



Fulfillment of customary obligations as an alternative punishment (Study in Wet Sesait Indigenous Community)

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ABSTRACT

Indonesia recognizes several legal systems that apply in society, one of which is customary law. The purpose of this research is to find out the mechanism for fulfilling customary obligations as an alternative to punishment in the Wet Sesait indigenous community and to find out the position of fulfilling these customary obligations. This research is empirical legal research. The results showed that the fulfillment of customary obligations is carried out if there are Wet Sesait indigenous people who violate the rules that exist in the community where the settlement mechanism is through tau loka empat, while the position of fulfilling customary obligations as an alternative to punishment is more important than state law, where for all Wet Sesait people who commit violations even though these violations are also regulated in state law, namely criminal law, but the Wet Sesait community chooses to resolve through custom and sanctions will be carried out by tau lokak empat. So here is reflected the form of punishment in the Wet Sesait customary law community in the form of fulfilling customary obligations as an alternative to punishment carried out by the state

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1. Introduction

Indonesia as an archipelago, has a heterogeneous society with a variety of traditions, cultures that apply and live in the community environment and it is one of the invaluable things that the Indonesian nation has. Based on this diversity, there is certainly a law that lives in this diversity, law and society are two things that are bound together. This is in line with what Marcus Tullius Cicero said "Ubi Societas Ibi Ius" which means that "where there is society there is law" (Ismiyati & Hendrawati, 2019).

In Indonesia, which is a state of law, all matters of social life are governed by law. However, in a multicultural culture, unwritten law or customary law, which has been passed down from generation to generation, also applies. This is as stated in Article 18B paragraph (2) of the 1945

Constitution of the Republic of Indonesia that "The State recognises and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the state". According to the provisions of this article, the notion of "recognising" means politically that as long as indigenous peoples do not request that their internal affairs be dealt with, the state does not intervene in these affairs. Based on this, states must respect the principle of "recognise" as long as indigenous peoples can handle their own affairs and as long as they do not request state assistance. Respect means allowing indigenous peoples to apply sanctions to problems that arise within their territories and taking clear and decisive action to resolve them (Resmini, 2013).

In their daily lives, customary law communities must comply with the rules that have been implemented for generations, if they do not comply or violate these rules then they will get sanctions. Basically, customary violations are actions that disturb the balance and peace of society by violating the sense of justice and propriety that lives in society. Any violation of customary law will result in harm, not only to the body and life of the person (victim), but also cause disturbance or instability in the magical realm (Mulyadi, 2013). This has the consequence that it is not enough for the resolution of a violation of the law to be an outward solution but must also include the restoration of the balance of nature. As a result of such violations, remedies are required in the form of the fulfilment of certain customary obligations (customary sanctions) (Sahyana, 2020) that must be met for those who violate. Based on this, it is reflected that customary law can be said to be a tool of social control (Zurnetti & Muliati, 2022).

Indonesia as a state of law, the settlement of an offence, in this case a criminal offence, is based on the Criminal Procedure Code (hereinafter referred to as KUHAP) which serves as the basis of procedural law in Indonesia, which regulates how formal law is applied to crimes through established procedures, but in certain communities, settlements are made using other than formal law such as customary law which is oriented towards achieving peace and harmony in community life. Despite the fact that state law applies to all Indonesians, in customary law communities, customary law has a greater influence in regulating their lives.

This is the case with the Wet Sesait community who prefer to resolve criminal offences that occur within the scope of Wet Sesait with customary law. Wet Sesait is an area where customary law applies, consisting of the villages of Sesait, Kayangan, Pendua, Santong and Dangieng located in North Lombok Regency, West Nusa Tenggara Province. The people in these villages are bound by customary laws that have been implemented for generations. The Wet Sesait indigenous community recognises the existence of adat tapsila which is an order of human life that reflects purity in thinking, speaking and acting in relation to *Neneq Siq Kuasa* (God), fellow humans and with *gumi paer* or *gontor paer* (the natural environment). So that the community must maintain these relationships.

