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[JURIS] Submission Acknowledgement

1 pesan

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27 Februari 2024 pukul 20.19

Toha Andiko:

Thank you for submitting the manuscript, "IMPLEMENTATION OF RESTORATIVE JUSTICE AND MAQASID SYARIAH IN TRADITIONAL COURTS IN REJANG LEBONG DISTRICT BENGKULU, INDONESIA" to JURIS (Jurnal Ilmiah Syariah). With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

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If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Arifki Budia Warman
JURIS (Jurnal Ilmiah Syariah)

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[JURIS] Editor Decision

2 pesan

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8 Juni 2024 pukul 23.04

Toha Andiko:

We have reached a decision regarding your submission to JURIS (Jurnal Ilmiah Syariah), "IMPLEMENTATION OF RESTORATIVE JUSTICE AND MAQASID SYARIAH IN TRADITIONAL COURTS IN REJANG LEBONG DISTRICT BENGKULU, INDONESIA".

Our decision is: Revisions Required

Please revise according to the reviewer's notes on the manuscript.

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8 Juni 2024 pukul 23.07

Toha Andiko:

We have reached a decision regarding your submission to JURIS (Jurnal Ilmiah Syariah), "IMPLEMENTATION OF RESTORATIVE JUSTICE AND MAQASID SYARIAH IN TRADITIONAL COURTS IN REJANG LEBONG DISTRICT BENGKULU, INDONESIA".

Our decision is: Revisions Required

Please revise according to the reviewer's notes on the manuscript.

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Reviewer A:

Artikel ini perlu direvisi mayor. Seluruh catatan reviewer bisa dilihat pada tubuh artikel

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[JURIS] Editor Decision

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Toha Andiko:

We have reached a decision regarding your submission to JURIS (Jurnal Ilmiah Syariah), "IMPLEMENTATION OF RESTORATIVE JUSTICE AND MAQASID SYARIAH IN TRADITIONAL COURTS IN REJANG LEBONG DISTRICT BENGKULU, INDONESIA".

Our decision is: Revisions Required

1. Please revise according to the suggestions of reviewer B
2. Please translate into English and proofread the English


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Reviewer B:

Artikel ini perlu diperbaiki, terutama dalam menekankan temuan pada bentuk keadilan restorative. Analisa maqasid juga perlu diperdalam kembali, jangan terkesan hanya pencocokan saja dan pengulang-ulangan konsep. Referensi juga masih perlu ditambah lagi.

Catatan selengkapnya lihat pada artikel.

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[JURIS] Editor Decision

1 pesan

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Toha Andiko:

We have reached a decision regarding your submission to JURIS (Jurnal Ilmiah Syariah), "IMPLEMENTATION OF RESTORATIVE JUSTICE IN A CUSTOMARY COURT IN REJANG LEBONG DISTRICT, BENGKULU, INDONESIA: A MAQASID SHARIA REVIEW".

Our decision is to: Accept Submission

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IMPLEMENTATION OF RESTORATIVE JUSTICE IN A CUSTOMARY COURT IN REJANG LEBONG DISTRICT, BENGKULU, INDONESIA: A MAQASID SHARIA REVIEW

Abstract: This paper aims at analyzing the form of restorative justice implemented in a customary court in Rejang Lebong District, and *maqasid sharia* review of the customary court. This type of research is qualitative with sociological-juridical approach. Data sources were literature, observation, in-depth interviews and documentation. The data analysis technique used qualitative descriptive analysis. This study showed that the form of restorative justice applied in the process customary court in Rejang Lebong prioritizes deliberation and peace between the parties. In terms of sanctions, compensation is based on the request of the victim and the consent of the perpetrator coupled with customary fines. Although there is a provision for customary fines, in practice, the judge determines the amount according to the ability of the perpetrator. In terms of *maqasid sharia*, the process prioritizing deliberation and peace is relevant to the objective of evading *mafsadat*, which is to reduce the anger and resentment of the victim or their family. Based on the form of sanctions applied, there is a benefit to maintain the existence of religion, property, soul, offspring, and honor. The sanctions prioritizing restoration, harmonious relations, deterrent effects, and learning for the community, have mutual functions of *zawajir* and *ta'dib*. This customary justice model that combines restorative justice and local wisdom can possibly be an alternative dispute resolution to non-litigation case settlement.

