



FULFILLMENT OF CUSTOMARY OBLIGATIONS AS ADDITIONAL CRIMINAL PENALTIES IN THE REFORM OF THE NATIONAL CRIMINAL CODE

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Abstract

Fulfillment of customary obligations as additional punishment as regulated in Article 66 of the Criminal Code is a new step to align positive law with customary norms but also has the potential to give rise to new legal issues. This study aims to analyze the limitations of the application of customary obligations as additional punishment so that it remains in line with the concept of restorative justice and does not violate human rights. This study uses a normative juridical method with a legislative approach and a conceptual approach. The results of this study indicate that the fulfillment of customary obligations can be an effective mechanism in supporting the objectives of punishment, as long as its implementation is strictly regulated to avoid discrimination, deviations, and human rights violations. Although it is included in the category of additional punishment, it is in line with the concept of restorative justice in the National Criminal Code. Punishment based on the fulfillment of customary obligations has also been proven to strengthen social relations between perpetrators, victims, and the community, thus contributing to realizing just recovery in accordance with the spirit of criminal law reform in Indonesia.

Keywords: Restorative Justice; Customary Obligations; Additional Penalties.

INTRODUCTION

Criminal Code National is idea or thinking from for legal experts who aim to realize laws that have national character and are based on Pancasila. This is evident in the renewal of Criminal Code in Indonesia Which Already confess law Which living in society (*living law*). The provisions regarding criminal penalties in Law Number 1 of 2023 concerning the Criminal Code show a number of significant changes. In the sections on criminal penalties, punishments, and actions, the National Criminal Code includes several new provisions, such as the purpose of criminal penalties, sentencing guidelines, and adjustments to the types of crimes. criminal, guidelines implementation imprisonment in the form of single or alternative formulations, types of punishment, and factors that can mitigate or aggravate the punishment. Criminal Code National apply system criminalization two track (*double track system*), in where perpetrator action criminal besides can sentenced punishment Criminal *punishments* can also be subject to other measures (*treatment*). Furthermore, the National Criminal Code also includes new types of principal penalties, namely community service and supervision. Furthermore, additional penalties are also expanded to include compensation payments and the obligation to comply with local customary laws or prevailing community laws.

Criminal addition in the form of "fulfillment obligation customs local has been arranged in Chapter 66 Constitution Number 1 Year 2023 About Criminal Code. This regulation has several implications. First, determine punishment customs as punishment addition makes it role secondary or complement, because punishment additional only can enforced simultaneously with punishment main. ¹ Fulfillment of local customary obligations and/or obligations according to existing laws in the community public" related with existence expansion meaning principle legality in positive law in Indonesia, as reflected in various laws and regulations. ² In this context, the principle of legality is not only interpreted formally as " *nullum delictum sine lege* " (no crime without law), but also includes the meaning of " *nullum delictum sine ius* " (no crime without law), which recognizes existence law criminal customs or law No written as part of a legitimate source of law. ³ The National Criminal Code explicitly

recognizes customary crimes, but still emphasizes the element of guilt as a prerequisite for punishment. This is reflected in the regulation that "fulfillment of local customary obligations and/or obligations according to prevailing laws within the community" is the primary penalty. Even, in condition certain as arranged in Article 2 paragraph (1), the sanction can be a principal penalty. This additional penalty can be imposed simultaneously with the principal penalty, can stand alone, or be imposed together with other forms of additional penalties. Article 96 of the National Criminal Code states that the judge can impose a penalty in the form of "fulfillment of local customary obligations and/or obligations according to the laws that exist in society", with consider provision in Chapter 2 Article (2), if the situation requires it to restore balance and create a sense of peace in society. This reflects that the aim of criminal punishment in the National Criminal Code does not only focus on giving punishment to the perpetrator, but also prioritizes recovery. balance social. Public customs through institution customs and traditional leaders resolve cases that occur by deliberation regardless of the background of the individuals involved. ⁴ In From a customary law perspective, rules are not enforced with the assurance of compliance through coercion, as in formal criminal law. Customary sanctions do not fully align with the concept of punishment in classical theories, as they have different objectives. The application of customary sanctions is an effort to correct actions that deviate from the cosmic order, in order to maintain order and balance in community life. say other, sanctions customs aim to restore disturbed social harmony. ⁵

