



Restorative Justice Implementation in Cases of Assault: Exploring Kefamenanu Traditional Law Connections

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Abstract—The occurrence of abuse, which occurred between Kornelis Tade and Okto Malaipada at the Kefamenanu Bus Terminal on December 29, 2023, brings attention to the state of law enforcement in Indonesia. The difficulty comes in guaranteeing that the Indonesian legal system can fairly and effectively handle such issues, especially in the execution of restorative justice and the recognition of customary law. Kornelis Tade was mentioned as a suspect in the alleged assault of Okto Malaipada. Although Tade was accused as a suspect under Article 351 paragraph (1) of the Criminal Code, the North Central Timor District Prosecutor's Office chose to pursue restorative justice as outlined in Perja No. 15 of 2020. This study utilizes a normative legal methodology to examine the application of restorative justice in customary law, specifically focusing on the employment of the Bikomi approach. Restorative justice is utilized as an alternative approach to conflict resolution that involves a process of recovery and reconciliation. The North Central Timor District Prosecutor's Office has incorporated restorative justice by merging the principles of restorative justice with customary law. The restorative justice method utilizes the Bikomi technique, which involves enforcing punishments by requiring the payment of fines in accordance with local customs. This implementation of restorative justice exemplifies a commitment to understanding and respecting the cultural norms and ideals of the local community. The handling of this case highlights the importance of integrating favorable laws with community values in upholding justice. The implementation of restorative justice through the Bikomi customary law system showcases the ability of the legal system to achieve reconciliation and restoration, rather than only emphasizing punishment. Thus, resolving such issues improves the linkage between formal and traditional law, resulting in a more inclusive and culturally rooted approach to enforcing the law.

Keywords— Customary law; Persecution; Restorative Justice.

I. INTRODUCTION

The altercation between Kornelis Tade and Okto Malaipada at the Kefamenanu Bus Terminal, situated in the North Central Timor Regency, on December 29, 2023, has highlighted the condition of law enforcement in Indonesia. This case illustrates the complex challenges involved in dealing with criminal charges, especially when it comes to implementing restorative justice and recognizing customary law in society.[1] Kornelis Tade was accused of being involved in the reported attack on Okto Malaipada, who later lodged a complaint with the North Central Timor Police. Although Kornelis Tade was identified as a suspect under Article 351 paragraph (1) of the Criminal Code, the North Central Timor Public Prosecutor chose to apply restorative justice in accordance with RI Attorney General Regulation No. 15 of 2020, which deals with the resolution of prosecution through restorative justice.

The challenge is in the Indonesian legal system's ability to impartially and efficiently address such matters, particularly in the implementation of restorative justice and the acknowledgment of customary law.[2] Concerns also arise over the alignment of the North Central Timor Public Prosecutor's operations with the ideals of justice stipulated in Indonesian law. The crux of the issue in this case lies in the capacity to synchronize restorative justice initiatives with the legal tenets that are applicable in Indonesia.[3] The implementation of restorative justice-oriented law enforcement presents concerns regarding its compatibility with established legal frameworks, particularly in relation to the acknowledgment of customary law.

The pertinent legal foundation encompasses Article 351, paragraph (1) of the Criminal Code, which governs the act of abuse, along with the Republic of Indonesia Attorney General Regulation No. 15 of 2020 regarding the Termination of Prosecution Based on Restorative Justice, which serves as the underlying principle for the actions undertaken by the North Central Timor Public Prosecutor's Office.[4] The Indonesian national legal system, as established by Law Number 12 of 2011, acknowledges customary law principles as a component of its framework.

It is crucial to examine the intricate connection between law, society, and cultural values in this research. Specifically, we need to assess the legal capacity to handle such matters in a fair and efficient manner. The significance and execution of restorative justice are currently receiving a lot of attention, as its principles prioritize the restoration of the relationship between the offender and the victim. Furthermore, the utilization of customary law, namely through the Bikomi (Kefamenanu) customary law approach, in resolving this case prompts inquiries regarding its impact on the process of law enforcement. Direct your attention towards the legal ramifications and the societal and cultural consequences of the legal judgments made. Therefore, addressing situations of this nature encompasses legal dimensions and the societal and cultural forces that influence our everyday existence.

