

Restoration of Justice Based Perwatin Deliberation in Lampung

Slamet Haryadi*, Ery Setya Negara, Suwardi

Law Faculty, Muhammadiyah Kotabumi University, Kotabumi, North Lampung Regency, Lampung, Indonesia

* E-mail of the corresponding author: slametharyadisukandar@gmail.com

Abstract

Mass violence in Central Pekurun village in Abung Pekurun sub-district, North Lampung regency, resulted in injuries and fatalities. The Perwatin Deliberation, as the leading institution for the implementation of Lampung custom, succeeded in recovering the situation by making amends. The perpetrators have provided customary money refunds of 24 million IDR, slaughtered two buffaloes, and customary fines of 60 million IDR. The criminal justice system knows that it has been resolved according to customary law provisions to process the perpetrators until punished to 4 years six months. Then it creates legal injustice. The current development of the theory of punishment objectives has shifted from a retributive approach to a restorative approach. However, law enforcement officials are still based on the principle of absolute legality. The criminal justice system should no longer force someone to be punished by criminal law. In North Lampung Regency, restoring a sense of community justice has been going on since time immemorial as a living law carried out by traditional leaders who are members of the perwatin deliberation. It is still running and relevant to penal restorative justice mediation. Law enforcement officials should accommodate this perwatin deliberation as penal mediation for the Lampung Abung indigenous people. Socio-legal, the position and authority of the perwatin deliberation as penal mediation is represented by the elements of the perwatin deliberation, namely traditional *punyimbang* from the family level and relatives to the royal clan so that all parties obey the decisions made. Moreover, in the new Criminal Code, the principle of legality has experienced an expansion with the enactment of the living law.

Keywords: Justice Restoration, Mass Violence, and Perwatin Deliberation

DOI: 10.7176/JLPG/129-05

Publication date: February 28th 2023

1. Introduction

The incident of eight years has passed, but it is still in the memories of Pekurun Tengah villagers. An invitation to commit mass violence was spoken in the local language and delivered through the mosque's speakers at midnight, around 01.30 WIB, on April 16, 2014. "Unyin gham ragam Pekurun, minjak unyan gham agow namuke ulun anjak Selagai hejow sai kak matei gahm peteike say hijow Lagei". ("All the people of Pekurun get together, we all want to find people from the village while the other one is dead, we will kill this one") (Kotabumi District Court Decision No.197/Pid.N/2014/PN. ktb. January 7, 2015).

Mass violence in Pekurun Tengah village in Abung Pekurun Subdistrict, North Lampung Regency, resulted in injuries and fatalities (death) in 2014. Traditionally, the conflicting parties met and made peace before the *Perwatin* deliberation witnessed by sub-district and regency government officials in signing a letter of a peace agreement.

In peace, the *Perwatin* deliberation agreed that the offender would pay restitution in the form of "*dau*" (money) to the victim from Selagai Linggai village as follows: (1) customary money Rp. 24,000,000- (two hundred and forty million rupiahs); and (2) slaughtering two buffaloes as a customary sanction. (3) The perpetrators were subject to the sanction of paying a fine in the form of money (*dau*) in Rp. 60,000,000 (sixty million rupiahs) to be given to the victims of Selagai Linggai village through one of the *punyimbang* (traditional leaders) of Pekurun Tengah village.

The peace agreement, not only the conflicting parties but ritually and sacredly becomes customary provisions that must be obeyed by all traditional leaders (*punyimbang*) from the family level to more significant kinship, namely, buay, tiyuh, tribe and clan and community local customs. All of them agreed to restore damaged social relations to normal.

Even though the decision of the *Perwatin* Deliberation is binding on traditional leaders and the indigenous people of the two villages of Pekurun Tengah and Selagai Linggai, the reality is not with positive criminal law. The criminal justice system continues to make incidents of mass violence a criminal act that must be held accountable to its creators and subject to appropriate punishment for the perpetrators. Regardless, law enforcement officials process and make peach decisions that result. The judge sentenced him to 4 years and six months in prison. It can be felt that the weight of the responsibility of the perpetrator and his family is to bear the sanctions, which restitution is not tiny, and the punishment is long.