Keywords: Restorative Justice, Customary Court, *Maqasid Sharia*

Abstrak: Tulisan ini bertujuan menganalisis bentuk keadilan restoratif yang diimplementasikan dalam peradilan adat di kabupaten Rejang Lebong, dan tinjauan maqasid syariah terhadap peradilan adat tersebut. Jenis penelitian ini adalah kualitatif dengan pendekatan yuridis sosiologis. Sumber data dari kepustakaan, observasi, wawancara mendalam dan dokumentasi. Teknik analisis data menggunakan analisis deskriptif kualitatif. Studi ini menemukan bahwa bentuk keadilan restoratif yang diterapkan dalam peradilan adat di Rejang Lebong dalam prosesnya, lebih mengutamakan musyawarah dan perdamaian para pihak. Dari segi sanksi, ganti rugi berdasarkan permintaan korban dan persetujuan pelaku, ditambah dengan denda adat. Walaupun ada ketentuan denda adat, dalam praktiknya hakim menetapkan nominalnya sesuai kesanggupan pelaku. Dalam tinjauan maqasid syariah, dari proses yang mengedepankan musyawarah dan perdamaian, ini relevan dengan tujuan menolak mafsadat yaitu meredakan amarah dan dendam dari pihak korban atau keluarganya. Dari bentuk sanksi yang diterapkan, terkandung kemashlahatan untuk memelihara eksistensi agama, harta, jiwa, keturunan, dan kehormatan. Dari fungsi sanksi yang mengedepankan pemulihan keadaan, hubungan harmonis, efek jera, dan pembelajaran bagi masyarakatnya, ini lebih dekat dengan fungsi *zawajir* dan *ta'dib*. Model peradilan adat yang mengkombinasikan keadilan restoratif dan kearifan lokal ini dapat menjadi solusi alternatif penyelesaian perkara non litigasi.

Kata kunci: Keadilan Restoratif, Peradilan Adat, Maqasid Syariah

Introduction

Disputes in society are a common phenomenon, involving two or more individuals. Handling all conflicts legally by the judiciary can complicate the legal system. Therefore, alternative solutions outside of the existing criminal justice process are needed. One solution is through a restorative justice approach. This approach emphasizes the creation of justice and balance for perpetrators and victims of crime. Previously, this concept was better known as a non-litigation settlement approach, and was generally only implemented in the context of juvenile justice and for minor offenses. (Sirande et al., 2021). In fact, international law has established minimum standard principles indicating that the application of restorative justice is not only limited to juvenile cases, but can also be applied in the context of serious human rights violations, as well as general crimes that are not limited to minor crimes. Restorative justice, as a relatively new approach in Indonesia, is closely related to the principle of deliberation which is an integral part of the Indonesian psyche (Zulfa, 2020).

In the context of resolving private crimes between individuals (*natuurlijk personen*) or legal entities (*recht personen*), restorative justice focuses on solving the core problems of the crime. The solution emphasized is the repair of the social order of the community that was disrupted by the crime. Restorative justice emphasizes a direct criminal accountability process from the perpetrator to the victim and the community. If the perpetrator, the victim, and the community whose rights have been violated feel that justice has been achieved through joint deliberation efforts, the use of punishment as an *ultimum remedium* can be avoided (Wagiu, 2015: 57).

The resolution of cases through litigation often does not meet the expectations and aspirations of the Indonesian people. The theft of three cocoa pods, the theft of a watermelon, the theft of a bunch of bananas, the theft of flip-flops, and the theft of plates and oxtail committed by "R" who has been found guilty by the Supreme Court, are concrete examples of judges' decisions that are considered not to reflect justice for the poor, while law enforcement related to corruption cases appears slow and obstructed (Yulia, 2012: 225). Therefore, the application of litigation in the current criminal justice system has been criticized, such as the pattern of punishment which is still retributive, excessive accumulation of cases, lack of attention to victims' rights, not in accordance with the principles of simple justice, and involves a long, complex and expensive process. Litigation resolution tends to be formalistic and rigid, unable to overcome the impact of crime, and does not reflect the expected justice by society (Azhar, 2019).

The traditional criminal justice system has not been able to fully address some of the problems that do not lead to other problems in the future. In this case, restorative justice can be an alternative solution. It is strongly believed that the principle of restorative justice has been practiced by indigenous people in Indonesia, reflected in the implementation of various customary courts through their respective customary laws, except in cases of their respective customary laws, excluding cases that are potentially divisive, SARA (Ethnicity, Religion, and Race), radicalism, and separatism (Adrianto, 2023). This can be seen from the impact of the implementation of customary sanctions for violators of customary law, both minor, moderate, and serious criminal offenses. The perpetrators and victims can reconcile. This customary justice practice, among others, has occurred in Bengkulu society, especially those living in Rejang Lebong district.

Related to the above topic, several previous studies explain that there is unequal coexistence and asymmetrical contestation between adat and Islamic law in Aceh, resulting in unequal relations between adat and Islamic law (A. Salim, 2021).

In addition, the implementation of legal politics towards customary law cannot be separated from the legal political system that already exists in indigenous communities at the village level. (Teguh et al., 2016). In addition, it is important to seriously revisit adat principles based on the Rejang and Malay community discussion model in Bengkulu, which is based on the spirit of reaching agreement, to anticipate the development of society so as not to conflict with the State judicial process (Herlambang, 2012). The model of case settlement is determined by the customary leader, or through customary justice. Restorative justice is applied in the settlement of criminal offenses as an effort to restore the suffering experienced by victims and to restore the balance of society (Rosdiana, 2020).

