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Customary law as an instrument of restorative justice: an alternative approach to criminal conflict resolution in plural legal systems

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Abstract

As a pluralistic nation, Indonesia recognizes the importance of customary law, as guaranteed in Article 28I of its Constitution. This study explores the application of customary law in criminal conflict resolution through a restorative justice approach. To illustrate this, the research focuses on the Megou Pak Tulang Bawang Indigenous Community in Lampung, which serves as a representative case study of how local wisdom is implemented within a broader, universally relevant legal framework. Utilizing an empirical juridical method, the study draws on primary data from interviews with traditional leaders and secondary

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data from literature and legal documents. The findings indicate that criminal cases within the Megou Pak community are resolved through a customary trial process known as Peppung, which prioritizes reconciliation between the offender and the victim. Sanctions—both material and symbolic—are imposed to restore social and cosmic harmony. Once both parties agree on the resolution, a ritual called Angkon Muakhi or Mewari is performed, symbolically integrating the victim into the offender's family to reestablish peaceful relations. This process is rooted in the local philosophy of Piil Pesenggiri, which upholds the values of responsibility, mutual cooperation, and deliberative consensus. The study concludes that customary law in the Megou Pak community exemplifies a form of restorative justice that addresses the limitations of the formal criminal justice system. It offers an effective alternative dispute resolution model that is culturally embedded, socially responsive, and aligned with the broader goals of the national legal system. Therefore, customary law should be acknowledged and integrated as a vital element within Indonesia's national legal framework.

Keywords: customary law, restorative justice, conflict resolution, indigenous justice, alternative dispute resolution.

*Derecho consuetudinario como instrumento de justicia restaurativa:
un enfoque alternativo para la resolución de conflictos penales en
sistemas jurídicos plurales*

Resumen

Como nación pluralista, Indonesia reconoce la importancia del derecho consuetudinario, tal como lo garantiza el artículo 28I de su Constitución. Este estudio explora la aplicación del derecho consuetudinario en la resolución de conflictos penales a través de un enfoque de justicia restaurativa. Para ilustrarlo, la investigación se centra en la Comunidad Indígena Megou Pak Tulang Bawang, en Lampung, la cual sirve como estudio de caso representativo de cómo la sabiduría local se implementa dentro de un marco jurídico más amplio y de relevancia universal. Utilizando un método jurídico empírico, el estudio se basa en datos primarios obtenidos a través de entrevistas con líderes tradicionales y

datos secundarios extraídos de literatura académica y documentos legales. Los hallazgos indican que los casos penales dentro de la comunidad Megou Pak se resuelven mediante un proceso judicial consuetudinario conocido como *Peppung*, el cual prioriza la reconciliación entre el agresor y la víctima. Se imponen sanciones —tanto materiales como simbólicas— con el fin de restaurar la armonía social y cósmica. Una vez que ambas partes acuerdan la resolución, se lleva a cabo un ritual llamado *Angkon Muakhi* o *Mewari*, que simboliza la integración de la víctima en la familia del agresor para restablecer relaciones pacíficas. Este proceso se basa en la filosofía local del *Piil Pesenggiri*, que promueve los valores de responsabilidad, cooperación mutua y consenso deliberativo. El estudio concluye que el derecho consuetudinario en la comunidad Megou Pak ejemplifica una forma de justicia restaurativa que responde a las limitaciones del sistema de justicia penal formal. Ofrece un modelo alternativo efectivo de resolución de conflictos, culturalmente arraigado, socialmente sensible y alineado con los objetivos más amplios del sistema legal nacional. Por lo tanto, el derecho consuetudinario debe ser reconocido e integrado como un elemento vital dentro del marco jurídico nacional de Indonesia.

Palabras clave: derecho consuetudinario, justicia restaurativa, resolución de conflictos, justicia indígena, resolución alternativa de disputas.

Introduction

Mezger interprets criminal law as a framework that associates an action which fulfils particular criteria with a corresponding criminal outcome. This definition may also be identified as *ius poenale*. Alongside *ius poenale*, the concept of *ius puniendi*, which refers to the authority to impose punishment, is also recognized. The application of punishment, intended as a response to the perpetrator's actions, is not a process that can be executed directly by the victim or the community; it must be mediated through the state organs within the criminal justice system (Sudarto, 2013). Consequently, the state appears to assume responsibility for the losses incurred by the victim despite the frequent

occurrence of the victim's suffering remaining unaddressed through such settlements.

The resolution of criminal cases via formal justice starkly contrasts the established model associated with out-of-court settlements. This model is referred to as penal mediation. Penal mediation emphasizes the interaction between the offender and the victim, leading to its alternative designations such as Victim Offender Mediation (VOM), *Täter Opfer Ausgleich* (TOA), or Offender Victim Arrangement (OVA) (Arief, 2008).

Within the framework of Indonesian legislation, penal mediation is recognized solely in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, specifically through the provisions on diversion. The Juvenile Criminal Justice System Act characterizes diversion as shifting the resolution of cases involving children away from the criminal justice framework to an alternative process. This transition must occur during the investigation, prosecution, and court examination stages. According to Article 7, paragraph (2) of the Juvenile Criminal Justice System Act, diversion is applied when the offence carries a potential imprisonment of fewer than seven years and the individual is not a repeat offender. Diversion is carried out through a systematic process that includes discussions with the child and their parents or guardians, the victim and/or their parents or guardians, community counsellors, and professional social workers, all grounded in a restorative justice framework. The deliberation aims to accomplish several key objectives: establishing peace between the victim and the child, resolving the child's case outside of the judicial system, preventing the child from facing deprivation of liberty, fostering community involvement, and instilling a sense of responsibility in the child.