Additional criminal sanctions in the form of "fulfilling local customary obligations and/or obligations according to prevailing laws within the community" serve the important purpose of protecting crime victims. This concept of victim protection is a concern in forum international, that is in Congress UN 10th year 2000 (document A/CONF.187/4/Rev.3), which encouraged the implementation of mediation mechanisms and restorative justice approaches. The results of this meeting then gave birth to several international documents supporting the use of mediation and restorative justice in the criminal justice system, including: Recommendation of the Council of Europe 1999 No. R (99) 19 on Mediation in Penal Matters, EU Framework Decision 2001 on the Standing of Victims in Criminal Proceedings, and The UN Principles 2002 (ECOSOC Resolution 2002/12) on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. Efforts to explore the laws that exist in society also reflect the existence of dissatisfaction, concern, and a crisis of confidence in the legal system and criminal policies that have been in effect so far. This phenomenon is in line with the global trend seen in various international congresses in the field of criminal law and criminology. A number of international documents and the Criminal Codes of other countries also show progress towards recognizing the principle of material legality. For example, Article 15 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) states that: "Nothing in this article shall prevent the trial and punishment of any person for any act or omission which, at the time of its commission, was considered a criminal offence under the general principles of law recognized by the international community." However, according to Barda Nawawi Arief, exploring living law does not mean directly adopting customary criminal law or religious law as part of national criminal law. What needs to be taken from living law are the basic principles and norms of criminal law that are in line with it. The similarities in values and principles found in living law need to be examined first through a national values approach, especially the values of Pancasila, before they can be established as part of positive Indonesian criminal law. Based on the provisions in the National Criminal Code regarding the principle of material legality and additional criminal sanctions in the form of "fulfillment of local customary obligations and/or obligations according to laws that live in society," this shows that violations of unwritten laws that apply in society can still be processed formally through legal mechanisms. This means that perpetrators of violations will undergo legal proceedings, from investigation to trial. However, challenges may arise in the technical implementation phase. For example, how police officers compile investigation reports and how prosecutors formulate indictments, given that the laws in society are dynamic, unwritten, and constantly evolving. This creates uncertainty, including in determining whether an act is prohibited or not according to local customary law. In practice, even in cases governed by written law, case files are often returned from prosecutors to investigators because they are deemed incomplete.

Another issue concerns the perpetrator's responsibility. While criminal responsibility is individual in the national criminal law system, this is not always the case in customary law. In some customary systems, criminal sanctions may be imposed on other parties, such as the perpetrator's family members. In various regions of Indonesia, such as Nias, Minangkabau, South Sumatra, Kalimantan, Gorontalo, Ambon, Bali, and Lombok, the practice is often found where the perpetrator's village of origin or the location of the crime is required to pay compensation to the family of the victim of murder or theft, especially if the victim is from outside the village. In such cases, the perpetrator's family may also be held responsible for the actions of one of its members. Therefore, in this study, the author will discuss the limitations of fulfilling customary obligations as additional punishment in line with the concept of restorative justice and the fulfillment of human rights, as well as fulfilling customary obligations as an effective and repressive means, even though it is

categorized as additional punishment. This research uses a normative juridical method, as stated by Peter Mahmud Marzuki in his book that normative legal research is "a process to find a legal rule, legal principles, or legal doctrines to answer the legal problems faced. Normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in solving the problems faced."⁶ In this research the author uses a statutory approach and a conceptual approach. According to the provisions of Article 1 number 2 of Law Number 12 of 2011, statutory regulations are written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures that have been determined in statutory regulations.⁷ The statutory regulatory approach is carried out to examine all statutory regulations and regulations related to the legal issue being discussed. This approach is a closed legal system because it is comprehensive (the legal norms within it are interrelated), all-inclusive (the collection of legal norms is able to accommodate existing legal problems so that there are no legal deficiencies), and systematic (the legal norms are also arranged systematically).⁸ Meanwhile, the conceptual approach is an approach carried out by analyzing doctrines or views that develop in legal science. The conceptual approach used in this study is the concept of legal objectives. Where the concept in question is reviewed through the theory of objectives in the aspect of certainty. That the existence of such legal rules and the implementation of these rules will create legal certainty, which has two meanings: first, the existence of general rules allows a person to know what is allowed or not allowed to do and second, in the form of legal security for a person from government arbitrariness, because with the existence of these general rules a person can know what the state may impose on a person.⁹ By using this approach, the author will develop new regulations and understand the dynamics of law in a broader context related to the fulfillment of customary criminal obligations as additional penalties in the reform of the National Criminal Code. The legal material search techniques used by the author are library research and internet studies. Once the legal materials have been collected, they will be thoroughly analyzed to find information to support this research. The legal material analysis technique used is systematic interpretation, which interprets laws that are part of the overall legal system by connecting them with^{other} laws to ensure they do not deviate from the legal system.

