



Implementation of the Concept of Restorative Justice in the Settlement of Misdemeanor Crimes

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Abstract

Restorative justice is an alternative approach in the criminal justice system that focuses on recovering losses suffered by victims, the responsibility of the perpetrator, and the involvement of the community in solving criminal acts. This approach does not focus on punishment, but on the restoration of relationships damaged by crime and participatory settlement between victims, perpetrators and social communities. The unity of the indigenous peoples of Southwest Maluku Regency adheres to the culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta (coexistence well) as a culture that is also the highest guideline of life and kinship applied in daily life that regulates kinship relations between individuals and between families in the integrity of life as a customary community. This study is an Empirical Juridical Research that explores the issues through conceptual, statutory, and case approaches. Based on these methods, conclusions and recommendations are formulated. The research and analysis employ the framework of the Criminal Justice System, the concept of Restorative Justice, Indigenous Communities, and the Theory of Balance in assessing the implementation of restorative justice in resolving minor offenses. The findings confirm that in every minor criminal offense committed within the indigenous legal community of Southwest Maluku, axiological values namely the customary values of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta take precedence over national criminal law (material criminal law). These values serve as legal principles to resolve the offense through non-penal means based on the concept of restorative justice, by imposing customary obligations that require the offender to compensate the victim. This form of simple justice, carried out through customary proceedings, aims to halt the formal criminal process, thereby reducing the burden on law enforcement subsystems and minimizing the state's financial expenditure related to the prosecution and imprisonment of minor offenders.

Keywords: *Implementation; Restorative Justice; Resolution of Minor Offenses.*

INTRODUCTION

The criminal justice system in Indonesia has so far focused more on a retributive approach, namely by punishing perpetrators without considering the restoration of the relationship between the perpetrator, the victim, and the community. This approach often does not solve the root of the problem and instead causes overcapacity in correctional institutions.¹ The criminal justice system is a series of working mechanisms of law enforcement officials consisting of sub-systems, starting from the stage of investigation, investigation, arrest, detention, to prosecution (pre-adjudication), followed by examinations at trials and judges' decisions (adjudication), as well as the implementation of verdicts and the development of prisoners in correctional institutions (post-adjudication). This entire process is the implementation of formal criminal law which aims to enforce and maintain the applicability of material criminal law as a form of achieving the goals of criminal justice.² In an effort to protect and defend legal interests (*rechtsbelang*), there are often violations of the law in the

¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenadamedia Group, 2017), p. 23.

² Yesmil Anwar dan Adang, *Sistem Peradilan Pidana (Konsep, Komponen dan Pelaksanaannya dalam Penegakan Hukum di Indonesia)* (Bandung: Widya Padjadjaran. 2009). p. 28.

form of criminal acts (*strafbaar feit*) or criminal acts (*delict*). These types of offenses include crimes (*misdrifven*) against the physical integrity and soul of humans, such as persecution, murder, adultery, and rape. In addition, there are also crimes that attack property rights, such as theft and destruction of goods, both individual and public property.

Petty crimes, although they have a small legal impact, still contribute to a high number of cases in court. Formal treatment is often not commensurate with the value of the losses and social impacts caused, so alternative approaches are highly relevant to apply.³ Petty crimes, although normatively considered to have a low level of punishment threat and limited legal impact, still contribute significantly to the high burden of cases in criminal justice institutions. Most of these cases involve violations that are simple in nature, both in terms of the value of the loss and the social impact caused. However, the handling still follows a complex formal process and requires considerable legal resources, time, and costs. This results in an imbalance between law enforcement efforts and the results achieved. In addition, a formal approach that is retributive does not pay attention to the aspect of restoring social relations between the perpetrator, the victim, and the community. In this context, the application of alternative approaches such as restorative justice becomes relevant and strategic, as it focuses more on participatory conflict resolution and direct recovery of losses. Restorative justice can be a solution in realizing the efficiency of the criminal justice system while maintaining substantive justice values, especially in minor cases that can actually be resolved outside of formal litigation mechanisms.⁴

