

Conference Paper

Customary Law "Bolit Mate Nawar Uman" As "Living Law" in West Kutai Regency, East Kalimantan.

Nu'man Aunuh, Syariful Alam, Tarisa

Universitas Muhammadiyah Malang

ORCIDNu'man Aunuh: <https://orcid.org/0000-0001-7784-1076>**Abstract.**

Customary law is a legal system that has been used by the community for a long time and it has been passed down from generation to generation. Bolit Mate Nawar Uman (BMNU) is a customary law used by indigenous people in West Kutai Regency, East Kalimantan. Even though there has been a shift in values and norms in society, BMNU customary law is still recognized and used by local communities in resolving legal disputes. Crime always appears where there is society, one of which is murder which, in this case, is studied according to the science of law and is associated with social life. The issues raised are how BMNU customs become living law when dealing with criminal acts of murder in West Kutai Regency and how BMNU customary sanctions can provide a value of justice for local indigenous people. This study uses a sociological juridical method with primary legal materials and secondary legal materials as well as a statutory approach and a case study approach. The results of the study show that the existence of BMNU customary law applies when the crime is committed within the territory of the customary territory and the victim of the crime of murder is a descendant of the Dayak tribe, West Kutai district. The application of customary sanctions for the criminal act of murder was tried by the method of deliberation between Dayak customary institutions and indigenous people in general.

Keywords: customary law, Bolit Mate Nawar Uman, living law

1. INTRODUCTION

Customary law was originally pointed out by Snouck Hurgronje in his 1983 book *De Atjehnese*. The term "customary law" was one of the laws that only applied to native Indonesians (earth sons) and foreign easterners during the Dutch East Indies era. Then it became legally meaningful after C. Van Vollenhoven wrote in his book entitled *Adatrecht*. C. Van Vollenhoven, who conveyed for the first time that customary law is the law that applies to native Indonesian people and makes customary law an object of separate subjects and knowledge in positive law [1],[2].

Customary law is also known as one of the positive laws in Indonesia where customary criminal law, the country of Indonesia is a country whose people have a variety of

Corresponding Author: Nu'man
Aunuh; email:
nukman@umm.ac.id

Published 5 January 2024

Publishing services provided by
Knowledge E

© Nu'man Aunuh et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

OPEN ACCESS

customs and cultures that are different from the current situation of the Indonesian state where there is diversity of Legal Pluralism (Law), where applied simultaneously to the development of the life of these indigenous peoples ([3]&[4]). Recognition of the existence of customary law has been contained in the 1945 Constitution of the Republic of Indonesia article 18B clause (2) and article 28I clause (3) ([5]&[6]).

The customary law community in West Kutai has a strong bond with customary law in the area. This is because customary law still has an existence and guidelines for people to behave, lead a life, and develop habits. It is a positive value for those who live in West Kutai, and they have ties based on ancestral origins and/or similarity of residence. There is a strong relationship with land and the environment, as well as a value system that determines economic, political, social, cultural, and legal institutions and uses a certain area for generations. The community in West Kutai Regency is a customary law community, the majority of which is occupied or inhabited by the Dayak customary law community. The Dayak tribe is very visible, that is, seen from the way they dress, the way they live their lives, and the ceremonies or rituals they perform. In addition, they also have a distinctive language and Dayak dances. Various kinds of customs are part of their culture [7].

Based on clause 8 clause (1) letter c Regional Regulation of Kutai Barat regency Number 24 of 2001 concerning empowerment, preservation, protection and development of customs and customary institutions in the Region of West Kutai regency has a position including "resolving disputes involving civil and criminal cases in every level of the Customary Institution Organization as long as the settlement does not conflict with the applicable laws and regulations"[8]. In the customary law system in West Kutai regency, there is a special institution entrusted by the West Kutai regency government to carry out tasks to assist the government in resolving customary issues or other matters that intersect with surrounding customary law. This institution is known as the Greater Customary Institution of West Kutai [9].