LIMITATIONS ON FULFILLMENT OF CUSTOMARY OBLIGATIONS AS ADDITIONAL CRIMINAL PENALTIES IN LINE WITH THE CONCEPT OF RESTORATIVE JUSTICE AND FULFILLMENT OF HUMAN RIGHTS

The concept of "living law" refers to law not only consisting of written regulations but also evolving and changing over time, with the development of society and culture. This concept emphasizes the importance of compliance with applicable legal principles and business ethics within the community. The National Criminal Code (KUHP) recognizes the existence of living law within the community (the living law) as the existence of indigenous communities and the customary laws applicable in those areas. The principle of legality in the National Criminal Code remains a crucial element of criminal law in Indonesia, including customary criminal law. The principle of material legality can fill the gap in norms within national criminal law. This means that if a new act is not stated in national criminal law, but is regulated by customary law as a crime, it can be subject to sanctions according to customary law. Thus, the principle of material legality provides a sense of justice for victims who suffer losses due to the act. This principle of material legality focuses on protecting the rights of victims who feel they have not received justice. This is because the principle of formal legality tends to be aimed at protecting perpetrators from punishment.¹¹ Customary criminal law, when linked to the principle of legality, is clearly incompatible. Customary criminal law is based on the philosophy of harmony and communal morality, which contradicts the principle of legality. If customary criminal law is to be recriminalized, four points must be clearly explained:¹²

- Not solely for the purpose of retaliation (not ad hoc);
- Must cause clear losses or victims (can be actual in material crimes) or potential in formal crimes;
- If there are other more effective methods, then do not use criminal law;
- The losses caused by the crime are smaller than the losses caused by the crime;
- There is support from the community; and
- Can be applied effectively.

The recognition of customary crimes is by including the fulfillment of local customary obligations as additional punishment. The definition of additional punishment is a punishment imposed by a judge to a convict that is additional to the main punishment, meaning that this additional punishment cannot stand alone without the main punishment.¹³ According to Andi Hamzah, additional punishment is interpreted as an optional punishment, namely the punishment can be imposed but is not mandatory.

According to Basir Rohrohmana, the concept of living law is a law that is largely unwritten and applies in the lives of certain communities and is used as a benchmark and is obeyed in terms of behavior between members of society. Basically, living law in society regulates three main relationships, namely the relationship between fellow humans, the relationship between humans and nature, and the relationship between humans and God the Creator. In addition, living law in society or living law is a social event formulated in legal regulations and a sense of social justice that grows and develops in society and its existence is recognized in society, this custom arises and is obeyed by the local community from generation to generation.¹⁴ However, in practice there are difficulties in classifying what actions are included in customary crimes. Any action that disrupts the cosmic balance is considered a violation of customary law. From this customary violation will result in customary sanctions whose main purpose is to restore legal and cosmic balance including corporal punishment, property and the most severe non-physical criminal sanction, namely expulsion from the local customary law area.

As in several regions in Indonesia, for example, in South Sumatra, customary criminal acts are based on Simbur Cahaya or the Charter of Queen Sinuhun, a book containing customary rules applicable in the South Sumatran community and is the work of Queen Sinuhun which contains legal material on community behavior regulations, adolescent relationships, customary government regulations, farming regulations and punishment regulations (sanctions). The customary criminal sanctions that apply include the offering of a goat to wash the hamlet, which is an act of charity to remove bad luck. However, currently in South Sumatra, regulations regarding customary criminal sanctions have gradually disappeared. What remains is regarding customs, as in Muara Enim Regency, which is regulated in Regional Regulation Number 2 of 2007 concerning the Marga Customary Institution. In addition, Banyuasin Regency also has a Draft Regional Regulation of 2012 concerning the Existence of Customary Law Communities and the Compilation of Customs and Traditions of Banyuasin Regency. The application of customary sanctions must adhere to the provisions of applicable laws and regulations. Therefore, applicable customary law must not deviate from applicable positive law. If the customary crime committed is similar to that regulated in the legislation, the violation of customary law may be subject to criminal sanctions based on the laws and regulations in force at the time.