Restorative justice is an alternative approach in the criminal justice system that focuses on recovering losses suffered by victims, the responsibility of the perpetrator, and the involvement of the community in solving criminal acts. This approach does not focus on punishment, but on the restoration of relationships damaged by crime and participatory settlement between victims, perpetrators and social communities.⁵ Unlike the retributive approach that emphasizes retribution against the perpetrators, restorative justice seeks dialogue, mediation, and mutual consensus that aims to restore the situation as it was before the crime occurred. The main goal of restorative justice is to create more humane justice, provide opportunities for perpetrators to be morally responsible, and provide space for psychological and social recovery for victims.⁶

Solving various criminal acts (*delict*) as mentioned earlier, the indigenous people of Southwest Maluku prioritize *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* as the highest customary law (*adatrecht*) that applies. This settlement mechanism is seen as more effective as a non-penal means than bringing the case to the realm of positive law (*legal positivism*), which takes the formal path of criminal justice (*criminal justice system*) and is oriented towards punishment, this model of criminal justice settlement is known as the concept of *restorative justice* developed by various scientists.

The unity of the indigenous peoples of Southwest Maluku Regency adheres to the *culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* (coexistence well) as a culture that is also the highest guideline of life and kinship applied in daily life that regulates kinship relations between individuals and between families in the integrity of life as a customary

³ Muladi, *Kapita Selektif Sistem Peradilan Pidana* (Semarang: Badan Penerbit UNDIP, 2002), 85.

⁴ Romli Atmasasmita, *Rekonstruksi Teori Hukum Pidana Indonesia dalam Perspektif Restorative Justice* (Bandung: Refika Aditama, 2012), p. 56.

⁵ Lilik Mulyadi, *Hukum Pidana dalam Perspektif Restorative Justice*, (Bandung: Citra Aditya Bakti, 2011), p. 25.

⁶ Tony Marshall, *Restorative Justice: An Overview*, (London: Home Office, 1999), p. 5.

society,⁷ In response to the limitations of the conventional justice system, the concept of restorative justice began to develop as an alternative to criminal case resolution that emphasizes recovery, dialogue, and agreement between the parties involved.

The Indonesian government through law enforcement officials has begun to accommodate the restorative justice approach in various policies, as stipulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice and the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. This study aims to examine the implementation of the concept of restorative justice in handling minor crimes in the Indonesian criminal justice system, by examining its effectiveness, implementation challenges, and potential for future development.

METHODS OF THE RESEARCH

Metode yang digunakan dalam penulisan skripsi ini adalah yuridis empiris. Suatu Metode penelitian hukum yuridis empiris, metode penelitian hukum yang berfungsi untuk memungkinkan kita melihat hukum dalam arti yang sebenarnya bagaimana 135social hukum berfungsi dalam kehidupan 135social135kat. Metode penelitian hukum empiris disebut juga penelitian hukum 135social atau penelitian hukum sosiologis karena merupakan penelitian yang melibatkan orang-orang dalam hubungan sosial,dapat dikatakan bahwa proses penelitian hukum ini dapat diperoleh dari fakta-fakta yang ada dalam kehidupan bermasyarakat, badan hukum.⁸

RESULTS AND DISCUSSION

A. The Concept of Restorative Justice in the Context of the Criminal Justice System

Frank Remington was a pioneer in the development of criminal justice administration engineering in the United States by introducing a *systemic approach*. The initial idea of this system approach was outlined in a pilot project report in 1958, which became widely known as *the Criminal Justice System*. The approach emphasizes the importance of integration between various subsystems in the criminal justice system, which include the police, prosecutor's office, judiciary, and correctional services. Since then, there has been a development of thinking from criminal law and criminal justice experts who prioritize the framework of the system in the implementation of law enforcement tasks.⁹

The implementation of the criminal justice system is basically a structured working mechanism of each criminal law enforcement subsystem. This mechanism includes the stages of investigation, investigation, arrest, detention, and prosecution (pre-adjudication), followed by the trial process and judge's decision (adjudication), and ends with the implementation of the verdict and the development of prisoners in correctional institutions (post-adjudication). All of these stages are an integral part of formal criminal law that serves to enforce and maintain the applicability of material criminal law in order to achieve the

⁷ Yeheskel Wessy, "Criminal Law Review of Customary Fines According to the Value of Kalwedo and Snyoli Lyeta in Tounwawan Village, Moa Island, Southwest Maluku Regency", *Journal; Lutur Law Journal* 1, no. 2 (2021): p. 71

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (UI Press, Jakarta, 1984), p. 43.