The Dayak Benuaq Customary Law Society resolves criminal cases of murder under customary law, this is already a traditional Indonesian customary law culture, because for the people the existing customary system should be obeyed and implemented. Then the large customary institution of West Kutai will hold a customary trial against the criminal act of murder. The perpetrator was considered to have violated customary provisions in the West Kutai region, namely the Bolitn Mate Namar Uman (BMNU) or also known as Bolitn Mate Pusit Daya [7],[10].

The existence of BMNU customary sanction, which is still recognized by the people in West Kutai Regency, is very interesting to study. This is because in its development when

compared to various other regions in Indonesia, even though there are still customary laws, their application is not carried out properly as a living law in a society that is characterized by local communities or at least provides forms and characteristics of local wisdom originating from nature and the cultural traditions of the people.

The researcher intends to discuss the Bolit Mate Namar Uman's customary sanctions for the crime of murder in West Kutai regency and to what extent the conception of their application to the crime of murder in terms of customary criminal law. Bolit Mate Namar Uman's local legislation in West Kutai regency.

2. METHODOLOGY

The research method used is Juridical Sociology, namely legal research using secondary data as initial data, which is then followed by primary data in the field or in the community. The statutory approach (statute approach), approach by going into the community, and the concept approach are used for data collection, study of documents or library materials and interviews. Moving on with this approach, the researcher will obtain information from various aspects regarding the problem being tried to find an answer by carrying out a comprehensive and holistic assessment. Research methods affect the analysis of problems that will be answered scientifically by researchers.

The legal material analysis technique used is by analyzing and interpreting each legal material that has been collected and then processed systematically and grammatically, followed by an in-depth study to get a clear answer as the problem formulation that has been prepared. Systematic interpretation is interpreting a law by connecting one article with another in a law or with another law. Meanwhile, grammatical interpretation is interpreting the law according to the meaning of the words (terms).

3. RESULTS AND DISCUSSIONS

Customary Law Communities, hereinafter abbreviated as CLC, are communities in West Kutai regency that have distinctive characteristics, live in groups in harmony according to their customary law, have ties to ancestral origins and/or the same place of residence, have a strong relationship with land and the environment, as well as the existence of a value system that determines economic, political, social, cultural, and legal institutions, and utilize a certain area for generations [11]. Within the customary law order, there are also customary institutions that oversee and have duties and functions as stipulated in the Regional Regulation of West Kutai regency Number 13 of 2017 concerning the

Implementation of Recognition and Protection of Customary Law Communities Clause 15 letter b, namely: “resolving disputes concerning customary law and local CLC customs.” And letter d: “implementing customary law, customary sanctions, and customary justice in accordance with local CLC customs”. This is the regulation that is the reference for indigenous peoples and customary law to exist in the West Kutai area because it has a clear legal umbrella and has indeed been recognized by the state [8].

The Ministry of Home Affairs also issued a regulation that supports efforts to protect and recognize indigenous peoples, namely Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples. In this case, the Provincial Government of East Kalimantan also supports and provides support with the Regional Regulation of the Province of East Kalimantan Number 1 of 2015 Concerning Guidelines for the Recognition and Protection of Customary Law Communities in the Province of East Kalimantan as a regional regulation on the provincial level, which becomes the legal umbrella for regional regulations under it [12].

BMNU customary law (*bolitn mate posit daya*) is customary law designation in the Dayak tribe, which is a customary law norm in cases of premeditated murder committed against the Dayak people themselves. The existence of BMNU law can be seen clearly in the case of the premeditated murder committed by Munawir against Madeline ([10]&[13]). The resolution of the premeditated murder case Munawir committed against Madeline demonstrates the existence of BMNU Human Law. The Kutai Barat Customary Institute then decided to hold a traditional trial because the offender broke BMNU customary law, which, in their opinion, felt that Munawir denigrated the nature of women, could have caused disapproval among families, and could have the murder case was the subject of a disagreement. The customary sanction received was a fine of Rp. 1.89 billion, with the customary sanction of 4120 antang, or jars, of Rp. 1.848 billion and costs for the Adat Paramp Api and Kenyau Etus Asakng Death events of Rp. 250 million, until the results of the customary trial finally sanctioned Munawir with a fine. This punishment must be carried out for a maximum of six months. The murder perpetrated by Munawir was investigated by the West Kutai Police in addition to getting customary punishments because it was a case that resulted in successful legal criminal punishments. Munawir be charged with clause 340 of the Criminal Code subsidiary clause 338 of the Criminal Code subsidiary clause 351 (3) of the Criminal Code namely premeditated murder with a sentence of life imprisonment ([14], [13]&[10]).