The Juvenile Criminal Justice System Act regulates penal mediation and is frequently observed in community practices. A case of maltreatment involving a housemaid was reported in Pulogadung, East Jakarta. The employer of the victim engaged in maltreatment, justifying their actions by claiming the victim was not performing her job adequately, which led to the employer's resentment. The local administrators facilitated reconciliation between the employer and the victimized housemaid as a resolution to the case. A comparable resolution was implemented in the incident involving a collision with a cyclist caused by the driver of a rescue vehicle from the Takalar Regency Social Service. The car's driver acknowledged that he was operating the vehicle at an excessive speed on Jalan Nusantara, Wajo, Makassar, while experiencing fatigue and drowsiness, which resulted in the car veering to the right and colliding with Ridwan, also known as Wawan. The driver was subjected to an internal review at the office, while the victim received financial compensation for medical expenses. This traffic accident case was resolved through mediation, effectively avoiding the need for further formal judicial proceedings. A homeless couple in Kwitang, Senen, Central Jakarta, stole a gas cylinder. The theft occurred due to insufficient medical funds for their children, leading the perpetrators to resort to stealing a gas cylinder from a shop owner to address their needs. The police facilitated an agreement between the perpetrator and the victim to reconcile. The offender forgives the victim, who subsequently expresses remorse and commits to avoiding similar behaviours. The theft case concluded amicably outside of court due to the absence of conflict between the perpetrator and the victim. The analysis of the aforementioned cases demonstrates that the resolution of criminal acts can be achieved through mediation or negotiations involving both the

perpetrator and the victim. Mediation serves as a significant method of alternative dispute resolution, particularly within the context of civil disputes. It is also feasible for mediation to occur in criminal cases.

Indonesia does not solely rely on statutory regulations as the foundation for its legal framework. Furthermore, Indonesia actively integrates societal values into its development framework, particularly through the lens of customary law. Lampung represents a region in Indonesia where customary law continues to be upheld. The Megou Pak Tulang Bawang Indigenous People represent one of the customary societies found in Lampung. Megou Pak Tulang Bawang represents an indigenous community characterized by its unique local wisdom and values, which significantly address various challenges. The Megou Pak Tulang Bawang Indigenous People have consistently adhered to and implemented the customs passed down through generations.

The customary law of the Megou Pak Tulang Bawang Indigenous People employs mediation to frequently resolve criminal acts amicably. In instances where death occurs as a result of a fight or quarrel, resolution may be achieved through compensation provided by the perpetrator to the family of the victim. Compensation encompasses material and immaterial aspects, as it serves the purpose of restoring cosmic balance within the indigenous community. Consequently, the notion of mediation, which emphasizes the resolution of conflicts in criminal cases, must be acknowledged and reinforced as a longstanding practice within indigenous communities to prevent it from being undervalued in the national legal framework. This research will examine the application of customary law among the Megou Pak Tulang Bawang Indigenous People in addressing criminal cases. It will also analyze how the conflict

resolution mechanisms employed by this community contribute to the reform of criminal law in Indonesia. This study employs an empirical juridical approach, emphasizing the collection of primary data sourced directly from local tribal informants.

1. Living law: the ecognition of indigenous peoples and the role of local wisdom in Indonesia's legal system

Article 1, paragraph (1) of the *Wetboek van Strafrecht* (Criminal Code) delineates the principle of legality within Indonesian criminal law, constraining the sources of law to encompass written provisions or laws and regulations solely. This provision appears to undermine customary law or unwritten law, which represents the original legal framework that existed within Indonesian society before acknowledging written provisions in the Criminal Code.

The concept of unwritten law is acknowledged in numerous legal frameworks and regulations beyond the scope of the Criminal Code. The Constitution of the Republic of Indonesia, Emergency Law No. 1 of 1951 regarding Temporary Measures for Organizing the Unity of Power Structures and Civil Court Procedures, as well as Law No. 48 of 2009 concerning Judicial Power, reflect this recognition. Article 18B paragraph (2) of the Constitution of the Republic of Indonesia acknowledges the existence of the unity of indigenous peoples and their traditional rights, stipulating that such unity and rights must align with societal development and not contradict the principles of Indonesia, which are fundamentally rooted in Pancasila. Consequently, this provision is critical in assessing how unwritten law can be acknowledged in Indonesia.

Alongside the Constitution of the Republic of Indonesia, the acknowledgement of customary law as unwritten law in Indonesia is also reflected in the Judicial Power Act. Article 50, paragraph (1) of the Judicial Power Act states, “Court decisions must include not only the reasons and basis for the decision but also specific articles of the relevant laws and regulations or unwritten sources of law that serve as the foundation for the judgment.” This provision indicates that while the formal criteria for declaring an individual guilty of a criminal offence are established in written laws and regulations, judges are also required to take into account unwritten sources of law when adjudicating a case. This may be understood as formalizing unwritten provisions within the Indonesian criminal system. The existence of indigenous peoples and the laws governing them remains unaffected by whether or not they receive state recognition. The persistence of indigenous peoples as cohesive communities can be attributed to their collective desire to maintain unity. The community will continue to thrive as long as the group members are committed to avoiding dissolution.