⁹ Romli Atmasasmita. *Sistem Peradilan Pidana Indonesia*. (Jakarta: Putra Bardin. 1996). p. 12.

ultimate goal of the criminal justice system itself,¹⁰ In this context, the criminal justice system is also referred to as the *criminal justice process*, which is a series of legal processes starting from the act of arrest to the execution of the crime. This system prioritizes the procedural dimension as a manifestation of normative provisions in laws and regulations, which provide a basis for authority for each subsystem in carrying out law enforcement functions efficiently and coordinated.¹¹

Romli Atmasasmita stated that the criminal justice system has a number of important characteristics that are the foundation in its implementation, namely: This system emphasizes the importance of coordination and synchronization between all components of law enforcement that are part of the criminal justice subsystem; 1) This system also emphasizes the importance of supervision and control over the use of authority by each subsystem so that there is no abuse of power; In its implementation, this system prioritizes the effectiveness of crime prevention rather than simply pursuing the efficiency of case resolution; 2) Law is positioned as an instrumental means used to strengthen *the administration of justice* as a whole.¹²

Mardjono Reksodipoetra defines the criminal justice system as a crime control system consisting of various law enforcement institutions, namely the police, prosecutor's office, courts, and correctional institutions that handle inmates. Based on this definition, he formulated three main objectives of the criminal justice system: 1) This system aims to prevent members of society from becoming victims of crime; 2) This system must be able to resolve criminal cases that have occurred fairly, so that the community feels that justice has been upheld and the perpetrators of crimes receive appropriate punishment; 3) This system also plays a role in efforts to rehabilitate perpetrators so that they do not return to commit criminal acts in the future.¹³ A British criminologist Howard Zehr with the *theory of "Restorative Justice"* there are four concepts of punishment, namely:¹⁴ 1) *Structured sentencing*; 2) *Indeterminate* ; and 3) *Restorative/community justice* .

Howard Zehr's view of restorative justice theory reveals 5 key principles of the restorative justice view, namely:¹⁵ 1) Restorative Justice contains full participation and consensus; 2) Restorative Justice seeks to heal the damage or losses that exist due to the occurrence of crimes; 3) Restorative Justice provides direct accountability from the perpetrator in its entirety; 4) Restorative Justice seeks reunification to community members who are divided or separated due to criminal acts; 5) Restorative Justice provides resilience to the community in order to prevent the next criminal act. It can be argued that the retributive approach or penal approach tends to ignore the relational dimension between perpetrators, victims, and indigenous communities, in this framework, the presence of alternative approaches such as restorative justice is very significant, because it offers a better settlement mechanism and is oriented towards the recovery of victims of minor crimes and the restoration of kinship relationships in order to maintain the social balance of society. This restorative justice model is considered to be able to increase the effectiveness of case handling, while maintaining the principle of substantive justice, especially in cases of minor crimes that should not always be

¹⁰ Yesmil Anwar dan Adang. *Sistem Peradilan Pidana (Konsep, Komponen dan Pelaksanaannya dalam Penegakan Hukum di Indonesia)*. (Bandung: Widya Padjadjaran. 2009), p. 28.

¹¹ Romli Atmasasmita, *Rekonstruksi Teori Hukum Pidana Indonesia dalam Perspektif Restorative Justice* (Bandung: Refika Aditama, 2012), p. 39.

¹² Romli Atmasasmita, *Sistem Peradilan Pidana: Perspektif Eksistensialisme dan Abolisionisme* (Jakarta: Prenadamedia Group, 2014). p. 29.

¹³ Mardjono Reksodipoetra, *Kriminologi dan Sistem Peradilan Pidana* (Jakarta: Lembaga Kriminologi Universitas Indonesia, 1994), p. 67.

¹⁴ Achmad Ali. *Menguak Teori Hukum (legal theory) dan Teori Peradilan (Judicial Prudence)*. (Jakarta: Kharisma Putra Utama. 2013). p. 247

¹⁵ *Ibid.* p. 249.

resolved through the criminal justice system and serving sentences in correctional institutions.

