



RATIO LEGIS OF SETTLEMENT OF CRIMINAL ACTS BY CUSTOMARY INSTITUTIONS OF THE STATES IN AMBON CITY

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Abstract:

The existence of indigenous communities in Indonesia is regulated in Article 18B Paragraph (2) of the 1945 Constitution, which states: The State recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law. This research uses the normative legal research type. The decisions of customary institutions are legitimate because they are supported by constitutional recognition (Article 18B paragraph (2) of the 1945 Constitution) and various regional regulations that govern the role of customary law communities. However, their nature is limited to cases that fall under customary authority (customary crimes or minor violations) and are not binding outside the customary community, unless formally recognized by state law. Decisions of customary institutions are socially and morally binding. Customary sanctions (fines, sasi, community service, apologies) are implemented based on cultural agreements and compliance. The legal certainty of customary decisions is strong within the customary community, because the norms and procedures are clear to members of the customary community.

Keywords:

Ratio; Regulation; Law

1. Introduction

The existence of indigenous communities in Indonesia is regulated in Article 18B Paragraph (2) of the 1945 Constitution, which states: The State recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

Customary law is generally unwritten and constitutes norms derived from the people's sense of justice that are constantly evolving and encompass regulations on human behavior in daily life. They are always obeyed and respected because they have legal consequences or sanctions. Customary law is an unwritten and uncoded rule, but it is still obeyed in society because it has certain sanctions if it is not obeyed.

The indigenous peoples of Ambon City adhere to a patrilineal legal system, as evidenced by their clan system, which is inherited through the father. Ambon is one of the customary legal groups mapped by van Vollenhoven. This indicates that this indigenous community has existed since the city's inception.

The customary law areas of each Negeri in Ambon City have different characteristics, their laws and regulations are also diverse, this is interesting to be studied further, in Maluku itself there are Villages and customary Negeri, Villages are administrative areas, while Negeri (Negeri or those called by other names as referred to in this provision, are intended to accommodate other terms or names similar to the customary law community units of Negeri found in other areas within the Maluku Provincial Government area, such as Ohoy in Southeast Maluku Regency and Tual

City; Kampung in Aru Islands Regency, Buru and South Buru; Pnue in Southwest Maluku Regency and Lekke and Negeri in Southwest Maluku Regency; or other names used as part of the Customary Law Community Unity in various other places within the Maluku Provincial Government area) is a group of customary communities led by a King.

Regulated in the Republic of Indonesia Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages, Article 1 number 7 "Customary Villages or those referred to by other names are customary law community units along with their traditional rights that are still in existence, whether territorial, genealogical, or functional, which have a customary institutional structure that is authorized to regulate and manage the interests of their customary law community, based on the rights of origin and local customs that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Furthermore, in the Republic of Indonesia Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, Article 354 paragraph (1) "Regional Governments can establish customary institutions and recognize the existence of customary institutions in the region."

Maluku Province Regional Regulation Number 14 of 2005 concerning the Re-establishment in Village as a Customary Law Community Unity within the Maluku Province Government Area, Article 11 Further provisions regarding of State Government Organizational Devices, State Consultative Body, Customary/Community Institutions, State Regulations, State Finances, Guidance and Supervision as well as other matters related to the Re-establishment of the State or what is called by another name as a customary law community association in Maluku Province will be further stipulated by Provincial, Regency and City Regional Regulations, in accordance with local Customs and Customary Laws which do not conflict with the applicable Laws and Regulations.

As regulated in Maluku Provincial Regulation Number 16 of 2019 concerning the Arrangement of Customary Villages, Article 1 Number 5, a customary village, or other name, hereinafter referred to as a Customary Village, is a legal community unit with territorial boundaries authorized to regulate and manage government affairs, local community interests based on community initiatives, ancestral rights, and/or traditional rights recognized and respected within the government system of the Unitary State of the Republic of Indonesia. Article 9 The implementation of customary village governance as referred to in Article 7 paragraph (1) includes: a. structuring the organizational and institutional systems of customary communities.