Of the four previous studies, Arskal's article focuses on the unequal relationship between customary law and Islamic law. Teguh Kayen's article dominantly discussed the structure of indigenous people without mentioning the implementation of customary justice. Meanwhile, Herlambang's article only explained the urgency of customary principles that can be developed in a court that does not conflict with Indonesian law. The works of Rosdiana and Ulum Janah discussed restorative justice which is limited to the settlement of adultery cases in the *Kutai Adat Lawas* community. The difference is that the author discusses the internalization of restorative justice principles in customary judicial practices in several cases, and the integration of customary law and Islamic law, some of which are relevant to *maqasid sharia*.

The focus of the problem studied is limited to the implementation of restorative justice in customary justice in Rejang Lebong district, by explaining the existence of the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) as the institution that oversees and implements it, and the *Maqasid Sharia* review of the practice of customary justice in several cases. The aim is to obtain a complete picture of the tendency of customary justice practices to apply the concept of restorative justice, and to explain its relevance in the judicial process and the sanctions applied with *maqasid sharia*. This kind of customary justice combining restorative principles and *maqasid sharia* values can become an alternative model for other customary courts, as well as making a progressive contribution to the development of national law, especially in the field of justice.

Method

This type of research is qualitative which produces descriptive data in the form of written or oral data from people or observed behavior (Moleong, 2019: 249). The form of this research is empirical juridical with a sociological-juridical approach. The location of this research is in Rejang Lebong Regency, Bengkulu Province, in order to directly observe the form of customary justice and the process of resolving violations of customary law and its sanctions. It employed primary, secondary, and tertiary legal materials. Primary legal materials are materials that have binding legal force, including legislation and customary regulations. Meanwhile, secondary legal materials are materials that provide explanations of primary legal materials, including academic papers, research results of legal experts, and expert opinions in their fields. Tertiary legal materials provide explanations of primary and secondary legal materials such as dictionaries and encyclopedias (H. S. Salim & Nurbani, 2017).

In this research, the researcher acts as an instrument as well as a data collector. Data collection is carried out in natural conditions, primary data sources and data collection techniques are carried out in addition to library data, complemented by participant observation, in-depth interviews with the chairman and secretary of the

BMA, traditional leaders, scholars in Rejang Lebong district, and documentation (Sugiyono, 2017). Data analysis is done by working through the data, organizing the data, sorting it into manageable units, synthesizing it, looking for and finding patterns (Sugiyono, 2010). Therefore, the data analysis technique used in this research is qualitative data analysis.

Literature Review

Customary Justice

Customary law communities are a group of people who have ancestral origins in a certain geographical area and have their own value system, ideology, economy, politics, culture, social, and territory (Sulaiman et al., 2019). After the implementation of the policy of unification of the national judicial system in 1951, adat courts remained alive and became part of the existence of the legal system. Unification was not intended to dismiss the existence of customary courts, but rather to negate the binding force of their decisions. The policy of making customary courts limited to peace forums can be seen in Law No. 6/2014. However, in its development, legislation has emerged that has provisions to eliminate criminal charges against a person who has been decided and given customary sanctions by the customary court. (Rona et al., 2020)

Customary justice is not oriented towards finding and determining winners and losers. Instead, it is oriented towards restoring the cosmic balance that has been disturbed due to customary violations. The customary justice system is able to provide justice for local communities. Customary justice is more accessible to members of the local community for various reasons including distance, language, process, and cultural factors. The resolution of criminal law violations in customary courts is considered effective in coping the over capacity of correctional institutions (prisons) (Mufidah et al., 2022).

Customary justice is still widely used by the community because, first, it is considered cheap, fast, and easier to use as it has a philosophy considered more suitable for indigenous people or local communities. Second, it is less likely to cause social disruption as it is more oriented towards reconciliation. Third, literacy about state law is not comprehended by the society, in addition to not being trusted and controlled, the legal system is weak because it is undermined by the corrupt behavior of law enforcement officials (Prawira Buana & Djanggih, 2018). In some cases, customary court decisions are relevant to state regulations, such as the sanctions imposed for the crime of petty theft in Aceh which are in accordance with Qanun No. 9/2008 on the Development of Customary Life and Customs, (Riza et al., 2022), and land tenure disputes in West Sumatra in accordance with West Sumatra Provincial Regulation No. 16 of 2008 concerning Customary Land and its Utilization (Wahyuni et al., 2021).

Restorative Justice

Restorative justice has long been practiced in various Indonesian customary communities, such as in Papua, Bali, Toraja, Minangkabau, and other traditional communities. The resolution of criminal disputes is carried out internally within the customary community, without involving state apparatus. Despite violating positive law, this mechanism has succeeded in maintaining harmony in the community. This is because the process of resolving cases based on restorative justice prioritizes deliberation and consensus, where the parties involved are asked to compromise in order to reach an agreement. The concept of deliberation has proven to be more effective in resolving disputes in the community, especially when

the role of the state and courts is less effective (Flora, 2018). Therefore, criminal justice processes focusing on punishment are replaced by dialogue and mediation, reaching a fairer agreement for both parties. Restorative justice involves restoration, which has a broader meaning than the concept of restitution or compensation in conventional criminal justice (Candra, n.d.)