In line with the restorative justice theory, the settlement of minor crimes in indigenous peoples as per the Balance Theory from R. Kranenburg,¹⁶ This theory is based on the principle of equilibrium. Since Kranenburg posits the division of the conditions for profit and loss, each member of society has an equal and equal position in the law. However, those who are willing to have special conditions will also get special benefits and losses. Each person will get a profit or loss according to the conditions that he or she has to obtain to gain or lose it. People's legal consciousness becomes the source of law, and it functions according to a real postulate.

Based on such thinking, if a person commits a crime or a criminal act that means that he makes a special suffering for others, then it is balanced that the criminal is given special suffering that is equal to the suffering he has committed against others, in a community that still upholds a formalistic cultural pattern, the practice of simple justice at the local or village level is still often found. This mechanism reflects the concept of *simple justice* which is maintained as a means to avoid the possibility of court decisions. However, the existence of a simple and speedy judiciary does not always guarantee the achievement of true justice, as overly concise procedures have the potential to override the principles of substantive justice and the protection of the human rights of the parties involved in minor crimes.

B. Implementation of Restorative Justice in the Settlement of Misdemeanor Crimes

The concept of the state of law cannot be interpreted narrowly only limited to the aspect of formality or the existence of the rule of law alone. More than that, there needs to be a strengthening in the form of the implementation of living legal values and consistent legal behavior in order to create a substantial state of law. There are still differences of opinion among legal thinkers, with some wanting the orientation of the national legal system towards the Western legal system, while others emphasize the importance of being rooted in Indonesian customary law principles as a reflection of local cultural identity.¹⁷

According to Simons, an act can be categorized as a delicacy if it meets several main elements, namely: first, the act is an act committed by a human being; second, the act is expressly prohibited by law and its violation is threatened with criminal sanctions; and third, the action is carried out by the perpetrator who can be legally held accountable for his actions.¹⁸ In principle, the handling of a criminal case is highly determined by the classification of the type of offense. There are two main categories in this case, namely ordinary crimes and complaint crimes. In ordinary crimes, the law enforcement process can be continued even without the consent of the victim. This means that even though the aggrieved party has withdrawn the report to law enforcement officials, the investigator still has the authority to continue the investigation.

On the other hand, a complaint is a criminal act that can only be processed if there is a report or complaint from the victim. According to Utrecht, in this type of offense, the criminal prosecution process is highly dependent on the consent of the victim. If there is peace

¹⁶ Adami Chazawi. *Pelajaran Hukum Pidana*, Bagian 1. (Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana). (Jakarta: RadjaGrafindo Persada. 2001), p. 161.

¹⁷ Sudjito bin Atmoredjo (Guru Besar dan Ketua Program Pascasarjana Fakultas Hukum UGM). *Negara Hukum Dalam Perspektif Pancasila*. Makalah untuk Kongres Pancasila. Kerjasama Mahkamah Konstitusi RI dan Gadjah Mada. Tanggal 30 Mei - 1 Juni 2009. Yogyakarta: Balai Senat UGM, 2009.

¹⁸ Leden Marpaung. *Unsur-Unsur Perbuatan yang Dapat Dihukum*. (Jakarta: Sinar Grafika. 1991). p. 4.

between the perpetrator and the victim, then the victim has the right to revoke his report and this can stop further legal proceedings.¹⁹

Types of misdemeanor offenses as complaints offenses as regulated in the Indonesian Criminal Code (KUHP), especially those that fall into the category of violations or misdemeanor crimes regulated in Book III of the Criminal Code; Articles 351-355 (Persecution), Article 170 (Joint violence) 362-364 (Theft), Article 335 Crimes against the independence of persons/Objectionable acts), Article 551 (Entering the yard of a person without permission), Articles 503-505 (Disturbing public order), Articles 406-407 (Damaging other people's plants) and other criminal acts as regulated in the Criminal Code as complaints offenses.