If it is violated, a sanction called *dedosan* will be imposed in the form of fulfilling customary obligations that must be carried out by the perpetrator. Although the act has been regulated in state law, for example theft regulated in the Criminal Code (hereinafter referred to as the Criminal Code), where the perpetrator should be tried and sanctioned in accordance with the provisions in the Criminal Code. However, the Wet Sesait customary community prefers to resolve through customary law. Where later the perpetrator will be tried in accordance with customary rules and subject to customary sanctions in the form of fulfilling customary obligations. If the customary obligation has been carried out by the perpetrator, it is considered complete and has been punished. This means that the fulfilment of customary obligations in the Wet Sesait indigenous community is a form of punishment in the Wet Sesait indigenous community, or can be said to be an alternative to punishment from national law. In terms of criminal law, punishment can be said to be the stage of deciding sanctions and the stage of enforcing sanctions, simply put, punishment can be interpreted as punishment (Agung et al., 2021). In terms of the purpose of punishment, Adami Chazawi argues that there are three groups of theories of the purpose of punishment, namely absolute theory or theory of retaliation, relative theory or theory of purpose and combined theory (Chazawi, 2002). Whereas

in customary law the purpose of punishment is not merely to punish the perpetrator, but also to bring a sense of peace and restore balance in society (Widayati, 2013) .

As was the case in July 2023 where a student from one of the universities on the island of Lombok made a TikTok content which triggered the anger of the people in Kayangan Village. The content was considered to hurt the feelings of the Kayangan community and violated the customary norms that apply in the area. The student had previously uploaded a clarification video and apology through their social media accounts. However, the head of Kayangan Village stated that the clarification and apology were not enough and the student was subject to the customary law sanction of "*gila bibir*" (A. Kurniawan, 2023). As it is known that Kayangan is one of the areas part of Wet Sesait so the act was resolved through customary channels. Therefore, the student was subject to customary obligations. In the tradition of Wet Sesait customary law, this act is an act that violates the custom known as *gila bibir*, which means an unlawful behaviour in the form of speech by a person or group of people over another person which causes offence to another person or group so that the student must be given sanctions in the Wet Sesait community called *dedosan* by fulfilling customary obligations by offering one goat, rice, and *sakuriring* to taste. *Sakuriring* is a set of equipment according to the size of the *dedosan* in the completion of customary sanctions.

This illustrates how customary law applies in the community. Currently, the National Criminal Code, which will take effect 3 years after its enactment in 2026, has accommodated the values that live in the community. Article 2 of the National Criminal Code states that a person can be prosecuted and convicted on the basis of laws that live in the community even though the act is not regulated in the legislation, based on this, the position of customary law is getting stronger. Then in terms of punishment, the National Criminal Code has accommodated customary law by including the fulfilment of customary obligations as an additional punishment.

Based on the description above, it is necessary to know how the mechanism of fulfilling customary obligations as an alternative to punishment in the Wet Sesait indigenous community and the position of fulfilling customary obligations as an alternative to punishment in the Wet Sesait indigenous community. So that theoretically this research can contribute to the development of legal science in general and criminal law in particular related to how the implementation of the fulfilment of customary obligations that exist in society and practically, namely it can be a reference for policy makers to take policies related to the fulfilment of customary obligations

2. Method

This research is a type of empirical legal research (Benuf & Azhar, 2020). Where research is conducted by examining and analysing the fulfilment of customary obligations as an alternative to punishment in the Wet Sesait indigenous community. The types of approaches used are sociological juridical and case approaches. The juridical sociological approach is used to examine and analyse how the fulfilment of customary obligations as an alternative to punishment in the Wet Sesait indigenous community. The case approach is used to find out about the causes of cases, the mechanism for resolving criminal offences and the fulfilment of customary obligations. The data used in this research consists of primary and secondary data, primary data in the form of interviews with traditional leaders, community leaders and local communities while secondary data is in the form of books, articles and documents related to the research topic. The data analysis technique uses a qualitative descriptive method where researchers describe the data in the form of fulfilling customary obligations and then based on this data are connected and studied based on existing legal provisions. Thus a conclusion is obtained to understand and answer the problems raised in this study.