It is not clear who gets justice and injustice based on the decisions of the *Perwatin* Deliberation and court decisions, the victims or the perpetrators. The fact is that customary law as the living law does not have a place in the perspective of positive criminal law by law enforcement officials. This reality shows that the theory of

restorative justice is not adhered to by law enforcement officials administering the criminal justice system, except for the theory of retributive criminal purposes (retaliation).

Theoretically and implementatively, criminal law and law enforcement have undergone a paradigmatic change. The notion of criminal sanctions is not the only objective of criminal law. The contemporary theory of criminal law purposes, put forward by Hiariej (2016), is the theory of restorative justice. Theory of Restorative Justice or the theory of restoration of justice, is an approach to resolving cases according to criminal law which deliberately provides an opportunity for the parties to the perpetrator and the victim to restore their relationship together by providing an opportunity for the perpetrator to come up with a way to repair the damage done to the victim (Gravielides, 2007).

The involvement of perpetrators of crimes, victims, families of victims or perpetrators and other parties in the theory of restorative justice is the substance of seeking a fair solution by emphasizing restoration to its original state and not retaliation (Zulva, 2014). Imprisonment, either as a means of reprisal (Walker, 1971) means of purpose (Sholehuddin, 2007) or a combination of both (Priyatno, 2003). It does not fit into the concept of rehabilitation, repair (Zulva, 2011). In fact, it has led to results that are counterproductive to the purposes of the criminal justice system.

The theory of the purpose of Restorative justice punishment is very appropriate and relevant to the peaceful resolution of the *Perwatin* Deliberation on the Lampung Abung custom. The criminal justice system should have stipulated decisions resulting from the *Perwatin* Deliberations as the living law. Thus law enforcement officials have a sense of justice and legal certainty recognizing and accommodating the law that lives the Lampung Pepadun indigenous people.

Based on the description of the background above, the writers are interested and focused on finding answers to the legal foundations of *Perwatin* deliberations as a form of restoration of justice (restorative justice) in resolving various violent conflicts that occurred in the Lampung Abung community.

Based on the problem identification, the writers are interested in and focused on finding answers to the legal foundations of *Perwatin* deliberation in carrying out restorative justice with customary deliberations.

This study used a socio-legal approach. Law is a system of systematic analysis of the overall meaning of the social actions of traditional figures (*punyimbang*) in natural, daily settings to obtain an understanding and interpretation of their thoughts and actions in building and maintaining and carrying out their roles in restoring the atmosphere of social harmony in the village in the region. In other words, socio-legal research aimed to understand and reconstruct the thoughts of traditional leaders who were members of *Perwatin* deliberation to create a social consensus accepted by the community and the conflicting parties.

The data were obtained from discussions and interviews with several traditional leaders, such as *punyimbang*, who were involved and followed the dynamics of the *perwatin* deliberation to resolve social conflicts. Researchers conducted dialogic and dialectical communication to obtain constructive thinking, and reconstruction was carried out together with traditional leaders and community leaders to obtain quality information and avoid inaccuracies.

The analysis of this research used interpretive analysis with the following stages. The first stage described the structure and construction of words and texts that were autonomous and intact. The second stage objectified the structure of words/sentences in terms of form, sound, and theme—the third stage classified layers of symbols and words as well as text. The fourth stage is the interpretation of terms, signs and words contained in symbols. The fifth stage interprets the text according to the dominant concept in the text about the restoration of justice.

2. Problems

Based on the problem identification, the writers are interested in and focused on finding answers to the legal foundations of *Perwatin* deliberation in carrying out restorative justice with customary deliberations.