As a country of law (*rechtstaat*), Indonesia emphasizes a firm distinction between written positive law and customary law as an unwritten law (*adatrecht*) that originates from people's customs. Every act that is classified as a criminal act (*delict*) will be responded to by the state through criminal law instruments, both from formal and material aspects. The State, through the judiciary as part of the criminal justice subsystem, exercises its authority under the law to enforce the law and protect the rights of the legal subjects who suffer losses, namely the victims.²⁰ Therefore, every legal subject who commits a criminal act (*strafbaar feit*) must be held accountable through the criminal *justice system* as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Law, which in legal literature is known as the Criminal Procedure Code (KUHP), in the framework of this criminal justice system customary law should have a space that is proportionality as an alternative mechanism in resolving cases or criminal acts, both at the *pre-adjudication stage* and in the *adjudication* process.

This effort is carried out based on the State's constitutional recognition of the existence of customary law communities contained in the 1945 Constitution of the Republic of Indonesia Article 18B Paragraph (2), namely that the State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law-invite. It is further regulated in Article 28I Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization.

Customary law has traditional characteristics, rooted in ancestral wills that are often positioned sacredly, and even considered as the embodiment of divine will. The main source of customary law comes from customs, which are a set of social norms that have lived and developed in society for generations, and function to regulate order in social life. These norms are adhered to by members of society in a certain legal community. However, not all customary norms can be categorized as positive laws, because in practice there are customary norms that are accompanied by sanctions (legally binding customs), and there are also those that do not have formal legal consequences so that they are not classified as customary law in a narrow sense.²¹ This effort is part of the realization of the goal of *law enforcement*, which not only aims to fulfill the sense of justice and legal certainty for the parties involved, but also functions in ensuring the benefits of the law. These benefits include

¹⁹ E. Utrecht, *Hukum Pidana I*, (Jakarta: Penerbit Universitas, 1986), p. 145-146.

²⁰ Barda Nawawi Arief, *Bunga Potpourri Políticas Hukum Kriminalana*, (Jakarta: Kencana, 2008), p. 25

²¹ Soepomo, *Bab-Bab tentang Hukum Adat*, (Jakarta: Pradnya Paramita, 2003), p. 15-17

the creation of balance and harmony in social relations and kinship between legal subjects and between groups in society.

A criminologist from England, Howard Zehr, through his theory of *Restorative Justice*, put forward four approaches in the concept of punishment, one of which is the *restorative* or *community justice* approach, which is justice oriented towards restoration and community justice.²² National law, in his view, can be positioned as the only means to realize justice, but it is only part of a system that aims to protect human values and maintain human dignity and dignity. This is also in line with the principles in the *culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* (coexistence well) as a culture which is also the highest guideline of life and kinship applied in daily life that regulates kinship relations between individuals and between families in the integrity of life as a customary society which contains the highest customary norms and values of justice, and functions as a normative mechanism to protect and honor the dignity of every individual in the indigenous community of Southwest Maluku, in the dynamics of the development of the criminal justice system, Muladi stated that this system is a network (*network*.) which consists of elements of material criminal law, formal criminal law, and criminal implementation law as integral components. However, the functioning of these institutions cannot be separated from the social context that surrounds them. If the judicial system is only based on formalistic aspects and oriented solely on the interests of normative law, then it has the potential to cause substantive injustice in practice.

Start,²³ emphasizing that the meaning of *integrated criminal justice system* is synchronization or opportunities and harmony that can be distinguished in: 1) *Structural synchronization* is harmony and harmony in the framework of relations between law enforcement agencies; 2) *Substantial synchronization* is the harmony and harmony that is vertical and horizontal in relation to the positive law; 3) *Cultural synchronization* is the harmony and harmony in living the views, attitudes and philosophies that underlie the course of the criminal justice system. Therefore, it is very realistic if national law is set aside by a sub-system such as the principle of *lex specialis derogat legi generali* (a law that specifically takes precedence over general law) if it is felt necessary to find true justice between the perpetrator/suspect/defendant and the victim and their respective families with the position/position and role of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* in national law which can then restore the situation as it should be in harmony.