In the guidelines for the implementation of restorative justice in the general judicial environment, it is explained that the principle of restorative justice is an element of law enforcement that can function as a means of recovery and has been implemented by the Supreme Court (*Lampiran Surat Keputusan Direktur Jenderal Badan Peradilan Umum, Nomor 1691/DJU/SK/PS.00/12/2020, Tanggal 22 Desember 2020 Tentang Pedoman Penerapan Restorative Justice di Lingkungan Peradilan Umum, n.d.*) / (Attached to the Decree of the Director General of the General Courts Agency, Number 1691//DJU/SK/PS.00/12/2020, December 22, 2020 Regarding Guidelines for the Application of Restorative Justice in the General Courts Environment, n.d.). The basic principles of restorative justice involve restoration for victims of crime through the provision of compensation, peace mediation, involvement of offenders in social work, and the achievement of other agreements. In the context of restorative justice, a fair law is characterized by impartiality, non-arbitrariness, as well as equal rights to compensation and balance in every aspect of life, in line with applicable statutory provisions.

The restorative approach in resolving criminal offenses has universal principles. First, the principle of due process guarantees the suspect's right to know the protection procedures when faced with prosecution or punishment. The implementation of the restorative approach demands the protection of the suspect's rights in line with due process, but the admission of guilt is a requirement in the restoration process, raising questions about informed consent and waiver of rights as the basis for a fair settlement (Silaban et al., 2022). Second, the principle of equal protection emphasizes justice from a shared understanding regardless of ethnicity, gender, religion, national origin, or social standing. Third, the principle of victims' rights emphasizes the need to pay attention to the rights of victims in the resolution through a restorative approach. In the conventional criminal justice system, victims' rights are often ignored, so it is important to pay attention and provide adequate compensation rights to recognize the suffering of victims (Sunarso et al., 2022).

Three other key principles in the concept of restorative justice are first, justice requires cooperation to restore those who have suffered. Second, those involved and affected by crime should have a full opportunity to respond. Third, legislation aims to protect the public interest, build society, and maintain peace (T. Hidayat, 2005). Toni Marshal, in "Restorative Justice an Overview," developed by Susan Sharpe in her book "Restorative Justice a Vision for Hearing and Change," reveals five key principles of restorative justice. First, full participation and consensus. Second, efforts to heal the damage caused by crime. Third, direct accountability of the perpetrator. Fourth, the search for reunification for community members divided by criminal acts. Fifth, providing community resilience to prevent further criminal acts (Amdani, 2016).

Maqāshid Sharīa

According to al-Syāṭibi, God enacted the *Sharia* to show the benefits of human life in this world and the hereafter. Therefore, the *maqāshid* of the *Sharia* is divided into two: *maqashid al-Shari'* (God's purpose) and *maqashid al-mukallaf* (human purpose), the essence of which is to realize the good and avoid the bad (Mulizar et al., 2022). Al-Raisuni explains that the word *maqshid* refers to the meaning, goal,

target, and purpose intended by *Shārī`*. *Maq̄sūd/maq̄sid* relates to the intention and direction of the will, both in words and actions. On the other hand, *Sharīa* is the law that Allah has established for His servants, in the form of legal provisions in the Qur'an and as-Sunnah. Thus, the *maq̄sid* of *Sharīa* encompasses the purpose and wisdom of all or most of the provisions of *Sharīa*, not only those that apply to certain specific legal provisions (Raisūnī, n.d.) This *maq̄sid sharīa* serves to fulfill the five basic elements of protecting religion, reason, soul, offspring, and property (Al-Māliki, n.d.). Jasser Auda adds another one that is important to note, namely maintaining honor (*hifz al-'irdh*) because he emphasizes more on morality, openness, development, humanity, and human rights (Juliansyahzen, 2022). This can be understood because Islamic law cannot be separated from the concept of humanity, which is God's mandate to promote and protect human rights based on the principle of mutual respect and responsibility for human values (Nur et al., 2020).

Regarding the stratification of priorities that must be maintained, Al-Ghazali emphasizes the essential protection of religion, because the highest actualization of human beings is that they will tend to be more obedient to their God and always do good to other humans. Therefore, the barometer in achieving *mashlahah* must be in line with the objectives of *shara'* even if it is contrary to human goals, because human goals are often based on the will of lust (Zuhdi, 2013). There are two ways to protect religion: first, in the condition of its existence, religion is protected by the establishment of obligations such as prayer and *zakah*. Secondly, religion can be protected by safeguarding the absence of certain aspects by preventing the things that cause it to exist (Syaripuddin, 2020). However, Hashim Kamali argues that the hierarchy that places religion at the first order to be protected is not appropriate. For him, the protection of the soul is the top priority, because when the soul is maintained, the existence of the others will also be maintained, because it is the soul that will play a major role in bringing intellectual awareness to spiritual values (religion), so that property and descendants are maintained (Muazaroh & Subaidi, 2019).