3. Research method

This study used a socio-legal approach. Law is a system of systematic analysis of the overall meaning of the social actions of traditional figures (*punyimbang*) in natural, daily settings to obtain an understanding and interpretation of their thoughts and actions in building and maintaining and carrying out their roles in restoring the atmosphere of social harmony in the village in the region. In other words, socio-legal research aimed to understand and reconstruct the thoughts of traditional leaders who were members of *Perwatin* deliberation to create a social consensus accepted by the community and the conflicting parties.

The data were obtained from discussions and interviews with several traditional leaders, such as *punyimbang*, who were involved and followed the dynamics of the *perwatin* deliberation to resolve social conflicts. Researchers conducted dialogic and dialectical communication to obtain constructive thinking, and reconstruction was carried out together with traditional leaders and community leaders to obtain quality information and avoid inaccuracies.

The analysis of this research used interpretive analysis with the following stages. The first stage described

the structure and construction of words and texts that were autonomous and intact. The second stage objectified the structure of words/sentences in terms of form, sound, and theme—the third stage classified layers of symbols and words as well as text. The fourth stage is the interpretation of terms, signs and words contained in symbols. The fifth stage interprets the text according to the dominant concept in the text about the restoration of justice.

4. Discussion

4.1. *Perwatin Deliberation*

The Perwatin Deliberation is an important institution in the governance of the implementation of customs by social actors who have authority within the family, relatives and indigenous peoples (Puspawidjaja, 2006) and is characterized as a traditional leader (Nisbet, 1993). This Perwatin deliberation has a function to discuss a problem to reach a decision and joint resolution for the common/public interest (Syarakawi, 2012). Perwatin refers to a balance institution, that is, social actors who become traditional balancers/traditional councils/traditional leaders/tuha khaja/traditional leaders.

These punyimbang customs who sit in the perwatin deliberation have the right and obligation to lead all activities of routine administration or matters directly related to gathering and assembling traditional leaders in a customary deliberation. As a counterweight to adat, it is obligatory to foster and maintain the stability of the customary government in harmony with the indigenous people it leads (Hadikusuma, 1989).

This Perwatin institution has great authority within the family, relatives, and indigenous peoples (Ikrom). Perwatin deliberations are based on the balance system, having a historical background in bloodline family relations with (genealogical) the position of the eldest son as the head of the family (patriarchy) who comes from the central (nucleus) family which is the stronghold of family leadership at the lowest level. Hierarchically, the family leadership system (kepunyimbangan) from the family level widens the balance of relatives. Then it widens the leadership of the tribal punyimbang, even more broadly to the village leadership (anek, pekon) and, most broadly, the cultural leadership (punyimbang) (Puspawidjaja, 2006).

The Lampung Abung customary balance institution is known as the Perwatin Deliberation. It has the authority to form rules that can guide of indigenous peoples. This method contains what is and is not allowed (Cepalo). The rule was determined in the Perwatin deliberation, which was attended by the customary lawmakers (Puspawidjaja, 2006).

Perwatin deliberations substantially are customary deliberations (Syarakawi, 2012), while the meaning of custom is a habit. In Indonesia, the custom is defined as a habit that continuously becomes a repeated behavior by community members. From generation to generation, the same behavior becomes a guide followed and obeyed as customary law (Siombo & Wilujeng, 2020).

Thus, Perwatin Deliberation has the meaning of deliberations carried out by leaders (punyimbang) in the hierarchy of indigenous peoples who prioritize deliberation and agreement in resolving conflicts always prioritize resolving in harmony and peace with deliberation and agreement (Siombo & Wilujeng, 2020)

4.2. *Penal Mediation Alternative Perwatin Deliberation*

Restorative justice is a new understanding that mistakes do not have to be punished, as well as being used as an approach to the culture of a society in understanding wrongdoing (Zehr, 2002). Among them, a) crime is a deviation against humanity and in its relationship between humans, b) breach creates liability and c) correcting mistakes is the main obligation (Zehr, 2002).