This idea is in line with Howard Zehr's view of *restorative justice*, where he formulates five main principles that underlie this approach;²⁴ 1) *Restorative justice* encourages the active participation of all parties involved and is achieved through mutual agreement; 2) This approach focuses on recovering from the impact of damage or loss caused by criminal acts; 3) The perpetrator of the crime is required to be directly and thoroughly responsible for his actions; 4) This approach also aims to reconstruct social relations in society that have been damaged by criminal acts; 5) *Restorative justice* seeks to strengthen the social resilience of the community in preventing the recurrence of criminal acts in the future.

Every delinquency (misdemeanor offense) committed by a legal subject in the unity of the indigenous people of Southwest Maluku then, of course, *axilogically* (beneficial/useful values), namely the cultural values of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta*

²² Achmad Ali. *Menguak Teori Hukum (legal theory) and Teori Peradilan (judicial prudence)*. (Jakarta: Kharisma Putra Utama. 2013). p. 247

²³ Muladi. *Sistem Peradilan Pidana Indonesia*. Citra Baru. Jakarta, 1994. p. 30.

²⁴ Achmad Ali. *Op. Cit.* p. 249.

precede national law (material criminal law) as a legal principle to resolve a criminal act of imposition (*non-penal*) according to the concept *Restorative Justice* (Restoration and Justice) By holding conditions as a ransom that must be paid/ paid by the perpetrator to the victim, the aim is to be able to stop the criminal justice process (*Penal*) so that it does not burden the law enforcement sub-system and does not provide a budgetary burden to the state in terms of handling perpetrators of minor crimes until they undergo criminal punishment in institutions correctional facilities within a certain period of time according to the judge's decision, in the settlement of a minor criminal act, of course there are sanctions/punishments received by the perpetrators of criminal acts by paying customary fines, either in the form of corporal punishment, cash fines and/or customary objects and livestock-livestock based on the results of a joint decision attended by both parties with their families which are also mediated by the Mata Rumah/Soa/Saniri Negeri of each village through *simple justice* (customary court) called the Saniri Session, this is done for the purpose as implied in the theory of Balance by R. Kranenburg,²⁵ which is based on the principle of balance regarding the distribution of conditions for gaining benefits and losses, so that each member of society has an equal and equal position to the law. That every legal subject who is able to meet the special requirements will also obtain special benefits and losses on the basis of fulfilling customary fine obligations incurred as a result of minor criminal acts so that the victim can be recovered through the principal customary fine that can be received from the perpetrator of the crime. Everyone will receive a positive or negative impact proportional to the additional conditions they create to achieve those gains or receive those losses. Public legal awareness is one of the sources of law formation, where law carries out its functions based on concrete and real principles.

One of the famous analogies introduced by Herbert Spencer describes the elements in society as organs in the body that work together to maintain the optimal functioning of the body, in the most basic sense, this approach focuses on trying to link each element, habit, and social practice to its contribution to maintaining the stability and cohesion of the social system as a whole. Based on the perspective of Spencer's theory above, in the settlement of a crime (criminal act) outside the court (*non-penal*) by using the system and values as well as the law in the *culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* as a legal principle (legal basis) for the settlement of a crime through customary courts by customary institutions which involve elements of the Village Government, Saniri Negeri/Soa/Mata Rumah, Parents of both parties, the Police, and elements of Babinsa (TNI), with the aim of restoring the condition of chaos to its original state, because the customary court has given strict and real legal punishment/sanctions as fairly as possible to the perpetrators of minor crimes. In this regard, the law enforcement sub-system (police, prosecutors and judges) can accommodate the cultural values of *Kalwedo and Snyoli Lyeta* as a legal principle to gain a position in procedural (formal criminal law) and substantial (material criminal law), starting from pre-adjudication to *adjudication* in the criminal justice system.

According to the author, the *culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* which is composed of values as abstract norms that appear in proverbs, rhymes, words and wise sentences, generally contain a lasting nature, lasting for a long time. Tradition lasts quite a long time as Ronald Z. Titahelu distinguishes it from traditional, namely, tradition tends to be a repetition of norms, but tradition is not an antique norm, because the norms that

²⁵ Adami Chazawi. *Pelajaran Hukum Pidana*, Bagian 1. (Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana). (Jakarta: RadjaGrafindo Persada. 2001). p. 161.

govern the relationship between individuals, or between individuals and the environment can change. Meanwhile, the norms that have not changed specifically are those related to the decision-making process by traditional heads or customary heads.