Recognition of the fulfillment of customary obligations as additional criminal penalties should not be interpreted in an absolute sense. There must be clear legal boundaries, namely that these customary norms must truly be alive, accepted, and consistently enforced by the local community. This is crucial to prevent their application from being arbitrary or used to justify discriminatory actions. Furthermore, criminal provisions must not conflict with Pancasila, the 1945 Constitution of the Republic of Indonesia, and the principles of human rights as stipulated in Article 2 of the National Criminal Code. Exploring the laws that exist in society means exploring the various similarities in the principles and norms of criminal law contained in these customary laws. If these principles and norms align with Pancasila values and do not conflict with human rights principles, and refer to legal principles, they can become principles and norms of positive national criminal law. In this regard, it is also important to emphasize that not all acts can be punished with additional customary obligations. They should be limited to certain acts that are minor in nature and allow for the process of social restoration. For serious crimes such as murder, terrorism, and sexual crimes, this approach is inadequate because the risks to victims and society are so great.

The new approach model in the National Criminal Code is restorative justice, which accommodates a balance between societal values and the principle of legality, which is one of the objectives of sentencing to resolve social conflicts and absolve the convict of guilt. In addition, in sentencing, it is necessary to consider the impact on the victim, the existence of forgiveness from the victim and his family, the community's view of the ongoing crime, the type of supervision and community service, additional types of punishment in the form of compensation payments and fulfillment of local customary obligations, and imprisonment will not be imposed if the losses suffered by the victim are not so great. From a social perspective, restorative justice basically needs to be given space as a means of shared responsibility in resolving criminal cases fairly, by considering the interests of all parties involved, including the perpetrator, the victim, and the wider community.

Fulfilling customary obligations has significant potential for realizing restorative justice, as it emphasizes reparation for victims' losses, reintegration of perpetrators into society, and community involvement in conflict resolution. Restorative justice is an approach that views crimes not only as violations of the law but also as violations of social relationships between individuals. Through this mechanism, perpetrators are given the opportunity to correct their mistakes through compensation, community service, or customary rituals aimed at repairing disturbed social relationships. Previous research indicates that although customary law is recognized in legislation, its implementation still faces challenges.¹⁵ In customary practices in various regions, the case resolution process often involves mediation, apologies, compensation, or traditional ceremonies as a means of collective healing. This

contrasts sharply with the more retributive approach of formal criminal law. Therefore, when fulfilling customary obligations is adopted as an additional punishment, the approach must be understood not simply as punishment, but as a means of inclusive and participatory healing. However, it must be emphasized that in order to be in line with the ideal principles of restorative justice, customary obligations must not be forced, must be based on voluntariness, and must consider the positions of the victim, the perpetrator, and the community in a balanced manner. As for the legal limitations on the application of the principles of restorative justice in fulfilling local customary obligations, ideally they are excluded from criminal acts that are very dangerous or detrimental to the community and the national economy.¹⁶

Although customary law is constitutionally recognized, its application in the criminal system must be filtered through human rights principles to prevent discrimination or violations of human dignity. Some customary practices in Indonesia, such as the obligation for victims to marry perpetrators of sexual violence as a form of reparation, clearly contradict human rights principles and should not be used as a basis for additional criminal penalties. Similarly, the protection of vulnerable groups, women, children, minority indigenous communities, and people with disabilities, must remain a primary consideration in the application of customary criminal law. Therefore, the recognition of customary law should not legitimize traditional practices that violate the fundamental rights of citizens. In its implementation, a mechanism for compiling or codifying customary law must be established that can serve as a reference for law enforcement officials. This compilation needs to be reviewed by authorized state institutions to ensure legal certainty and prevent deviations or excessive criminalization. Furthermore, to provide legal certainty for customary criminal law, it can be incorporated into written forms such as ancient manuscripts (kakawin, pepakem, jayapatra, inscriptions, lontara, kitab simbur cahaya, awig-awig, and several other written customary laws).

