1. There is a report from the surrounding community which is forwarded to the Head of RT to be completed. After that, the Chairman of RT will report that there has been a violation of customary practices to the traditional functionaries of Kandang Limun Village.
2. After that, the customary functionaries will discuss the reported problems, after which a customary session will be held. At this customary hearing, the Chairman of RT will summon the parties (perpetrator, victim, parents of the perpetrator and parents of the victim, witnesses). In the case of adultery, both are the perpetrators.
3. The form of resolving customary violations in the case of adultery of teenagers who are caught committing adultery is in the form of marriage of the two perpetrators, or both parties will be subject to a fine whose nominal amount is determined at the customary hearing. The amount of the fine is seen from the severity of the problem with what example if only two young men and women are caught alone until late at night, the fine will be smaller than the catch of two teenagers who are committing adultery, and another form of sanction is the yellow rice arbor but if it is not obtained Completion of the violation, the violation will be followed up to the police.

C. Sungai Serut District**1. Settlement of Customary Criminal Violations in Sungai Serut District**

The steps from the initial stage to the end of the settlement of customary criminal violations are as follows:

a. Reporting Level:

When a customary violation occurs, reporting can be done by the victim himself, the perpetrator to report the problem to the Customary Chief, or it can also be due to the initiative of the local customary chief in resolving customary criminal problems that occur in his environment. This report can be reported to the customary functionary but can also be done through the RT first and then the RT submits it to the local customary chief.

This report aims to seek a settlement without involving a formal legal process. The Traditional Chairman as the recipient of the Report first approaches the victim and then listens to the information from the perpetrator to get information related to the problems that occurred. He listened to direct information from both sides to understand their point of view.

After listening to information from the victims and perpetrators, the Traditional Chairman took the initiative to invite both parties and related parties, such as the parents of the victim and the perpetrator, witnesses, the head of the RT, Bhabinkamtibmas, and community leaders. This invitation aims to bring the case to a customary deliberation.

1. Preparation for customary deliberations: The Traditional Chairman takes three days to prepare for the customary deliberations commonly called Rajo Penghulu. The Traditional Leader prepares the meeting schedule, contacts related parties, and prepares the right place.
2. Day one: The Customary Leader gathers all parties involved to explain the purpose of the customary deliberations and clarify the issues that are happening. The Traditional Leader reminded the importance of upholding customary values and ensuring the active involvement of all parties.
3. Day Two: The Traditional Chief facilitates dialogue and negotiations between the victim, the perpetrator, the victim's parents, the perpetrator's parents, witnesses, the head of the RT, Bhabinkamtibmas, and community leaders. All parties were given the opportunity to express their views, information, and opinions regarding the problem. The Traditional Chairman acts as a

mediator who seeks a fair solution and directs the deliberation process.

4. Last day: The Customary Leader leads the customary deliberations to reach a mutual agreement. By using wisdom and experience in resolving customary conflicts, the Customary Chief ensures that all parties feel heard and the solutions found take into account the interests and fairness of all.
5. Implementation and monitoring: After the customary deliberation is completed, the Customary Chairman conveys the decision or agreement to all parties involved. He also ensured the implementation of the decree and maintained customary harmony and peace.

b. Rajo Penghulu Traditional Deliberation in Sungai Serut District

Rajo Penghulu is an institution in the city of Bengkulu that is tasked with solving the problems of daily life in the people of Bengkulu, Rajo Penghulu starts from the village level. The existence of the Rajo Penghulu Customary Deliberation is aimed at avoiding vigilante actions by indigenous peoples.

The Rajo Penghulu Traditional Deliberation is usually attended by the Victim, the Perpetrator, the victim's parents and the perpetrator's parents, the Chairman of the RT, witnesses, community leaders and also attended by Bhabinkamtibmas. Usually, the sub-district does not attend the traditional deliberations of Rajo Penghulu. The Rajo Penghulu customary deliberation forum is usually opened and led directly by the traditional chairman. In the process of Rajo Penghulu customary deliberation, usually the party who is asked for information first is the victim as the aggrieved person, then information is asked from the perpetrator, then information from witnesses. After the parties provide information, the traditional leader will bring the problem to the forum to find a customary solution. In the deliberations of the Rajo Penghulu, the decision-making procedure is usually carried out together with community leaders and related parties. Usually the decision of the Rajo Penghulu customary deliberation is in the form of an agreement, namely a peace agreement made in writing and signed by the parties accompanied by a stamp, the purpose is so that the case is not repeated again by the perpetrator, if it is repeated again it will be resolved legally. After the decision of the Rajo Penghulu deliberation is carried out, there will be sanctions given to the perpetrators of these customary violations, such as serving turmeric rice. This turmeric rice is one of the foods that has a symbol as a bond of brotherhood in the area.