Albert Eglash first put forward the term restorative justice in 1958 in the context of criminal justice. Albert suggests that there are three types of criminal justice provided: (1) retributive justice, based on punishment; (2) distributive justice, based on the treatment of offenders; and (3) restorative justice, based on restitution (Ness & Strong, 2010).

Both the punishment and treatment models 1 and 2 focus on the perpetrator's actions, deny the victim's participation in the judicial process and only require passive participation by the perpetrator. Restorative justice, on the other hand, focuses on the detrimental effects of the perpetrator's actions and actively engages victims and perpetrators in the process of reparation and rehabilitation (Ness & Strong, 2010).

Marshall (1999) described restorative justice as a process of meeting parties who have a common interest to resolve a violation and seek solutions as a result of the violation and its implications for the future.

Wright (1991) believes that the restoration of justice as a new model is to do as much as possible to restore the situation. Attention will be paid to outcomes and developing processes that respect the feelings and humanity of both victims and perpetrators. Crime, in the view of restorative justice, is damage that causes harm to society in the form of injuries in interactions in society. Losses caused by crime disrupt existing social institutions, causing an imbalance in social life.

Perwatin deliberations on the Lampung Abung indigenous people can be said to be an alternative form of problem-solving criminal law. The perwatin deliberation is in line with the concept of restorative justice. What Perwatin does is essentially a facilitator who tries to restore social injuries caused by damage caused by the

crime (mass violence) to be restored immediately so that it becomes normal again.

Perwatin Deliberation as a criminal mediation concept has ideas and working principles with the “Traditional Village or Tribal Moots” model (Nawawi, 2012). According to this model, the entire society meets to prevent criminal conflicts among its citizens. The characteristics of this model are more appropriate to be applied to indigenous peoples. It is not surprising that the indigenous people of Lampung Abung implemented this mediation because they have similarities; it was even implemented hundreds of years ago.

Resolution with a model approach like this heals the trauma from the suffering experienced by victims and real responsibility from the perpetrators and unites these parties to become a law-abiding society (Johnstone & Ness, 2007). It is always directed to provide benefits to society at large. The fact is relevant to the Perwatin Deliberation in solving mass violence, the restitution provided by the perpetrators is not only for victims but also for indigenous peoples, such as paying restitution in the form of “dau” (money) to Kampung Selagai Linggai in the amount of Rp. 24,000,000- (two hundred and forty million rupiahs) and slaughtering 2 (two) buffaloes as a form of customary sanction and as a form of peace, the party from Pekurun Village is subject to sanctions to pay a Dau fine of Rp. 60,000,000, must be paid by the party from Pekurun Village to the Selagai Village parties through custom balance.

Criminal mediation through the Perwatin Deliberation is not appropriate to apply to people outside the Lampung Abung custom or modern society unless the perpetrator is first enslaved (incorporated by custom). The Perwatin deliberations, which so far have significantly contributed to and inspired the modern model, are not considered by the state as an alternative to mediation. Currently, penal restorative justice mediation, which is essentially the same as the Perwatin Deliberation, is recognized as an alternative to solving problems in the field of criminal law, which law enforcement officials should understand and understand. When law enforcement officials have reached a peaceful settlement, they no longer need to carry out criminal justice.

Criminal justice system officials, if they have a restorative view rather than a retributive one, will think of replacing the construction of criminal imposition with community-based remedies, namely, together, healing, fixing, and recovering victims and perpetrators of crimes.

Lampung pepadun customary law can be interpreted as a community response based on customary law in resolving violent conflicts. For communities that still vigorously defend customary law, the operation of customary law in conflict resolution will determine success. Sudiman Kartohadiprodo in Trisno Raharjo stated: “If the authorities decide to maintain customary law, even though that law has receded. Then the determination will be useless (Raharjo, 2010). On the other hand, if it has been determined that customary law must be replaced while the people still obey it, then the state Judge will have no reason to deny it (Raharjo, 2010).