Based on the case described above, it shows that the existence related to the application of Bolit Mate Nawar Uman has long coexisted in the Dayak community in terms of imposing a criminal sanction that is a fine sanction in the form of “materialistic”

[1]. Customary law regulates society to act naturally as human beings and not commit acts that could harm others both physically and mentally. In addition, customary law also states the consequences that will be given if someone tries to disobey or consciously violates the customary rules that have been agreed upon. In the case of the murder that occurred in West Kutai, which belongs to the customary law community, it is only natural that the perpetrators receive customary sanctions for violating customary provisions in the West Kutai area, namely BMNU Customary Law [4].

The enactment of this BMNU customary law applies to all Dayak people and as long as the action is carried out in the West Kutai territory, while the authority is a traditional institution. Violation of this customary law is subject to singer sanctions. Sanctions imposed in the event of a violation of customary law are in the form of money or other objects. In determining the light weight of the sentence, the adat institution will look at the cause of the death. Because in Dayak customary law itself the sanction of murder does not all have the same amount of fines [15]. For example, in cases of positive law, namely the occurrence of ordinary killings which in their meaning (Dayak customary law) can occur in hunting animals in the forest, such as people who accidentally die from being hit by animal traps as long as the trap is not marked or warned or a trap can also be placed in an inappropriate place, the perpetrator will receive a fine which is different from the person who has placed a trap in the appropriate place or has given a sign or warning against animal traps in the forest. Then the perpetrator who is negligent will receive customary sanctions, but the person who traps the animal is in accordance with what it should be but accidentally grabs the victim, the victim is considered a suicide. Based on the interview where "Customary law also has a sequence starting from the planner" [10].

Customary criminal law can apply even though it is not written in the form of statutory regulations because the nature and legal sanctions and the method of resolution are in accordance with the times and conditions of society, or, in other words, customary criminal law is a dynamic law [16],[17]. Related to the implementation of customary sanctions in Kutai Barat, it has been illustrated that although there is no law that recognizes them, in daily society the implementation of customary sanctions continues to run in accordance with public awareness and a sense of justice that is lived by the community. In West Kutai itself, the Medelin case, where the perpetrator was subject to customary sanctions, namely Bolit Mate Nawar Uman customary law in the West Kutai area, is highly recognized by all of the West Kutai indigenous people. Dayak customary law is recognized by the community because it was applied before the existence of positive law. Even though the enactment of customary law at this time has changed the

civilization, it is not the same as in the period before the birth of positive law, namely an eye for an eye for a tooth for a tooth, where currently customary law is replaced by gawai, or urn, where the jar is given an amount of money (the price of the gawai) that has been agreed upon by the customary institution for the case that occurred at that time. The case of the murder that occurred in West Kutai is subject to positive law and customary law; both laws are recognized by indigenous peoples [18].

It is vital to comprehend how state and customary law interact and where customary law fits into the positive law. Customary law communities and their customary law do not conflict with the Republic of Indonesia's existence as a political and legal entity, according to the Republic of Indonesia's 1945 Constitution revision. While the provisions of Indonesia's current laws and regulations are followed in substance while enforcing customary law and positive state law, we believe the goal of this legal study question has been achieved [19]. The literature's data demonstrates that the execution of customary law does not conflict with the state's positive law, highlighting the fact that there is nothing that makes

4. CONCLUSION AND RECOMMENDATION

The results showed that Bolit Mate Nawar Uman (Bolitn Mate Pusit Daya) is the customary law of the West Kutai Dayak tribe which has been used for generations to decide criminal offenses among the Dayak people of West Kutai Regency. This law applies to people who live in the neighborhood. Subsequent research can examine the differences in the deterrent effect felt by criminal offenders who are punished according to the criminal law of the Republic of Indonesia and customary law such as Bolit Mate Nawar Uman.