The acknowledgement and presence of Indigenous Peoples in Indonesia have been extensively analyzed through legal and sociocultural frameworks. Their presence across the archipelago is clear, yet determining the criteria for who qualifies as Indigenous Peoples involves intricate challenges, especially within legal frameworks that seek to reconcile traditional customs with national legislation. Indonesian law, particularly Law No. 27 of 2007 regarding the Management of Coastal Areas and Small Islands, which was amended by Law No. 1 of 2014, seeks to establish a formal definition. The amended law’s Article 1 point 33 establishes a thorough legal framework for comprehending

Indigenous Peoples. It characterizes them as collectives that have occupied specific geographic regions over generations, linked by ancestral ties, with profound connections to their land, territories, and natural resources. They structure themselves through traditional institutions and legal frameworks that align with national legislation.

This legal articulation delineates four essential characteristics that must be evident for a group to attain recognition as Indigenous Peoples under Indonesian law. Initially, it is essential to establish a verifiable and recognized historical link between the community and the territory they occupy. History is frequently conveyed through oral traditions, symbols, or territorial names, and it constructs a narrative of origin that underpins the community's legitimacy and identity. This also illustrates the kinship patterns that link one group to another, depicting a complex social network grounded in ancestry and collective cultural memory. This notion of inherited belonging functions as an identifier of identity and a basis for asserting territorial rights and autonomy.

Secondly, Indigenous Peoples are defined by their reliance on and management of natural resources, especially in regions they oversee through traditional practices. This is significant in coastal regions and small islands where economic activities are closely linked to marine ecosystems. For these communities, the sea transcends its role as merely a source of food or income; it embodies a vital component of their cultural landscape. The sustainable utilization of marine and fishery resources, guided by local wisdom and established knowledge, exemplifies a sovereignty encompassing ecological and cultural dimensions. Their management systems, frequently undocumented in contemporary scientific language, illustrate profound ethical connections with

nature, highlighting a comprehension of conservation and equilibrium before established environmental regulations.

The third requirement pertains to the existence of well-defined and operational customary institutions. These institutions are pivotal in overseeing various aspects of community life, including social, economic, spiritual, and cultural dimensions. They serve a fundamental purpose beyond symbolism or ceremony; they constitute the essential framework through which Indigenous Peoples exercise self-governance. Leadership in these institutions is frequently shaped by established traditions and collective agreement, with authority being exercised in a way that maintains communal harmony. The governance structures facilitate the transmission of values and collective decision-making, reinforcing a sense of agency that is both communal and deeply connected to identity.

Fourth, a dynamic body of customary laws—norms and rules rooted in local wisdom—represents another key component. The rules embody a moral and cultural framework transmitted across generations. They govern conduct, delineate duties, and address disputes. Significantly, these are not merely theoretical guidelines; they are actively adhered to, enforced through community mechanisms, and possess legal and moral significance. The validity of these laws is grounded in their connection to the daily experiences of individuals, which contributes to their democratic essence. They are influenced by established customs and the objective of achieving justice and promoting the community's well-being.

This definition reveals a complex understanding of Indigenous Peoples, highlighting them not as static or isolated groups, but as dynamic and evolving

societies representing a unique relationship with the world. Their identities are maintained through cultural heritage and active engagement: a continuous interaction with land, nature, and one another via systems of knowledge and governance that have developed naturally over centuries. This indicates that utilizing local wisdom in specific areas of life does not inherently grant Indigenous status. The unique characteristic of Indigenous Peoples lies in the comprehensive incorporation of their wisdom across all facets of community life—encompassing belief systems, ecological practices, social norms, and leadership structures.

However, the legal framework presents an important stipulation: the customary legal orders and practices of Indigenous Peoples must be consistent with national legislation. Although appearing simple, this condition prompts intricate inquiries regarding autonomy, pluralism, and the boundaries of state acknowledgement. This indicates an effort to align traditional practices with essential rights and national priorities. Conversely, it highlights a potential area of conflict when indigenous practices are perceived as deviating from government-mandated standards, particularly in situations related to land utilization, resource extraction, or development strategies. The law recognizes Indigenous Peoples but operates within a centralized legal framework that maintains ultimate authority.

This situation encourages continuous dialogue and negotiation between Indigenous communities and the state. For numerous Indigenous Peoples, recognition transcends mere legal status; it encompasses restoring justice, identity, and authority over their ancestral lands and traditional ways of life. This approach emphasizes a distinct framework for development, prioritizing

equilibrium instead of exploitation, collaboration rather than competition, and sustainability over disruption. Legal recognition should be paired with authentic respect for indigenous systems of knowledge and governance and a commitment to engage with these systems as remnants of history and viable alternatives for the future.

The presence of indigenous peoples in the Lampung region originated from the collective accounts of those who resided on Mount Pesagi, specifically Sekala Brak. The alliance is evolving and can be categorized into two distinct groups: the Lampung Saibatin Indigenous People, characterized by their strong adherence to aristocratic values, and the Lampung Pepadun Indigenous People, who emphasize democratic principles and collaborative efforts. “Lampung Pepadun Indigenous People” derives from “pepaduan,” which signifies a gathering of high-ranking royal officials or a deliberation focused on executing customary justice, attended by local tribal leaders. The term “pepadun” refers to a small bench with four legs utilized by customary courtiers during conflict resolution discussions to foster harmony and peace (Putri et al., 2018). The Lampung Pepadun Indigenous Peoples consist of various branches, including the Megou Pak membership, which was established to advocate for the rights of indigenous peoples in Tulang Bawang Regency. This group is collectively known as Megou Pak Tulang Bawang.