Perwatin deliberations as an alternative to criminal mediation, from the start, aimed at reconstructing the imbalance and finding related parties to be jointly responsible for restoring the situation to normal and harmony through providing restitution to victims and providing forgiveness to perpetrators of crimes. Through the process of sitting together in a deliberation forum to find common ground for peace by forgiving each other and providing restitution for victims as ransom in perwatin deliberations (Nawawi, 2012).

Resolving violent conflicts through perwatin deliberations is the right step taken by traditional leaders, village/village heads, and local social actors, even though the violent conflict that occurred resulted in the death of one of the residents besides being injured. The regency government and criminal justice institutions support restorative justice efforts. However, this approach was not yet familiar to criminal justice institutions in the regions because, usually, restorative justice focuses more on minor criminal cases. Perwatin deliberations have become increasingly functional in the practice of conflict resolution to the presence of the theory of restorative justice.

The Perwatin deliberation had lived with its local wisdom to resolve violent conflicts in the Lampung Indigenous community long before this country was born. By taking peace, justice will be more easily achieved. It can accommodate the values of a society that sees that solution is returning the situation to its original balance, not merely a punishment.

The Perwatin deliberation process, allow every decision to be resolved thoroughly, quickly, easily, and simply. Violent disputes that occur between members of indigenous peoples or other violations committed by indigenous peoples are usually resolved in harmony and peace, where the traditional leader tries to get the two parties to achieve harmony again through customary deliberation and consensus.

4.3. Perwatin Deliberation Mechanism in Lampung Pepadun Customary Law

The work of Perwatin institution in restoring justice can be described as follows:

4.3.1. Ngughau (Inviting)

Lampung pepadun customary law implemented procedures in various places, especially Pekurun Tengah village and Selagai village. They learned that there was a violent conflict between villages, informally, several social actors. All village heads, community leaders, and traditional leaders met first with traditional leaders who have the most authority from genealogy and knowledge and are considered traditional leaders in their respective

villages who convey information to one another and report on developments in the violent conflict that has occurred.

These social actors at the house of the traditional leader or the house of the village head discussed the issue of social violence from a social and customary law perspective. Furthermore, it concluded that deliberations were done at the Perwatin meeting by assigning one of the social actors who was trusted by the head of the Perwatin office to do the task of being a liaison between other social actors as members of the Perwatin office in each village by invitation (*mengurau*).

The substances of the invitation conveyed to the traditional leaders' intercessors read as follows: "assalamualaikum sikam di kayun ngurau jamo suttan rajo di lapping ago puy pusekam dak jenganan no suttan bumi ruwai jurai ba'da maghrib ulah wat sai ago di bebalah dan mupasah waalaikumsallam" ("... I was ordered to invite all the Suttan Raja in Lampung to please gentlemen to the customary hall of Suttan bumi ruwah jurai after magrib to discuss and deliberate on something...").

4.3.2. Mupasah (Deliberation)

The mupasah or deliberation is carried out by the punyimbang, who, in a hierarchically, represent family, relatives, ethnicity, and culture, it is called the Perwatin deliberation. The traditional leaders of the two villages separately held meetings to discuss how to find a solution to find the best way.

The North Lampung Police, who knew the unsafe conditions, took security measures against the perpetrators of violence while waiting for efforts to restore the situation by traditional leaders, punyimbang, and community leaders. Active efforts are first ongoing and done by punyimbang, which is genealogical and relates to perpetrators and victims of violence.

Furthermore, the punyimbang, which he considers to have insightful knowledge, and an enormous family tree, conveys the events that occurred. They submitted to the head of the punyimbang or the head of the Perwatin to become a mediator for the case at hand.

As punyimbang and a mediator, this social actor communicates the intentions and goals of the offender's family to the victim's family and bridges the perpetrator's aspiration to reconcile with the victim.

The punyimbang, whose duty is to mediate a peaceful settlement meet, gathers and sits together to discuss the problems that have occurred with a clear mind, without using physiques. After all, they have to find the best solution from the penyimbang because, in the event of a riot, they have to sit down in one prominent case what and how; therefore, penyimbang will summon traditional leaders and community leaders and actors.