II. LITERATURE REVIEW

A. *Restoratif Justice*

Restorative justice is an approach in the justice system that focuses on restoration and reconciliation between perpetrators, victims, and communities affected by a crime.[5] This approach focuses on repairing the damage caused by crime, restoring disturbed relationships, and promoting the social responsibility of the perpetrator.[6] The main principle is to achieve justice by recognizing and repairing the harm caused by crime rather than simply traditionally punishing the perpetrator.[7] Restorative justice promotes the engagement of all parties involved in conflict resolution through open communication, personal accountability, and active participation. Restorative justice redirects the emphasis from state-sanctioned punishment against wrongdoers to the restoration of the initial circumstances for all parties concerned, encompassing victims, wrongdoers, and impacted communities. Liebman asserts that the primary objective of restorative justice is to reinstate the well-being of all individuals affected by crime, whether directly or indirectly.

Furthermore, this approach also aims to prevent future law violations and criminal acts by improving the relationship between the perpetrator and the victim and rebuilding trust in society.[8] Restorative justice enables all parties concerned to actively participate in the process of reaching a just resolution and restoring any damages resulting from a crime. Restorative justice, as defined in Article 1 Number 1 of Attorney General Regulation Number 15 of 2020, is a method of settling criminal cases that involves the participation of perpetrators, victims, families of perpetrators/victims, and other relevant parties. This method aims to achieve a fair resolution by prioritizing the restoration of the initial condition rather than seeking revenge. Article 4 of the Restorative Justice Regulation provides additional regulations for the implementation of restorative justice. Therefore, the law highlights the significance of engaging all pertinent stakeholders in settling criminal cases and underscores the values of restoration and reconciliation rather than punishment and vengeance.

B. *Customary law*

To be recognized as customary law, customs must be ratified by the tribal chief or local community leader as part of the legal norms that regulate their lives.[9] Ten Haar emphasized that customary law cannot be strictly separated from morality because the two are interrelated and influence each other.[10] These two conceptions are mutually reinforcing, and the moral and ethical norms of the community in question can view the embodiment of decency in legislation as an ideal. Customary law in Indonesia holds a formally acknowledged status within the national legal system, particularly following the implementation of Law Number 5 of 1960, which focuses on Agrarian Principles. Nevertheless, the acknowledgment of customary law remains restricted and is frequently acknowledged solely within specific local jurisdictions. Customary law concepts frequently contribute to the resolution of disputes and conflicts in society, particularly in regions that continue to respect traditions and customs. An examination of customary law in Indonesia reveals that achieving harmonization between customary law and national law remains difficult, particularly in safeguarding individual rights and ensuring the implementation of laws that are just and equitable for all individuals.

The foundation of restorative justice in customary law in Indonesia is established through a range of legal regulations that acknowledge and safeguard the rights of Indigenous peoples and their customary principles.[11] The 1945 Constitution, which is a fundamental aspect of Indonesian legislation, ensures the entitlements of native populations and the preservation of cultural variety within the nation. The constitutional protection is strengthened by further legislation, including Law Number 5 of 1960 on Agrarian Principles and Law Number 39 of 1999 on Human Rights, which particularly govern the safeguarding and acknowledgment of customary law. The application of restorative justice in Indonesian customary law is in accordance with the fundamental principles of criminal law as stipulated in the Criminal Code (KUHP). Although the Criminal Code does not officially mention restorative justice, the idea is consistent with the ideals of rehabilitation, reconciliation, and restoration that are upheld in Indonesia's favorable criminal legislation. Nevertheless, the task of incorporating restorative justice into customary law in Indonesia presents a difficulty in guaranteeing adherence and uniformity with national legal principles and the safeguarding of human rights. Hence, the establishment of restorative justice in customary law in Indonesia requires a meticulous and harmonious integration of indigenous values with globally recognized principles of justice and human rights.

C. Theory of Punishment

In understanding criminal law, three main theories are absolute theory, relative theory, and combined theory. Absolute theory emphasizes the idea of retaliation against criminals as the main aim of punishment, where punishment is imposed as a form of retaliation for the criminal acts committed.[12] Conversely, the idea of relativity regards punishment as a means to attain specific advantages beyond ordinary retribution. This idea posits that punishment is administered with the aim of deterring future criminal behavior or facilitating rehabilitation. The integrated theory aims to consolidate aspects of the two preceding theories. This method seeks to achieve a harmonious equilibrium between ensuring fairness for the wrongdoer and safeguarding the well-being of society at large. Immanuel Kant possessed a unique perspective on the notion of punishment. He believes that punishment is a moral duty that should be implemented regardless of the repercussions or advantages. According to his perspective, punishment serves not just as a means of retribution, but also as a way to enforce absolute moral ideals. Therefore, the punishment should be proportionate to the offense committed, without taking into account utilitarian aspects such as the deterrence impact or societal advantages. Kant's perspective on punishment adds an infinite ethical aspect to the theory, highlighting the principle of ultimate justice when dealing with offenders.