Megou Pak Tulang Bawang represents a membership structure comprising four descendants: Buai Bulan, Buai Tegamoan, Buai Umpu, and Buai Aji. The four descendants are distributed across various sub-districts within Tulang Bawang Regency (Putri et al., 2018). Historical records indicate that Tulang Bawang was included within the boundaries of the North Lampung Regency

region. According to Law No. 2 of 1997, the formation of Tulang Bawang Regency accounts for 22% of the total area of Lampung Province. Subsequently, the area of this district was expanded, ultimately encompassing approximately 3,466.32 square kilometres, which is divided into fifteen sub-districts, four villages, and one hundred forty-seven villages (Sumargono et al., 2021). This district encompasses a diverse array of natural resources and indigenous knowledge, which are viewed as viable opportunities for development aimed at enhancing the prosperity and welfare of all societal levels and their future generations.

Local wisdom is fundamentally based on Indigenous peoples' institutions' knowledge systems and family management practices. This arises from the close relationship they share. Indigenous peoples engage in a thorough process of interaction and adaptation with their environment, enabling them to establish and refine value systems, lifestyle patterns, institutional frameworks, and legal structures that align with the specific conditions of their locale. This process facilitates the development of a social system characterized by harmony and balance (Writer's Interview with Zainudin Hasan from Lampung University, 2024). The Lampung Indigenous People possess a deeply rooted philosophy of life that shapes their identity and distinct characteristics, known as Piil Pesenggiri. This philosophy is foundational to the Lampung people's heritage, providing a moral framework that guides their daily conduct. Piil Pesenggiri has deeply influenced the legal culture of the Lampung Indigenous People, serving as both a preventive principle and a normative framework against immoral or reprehensible actions, including corruption, theft, and adultery. These acts lead to a decline in the honour and dignity of the perpetrator and their family. Piil

Pesenggiri operates on the principle that wealth and money are attainable pursuits. Nonetheless, self-esteem, honour, dignity, and morality hold significantly greater value than wealth and money. Piil Pesenggiri serves as a representation of honour that requires preservation and inspiration drawn from traditional values. This includes the behaviours associated with Nemui Nyimah and Nengah Nyappur, which align with the Titie Gemattei norms or customary rules that embody the local wisdom of the Megou Pak Tulang Bawang Indigenous People.

Nemui Nyimah represents a fundamental value that underpins the principles guiding the lives of the Lampung people. The people of Lampung need to cultivate a welcoming and warm demeanour in their greetings. The Lampung language interprets “nemui” as receiving guests, hosting visits, fostering friendships, meeting one another, and extending a welcome. In the meantime, “nyimah” is defined as being generous, polite, not stingy, and characterized by a smile (Suwardi & Dinata, 2021). The concept of Nemui Nyimah can be expressed through interactions with foreigners or individuals from outside Lampung by providing a hospitable and cordial reception. Consequently, visitors or guests will experience a sense of being well-served and comfortable, which will likely motivate them to return. In the context of the customs of the Lampung people, the social value of Nengah Nyappur is intricately intertwined with a strong religious influence. The communal nature and togetherness of the Megou Pak Tulang Bawang, Indigenous People illustrate their religious philosophy, emphasizing common interests rooted in kinship, assistance, and cooperation (Writer’s Interview with Zainudin Hasan from Lampung University, 2024). The aforementioned positive aspects highlight that

the concepts of Piil Pesenggiri, Nemui Nyimah, and Nengah Nyappur represent significant elements of Lampung culture. These concepts serve as a crucial foundation for preserving social interactions, fostering harmonious and sustainable community institutions, and facilitating conflict resolution by the customary law or living law of the Megou Pak Tulang Bawang Indigenous People.

2. The foundations of customary criminal law and the role of local wisdom among the lampung indigenous peoples

The foundation of customary criminal law is established by Article 28I of the Constitution of the Republic of Indonesia, which mandates the respect for cultural identity and rights of traditional communities, aligning with contemporary developments and civilization. This article indicates the state's acknowledgement and respect for the unity of Indigenous peoples and their traditional rights, provided they remain active and aligned with the principles of Indonesia. Customary law consists of a set of customs that are primarily unwritten and not formally codified (Soekanto, 2008). It is important to acknowledge the existence of various alliances or customary societies that possess texts outlining provisions of customary law, including “Kitab Kuntara Raja Niti,” “Pelatoeran Sepandjang Hadat Lampong,” and “Cepalo 12” among the Lampung Indigenous People. Consequently, the traditional values upheld by the Lampung people, particularly those of the Megou Pak Tulang Bawang Indigenous People, are consistently preserved, as each Punyimbang or tribal leader is responsible for transmitting these texts to subsequent generations.

Historically, a notable legislative outcome from the Lampung community was the “Kuntara Raja Niti.” This book, in effect since the 16th century, serves not only to regulate traditional ceremonial processions but also includes provisions that govern relationships among individuals, neighbours, communities, and even the dynamics between the populace and their king. This book emphasizes the importance of instilling a sense of responsibility towards the earth and the surrounding natural environment in individuals. Kitab Kuntara Raja Niti is a crucial reference for Lampung customs, utilized by nearly all Lampung sub-tribes, including Pepadun and Pesisir. This book outlines the importance of discipline in preventing unethical behaviour, such as perjury. Article 166 of Kitab Kuntara Raja Niti addresses explicitly the regulation of testimony related to legal and justice matters, stating, “If someone swears an oath, and it is later discovered that the oath was false, the person concerned shall be fined 120 riyals”. The offence is articulated yet conveys a significant lesson: perjury is a reprehensible act that undermines the customary law order within a Lampung society, particularly affecting the Megou Pak Tulang Bawang, Indigenous People. The two hundred forty-eight chapters of Kitab Kuntara Raja Niti encompass regulations concerning self-respect, ethics, firmness, friendliness, mutual respect, communication, youth morals, environmental protection, and village cleanliness (Ayyuhda & Karsiwan, 2020). This book presents a detailed examination of case settlements through customary law, which includes various forms of compensation such as nyukak, the return of stolen property referred to as “ulang ko sai di maling,” monetary fines, the sacrifice of a specified number of buffaloes known as “mesol kibau,” and social penalties like an exile from family and customary society (Melati, 2019).