According to Dulsamad Glr. Ratu Superno, when the customary deliberation has started, the customary law is already in effect, so it cannot be disturbed. When a disaster occurs, both parties have to accept reality gracefully. The customary law of Lampung Pepadun requires a fair settlement. The settlement of customary law was attended by *Penyimbang*, traditional leaders, community leaders from the Pekurun village, and the village head in Pekurun, the party from Selagai, of course, asked for responsibility from the Pekurun for what had happened at that time because it had caused a died victim.

Penyimbang from Pekurun and Selagai Lingga cannot be represented in deliberation to get a settlement point. The perwatin deliberation mechanism is carried out at the adat hall. The customary law principles in Lampung, Pii Pesenggri, and Beadek became the basis for deliberations so that the traditional leaders discussed humbly with mutual respect within the family and the community and could accept feedback and suggestions.

In its implementation, from ancient times until now in North Lampung, especially in Abung Pekurun District, North Lampung Regency, the holder of absolute rights in making day-to-day decisions is the customary *Penyimbang* because *Penyimbang* is the oldest figure in the Lampung traditional community.

In its implementation, if there is a conflict between two groups of indigenous peoples, traditional leaders, the village and the government play an essential role in resolving these conflict and they should call for a number of ideas, including traditional leaders who have an essential capacity in encouraging conflict resolution and in the form of an agreement between the two conflict parties to end all violence, because acts of violence are very fatal things that require an effective resolving, traditional leaders must also be able to guarantee and must take full responsibility, the parties must reach an agreement in the form of a formula in the occurrence of conflict solving problems in the conflict trying to form a new way so that the conflict parties can fulfill their interests, and traditional leaders must also encourage to carry out peace after the conflict between the two parties has ended so that peace can be carried out and accepted by the community and can grow it in society how essential it is to carry out reconciliation.

Making a mistake and realizing a mistake, then asking for an apology and surrendering is a commendable act, as well as the family of the victim who was injured psychologically or physically, accepting and giving forgiveness in the Lampung Pepadun custom is an act that is recommended and commendable. Therefore, the peace settlement process in the Lampung Pepadun indigenous people is strongly influenced by the awareness of responsibility and awareness of improving the conditions that have occurred so that they can be restored relatively in a safe and secure atmosphere.

In the mediation process, the focus for restoring balance in law and justice, according to the Lampung Pepadun custom is the process of reducing (redemption) the guilt in total or part of the soul and body of both parties, becoming a family through the appointment of an oath that is traditionally made, just an ordinary family with limitations that are agreed upon by both parties. This process is also heavily influenced by the economic capability of the perpetrator to make a reduction (redemption) based on his economic capacity.

4.4. Decision Maker

If *punyimbang* of the two parties who act as mediators in the mediation process obtains a point for a consensus agreement (*mufasah*), then the values for the reduction (redemption) of money (*dau*) that are agreed upon become the basis for submitting in the consensus deliberation of the members of the *perwatin* to ratify the peace agreement.

The result of mediation and negotiations between the two village councils had been agreed. The *Perwatin* deliberations were represented by several *Punyimbang* figures from the two villages in the case of violence perpetrated by members of the traditional community of Pekurun Tengah Village. The nominal value of the reduction in *dau* that must be paid is Rp. 24,000,000 (twenty-four million rupiahs), slaughtering two buffaloes and a fine of Rp. 60,000,000 (sixty million rupiahs).

The peace agreement validates that the perpetrators' actions have been forgiven based on customary law, and it is guaranteed that no legal action will be taken from any party, including law enforcement officials. When the victim has reconciled and has received a ransom, which is meant by customary law, aborts the applicable positive lawsuits. The perpetrators and their families, with the *perwatin* deliberations, have their safety and security as members of the indigenous peoples fully guaranteed. There are no threats or retaliation because, officially and legally, peace has been announced to all members of the *perwatin* deliberations who come from each village.