The customary village system in Ambon City includes customary institutions whose duties not only assist the King in his leadership but also maintain stability within community groups. These include the SOA (Several Clan Groups), Saniri (SOA Representatives), Kewang (State Security), Marinyo (Notification of the King's orders), and Mauweng as Imam. In carrying out their duties, the Head of the Soa, Saniri, and Kewang have significant customary responsibilities.

In Ambon City Regulation Number 8 of 2017 concerning the State, Article 1 Number 30 states that the State Community Institution is an institution formed by the community according to the needs of the state which is a partner of the state government in the framework of empowerment and increasing community participation in the implementation of development. Article 75 Paragraph (1) b states that the state has the right to determine and manage state institutions. The legal ratio of the birth of Ambon City Regulation Number 8 of 2017 concerning the State departs from the need to emphasize the existence of customary institutions and state community institutions as an inseparable part of the government system in Ambon City. Therefore, it is not only limited to mentioning, but more about the sustainability of customary institutions in resolving criminal acts by customary institutions.

2. Methodology

This research uses the normative legal research type.

3. Discussion

The criminal justice process is a long process and is different from other judicial processes. This long process is divided into four stages: the investigation and inquiry stage, the prosecution stage, the trial examination stage, and ends with the decision being rendered by the judge. Therefore, the decision in this criminal trial is the culmination of criminal justice in general. The term "judge's decision" is a term that has important meaning for justice seekers in criminal justice. The term "judge's decision" on the one hand is useful for the defendant to obtain legal certainty regarding his "status," while on the other hand, the judge's decision is the "crown" and "peak" of the reflection of

the values of justice, essential truth, human rights, a well-established, competent and factual mastery of law or facts, as well as a visualization of the judge's ethics, mentality, and morality. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned, so this judge's consideration must be addressed carefully, well, and carefully.

The basis for a judge's decision-making must be based on interrelated theories and research findings to achieve optimal and balanced results in both theory and practice. One way to achieve legal certainty in the judiciary is for judges, as law enforcement officers, to use their decisions as a benchmark for achieving legal certainty.

The position of administering justice is very noble, because it can be said that this position is only one level below God Almighty, the Most Gracious and Most Merciful. Therefore, it can also be said that the judge is directly responsible to him. In addition, the judge also has a social responsibility to society. The duty and authority of the judge is to try a case that is final. In deciding a criminal case, the judge has several considerations. The basis for the judge's considerations in deciding a criminal case is to consider juridical truth (law) with philosophical truth (justice). A judge must make a decision, a just and wise decision, taking into account the legal implications and its impact on society.

Ratio Legis is two words that each have different meanings. According to the legal dictionary, Ratio means reason or understanding. Legis means law or construction of law. In phrase form, Ratio Legis is the reason or occasion of law, the occasion of making of law. Thus, Ratio Legis in this context means rational consideration as a legal reason.

Philosophically, it must be understood that the decision of a judge or panel of judges, which was initially an individual or panel decision, but when the judge's gavel is struck as a sign of the decision, then at that time the judge's decision must be seen as an institutional court decision, because after the judge's decision or the panel of judges' decision is pronounced in a trial that is open to the public, then such a decision has become a court decision and has become the property of the public.

Law is closely related to justice, and some even argue that it must be combined with justice to truly be meaningful as law, as the purpose of law is to achieve a sense of justice in society. Every law that is implemented demands justice, so law without justice will be in vain, making it worthless in the eyes of society. Law is objective and applies to everyone, while justice is not an easy thing. No matter how difficult it is, this must be done for the sake of the authority of the state and the judiciary, because basic legal rights are rights recognized by the judiciary.

To decide a case, a judge has the freedom from interference or intervention from any party, which is known as an independent judicial power, or can be interpreted as a judicial power that is free from interference from any party. This independent judicial power is an independence or freedom possessed by the judicial institution in order to create an objective and impartial decision.