Following the formation of the Megou Pak Tulang Bawang alliance, the tribal leaders from the four established clans convened to evaluate the implementation and safeguarding of the customary laws of Megou Pak Tulang Bawang. Moving away from the consensus reached during the deliberative agenda, a shared intention emerged to codify customary law principles into a publication titled: “Pelatoeran Sepandjang Hadat Lampong.” This book on customary law systematically compiles several key rules, including youth association, title system, civil law, criminal law, and judicial system, organized across multiple chapters. The text of Pelatoeran Sepandjang Hadat Lampong outlines the principles of the Megou Pak Tulang Bawang customary law concerning criminal offences. Specifically, Article 42, paragraphs (11), (12), and (13) state: “If an individual kills a person of mega rank, the perpetrator is required to pay wake, which signifies the replacement of the deceased’s soul, amounting to f450.

Additionally, a fine of 30 riyals is imposed, along with the cost of one buffalo at 10 riyals, to be borne by the Pepadun responsible for the act.” The implication is that the individual responsible for the death of a titled person must compensate with a fine of f450 to account for the lost soul, an extra fine of 30 riyals, and a buffalo valued at 10 riyals (Pratama, 2016). The formulation of the offence indicates that an individual who engages in a criminal act, such as taking another person’s life, will face standard penalties, which may include monetary fines. The established sanctions outlined in each article of Pelatoeran Sepandjang Hadat Lampong have been specifically designed to correspond with the degree of guilt and the severe repercussions of an action.

The established sanctions within Lampung society are delineated in “Cepalo 12,” aiming primarily to restore equilibrium by 12, 24, 36, 48, 96, and 120. The format establishes penalties for individuals who engage in customary violations, as determined through discussions among Punyimbang Adat. In addition to fines, Cepalo 12 encompasses a range of other punitive measures: The experience of expulsion from the village and family, exclusion from traditional ceremonial events, lack of consultation in agreements, and the transfer of responsibility to the state (Melati, 2019) illustrates a significant disconnection from community and familial ties.

The different categories of customary sanctions outlined are applied in response to an individual’s deviation or breach of customary law, which embodies the values intrinsic to the local community. Customary sanctions exist to reestablish equilibrium and cohesion within the societal framework. Consequently, when a violation occurs, the offender must try to reinstate the disrupted cosmic balance, ensuring that the community once more experiences a sense of peace and tranquillity (Oktora, 2023).

3. Kinship, sanction, and reconciliation: understanding customary justice among the lampung indigenous peoples

“Customary justice” is frequently referred to as “customary court.” The juxtaposition of these two terms is evident in the legislation. Emergency Law No. 1 of 1951 on Temporary Measures to Organize the Unity of the Structure of Powers and Procedures of Civil Courts specifies in Article 1 paragraph (1) letter b that: “All Customary Courts (inheemse rechtspraak in rechtstreeksbestuurd gebied), with the exception of religious courts if the court according to the living

law is a distinct component of the customary court.” In a comparable manner, Law No. 21 of 2001 regarding Special Autonomy for the Province of Papua includes a stipulation in Article 51 that contrasts the concepts of “customary court” and “customary justice”. The article states: “Customary courts function as peace courts within communities governed by customary law, possessing the authority to review and resolve customary civil disputes and criminal cases among their members”, “these courts are structured in accordance with the provisions of the customary law relevant to the specific community”, and “they assess and adjudicate customary civil disputes and criminal cases as outlined in paragraph (1), based on the customary law applicable to the community in question”.

The provisions in the aforementioned legislation indicate that while “customary justice” and “customary court” may appear similar, they possess distinct meanings. The phrase “customary justice” carries greater significance when viewed as a process or system, whereas “customary court” is more relevant to the institution responsible for implementing that system. The term “customary justice” is frequently encountered in scientific studies and legislative contexts; however, from a sociological perspective, it is not widely adopted by the community. In Indonesia, communities, particularly those of indigenous peoples, possess a structured approach to addressing issues that can be characterized as a judicial system, referred to as “*sidang adat*” and “*rapat adat*” (Sudantra et al., 2017).

The resolution of criminal cases among the Megou Pak Tulang Bawang Indigenous People is fundamentally rooted in the principle of Piil Pesenggiri, which serves as the guiding philosophy for the community’s way of life. The

esteemed principles present in Piil Pesenggiri, including tolerance, religion, responsibility, discipline, cooperation, and democracy, are thought to guide the process of achieving fair and humane resolutions in criminal cases. In the interim, the resolution of criminal cases is conducted by the principles established by the customary law frameworks acknowledged by the Megou Pak Tulang Bawang Indigenous People, specifically the “Kitab Kuntara Raja Niti”, “Pelatoeran Sepandjang Hadat Lampong”, and “Cepalo 12.” Violations occurring within the environment of the Megou Pak Tulang Bawang, Indigenous People are addressed through a trial conducted by the Punyimbang Adat, referred to as Peppung. From a cultural perspective, the trial manifests kinship principles, emphasizing the resolution of conflicts for both the victim and the perpetrator. Peppung’s decision aims to deliver a sense of justice for the victim while also creating a deterrent effect on the perpetrator to prevent recidivism. (Melati, 2022) The initiation of the customary trial involves the Punyimbang Marga seeking information from both the Punyimbang Tuha and Punyimbang Suku, gathering insights from the perpetrator and the victim. Punyimbang Marga sought clarifications from both the perpetrator and the victim to elucidate the information conveyed by each Punyimbang Tuha and Punyimbang Marga.