The importance of *maq̄sid Sharīa* is not only in *fiqh* or *ushul fiqh*, but also in the interpretation of the Quran, which is useful for correcting faith, improving morals, explaining *Sharīa*, and creating prosperity and harmony between people (Al-Dhahabī, 2003). To understand the *maq̄sid* of the *Sharīa*, three aspects must be applied: the clear commands and prohibitions, the *illat* of the commands and prohibitions, and the principal and subsidiary purposes (Bakri, 1996). Ibn Ashur divided *maq̄sid* into two parts, namely *maq̄sid al-sharī'ah 'ammah* and *maq̄sid al-sharī'ah khassah*. Through this method, he pointed out the main universal goals of Islam, namely *fitrah* which means straight or clean; *al-samāhah* which means *al-adl* or *al-tawasut*; *al-Musāwah* which means equality, harmony, and simplicity in life and eliminates imbalance (*al-tafāwut*), and *al-Hurriyah* which means freedom that does not cause harm to others or to oneself (Ni'ami & Bustamin, 2021). Contemporary scholars divide *maq̄sid* into three levels: *maq̄sid al-āmmah* (general goals) which includes the general wisdom contained in the majority of laws without being bound to a specific legal space; *maq̄sid khāssah* (specific goals) to detail specific goals in a chapter or similar law, such as strengthening kinship relations through *munakahat* law; and *maq̄sid al-juz`iyyah* (partial goals) as goals and values to be achieved in a particular law, such as honesty in testimony or overcoming difficulties in the law of fasting (Auda, 2008).

Results and Discussion

Implementation of Restorative Justice in Customary Courts in Rejang Lebong District

Guidelines for the implementation of restorative justice in the general court environment bind all district courts in Indonesia, especially in handling minor criminal cases, women's cases, children's cases, and narcotics cases. Restorative justice involves perpetrators, victims, families of perpetrators or victims, and related parties to reach a fair settlement, with a focus on restoring the original state, not retaliation (Lubis, 2022). If peace is reached, the agreement is signed by the defendant, victim, and related parties, and then taken into consideration by the judge. If peace is not achieved, the trial continues, while the judge continues to try to achieve peace and prioritize restorative justice in a decision. However, restorative justice does not apply to repeat offenders, in accordance with the provisions of laws and regulations (Salamor et al., 2023).

In relation to criminal cases involving children in Indonesia, the term diversion is known as a form of diversion or setting aside the handling of juvenile delinquency from the conventional juvenile justice process, towards a more community service-oriented handling (Wahyudi, 2022). Diversion is carried out with the aim of preventing child offenders from the negative impacts that may arise from their involvement in the juvenile justice system. The application of diversion is based on the desire to prevent adverse impacts on the mental and developmental aspects of children that can be caused by their participation in the criminal justice system (Adi, 2021). In the context of juvenile offenders who are 14 years old and facing legal problems, non-criminal measures such as return to parents, surrender to certain individuals, hospitalization, obligation to attend formal education or public/private training, and reparation of the consequences of the crime, can be applied. However, this diversion process can only be carried out for criminal offenses that are punishable by imprisonment of less than 7 years and are not repeat offenders (S. K. Hidayat et al., 2021).

The implementation of Rejang customary law in Rejang Lebong Regency is based on Regional Regulation No. 2 of 2007 concerning the Enforcement of Rejang Customary Law in Rejang Lebong Regency. It is strengthened by Regional Regulation No. 5/2018 on the Recognition and Protection of Customary Law Communities in Rejang Lebong Regency. This regulation firmly establishes Rejang customary law as the applicable legal norm in the region. This is done to maintain the noble values and spiritual wealth of customary law as an important part of local identity, while supporting local government programs in resolving disputes or problems of customary violations in the community (Mursalin et al., 2023).

The implementation of customary law in this Regional Regulation is enforced through customary devices or customary institutions in Rejang Lebong Regency. These adat institutions are regulated and determined by the Regent of Rejang Lebong. They are responsible for taking care of the interests of the community based on customs, traditional customs, and civilized customs. This regulation is based on Rejang Lebong Regent Regulation No. 27/2007 on the Duties of the *Jenang Kutei* (Village Judge), Guidelines for the Arrangement of Events and Attributes or Equipment in the Implementation of Customary Activities in Villages in Rejang Lebong Regency, which stipulates the authority of the Customary Consultative Body through the *Jenang Kutei* (Yamani et al., 2023).