References

- [1] Sri Hajati, Dwi Poespari E, Soelistyowati, Joeni A, Widowati C, Moechthar O. *Buku Ajar Hukum Adat, Pertama*. Jakarta Timur: Kencana, 2019.
- [2] Risyat A, Muliani R, Redhani ME. Constitutional jurisdiction review of the existence of indigenous law communities in Indonesia. *Const Law Soc*. 2022;1(1):25–40.
- [3] Efendi L, Gunawan BP, Supangkat A. Pengakuan Putusan Peradilan Adat Kutai Barat dalam Sistem Peradilan di Indonesia. *J Reformasi Huk Cogito Ergo Sum*. 2020;3(1):51–60.

- [4] Hajati S, Dwi Poespari E, Moechthar O. "Hukum Adat," in Pengantar Hukum Indonesia, Kedua., Surabaya, Jawa Timur: Airlangga University Press, 2019, p. 261.
- [5] MKRI, "RESUME PERMOHONAN PERKARA Nomor 017 / PUU-IV / 2006 Perbaikan Tanggal 12 September 2006," 2006, no. 12 September 2006.
- [6] MPR RI, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Kesembilan. Jakarta: Sekretaris Jendral MPR RI; 2020.
- [7] Johansen P, Natsir M, Juliatri B. Adat Dan Hukum Adat. Pada Komunitas Adat di Kabupaten Kutai Barat Provinsi Kalimantan Timur. Bandung, Jawa Barat: CV. Media Jaya Abadi, 2019.
- [8] K. T. Bupati Kutai Barat, "Peraturan Daerah Kabupaten Kutai Barat No 13 Tahun 2017 tentang Penyelenggaraan Pengakuan dan Perlindungan Masyarakat Hukum Adat."
- [9] Pemkab Kutai Barat. Peraturan Daerah Kabupaten Kutai Barat No. 24 Tahun 2001 tentang Pemberdayaan, Pelestarian, Perlindungan, Pengembangan Adat Istiadat dan Lembaga Adat dalam Wilayah Kabupaten Kutai Barat. Pemerintah Kabupaten Kutai Barat, Sendawar, Kutai Barat; 2001.
- [10] Khairunnisa CF, Pratiwi EA, Febriyanti N, Fitriono RA. "Penerapan Hukum Adat Boiltn Mate Namar Uman Dalam Prespektif Kriminologi." J Pendidik Sociol dan Hum. 2021;12(2):94. <https://doi.org/10.26418/j-psh.v12i2.49421>.
- [11] Anugrah Pratama W. Paradigma Hukum Adat (Hukum dalam Perspektif Masyarakat Hukum Adat). Bogor, Jawa Barat: Guepedia, 2019.
- [12] Mendagri, "Peraturan Menteri Dalam Negeri No 52 Tahun 2014 tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat," 2014.
- [13] Ramdhani J. Bunuh Wanita di Kutai Barat, Pria ini Disanksi Adat Rp 1.89 Miliar. Detiknews; 2021.
- [14] Sendawar, "Munawir Divonis Hakim Hukuman Penjara Seumur Hidup," Infokubar.id, 2021.
- [15] Institut Dayakologi. Adat Istiadat dan Hukum Adat. Jenis-jenius Denda Adat; 2017.
- [16] Holle E, Nendissa R, Matitaputty M, Matuankotta J. Urgensi Pembentukan Peraturan Desa Adat Hutumuri Tentang Pengelolaan Sumber Daya Pesisir Berbasis Masyarakat. J Dedik Huk. 2022 Apr;2(1):24–37.
- [17] Tongat T, Prasetyo SN, Aunuh N, Fajrin YA. Hukum yang Hidup dalam Masyarakat dalam Pembaharuan Hukum Pidana Nasional. J Konstitusi. 2020 May;17(1):157–77.
- [18] Harsanto N. Sistem Hukum Indonesia, Kedua. Jakarta: Universitas Terbuka, 2012.

- [19] Suryawati N, Syaputri MD. Harmonization of the application of customary law and positive law in village communities of Malang Regency. *Int J Appl Bus Int Manag.* 2021;6(2):1–12.