D. Singaran Pati District

The stages of resolving customary violations committed are as follows:

1. Complainants are residents who feel that there is a violation of customary practices
2. Reports of customs violations are submitted first to the head of RT
3. After receiving the report, the Chairman of RT summoned parties who would later participate in the settlement of customary violations.
4. It takes about 2-3 days to prepare the traditional deliberation of Rajo Penghulu.

Those present at the Rajo Penghulu deliberation were the Chairman of RT, the Chairman of the RW, the Imam, the Traditional Chairman, the perpetrator of the customary violation, and the parents of the perpetrator of the customary violation. The deliberation is opened according to the agreement of the head of RT, the Chairman of the RW, or the Imam. The Chairman of the RT will lead the deliberations. The order of the parties who were questioned in the deliberations was the first perpetrator of customary violation, then the parents of the perpetrator of customary violation. There is no standard format about the questions to be asked, because according to the Customary Chairman, people who are caught committing customary acts will lie to protect themselves, therefore the thing that is asked is the identity of the perpetrator and parents, as well as the ability to carry out customary sanctions.

There are no special provisions for decision-making, because the final product of this deliberative decision is agreements and sanctions as well as binding promises between the perpetrators and the indigenous people of Singaran Pati District. The sanctions given depend on the violations committed, for example, for violations of the customary act of perverted acts, holding village washing, and leaving the village. Violation of the custom of fighting, sanctions are imposed on nasi puar. Both village washing on the condition of preparing one goat, and nasi punjung is to entertain and restore the community whose customary balance is disturbed due to acts of customary violation. The decision is made in writing by the head of the RT which contains an agreement to bear customary sanctions and not to repeat the act of customary violation that must be committed by the perpetrator of customary violations.

E. Kampung Melayu Districts

The settlement of customary crimes that has been carried out in Ratu Agung District with immoral cases is that customary apparatus (customary functionaries) conducted deliberations which were attended by the two perpetrators, RT, RW, Babinsa, Babinkamtibmas and witnesses who made

reports to agree on what punishment or sanctions would be given. After deliberations that were carried out for approximately 1 hour, the punishment or sanction of washing the village by cutting a goat and an agreement on a stamp signed by 4 people as witnesses to the incident, the Chairman of the RT, and the two perpetrators.

F. Ratu Samban District

a. Settlement of Customary Violations

The traditional leader immediately summoned the party concerned (the perpetrator) and immediately resolved the violation case. Taking the initiative, the customary session which was held consisted of 3 components, namely syarak, customs, and government. The components of syara' are Imam, Khatib, Bilal and Gharim. The customary component consists of the Customary Chairman and members of the customary functionaries. The government component consists of the Sub-district Head and Babinkamtibmas.

On the order of the traditional chief to summon the parties concerned such as, presenting the perpetrator, parents, also attended by the head of the local RT, witnesses who carried out the raid, also attended by Bhabinkamtibmas, also attended by the Traditional Chief, and also attended by the imam. The length of time required to prepare for the Rajo Penghulu traditional deliberation is 1 x 24 hours since the incident. So the customary deliberation has two stages, the first is to present the perpetrators and is also attended by the parties concerned, then the second after all the parties concerned have attended, then the Customary Chairman and the perpetrator will listen to the information from the community who carried out the raid, then after being described by the community about the occurrence of the raid, the two perpetrators will be asked, whether the report submitted by the residents is true all or partially true, or all of them, or one of them.

b. Rajo Penghulu Deliberation

In the custom of descent, decision-making is carried out deliberatively. The deliberation was carried out with the attendance of three components, namely: the traditional chairman, Syarak (Imam/Khotib), and the Government (RT/RW). In addition, the sub-district government and Babinkamtibmas are also allowed to attend, but in the customary rules only three components are required.

Based on the customary guidelines in the descent custom, in the customary deliberation there are several sequences that must be asked

for information, namely the first will be opened by the traditional chief, then listen to information from both parties concerned, then the customary chairman conveys the chronology and customary law, then finally the information from the parents of both parties. Questions that will be asked of the parties as witnesses are: their identity, family, and status. After listening to information from several parties, the next is decision-making through meetings and deliberation by customary functionaries, paying for a customary session amounting to 2 Ringgit in the amount of 1 Ringgit equivalent to Rp250,000, village washing with costs fully borne by the perpetrator in the amount of Rp4,000,000 and if both parents are unable to attend, village washing is still carried out according to the schedule that has been determined in the deliberations.

Customary hearings can also be conducted through a marriage contract if the perpetrator is single and is caught in the act of adultery. After fulfilling the procedure, the perpetrator does not need to be subject to sanctions if both parties have agreed to carry out the marriage contract and village cleansing, and the decision does not need to be made in writing, but if there is a request from both parties regarding the decision to be made in writing, it will be issued by the customary party.