Cases brought to the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) are confirmed to be cases that have actually occurred, because the case is first

reported to the village head or *lurah*, from the village head or *lurah* then the case is submitted to the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) in that village to be scheduled for resolution. In addition, the person reporting will be sworn in first, then issue a statement. According to Sukarni, the offense is a complaint, either from the person concerned or from someone who has knowledge of the incident. (interview with Sukarni, Chairman of the Kuta Traditional Institution, Padang Akad Village Kepahiang on May 4, 2022). The judge who hears the case is a single judge. If a case occurs in a village, the judge is the chairperson of the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) in that village. However, if the case is not resolved or the parties do not accept the judge's decision, it can be submitted to the sub-district BMA, and if it is not resolved either, it can be submitted to the district BMA. If the case involves a party from outside Rejang Lebong district, then the case is automatically handled directly by the district BMA (interview with Usman, Chairman of the BMA Air Rambai Sub-District, Rejang Lebong Regency on March 1, 2022). Some of the legal cases handled by the Rejang Lebong BMA include the following:

1. Vandalism of Farm Fences and Fruit Theft

This incident occurred in early January 2021. At that time there was a vandalism of the garden fence and the disappearance of several fruits from the plants in the garden. After investigating and finding a witness who saw the incident in the afternoon, the garden owner reported it to the village head. Then the village head called the suspected party, and after being asked, the perpetrator finally admitted it. The case was then reported to the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) in that village. After that, the head of the village BMA summoned the owner of the plantation and the perpetrator of the vandalism, along with witnesses, and the families of both parties. During the trial at the village hall, the perpetrator confessed, so the head of the BMA set a customary fine and compensation. However, because the perpetrator was from a poor family, the customary chairman replaced the penalty for damage to the fence and loss of fruit, with an obligation for the perpetrator to work in the owner's garden without salary for 1 year, the perpetrator only getting lunch from the garden owner. (interview with Ahmad Faizir, Chairman of the BMA Rejang Lebong Regency on March 13, 2022)

2. Child Fights

On Wednesday, August 18, 2021 at around 16.00 behind the Air Bang Stadium, Curup Tengah District, Rejang Lebong, there was a beating by 15-year-old Yoriska Khairunnissa and three of her friends against 13-year-old girl named Siren. This incident was immediately handled by the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) by resolving it through a combination of applying customary law and in a family manner. To bind them not to repeat the same incident, an agreement was made between the two parties. Given that the perpetrator and victim were minors, the agreement was made with the involvement of the child's parents. The perpetrator was represented by Yoriska Khairunnissa's parents, namely her mother Riski Amelia Sari. Meanwhile, the victim was represented by her guardian, Sudirman. Among the contents of the agreement are (1) both parties agreed to reconcile in a family manner and were willing to apologize to the victim in the presence of witnesses; (2) the perpetrator agreed to pay the victim's medical expenses of 7 million; (3) the victim promised not to sue the

perpetrator legally; (4) both parties (perpetrator and victim) are willing and able after this agreement to maintain good relations, no grudges, and no longer bring up this incident in the future; (5) if one or both parties renege on this agreement, both are ready to be processed under the applicable law in Indonesia (interview with Johar, Chairman of the BMA Air Bang Sub Distric, Rejang Lebong Regency on March 1, 2022).

3. Defamation Involving a Third Party

On March 13, 2021, A, a doctor, accused B, a whitening medicine seller, of selling whitening medicine that was illegal and harmful to health. A expressed this accusation on his Facebook page. Then B, who was unhappy, reported A to BMA (*Badan Musyawarah Adat*/Customary Consultative Body) of the neighborhood where B lived. Since the two of them lived in different urban villages, a deliberation was held between the two parties involving the two urban village BMA's and involving local government elements such as the *Lurah*. However, no agreement was reached. After that, B, who felt unhappy with the results of the deliberation, reported to the company selling the skin whitening medicine. The company then reported A to the police for defamation of the company's products.

As the above incident became more complicated, the matter was then taken over by the District BMA. After mediation by the Regency BMA, the two parties were finally able to reconcile. This was after the Regency BMA traced the genealogy of the descendants of A and B, who turned out to be of the same descent and were still related. As a result of the mediation, A was willing to apologize and B accepted it, but B finally stopped selling the skin whitening medicine. However, A was still punished for committing *cepalo mulut* with a fine of 1 *Ria*. This minimum fine was applied because A showed regret, had apologized to B and the company, and both were also willing to forgive him. This is emphasized by the company, which has withdrawn its report against A for defamation in the police. (interview with Fernando, Secretary of BMA's Rejang Lebong Regency on April 29, 2022).

4. Allegation of Zina (Adultery)

On November 17, 2021, the accused D reported the accuser R to the Rejang Lebong BMA (*Badan Musyawarah Adat*/Customary Consultative Body). D felt that R had defamed her and her family. According to D, the accuser R is a friend of her husband whom she does not know, they often meet outside without her knowledge, coupled with the attitude of D's husband when there is a Whatsapp message or phone call from R immediately deleted. Their relationship has lasted two years, when D asked her husband about this, he replied that R was his sister, but R was never introduced to D as his wife. Moreover, D's husband was so angry that he left the house. On the other hand, R loudly said that D and her husband had had an affair and got pregnant before marriage. For R's accusation, D, who felt defamed, made a report to the BMA by including evidence of her religious marriage (not recorded) which took place on November 19, 2017, and her official marriage was recorded on April 27, 2018, then her child was born on July 12, 2019.