FULFILLMENT OF CUSTOMARY OBLIGATIONS AS AN EFFECTIVE AND REPRESSIVE MEANS ALTHOUGH IT IS INCLUDED IN AN ADDITIONAL CRIMINAL CATEGORY

Along with the advancement of human civilization, law is not fixed but dynamic, constantly changing according to the needs and desires of society. The legal system in Indonesia is based on the values of life and national culture, as stated in Pancasila, which is the philosophical basis of the nation and state. Therefore, the national legal system must comply with the legal principles of Pancasila.¹⁷ One application of the values and principles of Pancasila is the recognition of the existence of customary law, the application of which is side by side with positive law. The concept or term of custom or customary law has long been born in the life of Indonesian society before the arrival of the Dutch East Indies colonialism. One written evidence of the term or terminology of customary law is found in the Book of Makunta Alam, from the reign of Sultan Iskandar Muda in Aceh in the 12th century. The book's preface states that a judge must pay attention to Islamic law, customary law, and customs.¹⁸ This term has actually also existed in various customary law communities in Indonesia. In Minangkabau, for example, although not written down, the term adat is an inseparable part of daily life, for example from proverbs such as: adat isi institut diturang (adat dilakukan) and adat obligations are daily life, especially in various activities, community members must follow, obey and fulfill existing customs.¹⁹ The reform of the National Criminal Code in Law Number 1 of 2023 clearly recognizes the existence of customary crimes, which is proven by the existence of additional crimes in the form of fulfilling local customary obligations as stated in Article 66 letter f. It is clear that the makers of the new Criminal Code are trying to avoid negative conditions that can arise due to the implementation of customary crimes, including:

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First, the imposition of local legal values on the entire community (national scale) who may be unaware of (or disagree with) those values. Second, the emergence of legal dualism (i.e., if customary law also regulates acts that are considered criminal under the Criminal Code), which has the potential to result in ambiguity or discrimination in its application. Third, the application of local laws that may conflict with the fundamental values and rights of the community that have been guaranteed by the state foundation and general legal principles. Fourth, the application of excessive types of sanctions or punishments (at least those that are heavier than additional criminal sanctions for fulfilling customary obligations) or other sanctions that are not in line with current societal values. This revolutionary step reflects an effort to align positive law with living law—customary norms that are still substantially upheld by local communities and function as natural social controls.²¹ Thus, customary sanctions not only reflect conventional sanctions in the form of imprisonment or fines, but also provide new breakthroughs in aspects of law enforcement elements that are more contextual with a cultural touch. This relates to and aligns with the concept of restorative justice promoted in the reform of criminal law through the National Criminal Code. From a contemporary criminal law perspective, restorative justice is one of the goals of sentencing. Restorative justice is defined as a

mechanism for addressing criminal law issues by involving the perpetrator, victim, or their family, and other relevant parties in seeking viable justice with an emphasis on restoring the situation.²²

In the context of the application of restorative justice in customary law, Indonesian laws and regulations have provided a basis for the recognition and application of customary law in the national legal system.²³ For example, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the existence of customary law communities and their traditional rights are recognized, as long as they still exist and are in line with the social dynamics and principles of the Unitary State of the Republic of Indonesia (1945 Constitution). This recognition is also emphasized in Law Number 39 of 1999 concerning Human Rights, especially Article 6, which states that customary law is part of the rights of customary communities that should be respected, as long as it does not conflict with universal human rights principles (Law No. 39 of 1999 concerning Human Rights). Additional penalties in the form of fulfilling local customary obligations and/or obligations according to existing laws in the community are one aspect of protection for victims, where this type of penalty can basically also be seen as a form of providing compensation to victims. However, the victims here are indigenous communities. Local customary obligations and/or legal obligations within the community, or the revocation of rights, can be imposed even if they are not included in the criminal offense formulation. The existence of additional penalties is intended to supplement the principal penalty imposed and is essentially optional.²⁴

Unlike the general concept of criminal law, which classifies perpetrators of criminal acts into those who commit crimes (*plegen*), those who order them to commit them (*doen plegen*), and those who participate in them (*mede plegen*), customary law does not recognize such classifications. In customary law, anyone can be categorized as a perpetrator of a criminal act if they have violated applicable customary norms, their actions require customary sanctions, and there are losses that must be paid by that person. Referring to criminal penalties based on positive law, this customary law concept creates equality in sentencing for perpetrators if a crime is committed by more than one person. It can then be concluded that the basis for imposing customary criminal penalties is different but remains in line with the concept of criminal penalties in Indonesian positive law.