Perwatin as the Executor of the customary deliberations consisting of intercessors to ensure that *perwatin* deliberations and decisions taken and implemented are carried out democratically and the results of the agreements decided in these deliberations become customary provisions that all members of the *perwatin* deliberations or all *punyimbang* must obey.

One of the duties and functions of the *Perwatin* deliberation is to resolve conflicts or cases involving or relating to customs between members of the same indigenous community and members of other communities, including the assets of the indigenous peoples concerned.

4.5. The current and future position of customary law in criminal acts

Recognition of unwritten law previously was only explained or included in the General Explanation of the 1945 Constitution number 1. The validity of the 1945 Constitution is essentially based on basic unwritten law, fundamental principles that are ongoing and maintained as habits in the practice of society, nation, and state even though not written.

Article 18 B paragraph (2) The amendments to the 1945 Constitution have recognized and respected customary law community units and their traditional rights as long as they are still alive by the development of society and the principle of the unity of the Republic of Indonesia. According to the article, this customary law that is acknowledged is customary law that is still clearly alive, explicit material, and within the scope of the community.

The provisions of Article 18 B paragraph (2) above can be understood that the 1945 Constitution prioritizes written law rather than unwritten. This means that the recognition of customary law that still exists in an area in society must be carried out with the provisions of the law. As a living law, Lampung customary law is only recognized as unable to be used and applied as law in criminal cases.

The principle of legality in the Criminal Code means (a) there is no criminal act without the provisions of the law (*nullum crime sine lege*); there is no crime without criminal law (*nulla poena sine lege*), and there is no crime without crime (*nulla poena sine crimen*). The essence of the principle of legality is, first, criminal laws must be written (*lex scripta*), clear (*lex stricta*) and clear (*lex certa*). (b) Criminal provisions are not retroactive (Atmasasmita, 2022).

Thus everything related to a criminal incident may not be attempted by other actions or analogy interpretations without being based on existing written legal provisions (laws). As is the case with crimes of mass violence that have been resolved under customary law, the criminal justice system still processes perpetrators of mass violence as long as there are no rules that allow it to be resolved under customary law.

The principle of legality is in line with the development of modern law, which is mechanistic and procedural, aiming to guarantee legal certainty and protect human rights. On the other hand, the principle of legality undermines the existence of customary law as the original law of Indonesia. In Indonesia's positive legal system, customary law is recognized and has never been accommodated in criminal justice practices. The legality principle of the Criminal Code has changed the way criminal justice system administrators think not to

recognize and accommodate customary law as a living law.

The view of criminal law as a written rule places the apparatus of the criminal justice system as nothing more than executors of laws. In other words, investigators, public prosecutors and judges accept the principle of absolute legality in criminal justice practices so that the demands of justice are often violated (Hiariej, 2009). The application of the legality principle makes legal certainty the primary basis for enforcing the law.

The principle of legality is legal certainty. (Tim Justisia, 2015). The reality has been well constructed in the cognition of law enforcement officers as a way of thinking and understanding criminal law. The consequence of applying this principle is to facilitate the mechanical and procedural processes that police investigators, public prosecutors, and judges accept for smoothness, ease, and legal certainty. Even law enforcement officials also know that the settlement of a crime using customary law in society is not a new thing in Indonesia. The legality of customary law decisions in the criminal justice system is still considered to be contrary to the legality principles of the Criminal Code.

It has been a long time (1992). The Government of Indonesia has started to make efforts to solve this problem; one of them is by drafting a new Criminal Code that includes several rules that reflect original Indonesian law. Indonesia's government and representative council legalized the new draft Criminal Code on December 6, 2020. The current Criminal Code still adheres to the principle of legality as formulated in Article 1, paragraph (1) of the Criminal code. The advantages are found in Article 2, which clearly and unequivocally states: "etc...the enactment of laws that live in society...st. (2) The living law applies in the place where the law lives" (RKUHP, 2002).