Meanwhile, Bentham maintained that the primary objective of punishment is to generate the most advantageous impact on society. He perceives punishment as a mechanism to deter crime by diminishing an individual's inclination to violate the law. In this scenario, the penalty must be determined by considering the deterrent impact it can have on reducing individuals' inclination to engage in criminal activities in the future. Bentham's perspective diverges from Kant's due to Bentham's emphasis on the pragmatic outcomes of an action, whereas Kant places greater emphasis on absolute moral standards. Meanwhile, Bentham, in his utilitarian perspective, believed that punishment should be evaluated according to its societal consequences and advantages, rather than solely relying on absolute moral ideals.

D. Conflict Theory

According to Kilman and Thomas, conflict is a mismatch or lack of understanding between the values or goals that must be achieved within their person and/or about fellow humans. Conflict will always occur as long as there is interaction or relationship between people or groups.[13] Conflict arises in the sphere of interpersonal communication due to its ability to convey emotions and general messages, as stated by Loretta L. Pecchioni. The communicator and the communicant are connected through emotional similarities, leading to a strong emotional reliance among all individuals involved. Conflict is infrequent in the group domain; but, if it does arise, it typically originates in the interpersonal domain.

Kilman, Thomas, and Pecchioni elucidate that conflict theory emphasizes the significance of a deficiency in comprehension or incongruity of values and objectives as the root cause of conflict among individuals or organizations. In Indonesian legal system, the attention of law enforcement and dispute settlement is frequently directed towards conflict. The legislation now in effect in Indonesia establishes a structure for the resolution of various conflicts and disputes. An instance of a pertinent legislative structure is Law Number 30 of 1999, which pertains to Arbitration and Alternative Dispute Resolution. This legislation establishes the foundation for the resolution of conflicts outside of the judicial system by means of arbitration and mediation. This law enables the parties engaged in a problem to pursue a peaceful resolution without having to undergo a protracted litigation process in a court of law. Furthermore, Law Number 48 of 2009, which pertains to Judicial Power, establishes a structure for the resolution of conflicts using the legal system in Indonesia. This legislation governs the procedural requirements that must be adhered to when resolving a wide range of issues, spanning from civil to criminal disputes.

When analyzing conflicts within the legal framework of Indonesia, the resolution process is guided by the assessment of legal principles, including fairness, legal clarity, and efficiency. Legal practitioners can mitigate

conflict escalation and enhance dispute resolution by comprehending conflict theory and the relevant legal framework.

III. METHOD

This research adopts a normative legal approach to examine the application of restorative justice in criminal acts of abuse connected to customary law. In this case, the Head of the North Central Timor District Prosecutor's Office used Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Perja Restorative Justice).[14] It incorporated the fundamental concepts of Bikomi Kefamenanu City's traditional legal system. The restorative justice procedure entails the restitution of fines through the provision of property, with the aim of returning them to their former state. Although criminal legislation does not officially incorporate customary law, law enforcement tactics may embrace customary law norms or aspects, such as the idea of deliberation to reach consensus. The notion of restorative justice in Perja no. 15 of 2020 embodies the principles of customary law by prioritizing the restoration of the original condition rather than seeking revenge. Inside this particular framework, this research demonstrates the influence of customary law on the advancement of positive law in Indonesia, serving as a mechanism for reform in the enforcement of criminal law inside the nation.

IV. RESULT AND DISCUSSION

A. *Application of Restorative Justice in Criminal Acts of Persecution Linked to Customary Law*

Conflicts and misunderstandings between individuals or groups are often inevitable in community life. These conflicts often result in criminal acts of assault, where one person physically or mentally harms another. When such cases occur, the government intervenes through law enforcement to uphold justice. In handling criminal acts such as assault, law enforcement agencies refer to various legal foundations applicable in Indonesia, including the Criminal Code (KUHP), which contains relevant articles such as Article 351 on assault.[15] In addition, there are several more rules that function as guidelines, including Law Number 2 of 2002 about the Indonesian National Police and Law Number 16 of 2004 regarding the Indonesian Prosecutor's Office. These documents serve as the legal foundation for the management of criminal proceedings in Indonesia. The purpose of these activities is to safeguard victims, enforce the law, and ensure that perpetrators are held responsible. By implementing an equitable and transparent legal procedure, the aim is to instill a sense of security and protection within the society, while also establishing order and justice in social affairs.