From a sociological perspective and the realities of social practice on the ground, the application of customary obligations as a form of sanction has a very high level of social legitimacy. This is inseparable from the fact that customary norms are derived from cultural values that have long existed, grown, and become deeply rooted in community life. These values are not only recognized from generation to generation but are also actively internalized by individuals within customary communities through socialization processes and daily experiences. Therefore, fulfilling customary obligations is not merely a form of punishment, but an integral part of a value system believed by the community to be the most appropriate way to restore social balance disturbed by violations or criminal acts. Unlike the positive legal system, which emphasizes retributive aspects, namely the imposition of punishment as a form of retribution for unlawful acts, customary sanctions prioritize a restorative approach. This approach emphasizes the importance of improving relationships between perpetrators, victims, and the community as a whole, as well as restoring harmony in communal life. This characteristic is the main reason why customary sanctions are very relevant to be implemented, especially in areas where the community still highly upholds customary values and traditions.

Moreover, the effectiveness of customary sanctions is also evident in their flexible and participatory nature. The customary case resolution process is often carried out through a deliberation mechanism involving all relevant parties: the perpetrator, the victim, their respective families, and authorized and respected customary leaders. By directly involving community elements, the results of customary sanctions can create a greater sense of substantive justice for all parties. In addition to providing a deterrent effect, this form of sanction also contains moral and educational values because it is educational, not merely punitive. In many cases, customary sanctions produce more meaningful solutions than formal criminal sanctions such as imprisonment or confinement. Furthermore, the implementation of customary sanctions not only provides protection and reparation for victims but also allows perpetrators to account for their actions in a more humane manner. In this context, the perpetrators' rights are still proportionally considered, something often neglected in the rigid and procedural practice of the formal criminal justice system. Therefore, it cannot be denied that the application of customary sanctions as a form of fulfilling socio-cultural obligations has been proven to have high efficacy, both in maintaining social justice and strengthening social cohesion within indigenous communities. The imposition of customary sanctions as part of fulfilling customary obligations also plays a repressive role, in the context of customary sanctions as a repressive mechanism that maintains customary norms and discipline within indigenous communities. This is said because although customary sanctions do not involve imprisonment or confinement, they create social and moral pressure on perpetrators of criminal acts, thus providing a genuine deterrent effect. As part of the additional anticipatory-criminal domain in

Law Number 1 of 2023 concerning the National Criminal Code, customary sanctions are now recognized by formal law as a form of response to violations, particularly in the realm of village life and traditional communities. For example, in Bali, the concept of *tri danda*—namely, fines (*artha danda*), physical or psychological suffering (*jiwa danda*), and restoration of magical balance (*sangaskara danda*)—is recognized for perpetrators of certain customary crimes such as violations of morality, destruction of temples, or neglect of customary rituals. These sanctions clearly demonstrate the repressive aspect of customary sanctions, in the sense that they provide real punishment, even though they are based on local culture and not the result of formal positive legislation.²⁵ Another concrete example emerged in Batang Hari Regency, Jambi, where a customary court ruled that a theft perpetrator must pay a fine of Rp 5 million to the victim, or that a couple who committed a moral violation must undergo a customary marriage as part of restoring social status and community trust.²⁶ This case shows how customary sanctions continue to exert social and moral pressure, which previously could only be overcome through formal dispute resolution channels.

However, the repressive effectiveness of customary sanctions as part of fulfilling customary obligations is not always achieved perfectly. In Aceh, for example, cases of Domestic Violence (DV) often recur despite sanctions such as imposing community service within the household and requiring prior mediation with the family before ultimately requiring the intervention of the local village head, known as *Qeuchik*, to provide advice and solutions. Such sanctions do not have a deterrent effect because there are no regulations based on *Qanun Gampong* (a type of village-level legislation in Aceh) based on Islamic law and *hadith*²⁷ that specifically regulate domestic violence in the region. Therefore, perpetrators often repeat their actions because the imposition of community service and mediation alone does not have a sufficient deterrent effect. This indicates that there are still weaknesses in the regulation of the mechanism for fulfilling customary obligations as sanctions for perpetrators of criminal acts within indigenous communities. Therefore, the National Criminal Code provides alternatives in the form of substitute punishments—community service, fines, or supervision—as a backup when customary sanctions fail to have the desired repressive effect.