Likewise in customary courts. The customary judge's decision on cases must be based on the decision, customary sanctions must be in accordance with the provisions as stated in the customary law, not excessive or reduced, educational in nature so that perpetrators who violate customary law are aware so that they do not commit acts that violate customary provisions again. In this way, the decision of the traditional judge can be accepted and the parties to the dispute will return to harmony, so it is hoped that the balance of society will be disturbed and restored. Law is defined as a legal decision (court decision), the main issue being the duties and obligations of judges regarding the duties and obligations of judges in determining what constitutes law. Judges can be considered as one of the factors that shape law. Because the law is incomplete, judges must seek and find the law (*recthsvinding*).

Judges must be able to keep up with the development of legal values within society, as the dynamics that emerge in society often evolve much faster than the legal system itself. Some cases brought to court include cases for which the legal provisions themselves do not exist or are outdated. In urgent situations, when a case is brought to court and positive law does not yet regulate the legal basis for adjudicating the case, the judge, as the embodiment of the judicial pillar who is considered to know the law, can seek and discover the law (*rechtsvinding*) and create legal norms (judge-made law).

Therefore, it is imperative for judges to use a legal discovery approach when determining the law. Although judges are prohibited from refusing to examine, try, and decide a case, this does not mean they can simply make legal discoveries without considering the balance between the elements of certainty, justice, and legal utility. Judges must be absolutely certain that the legal discovery is truly necessary to uphold justice in society. The judge's Ratio Decidendi, or legal reasoning, in making legal discoveries must be very precise. Ideally, in making a decision on a

case, judges consider four elements: philosophical aspects, legal principles, positive legal rules, and the culture of the legal community. These four elements are included proportionally in the legal decision-making process.

Every law is static and unable to keep pace with societal developments, thus creating a vacuum that needs to be filled by judges. Judges try to find and discover their own laws from other legal sources such as jurisprudence, doctrine, treaties, customs, or unwritten law. The existence of law is only felt when a case arises and to resolve the case.

Article 18B paragraph (2) of the 1945 Constitution states: "The state recognizes and respects regional government units that are special or exceptional in nature as well as customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

The legal rationale of Article 18B paragraph (2) of the 1945 Constitution essentially demonstrates the state's commitment to recognizing and respecting the existence of customary law communities and their traditional rights. This regulation was born as a form of legitimacy for the socio-cultural reality that existed long before the nation was founded. Thus, the state cannot ignore the local identity and wisdom that are the foundation of Indonesian nationality. Beyond mere recognition, the constitution also requires respect for the traditional rights inherent in customary law communities. The legal rationale of this regulation is to guarantee the protection and preservation of these rights so that they are not eroded by the currents of modernization, political intervention, or the dominance of centralistic state law. However, this recognition is limited by the condition "as long as they are still alive." This means that only customary law communities that truly still exist socially, culturally, and legally are recognized by the state. The legal rationale of this requirement is to prevent symbolic or fictitious recognition, so that only customary entities that have real continuity in the life of society are recognized. The legislative ratio is to provide legal certainty, establish formal mechanisms, and determine clear boundaries so that the relationship between state law and customary law can run in harmony. Thus, Article 18B paragraph (2) of the 1945 Constitution reflects a constitutional paradigm that seeks to balance respect for the plurality of customary law and the need for integration within the national legal system, so that customary law remains alive, develops, and contributes to strengthening the nation's identity.

Article 1, number 7 of Law No. 3 of 2024, affirms that a traditional village is a distinctly existing customary law community unit, whether territorial, genealogical, or functional, possessing a customary institutional structure authorized to regulate and manage the interests of the customary law community based on their ancestral rights and local customs. This formulation positions customary institutions as a fundamental element in the existence of customary villages.