Additionally, the Punyimbang Marga inquired whether the victim, the perpetrator, or the disputing parties could resolve their issue through a traditional trial. Should both parties express their willingness, the Punyimbang Marga advances the customary court process by inquiring with the victim and perpetrator or the disputing parties regarding the underlying issue. The customary hearing concludes with formally issuing an agreement regarding the sanctions to be applied to the perpetrator (Dewi, 2014).

The punishment is executed according to the sanctions established by the Punyimbang Adat based on the crime committed. The sanction imposed is contingent upon the severity of the crime and the extent of both material and immaterial losses incurred by the victim as a result of the offence. Sanctions may include fines, the slaughtering of buffaloes, social ostracism from the customary community, exclusion from traditional ceremonial events, and expulsion from the customary community.

Following the completion of Peppung, which leads to an agreement between the parties, the next step involves the implementation of Angkon Muakhi or Mewari. In this phase, the victim is designated as a member of the perpetrator's family, aimed at promoting harmony and sustaining ongoing relationships between both families. (Melati, 2019) Establishing kinship ties mitigates the conflict between the perpetrator and the victim, allowing the issue to be perceived as resolved and potentially serving as a valuable lesson for future reference. This symbol of kinship illustrates a complete acknowledgement of the close relationship between both parties, characterized by the absence of criticism, suspicion, or dispute. When a relationship is established as one of brotherhood or sisterhood, both individuals must uphold mutual respect, appreciation, and tolerance. They are expected to maintain openness, defend one another, provide protection, and offer assistance, reflecting the fraternity's core values among the Lampung Indigenous People as outlined in the Piil Pesenggiri philosophy (Hasan, 2024). The Megou Pak Tulang Bawang among the Lampung Indigenous People possess the Peppung and Angkon Muakhi or Mewari, which can restore the cosmic balance disrupted by conflict.

A notable instance of resolving criminal cases through customary court involves an adultery case between two State Civil Apparatus. This incident occurred in Daya Murni, Tumijajar, West Tulang Bawang, involving Sustini (34) and Lukman Idris (50). At the outset, the responsibility for this case was designated to the local police. Given that adultery is classified as an absolute complaint offence and there was no formal complaint lodged by either the husband or wife of the involved parties, the police transferred the resolution of this case to the local customary institution. The Head of Tiyuh addressed the situation along with the tribal leaders of the Penumangan community, who resided in the vicinity of the victims, utilizing the customary institution Megou Pak Tegamo'an Tiyuh Penumangan. The resolution of this criminal case centres on achieving a mutually beneficial outcome via penal mediation for both parties, thereby avoiding punishment. The settlement mechanism is categorized into pre-, Peace, and Post-Peace. During the Pre-Peace stage, the head of Penumangan Tiyuh, along with tribal leaders and the community, facilitates the parties involved in conducting penal mediation at the Megou Pak Tegamo'an Institution, utilizing a Peppung procession that has been meticulously prepared. The subsequent phase is the Peace stage, during which tribal leaders and the community identify the adulterous parties and offer insights regarding the customary law of Megou Pak Tegamo'an. Subsequently, tribal leaders and the community engage in a discussion to determine the nature and extent of sanctions for the party involved in adultery. Subsequently, the tribal leaders and the community concluded the sanctions imposed on the involved parties, specifically Sustini, which included expulsion from the Penumangan area.

Lukman Idris faced sanctions, including a fine of Rp 12.000.000,00 and an additional customary money fine of Rp 2.400.000,00. The parties agreed to address the decision by complying with the established sanctions. The case settlement process concluded with the Post-Peace stage, wherein a joint decision was reached during Peppung, leading both the perpetrator and victim to implement the decision's contents within the customary institution Megou Pak Tegamo'an Tiyuh Penumangan. Sustini promptly removed her feet from the Penumangan area, reflecting her compliance with the expulsion sanction imposed on her. Lukman Idris transferred Rp 12.000.000,00 to Yantoso and an additional customary fine amounting to Rp 2.400.000,00. The analysis of the three stages indicates that the criminal case concerning adultery can be effectively addressed through mediation between the involved parties, who have also committed to refraining from similar actions in the future (Berlian, 2019).

4. Restorative justice in the spirit of Pancasila: the role of customary law in reforming Indonesia's criminal justice system

Indonesia has implemented the Pancasila National Legal System, establishing Pancasila as the country's foundational legal framework. This system highlights the implementation of law based on the three foundational pillars of Pancasila, which encompass the principles of divinity, humanity, and social welfare (Arief, 2012). The three central values in Pancasila should serve as the foundational principles for developing the national legal system. Consequently, a legal system that does not align with the principles of Pancasila cannot be classified as a national legal system.

A defining characteristic of law as a system is its orientation towards specific goals. Therefore, if the law constitutes a system, it is essential to ascertain the purpose of the legal system with precision. Through his utility theory, Jeremy Bentham posited that the law's primary objective is to maximize the populace's happiness (Warassih, 2011). The theory aligns with criminal law's fundamental objectives, which aim to ensure social defence and promote social welfare (Arief, 2010).