As stated by R. Z. Titahelu, what often appears is that between the laws and regulations formed by the state, and customary law both have the same aspects that are based on the principles of common law. Philosophical aspects which are the principles of general law, in laws and regulations issued by the state are also found in the scope of customary law including;²⁶ 1) The obligation to give, or to take precedence over right; 2) The necessity of making decisions in an atmosphere of consensus deliberation; 3) Fulfillment of balance of rights and obligations; 4) The obligation to recognize the existence, role and place of other parties in an effort to achieve common interests and benefits. These aspects provide the reason for the continued enactment of customary law, especially the *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* cultures. Not only because the *Kalwedo* culture is a living law as part of the Maluku customary law so that the *Kalwedo* culture is given a place in national law, it is also for philosophical and theoretical reasons that the *Kalwedo* culture from the unity of the indigenous peoples of Southwest Maluku is recognized as its existence within the scope of the legal system of the Unitary State of the Republic of Indonesia as part of the Maluku customary law that exists in the Indonesian customary law system (*Custom Law Characteristics*).

Ronald Z. Titahelu on the adjustment of customary law in Indonesian national law can occur in the form of new provisions, which appear in customary law societies in accordance with existing developments characterized by *fact law* as found in customary law societies in general as seen in the requirements including;²⁷ 1) The existence of normative rules formulated in the form of proverbs which are legal principles (unwritten), which are remembered by the indigenous hukkom community, used as a guideline for behavior and actions, carried out by community leaders and their members; 2) The implementation of normative rules, formulations, code of conduct, and legal principles takes place repeatedly; 3) Solving problems that occur in the community takes place through consensus deliberation of indigenous peoples; 4) There are customary institutions with special functions in efforts to enforce the normative rules of customary law in customary law societies as a result of the violation of the aforementioned normative rules. So that the customary cultural values of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* as part of the customary law of Maluku in the national customary law system can be accommodated as they should be according to the prudence and authority of the sub-system (police, prosecutors, judges) in the implementation of the *criminal justice system*, meaning that the mechanism and procedures for the work of law enforcement officials through the investigation and investigation process (*pre-adjudication*) until the examination in the court hearing and the judge's decision (*adjudication*), should accommodate the culture of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* if the perpetrator/suspect and/or defendant has resolved the problem with the victim outside the court (*non-penal*) through the fulfillment of customary obligations/customary fines. In order to find the essence of law enforcement, namely justice that is as fair as possible for both parties, in order to achieve the goals of criminal justice for law enforcement and justice by the police, prosecutors and judges as law

²⁶ Ronald Z. Titahelu. *Penetapan Asas-Asas Hukum Umum Dalam Penggunaan Tanah Untuk Sebesar-Besarnya Kemakmuran Rakyat*, (Ambon: Deepublish-Budi Utama. 2015). p. 189.

²⁷ *Ibid.* p. 192.

enforcers with different duties, functions and authorities but it must be understood that law enforcement must work in a unified system so that the cultural position of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* The settlement of a crime (criminal act) should be respected to be accommodated in every stage of *pre-adjudication* to *adjudication (penal means)*. So that the ideal form of *the criminal justice system* in accommodating *the culture of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* to the settlement of crimes according to the duties, functions and authorities of the police, prosecutors, judges and advocates as law enforcement institutions are as follows;

1. Investigation

The implementation of *pre-adjudication* by Investigators and Investigators is enforced in accordance with the functions and authorities given by the state through the Criminal Procedure Code (KUHP) and the implementation of restorative justice against perpetrators of minor crimes at the investigation stage by the police can be carried out if the perpetrator or suspect is able to meet the normative requirements that have been set out in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 about Handling Crimes Based on Restorative Justice. The procedure for applying *restorative justice* to perpetrators of minor crimes as stipulated in the Police Regulation of the Republic of Indonesia is a form of legal protection, both for perpetrators and victims. In this context, the implementation of restorative justice reflects the synergy between written positive legal provisions and unwritten laws, namely customary law, as an instrument of the state to create justice and social order. This approach is in line with the views of O. Notohamidjojo²⁸ which states that legal protection includes all rules, both written and unwritten, that regulate and enforce in order to direct human behavior in order to create justice and benefits for the order and peace of society.