3. Analysis and Results

3.1. Mechanisms for Fulfilling Customary Obligations as an Alternative to Punishment in the Wet Sesait Indigenous Community

Indonesia as a plural country has an impact on the laws that apply in society, the community is not only governed by state law but also laws that live in the community. This causes various differences in the application of the law implemented in each community group. No exception in resolving the problems that occur. As is known, there are at least two different types of institutions to resolve disputes in society, namely (Nurjaya, 2008): a) Institutions for resolving traditional disputes, which are based on the political and legal system of the people and take place traditionally, b) Institutions for resolving disputes based on the political and legal system of the state.

In customary law communities, of course, they will choose the first type of institution that is traditional in resolving problems that occur. Customary law has its own way of resolving the problems of its members. When compared to other legal systems, customary law has a special and unique character because customary law develops from society and thus its existence cannot be separated from it (Hamid, 2016). Every customary law community is required to comply with the norms and rules that are the agreement of the members of the customary law community. Likewise, in the Wet Sesait indigenous community in everyday life there are actions that should not be done or violated. The forms of these actions include: a) Offences against houses of worship such as: deliberately damaging houses of worship or facilities, deliberately polluting houses of worship or facilities and deliberately entering houses of worship dressed without covering the aurat, b) Violations in the month of hardship (the month of sa'ban and Ramadan) such as: everyone should not have sexual intercourse in the month of hardship, should not deliberately recite, should not deliberately eat drink and or the like during the day in the month of fasting (month of hardship), and every leader and / or family (children and wife) who have sexual intercourse in the month of hardship, c) Prohibition of alcohol and gambling, d) Prohibition of slander such as: all people are prohibited from deliberately slandering and or the like against other people including slandering traditional leaders, religious leaders, and government leaders, e) Prohibition of beatings where every person is prohibited from intentionally beating another person which causes the other person to suffer injury, serious injury or death, f) Prohibition of not keeping promises in this case everyone is prohibited from deliberately committing acts to not keep promises between each other, and everyone is prohibited from deliberately committing acts that are contrary to the behavioural procedures of indigenous peoples, g) Prohibitions on non-mahram interactions such as: every man is prohibited from deliberately stalking and or holding certain body parts of women who are not his muhrim, prohibited from committing acts of rape against women, prohibited from committing acts of rape against girls and causing pregnancy, prohibited from committing acts of rape against other people's wives, prohibited from ngembetin (impregnating) women (consensual), every woman is prohibited from embet (getting pregnant) outside marriage, prohibited from committing adultery between married couples talaq three and causing pregnancy, and or adultery, h) *Salaq kelakuan* (misbehaviour) in this case every person is prohibited from deliberately taking someone else's property without clear intention, every person deliberately peeping at someone bathing is subject to the law of *salak kelakuan* and every person is prohibited from deliberately entering someone else's house secretly or without the knowledge and permission of the owner of the house, i) *Memaling* (stealing), in this case everyone is prohibited from deliberately damaging other people's property and everyone is prohibited from committing maling (stealing), j) *Bodo krama*, which is when committing an act that violates customary law due to ignorance.

Wet Sesait customary law does not differentiate whether the act is a criminal or civil act, all of which constitute an offence. Even though the act is an offence against state law, in this case criminal law, the community will choose to resolve it through customary law. So in the Wet Sesait community, if someone disobeys or violates the rules, the action is resolved through adat,

in this case it is resolved through *tau lokak empat*, which are elders who are given the responsibility of carrying out the mandate of worship. *Tau lokak empat* consists of mangku gumi, pengulu, pemusungan and jintaka. The mangku gumi is the worship leader, the pengulu is part of the *tau lokak empat* who are responsible for carrying out religious rituals, the pemusungan is part of the *tau lokak empat* who are in charge of running the customary government and the jintaka is part of the *tau lokak empat* who are responsible for carrying out rituals in farming. Currently, in Wet Sesait, the mangku bumi is held by Setam who is a resident of Sesait village, the jintaka is held by Amaq Timi from Kayangan village, the pengulu is held by Maswadin from Sesait village and the pemusung is held by Susianto from Sesait village.