The punishment system is regarded as a functional framework, where punishment serves not as a final objective but as a mechanism to attain the desired outcome (Arief, 2009). The purpose of punishment serves as a fundamental component of the punishment system, inherently linked to other sub-systems, including criminal acts, criminal responsibility, and the punishment itself. Criminalization must encompass objectives that extend beyond the individual offender. It should aim to alleviate guilt, facilitate the social reintegration of the convict, and safeguard the perpetrator from potential abuses by authorities. Additionally, it is essential to focus on societal protection through crime prevention, ensuring community safety, restoring societal equilibrium via conflict resolution, and fostering a sense of peace (Arief, 2010). Consequently, in every instance of criminalization, it is essential to facilitate conflict resolution that engages victims, perpetrators, and the community in identifying solutions to achieve repairs, reconciliation, and assurances. (Priyatno, 2018).

The existing punishment framework, grounded in the Criminal Code, interprets punishment as a response to the actions of an individual, specifically the offender of a criminal act. This perspective is grounded in the classical and neo-classical schools of criminal law, which assert that the perpetrator's

engagement in a criminal act results from free will (indeterminism). Consequently, the punishment administered is designed as a response to their actions (Sudarto, 2013). Addressing the perpetrator of a criminal act leads to resolving the issue between the perpetrator and the victim. The state can assume the victim's right to seek restitution for the perpetrator's actions through its organs.

This contrasts with the provisions outlined in Law No. 1 of 2023 on the Criminal Code (New Criminal Code), which perceives the perpetrator of a criminal offence as lacking free will (determinism). The interplay between character and environment significantly motivates the perpetrator to engage in criminal behaviour. Consequently, the punishment enforced serves not merely as a form of reward but primarily as a measure to safeguard society. The New Criminal Code outlines the requirements for punishment, which consist of objective and subjective elements and also encompass the purpose of punishment. This aspect has not been incorporated into the Criminal Code.

Incorporating the purpose of punishment has been implemented in developing the New Criminal Code. Article 51 outlines the rationale behind punishment in the New Criminal Code. The article outlines a renewal concerning the purpose of punishment, indicating that it should not solely serve preventive and repressive functions but also aim to resolve conflicts, reflecting the principles of restorative justice. Restorative justice represents a reexamination of the theoretical framework surrounding the purpose of punishment, shifting away from the traditional retributive justice model that focuses primarily on retribution. Restorative justice posits that punishment aims to resolve the case

fairly rather than simply reverting to the original state. It emphasizes restoring positive relationships within society (Sahputra, 2022).

The formulation of the purpose of punishment in the New Criminal Code encompasses two primary aspects: the safeguarding of society and the rehabilitation or development of individual offenders. The elements of community protection against criminal acts encompass objectives like crime prevention, ensuring the community's security, restoring societal balance through conflict resolution and fostering a sense of peace. Conversely, the dimension concerning the protection or development of individual criminal offenders (social welfare) encompasses goals such as rehabilitation, re-education, and resocialization of convicts. These aims are designed to ensure that individuals become ethical and refrain from actions that could harm themselves or others, alleviate feelings of guilt, and safeguard the offender from arbitrary and inhumane sanctions or retaliation (Arief, 2009).

The current punishment system has not adequately addressed conflict resolution, as it predominantly centres on the perpetrator without considering broader implications. The state addresses the perpetrator solely as a means of resolving the case. This situation undoubtedly presents challenges concerning the conflict that emerges from a criminal offence involving the perpetrator and the victim. This contemporary approach to conflict resolution typically employs universal theories and methodologies rooted in Western thought. This approach frequently fails to yield sustainable solutions, resulting in recurring conflicts that do not facilitate positive societal change (Arsensius et al., 2024). A customary offence fundamentally represents an action that contravenes the community's established values of justice and propriety, leading to a disturbance in the

equilibrium and tranquillity of the community. Nevertheless, the resolution of criminal cases through customary law is infrequently pursued despite its potential to address various issues within the criminal justice system in Indonesia. These issues include prison overcapacity, rising crime rates, excessive criminalization, and the resultant insecurity and social disturbances within communities due to the escalating crime levels (Writer's Interview with Zainudin Hasan from Lampung University, 2024).

Customary law is a legal framework that emphasizes resolving disputes and addressing community issues through societal harmony or balance. In contrast, modern law, often derived from European systems, focuses on court-based dispute resolution, which is costly and complex. On the other hand, customary law facilitates the reconciliation of conflicting parties through the guidance of traditional elders, who conduct a thorough review before reaching a decision. Cases involving this type of customary law are characterized by speed, cost-effectiveness, and efficiency (Tomalili et al., 2019).

Settlement mechanisms via traditional institutions consistently emphasize maintaining harmony and social cohesion. In rural life, preserving social harmony is of significant importance, with informal actors focusing on restoring social relations when issues arise. Settlements via traditional institutions exhibit a degree of flexibility. Structures and norms exhibit flexibility to accommodate social changes. Resolving disputes via customary institutions is contingent upon local authority and legitimacy (Ismail et al., 2023). District courts' inadequate integration of customary court decisions frequently results in discontent regarding the perception of justice among Indigenous peoples, potentially fostering resistance to the outcomes of criminal justice rulings. Consequently,

despite the perpetrator receiving a prison sentence from the District Court, it remains evident that upon their return to the community, there are ongoing calls for a customary trial in the Customary Court. This is based on the premise that indigenous peoples' justice has yet to be fully addressed (Suhariyanto et al., 2024).