The concept of legal protection for perpetrators and victims reflects the essence of the legal function itself, namely as a means to realize justice, order, legal certainty, utility, and create an atmosphere of peace both for the parties involved and for the community at large. These philosophical values are in line with the goals contained in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, namely; The existence of a peace statement is evidenced by a statement of recovery of victims of criminal acts that the fulfillment of customary obligations in the form of customary fines has been carried out. That the perpetrator/suspect in the case of a minor crime together with his family has shown the implementation of legal protection in various dimensions, namely the law as a real behavior, as a system of norms, and as a manifestation of family or fraternal values. The concrete form of these efforts is realized through a mechanism for recovering victims, including the payment of customary fines as a form of fulfilling customary fines from the perpetrator/suspect. This process involves the participation of families from both parties as well as important elements as outlined above that have an interest. Therefore, the application of the principle of restorative justice can be carried out against the perpetrator or suspect at the stage of investigation and investigation by the Police in order to stop the investigation.

1. Prosecution

Juridically, a misdemeanor can be stopped in the prosecution process through a *restorative justice* approach, as long as the parties involved have fulfilled their rights and obligations

²⁸ Syamsul Arifin, *Pengantar Hukum Indonesia*, (Medan: Medan Area University Press, 2012), p. 5-6.

reciprocated. The termination can be carried out if several provisions are met, including that the criminal act committed is only threatened with a fine or imprisonment for a maximum of five years, the perpetrator is a person who has committed a criminal act for the first time, and the criminal act causes losses or involves evidence with a value not exceeding IDR. 2,500,000.

Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice requires that the fulfillment of procedures or procedures for the application of restorative justice to perpetrators of criminal acts of persecution at the investigation stage by the Public Prosecutor can be implemented if the perpetrator/suspect can carry out and fulfill various normative provisions as regulated that is; peace efforts carried out by the Public Prosecutor at the request of the perpetrator and victim of a misdemeanor, the existence of a peace process between the perpetrator and the victim of a misdemeanor and there is a peace agreement, against which the Public Prosecutor terminates the prosecution based on Restorative Justice by fulfilling the terms and procedures of peace.

Against this reason, it can be stated that, every minor criminal act committed by a legal subject in the customary law community in the Southwest Maluku region, then, the cultural values of Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta axiologically (i.e. as values that contain benefits) are always prioritized compared to national criminal law (material criminal law). These values are used as the basis for resolving criminal cases in a non-penal manner, based on *the restorative justice* approach, through the determination of certain conditions that must be met by the perpetrator as a form of ransom to the victim. This approach aims to stop the formal criminal justice process, in order to reduce the workload of law enforcement officials and save the state budget in terms of handling cases of minor crimes up to the stage of criminal execution in correctional institutions according to court decisions.

CONCLUSION

Every indigenous community that still upholds a formalistic cultural pattern, simple judicial practices at the local or village level are still often found. This mechanism reflects the concept of *simple justice* which is maintained as a means to avoid the possibility of court decisions. However, the existence of a simple and speedy judiciary does not always guarantee the achievement of true justice, as overly concise procedures have the potential to override the principles of substantive justice and the protection of the human rights of the parties involved in minor crimes. Every minor criminal act committed by a legal subject in the unity of the indigenous people of Southwest Maluku is, of course, *axiologically* (beneficial/useful value), namely the cultural values of *Kalwedo and Snyoli Lyeta/Niolilieta/Hiolilieta/Siolilieta* precede national law (material criminal law) as a legal principle to resolve a criminal act of imposition (*non-penal*) according to the concept of *Restorative Justice* by holding conditions as a ransom that must be paid by the perpetrator to the victim as a form of fulfilling customary obligations through customary justice (*simple justice*), it is intended to be able to stop the criminal justice process (*penal*) So that it does not burden the law enforcement sub-system and does not provide a budgetary burden to the state in terms of handling perpetrators of minor crimes until they undergo criminal punishment in a correctional institution within a certain period of time according to court decisions.

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