If there are residents who violate it, they will be processed in accordance with existing customary law and will be given sanctions in the form of fulfilling customary obligations. Given that the Wet Sesait indigenous people prefer to use customary law compared to state law. The mechanism in the event of a violation of customary law, resulting in the fulfilment of customary obligations, is as follows:

First of all *ngerusipang*, which is raising problems that occur to a person or group suspected of committing a customary violation, then followed by *ngerpotang*, which is reporting a case or problem that can be considered a form of customary violation to the *krama gubuk*. Then after there is a report, the *tau lokak empat* will summon the parties, namely the complainant and the reported party suspected of committing a customary violation to obtain information. The parties in this stage are usually accompanied by their respective hamlet heads.

Then at this stage the *tau lokak empat* investigates the parties, the investigation can be carried out by the *tau lokak empat* or one of the *tau lokak empat* who has been mandated to do so. Outside the *tau lokak empat* in the process can be assisted by *pembekel* whose function is to help the *tau lokak empat* carry out customary duties and functions in Wet Sesait. Then after the process, if it is proven based on the results of the investigation through clarification of each party and after examining the evidence and the perpetrator admits, the *tau lokak empat* will determine the *dedosan*, but if it is not proven what is alleged and does not have a strong basis, the reported party is declared innocent and cannot be blamed by custom.

Furthermore, if the reported party does not admit or deny after clarification as in the previous stage, it will be followed by an oath under the Koran carried out in *the kampu* (a type of traditional house where customary deliberations are held). For those who do not admit but have carried out the oath, they will not be subject to *dedosan*, because according to the community's belief if they really did it but did not admit it, they will get a reply from God, God will give justice. For those who admit, the *dedosan* will then be determined depending on the severity of the offence based on the decision of the *tau lokak empat*. After there is a decision, the perpetrator must carry out the customary obligation as his responsibility for committing an offence, to fulfil the customary obligation the perpetrator will be given time to fulfil the customary obligation. After the specified time limit, the perpetrator will come with the *dedosan*, and the officer who has been mandated by *tau lokak empat* will check the *sakuriring* brought by the perpetrator then proceed with a congratulatory prayer. The activity is attended by *tau loka empat*, religious leaders, traditional leaders, regional leaders from both parties, the parties including in this case the community who come to witness but in limited numbers.

It is different if the perpetrator of violating customary law is caught red-handed accompanied by evidence when committing a violation, in which case the *dedosan* will be imposed directly. This also applies if the perpetrator commits a customary violation openly or in a public place. Another case if the violation of customary law is committed by leaders of indigenous community leaders, religious leaders, the *dedosan* obtained is 2 times as much and dismissed from office.

Based on this mechanism, it can be seen that the settlement of violations in the Wet Sesait indigenous community reflects the use of the presumption of innocence, where a person who is reported is not considered guilty until there is a decision that is legally binding (Tryan, 2016) , in

this case the decision of the *tau lokak empat*. In the process of resolving the problem by the *tau lokak empat*, it is carried out in a balanced manner where the *tau lokak empat* as decision makers clarify the parties and look for evidence not just getting a report and then imposing sanctions, this reflects a judicial process that is carried out in a balanced manner by paying attention to the values of justice. This will certainly give more confidence to the Wet Sesait indigenous people to resolve their problems through customary channels rather than using state law.

3.2. The Position of Fulfilment of Customary Obligations as an Alternative Punishment in the Wet Sesait Indigenous Community

Customary law is the original law of Indonesia, in which there is order and prohibition. Prohibitions in customary law imply sanctions that will be received by the perpetrators (Busroh, 2018). Customary law is used in all areas of social life. Customary law serves as the main source of rules in the behaviour of indigenous peoples. In Indonesia, the existence of customary law has been officially recognised by the state based on Article 18B paragraph (2) of the 1945 Constitution.