D's report was then followed up by the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) by summoning all relevant parties, starting from the person who was reported, the reporter himself, as well as BMA people from the village where the reporter and the reported person were located. After the customary judge heard and examined the testimonies of the parties and witnesses as well as the available evidence, the customary court decided that R was subject to a

cepalo jari fine, because R had defamed D by typing a post via WhatsApp social media. Therefore, R had to pay a fine to D as the injured party and apologize publicly on social media. Then the settlement was carried out in a customary manner by preparing an arbor and *setawar* flour attended by community members, the Village Head, the Sub-District Head, and the district BMA board. (interview with Fernando, Secretary of BMA Rejang Lebong Regency on April 29, 2022).

These are some examples of cases handled by the Rejang Lebong BMA. According to Ahmad Faizir, since adat courts were revived, the BMA of Rejang Lebong district, starting from the village level to the district level, has had to work hard to handle cases that come to their respective places. In addition to the four cases mentioned above, the cases that come into each region vary, ranging from cases of *cepalo bibir* (lips prohibition), *cepalo mata* (eyes prohibition), *cepalo tangan* (hand prohibition) such as a father holding the hand of another man's daughter, touching feet, infidelity, theft, murder, juvenile delinquency, use of social media that offends others, talk that is too harsh, to civil cases such as land disputes and inheritance. (interview with Ahmad Faizir, Chairman of the BMA Rejang Lebong Regency on February 23, 2022).

Looking at the function of sanctions in customary justice above, it seems closer to the theory of reintegrative shaming, this sanction prioritizes giving shame to the perpetrator so that they get a deterrent effect, so they promise not to repeat their actions. After the punishment, the community will accept them back as part of their group by forgiving their actions (Rahmadiana et al., 2022)

All cases are handled by the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) except terrorist and drug cases. Apart from these two cases, if the case has already been reported to the police before it is resolved through the BMA, the police will return the case to the BMA first. If the case cannot be resolved through the BMA, then the police will take over the case. According to Faizir, all cases handled by the BMA have been resolved properly and without causing ongoing conflict. In 2021, there were around 45 cases handled by the BMA at the village, sub-district and district levels. It is due to the good performance of the Rejang Lebong district BMA in handling various existing cases, the Rejang Lebong BMA in 2021 received an award from the National Police Chief through the Rejang Lebong Police Chief (Muhammad Nur, 2023).

Customary sanctions can take the form of customary fines called *batu adat*, which contain money and betel lime. The amount of the fine is determined based on the form of *cepalo* violated by referring to the adat book. Part of the fine money will be given to the victim or the injured party, and part will go to the BMA treasury. The calculation of the percentage is in accordance with the customary rules contained in the customary guidebook. In addition, there are also additional sanctions, namely by apologizing to elements of *shara'*, traditional elders, elements of government, and to the victim's family if other parties are involved. As for murder cases, the BMA does not impose sanctions, but customary parties are only involved in resolving peace between the two parties. So this customary court tends to prioritize deliberation.

Maqasid Sharia Review of Customary Court Practices in Rejang Lebong Regency

Laws or rules, both those made by humans and those established by Allah SWT, have certain purposes and objectives for the good of humans. Ibn Qayyim al-Jauziyah stated that the purpose of *sharia* is the benefit of servants in the world and

the hereafter. Izzuddin ibn Abd al-Salam added that every *taklif* law aims for the benefit of servants in the life of the world and the hereafter. *Maqasid sharia* aims to ensure the realization of benefit or goodness in society, with preventive measures against potential harm or badness (Setiawan, 2023).

In the context of customary justice in Rejang Lebong District, the implementation of *maqasid sharia* can be seen in the following cases:

1. Customary sanctions in cases of theft

The Chairman of the BMA (*Badan Musyawarah Adat*/Customary Consultative Body) of Rejang Lebong Regency, Ahmad Faizir, explained that for theft cases, the customary sanctions include apologizing to the local community by visiting people's homes, returning the stolen goods, replacing the value of the damage to the goods to the victim, and paying a fine. The fine is divided between the victim and the BMA treasury.

Although theft in Islamic criminal law is included in *hudud* cases that are potentially subject to hand-cutting, Rejang Lebong customary law adopts the principle of restorative justice. In this context, the sanction is decided by an authorized judge, such as the head of the local BMA, and the form of punishment is at the discretion of the judge while still being guided by Rejang adat. This type of punishment is closer to a modified *hudud* punishment, as the main form of punishment is already limited by customary law. Here the judge can determine the maximum or minimum penalty or other additional alternative penalties based on the condition of the perpetrator. This is relevant to al-Syatibi's *maqasid sharia* which emphasizes the realization of benefits and goodness for humans adjusted to the background and motives of the perpetrators (*maqasid al-mukallaf*). The perpetrator is also required to apologize to the surrounding community. This is part of the effort to realize the general sharia objectives (*maqasid al-ammah*) so as to create a sense of security for the wider community. The whole process, seen from the perspective of *maqasid sharia*, aims to protect human property (*hifz al-mal*) from potential losses.