G. Teluk Segara District

Settlement of Criminal Offenses in the Pasar Baru area in cases of adultery or cheating, if someone commits adultery or cheating and is known to the community, then the perpetrator is forced to be expelled from the area by presenting 3 social witnesses called Tigo Tungku Sejerangan, namely Rajo Traditional Chairman of Pasar Baru, Lurah (Penghulu Adat), and Imam. Tigo Tungku Sejerangan in the settlement of adultery must be present. Because, if the Village Head and Rajo of the Pasar Baru Traditional Chairman are not present, the party can be dismissed directly in accordance with the customs of Pasar Baru Village. Meanwhile, the Imam can be replaced when he is unable to be present at the time of the settlement of the adultery case.

In the case of customary crimes committed by children, this incident occurred 1 year ago, then the child went to the traditional officials of Tigo Tungku Sejerangan to make an agreement accompanied by the guardian's parents and received sanctions in the form of Fajr prayers to the mosque for 3 months in order to improve the morals and ethics of the child. Then the usual deliberations were carried out, usually accompanied by activities to make yellow rice and chicken grills made for all residents and traditional officials. Then carry out prayer activities so that the child gets guidance in the hope of becoming a better human being.

Hand cempalo and mouth cempalo are actions carried out by someone who acts not in accordance with the norm. Hand cempalo has been exemplified in the case of theft by children, theft is included in the category of hand cempalo. Meanwhile, oral cempalo is an action carried out by the opposite sex by flirting so that the opposite sex feels unsafe and privacy is disturbed.

H. Selebar District

a. Settlement of Customary Violations

The violation of the custom begins with a community report to the local RT Chairman, then the RT Chairman will follow up and make an agreement to conduct a raid. Then, after that, the community will conduct a raid and take evidence such as ID cards or pictures, then a report will be made about how the incident occurred, then the next day the report will be submitted by the head of the local RT to the Traditional Chairman. The Chairman of RT will convey that last night there was a raid. Regarding the actions taken by the recipient of the report, in accordance with the report of the Chairman of the RT to the Chairman of the Custom, it will be followed up with deliberation, in the deliberation the Chairman of the RT will summon the parties concerned such as, presenting the perpetrator, parents, also attended by the Chairman of the local RT, witnesses who carried out the raid, also attended by Bhabinkamtibmas, also attended by the Chairman of the Custom, and also attended by the imam.

The length of time needed to prepare the Rajo Penghulu customary deliberation, so the customary deliberation has two stages, the first is to present the perpetrators and also attended by the parties concerned, then the second after all the perpetrators have been present, then the Traditional Chairman and the perpetrators will listen to information from the community who carried out the raid, then after being described by the community about the occurrence of the raid, the two perpetrators will be asked, Whether the report submitted by the citizen is true all or true in part, or wrong all, or wrong in part.

b. Rajo Penghulu Deliberation

At the Rajo Penghulu deliberation in Selebar District, according to the local BMA Chairman, the deliberation was attended by the parties, namely, the witness who carried out the raid, the head of the RT and the head of the RW, also attended by Bhabinkamtibmas, then attended by the Traditional Chairman and imam and other indigenous community

leaders. When the deliberation will be opened by the Chairman of the RT first, the Chairman of the RT will explain about the raid that occurred in his area, after the deliberation is opened by the head of the RT, then the one who leads the deliberation is the Chairman of the Custom.

Regarding the order of the parties who were questioned in the deliberations of the Rajo penghulu in Selebar district, namely the order in which the first will listen to the witnesses who carried out the raid, after listening to the information from the witnesses, then the two perpetrators will be asked whether the testimony of the witnesses is all true, partially true, all wrong or partly wrong

The decision-making procedure, the decision is based on deliberation, the Traditional Chairman and community leaders who are present will listen to information from witnesses and perpetrators. After listening to information from various parties, the Traditional Chief will give a conclusion, if the perpetrator admits his mistake, then the Traditional Chief will sanction the perpetrators. On the issue of providing sanctions in the form of village washing or other sanctions, the Bengkulu City Indigenous Peoples Bodies follow the rules in Regional Regulation Number 2 of 2003, concerning Dapek Salah Violations. Sometimes people often misperceive the Dapek Salah rule, people think that if there is a couple who are not husband and wife in the room alone, then the community tells the perpetrator to wash the village or cut the goat.

So, the sanctions given after a more in-depth deliberation by the Traditional Leaders, the sanctions given are the perpetrators of making Nasi Jambar. Because Nasi Jambar is a form that the perpetrator has admitted his mistake. Nasi Jambar will be made by the male side 1 Nasi Jambar and the female side 1 Nasi Jambar, so there are a total of 2 Nasi Jambar. In the next meeting, the perpetrators will bring the agreed Nasi Jambar and will eat Nasi Jambar together. Then, the perpetrators will also apologize to the local community, the local government and the local Traditional Chief.