The resolution of criminal cases through customary law represents a viable method within a law enforcement framework that emphasizes restorative justice principles. This method presents a different solution for addressing specific cases that seek to mediate conflicts between offenders and victims, facilitating the restoration of social relationships among offenders, victims, and the broader community. This restorative process aims to re-establish societal balance and ensure the effective implementation of the law's primary objectives. Consequently, customary law has been recognized as the legal framework within Indonesia. The formulation of Article 2 paragraph (1) of the New Criminal Code underscores the recognition of living laws, incorporating them into the societal context as a legal basis for punishment.

As understood by the Megou Pak Tulang Bawang Indigenous People, the resolution of criminal cases presents a philosophical perspective on reforming Indonesia's national criminal law system. This approach emphasizes that addressing criminal acts extends beyond mere formalities of punishment. Instead, it seeks to achieve a more significant objective: effectively resolving the conflicts that emerge between perpetrators and victims of criminal acts. This is consistent with the principles outlined in Piil Pesenggiri and various customary law texts, which emphasize the importance of kinship and customs and the objective of restoring cosmic balance within society following a case. The

resolution of criminal cases among the Megou Pak Tulang Bawang Indigenous People is conducted through a traditional trial called Peppung. This process is designed to address conflicts between victims and perpetrators, aligning with one of the primary objectives of criminal law as outlined in the New Criminal Code. The philosophy of the Megou Pak Tulang Bawang Indigenous People serves as a critical framework for reforming the national criminal law system through the development and implementation of the New Criminal Code. This initiative is poised to instigate significant shifts in the conceptualization of punishment in Indonesia, particularly concerning the dual objectives of punishment: fostering the rehabilitation of offenders (social welfare) and safeguarding the community against criminal activities (social defence) (Melati, 2019).

Conclusion

As a state governed by law, Indonesia not only incorporates codified legal provisions but also acknowledges and maintains unwritten legal norms that have historically existed and become entrenched in society. This principle is evident in Article 28I of the Constitution, which confirms the acknowledgement of customary laws and traditions that continue to be observed throughout the archipelago. The Megou Pak Tulang Bawang Indigenous People of Lampung are a community that consistently maintains and implements customary law in their daily practices. Their dedication to traditional legal practices is maintained through documented sources, including the Kitab Kuntara Raja Niti, Pelatoeran Sepandjang Hadat Lampong, and Cepalo 12. These texts function as frameworks for legal and ethical standards among indigenous communities, establishing foundational principles of justice, social organization, and cultural identity.

The Megou Pak Tulang Bawang Indigenous legal system exhibits a distinctive methodology in addressing criminal cases. Instead of punitive, they implement a restorative process focused on family-based mediation and reconciliation. This approach serves as both an embodiment of their indigenous philosophy of life—Piil Pesenggiri—and a means to restore cosmic and social harmony. Piil Pesenggiri highlights fundamental principles, including mutual respect, shared responsibility, tolerance, collaboration, and inclusive decision-making processes. The community's worldview is fundamentally shaped by these values, which influence the conceptualization and practice of justice.

Criminal cases in the community are addressed through a customary court referred to as Peppung, overseen by traditional elders known as Punyimbang Adat. The elders function as mediators and adjudicators, utilizing customary principles and the community's consensus. The gravity of the offence determines sanctions and can encompass fines, the ceremonial slaughter of buffalo, or potential exclusion from the customary territory. The resolution concludes with a reconciliation ritual known as Angkon Muakhi or Mewari, where the victim is symbolically integrated into the perpetrator's family. This ritual aims to conclude conflicts while promoting forgiveness, restoring familial connections, and reinforcing social cohesion. The focus is directed towards emotional healing and moral restitution instead of retribution.

This traditional mechanism operates in a manner that closely resembles the restorative justice framework recognized in contemporary legal theory. Upon closer examination, the Peppung process aligns with the objectives outlined in the New Criminal Code of Indonesia, particularly to resolve conflicts by prioritizing restoring relationships among perpetrators, victims, and the wider

community. This model aims to reintegrate offenders into society by fostering mutual understanding and accountability rather than isolating them through incarceration.

Moreover, the traditional method presents tangible benefits compared to the contemporary criminal justice system, which frequently encounters systemic issues like overcrowded facilities and consistently elevated crime statistics. The Megou Pak Tulang Bawang model systematically addresses these shortcomings by emphasizing community-based solutions and proactive social engagement strategies. It represents a justice that aligns with cultural values, demonstrates emotional awareness, and maintains structural viability.

Acknowledging customary law as a legitimate source of legal authority is not just symbolic; it is crucial due to its effectiveness and cultural significance. Article 2, paragraph (1) of the New Criminal Code recognizes the existence and applicability of living law within society, providing a legal basis for incorporating indigenous justice systems into the broader national legal framework. This acknowledgement highlights the significance of legal pluralism and the necessity to align statutory law with local traditions, ensuring that the diversity and dignity of Indonesia's various communities are respected.

The Megou Pak Tulang Bawang Indigenous People illustrate the effectiveness of customary law as a mechanism for resolving conflicts, fostering social integration, and providing moral education. Their practices clearly demonstrate the ongoing significance of Indigenous knowledge systems when confronted with contemporary legal challenges. As Indonesia advances its legal institutions, incorporating customary models should be viewed not merely as a

constitutional requirement but as a strategic necessity for fostering a more inclusive, humane, and culturally relevant justice system.

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Conflict of interest and originality declaration

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