The legal rationale for this regulation can be understood as follows: the existence of a customary institutional structure is positioned as an essential requirement for the recognition of a customary village. This demonstrates that customary law is not merely norms or customs but also encompasses institutional apparatuses that carry out functions of governance, social management, and enforcement of customary law. Thus, customary institutions are guaranteed legal legitimacy within the framework of the national government system. This regulation emphasizes the importance of customary-based autonomy.

Customary institutions are granted the authority to regulate and manage the interests of their own communities, in accordance with their ancestral rights. The legal rationale recognizes the capacity of customary institutions as legitimate actors in community governance, preventing the marginalization of customary institutions amidst the dominance of modern state bureaucracy. By incorporating customary institutions into the government system of the Republic of Indonesia, this regulation has strategic value in preserving and strengthening local legal culture. Customary institutions function as guardians of tradition, dispute resolution, and government partners in development based on local wisdom. With the legal legitimacy granted by law, the role of customary institutions is further strengthened to carry out these functions without losing authority amidst the current of modernization. Thus, the legislative ratio of Article 1, number 7 of Law No. 3 of 2024 is to ensure that the existence of customary villages is supported not only by historical and social factors, but also by the existence of customary institutions that are formally recognized, authorized, and integrated into the national government system. This emphasizes that customary institutions are a key pillar in maintaining the continuity of identity, cultural sovereignty, and participation of indigenous communities in national development. Therefore, there is a need for recognition and protection of decisions of customary institutions in every village in the Ambon city.

Formulated in the Republic of Indonesia Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government Article 354 paragraph (1) "Regional Governments can establish customary institutions and recognize the existence of customary institutions in the region" The legal ratio of the provisions of Article 354 paragraph (1) of Law Number 9 of 2015 basically confirms that the recognition and establishment of customary institutions by regional governments is not merely an administrative policy, but is a constitutional step that has a strong philosophical, juridical, and sociological foundation. This regulation reflects the recognition of sociological reality. Customary institutions have actually existed long before the modern government system was formed, with an important role in regulating community life, resolving conflicts, and maintaining social balance. Therefore, the authority of regional governments to recognize customary institutions is a form of state adjustment to the social reality that has been established and lives in society.

Maluku Province Regional Regulation Number 14 of 2005 Concerning the Re-establishment of the Village as a Unitary Customary Law Community in the Maluku Province Government Area, Article 11 Further provisions regarding the Organizational Apparatus of the Village Government, Village Consultative Body, Customary/Community Institutions, Village Regulations, Village Finances, Guidance and Supervision as well as other matters related to the Re-establishment of the Village or what is called by another name as a union of customary law communities in Maluku Province will be further stipulated by Provincial, Regency and City Regional Regulations, in accordance with local Customs and Customary Law which do not conflict with the applicable Laws and Regulations.

Recognition of customary institutions in the Ambon City Regional Regulation is an urgent legal necessity. This stems from the constitutional basis as affirmed in Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities and their traditional rights. This provision affirms that customary law, including the decisions of customary institutions, has legal standing as long as it remains alive and in line with the principles of the Unitary State of Republic Indonesia.

Traditional institutions in Maluku, such as the Saniri Negeri and Raja, have played a crucial role in resolving disputes, both civil and criminal. However, their decisions are often only socially recognized without formal legitimacy from the state. This situation raises legal certainty issues, as the validity of customary decisions is often questioned when confronted with positive law. Therefore, the Ambon City Regional Regulation is necessary to provide a clear legal framework so that customary institution decisions are not only valid sociologically but also have recognized legal force.

From the perspective of effectiveness and access to justice, customary institutions have proven to be closer to the community. Customary mechanisms are considered faster, cheaper, and widely accepted because they are rooted in local cultural values. Customary decisions not only resolve legal aspects but also restore social relationships fractured by violations. By incorporating this into the Regional Regulation, the local justice system can operate in harmony with the national legal system, thus fostering integration between state law and customary law.