Indigenous peoples in their daily lives are bound by provisions or rules that have been implemented for generations, while if there is a violation, it will usually be resolved through customary institutions as well. The settlement of community disputes based on customary law is built on the philosophical ideals of justice, sacrifice, and communal unity (Remini & Sakban, 2018). Each member of an indigenous community has embedded in his or her heart a philosophy of life known as customary law which is of common interest. Conflicts or disputes between individuals and groups must be resolved quickly and wisely by using customary resolution channels, because in the view of customary law communities conflicts or disputes will harm the common (communal) interest (N. adhi Kurniawan, 2021). Based on this, it can be said that in customary law communities, disputes that arise between communities or groups are actions that interfere with common interests so that they must be resolved quickly and wisely by resolving through customary law.

The Wet Sesait indigenous community uses customary law as the basis for their behaviour. In the Wet Sesait indigenous community, if members commit an offence in the area, the settlement prioritises the applicable customary law. The Wet Sesait indigenous community implements customary law that has been implemented for generations, as a regulator, supervisor, and limiting the community in behaviour. This is solely to maintain security and order in the community. If violated, sanctions will be imposed in accordance with existing customary rules. The concept of sanctions in the Wet Sesait indigenous community is intended as a consequence that must be accepted for anyone who commits an act that is contrary to custom. Sanctions have the same meaning as the word punishment (Efriani & Agustinus, 2021) or in criminal law in principle sanctions are the deliberate addition of suffering (Amiruddin, 2021). However, in the Wet Sesait customary law community sanctions are not as in criminal law, sanctions mean a form of responsibility that must be carried out by violators. The sanction must be implemented and paid by the violator, the sanction is the result of an agreement from the community represented by *tau lokak empat*.

The types of sanctions in Wet Sesait have levels ranging from low, medium and high. This depends on the type of offence committed. The highest level is a cow or buffalo, then the medium level is a goat and the lowest level is a chicken, the three dedos / sanctions are usually accompanied by rice sik rombong and *sakuriring*.

The Wet Sesait indigenous people in their lives are more subject to customary law, they prefer to solve their problems through customary law rather than state law. The community will accept the offender back if he has fulfilled his customary obligations. This means that adat-based settlements bind the community inwardly so that they are trusted to solve their problems. This is because when a rule binds a person's mind, it affects their awareness of the rule and makes them more likely to accept and follow it.

As according to one of the Wet Sesait traditional leaders, the Wet Sesait community has its own awareness in implementing existing customary laws, for example, there are people with their own awareness without being known by others to commit customary violations by saying dirty words in certain months that should not be done, they come to the kampu themselves and declare themselves guilty and are ready to repair themselves by custom. Based on this, it can be said that customary law is inwardly binding for each of its citizens so that they have the awareness to comply with it.

Customary settlements provide satisfaction to the community and therefore can be said to provide justice to the community. Settlement through adat in Wet Sesait prioritises forgiveness and peace for all members of the community including the perpetrator or victim. Such a settlement can be considered a high quality settlement because it can resolve the problem thoroughly without leaving traces of hatred or revenge because the settlement of disputes outside the court is based on conscience and implementing the law at the level of values.

Just as settlement through custom in Wet Sesait will not leave behind hatred, enmity, or mutual grudges between the parties if someone guilty according to custom has carried out the resolution in the form of fulfilling his customary obligations. This is related to trust and adherence to traditional values(Rada, 2010).

Fulfillment of customary obligations can be said to be an alternative punishment in the Wet Sesait community, where for all Wet Sesait communities who commit violations even though these violations are also regulated in state law, namely criminal law, where these actions can be categorized as criminal acts regulated in the Criminal Code, however, Customary law communities choose to settle through custom and sanctions will be carried out by *tau lokak empat*. Based on criminal law, the punishment should be adjusted to the type of crime committed.