Even though living legal recognition has been accommodated in the new Criminal Code, normatively, it still needs to be formulated in government regulations. However, living laws, such as the customary law of Lampung Pepadun with its *perwatin* deliberations, have space that is still in line with the expansion of the legality principle as stated in Article 2, paragraph (1) and paragraph (2) of the criminal code.

5. Conclusion

Perwatin deliberations are one of the living laws in Lampung Pepadun society by the criminal justice system. They have the opportunity to be accommodated because the new Criminal Code provides a legal basis for the functioning of customary law or perwatin deliberations as penal mediation through the operation of perwatin deliberations as a model for restoring justice can produce customary law decisions. Law enforcement officials based on the expansion of the legality principle as referred to in Article 2 paragraphs (1), (2), and (3) of the criminal justice system only require strengthening in the form of peace and restitution for victims of violent crimes.

References

- Atmasasmita, R. (2022). Asas Legalitas dalam Sistem Hukum di Indonesia Relevankah?. [online] Available: <https://mediaindonesia.com/opini/493317/asas-legalitas-dalam-sistem-hukum-di-indonesia-relevankah>
- Gravielides, T. (2007). Restorative Justice Theory and Practice: Addressing Discrepancy. Academic Bookstore.
- Hadikusuma, H. (1989). Masyarakat dan Adat Budaya Lampung. Mandar Maju.
- Hiariej, E. O. (2016). Prinsip-prinsip Hukum Pidana (Revised). Cahya Atma Pustaka.
- Hiariej, E. O. (2009). Asas Legalitas dan Penemuan Hukum dalam Hukum Pidana. Erlangga.
- Ikrom, M. A. (n.d.). Lembaga Perwatin dan lembaga perwatin dan Kepunyeimbangan Dalam Masyarakat Adat.
- Johnstone, G., & Ness, D. W. Van. (2007). The Meaning of Restorative Justice. Willan Publishing.
- Marshall, T. (1999). Restorative Justice: An Overview. Home Office Research Development and Statistics Directorate.
- Nawawi, B. (2012). Mediasi Penal Penyelesaian Perkara Pidana di Luar Pengadilan. Pustaka Magister.
- Ness, D. W. Van, & Strong, K. H. (2010). Restoring Justice: An Introduction to Restorative Justice. In Lexis Nexis (hal. 21–22). New Providence NJ.
- Nisbet, R. A. (1993). Sociological Tradition. Transaction Publishers.
- Priyatno, D. (2003). Sistem Pelaksanaan Pidana Penjara di Indonesia. Refika Aditama.
- Puspawidjaja, R. (2006). Hukum Adat dalam Tebaran Pemikiran. Universitas Lampung.
- Putusan Pengadilan Negeri Kotabumi No.197/Pid.N/2014/PN. Ktb. 7 Januari, (2015).
- Raharjo, T. (2010). Mediasi Pidana dalam Ketentuan Hukum Adat. Hukum, 17(3), 492–519.
- RKUHP, (2002).
- Sholehuddin, M. (2007). Sistem Sanksi dalam Hukum Pidana: Ide Double Track System dan Implikasinya (1 ed.). Raja Grafindo.
- Siombo, M. R., & Wilujeng, H. (2020). Hukum Adar dalam Perkembangannya. UKI Atma Jaya.
- Syarakawi. (2012). Implementasi Musyawarah Menurut Nomokrasi Islam. Lentera, 12(1), 87–90.
- Tim Justisia. (2015). KUHP dan KUHP. Justice Publishing.
- Walker, N. (1971). Sentencing in Rational Society. Basic Book.

- Wright, M. (1991). *Justice for Victims and Offenders*. Open University Press.
Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.
Zulva, E. A. (2011). *Pergeseran Paradigma Pemidanaan*. Lubuk Agung.
Zulva, E. A. (2014). Konsep dasar Retoratif Justice (hal. 23–27).