Furthermore, the ratio legis also plays a role in maintaining the sustainability of customary legal systems, which are often unwritten and may not be easily understood by outsiders. With the ratio legis, indigenous communities have a clear framework for how they should act when facing problems. In this context, the ratio legis also aims to avoid misinterpretations that could harm certain parties and prevent the emergence of decisions that are inconsistent with the values held by the indigenous community.

In practice, the ratio legis in customary courts can refer to flexible norms that can adapt to the dynamics of the times, without neglecting the basic principles that underlie customary law itself. For example, in resolving customary land disputes, the ratio legis can refer to an understanding of the relationship between humans and nature and the obligation to sustainably conserve natural resources. This demonstrates that customary courts focus not only on conflict resolution but also on the sustainability and balance of the broader ecosystem.

Philosophically, customary law stems from local wisdom values believed by indigenous communities to guide their collective life. Resolving criminal acts through customary mechanisms is not only intended to punish the perpetrator, but also to restore the social balance and harmony disrupted by the violation.

Sociologically, the resolution of customary criminal acts is driven by the community's need for an internal mechanism that is more accessible, expeditious, and aligned with their social values. In Urimesing Village, for example, the resolution of land disputes between villages or land boundary issues involves the king, saniri, soa, and kewang. This process demonstrates the community's trust in the customary mechanisms they have long understood rather than directly taking cases to state law enforcement, which are considered more bureaucratic and rigid.

Similarly, in Naku Village, Kilang, the community prefers to resolve criminal and civil matters first through the soa head. If this is not resolved, the king and saniri then decide using the "naik meja" (tribunal) mechanism, a symbol of customary courts. The sanctions given are not just punishment, but also educational, such as taking sand with a can while walking around the country and shouting "Don't be like me", so that other people can learn a lesson.

From a legal perspective, customary law mechanisms serve as a complement to state law. Although Indonesian positive law does not explicitly abolish customary law, its implementation is often debated, particularly when customary sanctions are deemed to conflict with human rights principles. A concrete example is seen in Negeri Kilang, where the customary sanction of caning is still practiced. This punishment is carried out in public, usually after the perpetrator has been "taken to the bench." Traditionally, this is intended to create a deterrent effect and maintain social order. However, from a national legal perspective, this practice can be considered a violation of human rights if it lacks a formal legal basis.

Similarly, in Negeri Latuhalat, the village head acts as the executor of caning. For lighter sanctions, the community is more familiar with warnings or advice. This demonstrates the urgent need for the Ambon City government to issue a Regional Regulation (PERDA) as a legal umbrella. With PERDA, the implementation of customary sanctions retains legal legitimacy, avoids potential human rights violations, and preserves local wisdom. In all traditional countries discussed, the King always occupies the highest position in the case resolution structure. The King's decision is considered final and binding, as seen in the Land of Refineries. Meanwhile, Saniri Negeri acts as a deliberative institution, and the Soa Chief acts as the first resolver at the family or clan level.

First, from a constitutional perspective, Article 18B paragraph (2) of the 1945 Constitution affirms that the state recognizes and respects customary law communities and their traditional rights as long as they remain viable and align with the principles of the Unitary State of the Republic of Indonesia (NKRI). The legislative rationale for this mandate is the necessity of establishing regional regulations that serve as concrete instruments of state recognition, ensuring that customary institutions do not cease to be merely declarative recognition but instead have clear legal force within the regional government structure. Second, from a legal perspective, the establishment of regional regulations on customary institutions aims to integrate customary law with state law. The regulation will serve as the basis for regulating the status, authority, and function of customary institutions, including mechanisms for resolving customary disputes (both civil and criminal), to ensure they do not conflict with national law and human rights principles.

Thus, regional regulations serve as a normative bridge that avoids conflict between customary law and positive law.

Third, from a sociological perspective, the people of Maluku and Ambon City still view customary institutions—such as kings, village heads, and other customary officials—as moral authorities and effective social institutions in maintaining harmony, resolving conflicts, and restoring social relations. The legislative rationale of the Regional Regulation is to provide a more formal and legal space for these customary settlement practices, so that their existence is not seen as merely a tradition, but is recognized as part of the local government system.