A violent incident took place in Kefamenanu Bus Terminal, located in North Central Timor Regency, on December 29, 2023, at approximately 12:30 PM WITA. The incident involved Kornelis Tade and Okto Malaipada and led to a sequence of court proceedings. Following Okto Malaipada's report to the North Central Timor Police, Kornelis Tade was identified as a suspect for allegedly contravening Article 351 paragraph (1) of the Criminal Code (KUHP), which pertains to cases of assault. After concluding the investigation, the Public Prosecutor declared the case files as complete, signifying the presence of ample evidence to proceed with a trial in court.

A noteworthy advancement in this case is the decision made by the Head of the North Central Timor Prosecutor's Office to implement Restorative Justice, utilizing an approach rooted in Bikomi customary law (Kefamenanu), as outlined in the Attorney General's Regulation No. 15 of 2020.[16] Restorative Justice is a substitute method for resolving the issue between Kornelis Tade and Okto Malaipada, with a focus on restoring and reconciling rather than following the usual criminal prosecution process. This alternative case settlement represents an endeavor to implement a more compassionate strategy rooted in community values when dealing with criminal cases, with the goal of attaining a more agreeable outcome for all parties concerned.

The Head of the North Central Timor Prosecutor's Office has demonstrated an endeavor to incorporate the principles of Restorative Justice, as outlined in the Attorney General's Regulation No. 15 of 2020, with the customary legal values that are prevalent in the Bikomi area of Kefamenanu. This is evident in the implementation of restorative justice in the assault case involving Kornelis Tade and Okto Malaipada. The restorative justice process took place on February 27, 2024, at Lopo Sonaf Bikomi Raja Bana, Fatuteke, South Kefamenanu-TTU. This event demonstrated a dedication to creating a comprehensive and unified legal strategy. Restorative Justice was integrated into the traditional Bikomi community's customary law, which influenced the penalties imposed on the offender. The punishments imposed consisted of a fine amounting to Rp. 5,000,000, which was to be paid in the form of one pig, one piece of silver, one blanket, and cash. This technique exemplifies sagacity in comprehending and honoring the indigenous values and customs that predominate in a given society, while simultaneously assuring the administration of justice.

Restorative justice is a justice system strategy that prioritizes the process of recovery and reconciliation among the perpetrator, the victim, and the community impacted by a crime. In this instance, the ideas of restorative justice were employed by integrating them with the customary law of the Bikomi community.[17] This strategy seeks to facilitate opportunities for the offender to assume accountability for their acts, reinstate

relationships between the offender and the victim, and rectify the harm inflicted within the community. During the restorative justice process, the sanctions imposed on the offender are punitive or retaliatory and aim to acknowledge and honor the local values and traditions that hold importance to the community's identity and culture. In this instance, the penalties imposed on Kornelis Tade encompassed the remittance of a fine comprising a pig, silver, a blanket, and cash. This case demonstrates that the restorative justice process goes beyond traditional forms of punishment such as incarceration or fines, and instead recognizes and cherishes the local customs and traditions that are important to the community's identity and culture.

The legal theories at play, including restorative justice theory, customary law, theory of punishment, and conflict theory, contribute to a more comprehensive comprehension of the dynamics of this case. Restorative justice prioritizes the significance of recuperation and conciliation rather than punishment as the main objective in addressing criminal problems.[18] Meanwhile, customary law highlights the role of traditional laws in resolving conflicts according to the local values and traditions prevailing in the community. By integrating these various legal theories, legal practitioners can develop a more holistic and integrated approach to handling criminal cases, recognizing and appreciating the diversity of values and norms within society. The approach is a humane legal breakthrough, acknowledging the importance of blending the objectives of positive law with the local wisdom indigenous communities possess. This approach reinforces that punishment is not the only solution to resolving issues but is one of several alternatives that can be pursued. Therefore, this approach provides an example of how law can serve as an instrument to achieve reconciliation and recovery rather than mere retribution.

B. The Position of Customary Law in the Restorative Concept Justice

The principle of legality in criminal law, a cornerstone of the Indonesian legal system, is enshrined in Article 1, paragraph (1) of the Indonesian Criminal Code (KUHP). This principle, which states that:

"A deed cannot be punished unless based on the strength of the existing criminal law provisions."