Based on this, it is reflected that perpetrators who commit violations are subject to sanctions even though they do not take legal action, so that the form of punishment in the Wet Sesait customary law community in the form of fulfilling customary obligations is an alternative to punishment carried out by the state. Thus, people who commit violating acts are not free from responsibility, even though they do not use state law, they will still receive sanctions that must be fulfilled in accordance with customary law.

In the Wet Sesait community, the community is more satisfied if it has been resolved through custom and it becomes a social record that the mistake has been resolved according to custom and the perpetrator has carried out his customary obligations. However, if it is not resolved according to custom, it will be the talk of the town forever. This shows how the position of fulfilling customary obligations is more important than state law.

As is currently known, the application of Indonesian criminal law states that it cannot use unwritten law as a solution to Indonesian law. This is related to the principle of legality which states that an act cannot be punished with a criminal sentence, except based on the strength of the provisions of existing criminal legislation(Soa & Ismawati, 2023). This certainly weakens the position of customary law in national law.

However, the existence of the National Criminal Code has strengthened the position of customary law because of its recognition in the National Criminal Code as in the provisions in Article 2, where paragraph 1 states that: "the provisions referred to in Article 1 paragraph 1 which states that "does not reduce the validity of the laws that live in a society which determines that a person deserves to be punished even though the act is not regulated in this law", then paragraph 2 states that: "the law that lives in society as intended in paragraph (1) applies in the place where the law lives and as long as it is not regulated in law "This law is by the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights and general legal principles recognized by the people of nations."

This provision applies laws that live in society as long as they are not yet contained in this Law. Apart from that, this article shows the freedom provided by the principle of legality for the application of law in society and law enforcement. Then the National Criminal Code regulates things that were not previously regulated in the current Criminal Code, namely related to punishment, where Article 66 letter f states that additional punishment is a fulfillment of customary obligations. Based on this, of course, the National Criminal Code in terms of punishment has accommodated customary law by including the fulfillment of customary obligations as an additional crime.

Based on these articles, of course, it has accommodated the values that live in society and strengthened the position of customary law in state law. However, at the implementation level, it will require several changes and adjustments to facilitate the achievement of benefits, certainty, and justice.

4. Conclusion

Fulfillment of customary obligations is carried out if the Wet Sesait indigenous community violates the rules that have been in place for generations. Where the mechanism starts with *ngerusipang*, then *ngerpotang*, summons, *sepukang*, then if you admit, a *dedosan* will be determined, and if you don't admit it will continue with an oath, that those who admit will carry out traditional obligations and close with a congratulatory prayer. The position of fulfilling customary obligations in the wet customary community is that fulfilling customary obligations can be said to be an alternative punishment in the Wet Sesait community, where all Wet Sesait communities who commit violations even though these violations are also regulated in state law, namely criminal law, where these actions can be categorized as a criminal offense regulated in the Criminal Code but the customary law community chooses to resolve it through custom and the imposition of sanctions will be carried out by *tau lokak empat*. Based on criminal law, the punishment should be adjusted to the type of crime committed. So here it is reflected that perpetrators who commit violations are subject to sanctions even though they do not take legal action so the form of punishment in the Wet Sesait customary law community in the form of fulfilling customary obligations is an alternative to punishment carried out by the state. Thus, people who commit violating acts are not free from responsibility, even though they do not use state law, they will still receive sanctions that must be fulfilled by customary law.

In the Wet Sesait community, the community is more satisfied if it has been resolved through custom and it becomes a social record that the mistake has been resolved according to custom and the perpetrator has carried out his customary obligations. However, if it is not resolved according to custom, it will be the talk of the town forever. This shows how the position of fulfilling customary obligations is more important than state law. So that this has implications for how the implementing regulations and policies of each region related to the fulfilment of customary obligations in the National Criminal Code considering that customs in each region are different and of course these differences add to the treasures in legal science, especially criminal law related to the fulfilment of customary obligations.

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