4. Conclusion

The decisions of customary institutions are legitimate because they are supported by constitutional recognition (Article 18B paragraph (2) of the 1945 Constitution) and various regional regulations that govern the role of customary law communities. However, their nature is limited to cases that fall under customary authority (customary crimes or minor violations) and are not binding outside the customary community, unless formally recognized by state law. Decisions of customary institutions are socially and morally binding. Customary sanctions (fines, sasi, community service, apologies) are implemented based on cultural agreements and compliance. The legal certainty of customary decisions is strong within the customary community, because the norms and procedures are clear to members of the customary community. The application of customary law is an action carried out by customary leaders with very strong community support to uphold and implement customary law as a law that can provide a sense of justice. Community social actions are carried out based on norms, traditional values, and applicable customary rules. These actions are felt as an awareness of the need for rules that protect and nurture their interests in community life. Individual members of society appreciate the social environment in which they live in society, pay attention to the goals of the members of society concerned, including shared goals in the social environment, and therefore try to understand their actions.

References

- Andi Hamzah, Pengantar Hukum Acara Pidana (Yogyakarta: Liberty, 1996).
- Black, Henry Campbell, Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern (Saint Paul: West Publishing, 1988)
- Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringi, Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana (Bandung: Alfabeta, 2013).
- Dewi C Wulansari, Hukum Adat Indonesia Suatu Pengantar (Bandung: PT Refika Aditama, 2010), pp. 3–4.
- Frans Magnis Suseno, Etika Politik : Prinsip-Prinsip Moral Dasar Kenegaraan Modern (Jakarta: Gramedia, 1991).
- Hazairin, Demokrasi Pancasila (Jakarta: Bina Aksara, 1970).
- Hazairin, Demokrasi Pancasila (Jakarta: Bina Aksara, 1970).
- Irwansyah, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, 5th edn (Yogyakarta: Mirra Buana Media, 2022).
- Lili Rasjidi, Pengantar Filsafat Hukum (Bandung: Mandaar Maju, 2007).\
- Marzuki, Peter Mahmud, Penelitian Hukum, (Jakarta: Kencana, 2007)
- Mertokusumo, S. (2009). Penemuan hukum: Sebuah pengantar. Yogyakarta: Liberty. (Mengutip pemikiran Van Der Valden mengenai asas norma).
- Muchsin, H. (2003). Pengantar ilmu hukum. Malang: UMM Press. (Mengutip pemikiran Dudu Duswara mengenai asas norma sebagai dasar aturan hukum umum).
- Mukti Arto, Praktek Perkara Perdata Pada Pengadilan Agama (Yogyakarta: Pustaka Pelajar, 2004).
- Soekanto, Kedudukan Dan Peranan Hukum Adat (Jakarta: FH UI, 2002).
- Soerjono Soekanto, Kedudukan dan Peranan Hukum Adat (Jakarta: FH UI, 2002).
- Soewandi. (1983). Pengantar ilmu hukum. Jakarta: Pradnya Paramita. (Mengutip pandangan Paul Scholten tentang asas norma dan kesusilaan).
- Tomy Michael Ach Reza pahlevi, 'Pembatasan Gerai Waralaba Dalam Peraturan Meteri Perdagangan Nomor 68 Tahun 2012', Jurnal Hukum <epository.untag-sby.ac.id/2288/7/JURNAL.pdf>.
- Wiwin Yulianingsih, Frans Simangunsong, Muh. Arief Syahroni, Awig-Awig Management Of Marine And Fisheries Resources West Lombok, International Journal Of Community Service, <https://ijcsnet.id/>
- Yudha Bhakti Ardhiwisastra, Penafsiran Dan Kontruksi Hukum (Bandung: Alumni, 200AD).