This regulation implies that, to classify an act as a criminal offense, a well-defined legal foundation must identify the act as a breach of the law. The principle of legality in the KUHP explicitly prohibits the direct application of customary law to criminal acts. This case is because customary law has yet to be officially recognized in Indonesian legislation, which means it has no authority to serve as a legal basis for criminalizing an act. In other words, a person cannot be punished for violating customary law not formally written in legislation.[2] Nevertheless, criminal law undergoes constant changes in response to societal developments, and in contemporary legal proceedings, customary law is frequently taken into account when dealing with criminal offenders. Customary law values or traits often play a significant role in law enforcement while handling criminal situations. Restorative justice is a notion derived from customary law ideals that prioritizes the restoration of the original state rather than seeking revenge.

The implementation of restorative justice in Indonesian law is seen in the Attorney General's Regulation No. 15 of 2020. This notion embodies the principles found in traditional law, as it highlights endeavors to reinstate and harmonize relations among the wrongdoer, the sufferer, and the society impacted by an offense. While criminal legislation does not officially incorporate customary law, law enforcement operations typically embrace the ideals and characteristics of customary law, such as the principle of debate, to achieve consensus. The principle of legality in criminal law, which stipulates that an act can only be punished if it is explicitly prohibited by existing criminal law rules, has profound ramifications in the Indonesian legal system. This principle serves as a robust basis for maintaining justice and ensuring legal certainty in the conduct of criminal proceedings.

R. Soesilo asserts that the principle of legality is a crucial premise in criminal law that constrains the authority of law enforcement. According to his perspective, the principle of legality serves to restrict law enforcement power within the boundaries of the law, so preventing any misuse of authority or arbitrary implementation of laws.[11] According to Sri Soemantri, the notion of legality is a fundamental aspect of the criminal justice system that ensures the protection of individual human rights. He asserts that the idea of legality guarantees that all law enforcement actions must adhere to explicit and precise legal regulations, thereby safeguarding individual rights. The implementation of this notion of legality is in accordance with international legal norms. William A. Schabas asserts that the notion of legality holds significant importance in international criminal law and enjoys widespread recognition. The principle in international law is known as "nullum crimen, nulla poena sine lege," which translates to "no crime, no punishment without a pre-existing law." Barda Nawawi Arief asserts that in Indonesia, as a state governed by the rule of law, the court thoroughly scrutinizes and renders judgments on all criminal offenses. Nevertheless, in certain cases, criminal transgressions might be handled extrajudicially through the pursuit of reconciliation. According to Eugen Ehrlich, positive law can be advantageous when it aligns with the dynamic and evolving living law of society.

It is crucial to implement positive legislation in accordance with the values and advancements of the living law in society, considering the many viewpoints. While Indonesian criminal law does not explicitly

acknowledge customary law as a legal foundation, its impact on the improvement of criminal law enforcement cannot be disregarded. Thus, customary law can be seen as a mechanism for reform that has the capacity to enhance and broaden the extent of positive legislation in Indonesia. The notion of legality not only forms the fundamental basis of the Indonesian legal system but also embodies worldwide values of human rights. The existence of the legal system guarantees equal legal protection for all individuals and ensures that criminal proceedings are handled fairly and transparently in upholding justice.

V. CONCLUSION

The two conversations lead to the conclusion that implementing Restorative Justice for criminal crimes of abuse connected to customary law is a forward-thinking approach to law enforcement in Indonesia. This strategy enables the implementation of recovery and reconciliation activities among perpetrators, victims, and affected communities with more effectiveness. The integration of Restorative Justice ideas with traditional legal ideals yields a comprehensive and community-oriented approach to managing criminal cases. Article 1 paragraph (1) of the Criminal Code establishes the notion of legality in criminal law, which serves as a strong foundation for ensuring justice and legal certainty in the treatment of criminal cases. The principle of legality safeguards individual human rights and avoids abuse of authority by ensuring that all law enforcement actions adhere to explicit and unambiguous legal regulations. These two principles demonstrate Indonesia's dedication as a nation governed by the rule of law to attain reconciliation, recovery, and justice in law enforcement, while simultaneously upholding the local values and cultural variety present in society. The legal framework for implementing this concept consists of Law Number 2 of 2002 regarding the National Police of the Republic of Indonesia, Law Number 16 of 2004 regarding the Prosecutor's Office of the Republic of Indonesia, and Attorney General Regulation No. 15 of 2020, which governs Restorative Justice.

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