Ultimately, even though the fulfillment of customary obligations is recognized as an additional form of punishment and is then considered effective and repressive in dealing with criminal acts, it still does not rule out the possibility of discrepancies in its implementation. Asnawi and Hadi in their research revealed that the imposition of customary sanctions is sometimes executed emotionally due to spontaneous responses to a crime committed by indigenous communities, inconsistently, dependent on pressure and pressure from the community, and often gives rise to internal community conflict due to unstructured norms.²⁸ This situation also shows the unstructured and prone to deviation side of the repressive nature of customary sanctions: effective, but can be misused if not framed in clear written norms. The existence of customary criminal law regulations is certainly meaningless without the existence of an institution that functions to enforce customary law. Customary criminal law, like other criminal laws, should also have a law enforcement institution, especially a judicial institution, namely customary courts.²⁹ Therefore, the authorities and makers of legislation in issuing legal products should make clear legislation, not giving rise to doubt or multiple interpretations, not clashing with prevailing norms in society so that society is expected to understand and follow what the authorities want as the makers of the regulations. When customary criminal law is used as an alternative if the New Criminal Code does not regulate specific issues, then the problem is the uncertainty in the customary law, in this case the uncertainty exists when a norm exists and is recognized *de facto*, but in its implementation is unable to provide a direction of justice in accordance with the principles of justice.³⁰

To date, there is no benchmark for determining the effectiveness of customary law as a repressive measure against criminal acts. However, such effectiveness can be achieved by establishing written norms and implementing them, involving all stakeholders. The success of a norm's implementation is not limited to whether its formal aspects have been met; it also requires assessing whether the goals and ideals of the law have been achieved, ensuring justice for all parties and the community, and ensuring legal certainty. To achieve this, adequate capabilities are required from law enforcement officials, particularly in implementing customary laws and aligning them with positive law. However, before that, it is necessary to establish formally recognized (written) customary laws that are aligned with the National Criminal Code and other laws and regulations. If customary norms or rules are not clearly codified, they provide an opportunity for judges to arbitrarily determine customary obligations, resulting in unequal implementation and discrimination between regions, each with different local customary norms. The success of implementing customary norms clearly depends heavily on the availability of implementing regulations, the capacity of the apparatus, the codification of customary norms, and strict monitoring mechanisms to protect justice and human rights, and to realize justice and legal certainty.

CONCLUSION

The recognition of customary obligations as additional penalties in the new National Criminal Code is an important step in integrating positive state law with local values still prevalent in society. This policy demonstrates that the law need not be uniform and rigid, but rather dynamic, meaning it can adapt to the varying socio-cultural conditions of each region. By incorporating customary sanctions into the criminal justice system, the state is effectively attempting to bring the law closer to the people in its own way. However, the application of customary sanctions must also be carried out with caution. Not all forms of customary obligations can be used as official punishment, especially if their content conflicts with principles of justice, human rights, or even leads to discrimination. The state must continue to ensure that the customary values used are in line with constitutional values and do not harm any party.

For customary sanctions to truly become part of criminal justice systems that align with Indonesian positive law, clear regulations and guidance for customary institutions in each region are needed. Codification or writing down of applicable customary norms is necessary to provide law enforcement officials with a clear reference in handling any case involving indigenous communities. Furthermore, community involvement in implementing customary sanctions is crucial so that the criminal justice process goes beyond punishment and also improves social relations between perpetrators, victims, and the community, in accordance with the concept of restorative justice. Successful fulfillment of customary obligations as additional punishment will depend on cooperation between state legal institutions and indigenous communities themselves. If implemented appropriately and measurably, customary sanctions can be an effective complement to the Indonesian criminal justice system, while strengthening the identity of Indonesian national law while still adhering to the objectives of law: justice, expediency, and legal certainty.

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