The deliberative decision in Selebar sub-district is made in writing. There are minutes and blanks that have been provided by the Selebar District Indigenous Peoples Agency. The minutes contain starting with the time of the night of the raid, then about the deliberations, and finally filling in the blanks that have been prepared. Deliberation is usually carried out for 2 to 3 days. Payment of Nasi Jambar can be made when the perpetrator is economically ready, and this agreement is also written in the Minutes of Events, the perpetrator of the violation must be reported to the police or not the answer is that it does not have to be brought to the police,

because if it can be resolved by the local Indigenous Peoples' Agency, then the BMA takes over the settlement of the violation.

I. Gading Cempaka District

a. Settlement of Customary Violations

Customary violations are reported by the Chairman of the RT, if there is a community that knows, then the community must first convey it to the head of the RT. If there is a violation of custom, the head of the RT will report to the traditional chairman. After receiving the report, the Traditional Chairman summoned the perpetrator and the parents of both parties who committed immoral acts, then interrogated and asked, if it is true to commit immoral acts, then the perpetrator must be married, if it is just a gathering and does not commit immoral acts, then only a letter of agreement / statement is made not to repeat such a thing. The traditional leader summons the parties (perpetrators, victims, parents, witnesses, others). The time needed to prepare the Rajo Penghulu customary deliberation does not take a long time, when there is a violation of customary deliberation it is immediately prepared for customary deliberation, if the act is carried out at night and conditions are not possible, it will be resolved the next day.

b. Rajo Penghulu Deliberation

In the deliberation, Rajo Penghulu was present the Traditional Chairman, Perpetrators, Parents of the two perpetrators, the head of RT Babinsa, Babinkamtibmas and residents or witnesses who reported the act. The District government, Bhabinkamtibmas was also present in the deliberations. The sub-district government who participated in the event was the head of RT. Babinsa and babinkamtibmas were also present to secure local residents if unwanted actions occurred to the perpetrators.

The deliberation was opened by the Chairman of RT as well as leading the deliberations but the one who adjudicated was the traditional chief. The information in the deliberation was given in order by the two perpetrators, the first from the male side, after it was finished, it continued to the female side. Then residents as witnesses who saw and the Chairman of RT. The questions asked to the parties included the identity of the perpetrator, the reason for committing an immoral act, how the act could have occurred, and then what kind of settlement was desired in accordance with the deliberations carried out by the traditional chief, the perpetrator, the head of the RT, as well as residents or the local community as witnesses, Babinsa and Babinkamtibmas.

The decision-making procedure is carried out by deliberation by the traditional chief, if it is agreed by the perpetrator, it will be completed at the traditional chief, if it is not able then it will be continued in Babinsa. The sanctions given are to be married and redeemed, for example, by cooking tumpeng. The deliberative decision is made in writing, with the aim of reaching a mutual agreement, so that a decision obtained can be accounted for by the parties.

Based on the results of the study, dispute resolution through customary institutions is one of the alternatives to dispute resolution outside the litigation channel (outside the court). So if these alternatives do not work, then it can be done with other alternatives, for example, consultation, good services, arbitration, and if all these alternatives are also unsuccessful, then it can be done through the courts as a last alternative. The basic principles of dispute resolution through customary institutions:

1. Pay attention to ideal customary norms, procedures and cultures.
2. Low cost/even no cost, simple and quick to complete.
3. Social justice is prioritized, which leads to the usefulness of the law, deliberation, is a general model and the main one in the trial process in customary courts.

This means that customary judicial institutions, do not come with the main mission of being a means of coercion. The role of mediators for reconciliation and consolidation of the parties, through the process of finding a verdict that relieves all parties, including the general public from their communities who are not directly related to the case, is an important feature of the dispute resolution mechanism through customary institutions.

CONCLUSION

The position and recognition of customary law, in which there is customary criminal law in laws and regulations in Indonesia, is contained in several laws and regulations. In addition to being clearly stated in the amended 1945 Constitution, it is also contained in Law No. 1 of Emergency of 1951, Law No. 48 of 2009 concerning Judicial Power, Law No. 39 of 1999 concerning Human Rights, Law No. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003 concerning the Constitutional Court, Law No. 20 of 2003 concerning the National Education System, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Law Number 1 of 2023 concerning the Criminal Code.

The settlement of customary crimes according to the law that live in the community in Bengkulu City so far is only a few minor customary violations that are resolved through customary law and laws that live in the community. The

procedure for settlement is also not the same, depending on the legal habits that live in society.

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