2. Customary sanctions in cases of fighting

If there is a fight that results in an injured party that needs to be treated, then a pre-peace agreement is made first by making a letter of agreement while waiting for the treated party to recover. If a doctor certifies that the injured party has recovered, then the customary sanction is carried out. Some customary sanctions involve slaughtering a goat, while others involve preparing an arbor, *setawar* flour and other food to entertain those present during the peace process. In addition, it is customary to pay a fine to the victim. The amount of the fine to be paid is adjusted to the loss suffered by the victim. Everything is decided in the customary deliberation which is in accordance with the function of restorative justice in reconciling and restoring the situation to its original state.

In Islam, fighting is considered an ordinary *jarimah* (crime), the perpetrator who injures the opposing party can be subject to *ta'zir* punishment which is left to the judge according to his authority. The imposition of customary sanctions for perpetrators of fights is acceptable and justified, in accordance with the concept of *al-Shullh* in Islam, which is an attempt to reconcile disputing parties. *Al-Shullh* involves an agreement to end a dispute between two previously quarreling parties, by releasing some or all of their demands. This concept is in accordance with the goal of peace in the Quran. The importance of adhering to conditions

that do not legalize the unlawful or forbid the lawful is also affirmed in the *hadith* which states that peace is permitted as long as it does not violate the basic Islamic principles of *tawassuth* (moderation), *tasamuh* (tolerance), *tawazun* (harmony), and *ta'adul* (justice). In the context of customary sanctions for fighting, there is no visible violation of Islamic teachings, so this is still in accordance with the function of punishment to eliminate sins (*jawabir*), and the objective of the benefit of protecting human souls (*hifz al-nafs*). The application of *hifz al-nafs* is included in the level of primary needs (*dharuriyyat*) (Dahlan et al., 2021).

3. Customary sanctions for defamation and accusations of adultery

In the defamation case, the experience and thoroughness of the customary judge was evident from the judge's efforts to trace the families of the two litigants. After questioning both parties and their families, it was discovered that the parties were related by *Poyang* (grandmother's mother). This made it easier for the judge to ease the tension between the two parties, so that the defamed party was no longer deeply offended, and the defamer sincerely admitted his actions and apologized. In this case, restorative justice applied in this defamation case was resolved through mediation.

In the case of allegations of adultery without evidence, the judge summoned the parties and witnesses, and saw first-hand evidence of the accusations made by the accuser on social media. Then the judge confirmed it to the accuser, and the accuser admitted it. After learning about the accuser's reasons for the untrue accusation, the judge offered peace to the two parties. After deliberation, it was finally agreed that the accuser was willing to apologize to the accused, both in person and through social media. This is also in accordance with the principle of restorative justice which prioritizes repairing relationships and eliminating grudges with mutually agreed sanctions.

In Islamic teachings, the resolution of the two cases above through mediation is closer to the concept of forgiveness and peace (*al-shulh*). As for the customary sanctions that are still applied with fines, as an effort to create a deterrent effect (*zawajir*) for the perpetrator and at the same time learning (*ta'dib*) for the community to be more careful in speaking words that can cause slender/*fitnah*. In terms of *maqasid sharia*, this serves to realize *al-mashalahah*, namely the willingness of the victim, repairing the good name of the victim and his family, and rejecting *mafsadat* (damage due to hostility and revenge). The purpose of this customary sanction is very relevant in maintaining the existence of religious teachings (*hifz al-din*) which strictly prohibits accusations of adultery (*al-qadzif*), as well as being able to protect offspring (*hifz al-nasl*) and maintain human honor (*hifz al-'irdh*).

Conclusion

From the description above, there are several aspects that can be concluded that restorative justice applied in customary courts in Rejang Lebong consists of several forms. First, the process prioritizes deliberation and peace between the parties. This can be seen in cases of garden destruction and theft, fights, insults and defamation. Secondly, in terms of the sanctions applied, compensation is based on the request of the victim and the consent of the perpetrator. Meanwhile, customary fines are determined by looking at the economic capacity of customary violators and their physical condition. As for other alternative sanctions, they are carried out with punishments that are beneficial to the perpetrator with the consent of the families of

the parties, to realize the importance of responsibility and educate public legal awareness.

In general, restorative justice applied to the process and sanctions in customary justice in Rejang Lebong district is in accordance with *maqasid al-syari'ah al-`ammah* to realize the good and reject the evil by creating harmonious relationships among community members. In terms of the process that prioritizes deliberation and peace, this is in accordance with the aim of eliminating *mafsadat*, namely relieving anger and resentment from the victim or his family, so that good relations between the perpetrator and the victim and the families of both parties can be restored. Likewise, in determining sanctions while taking into account the economic conditions, status, and physical abilities of the perpetrator. In cases of theft, defamation, accusations of adultery punished by customary fines, compensation, apologies, and promises not to repeat, are intended to preserve property (*hifz al-mal*), preserve religion (*hifz al-din*), preserve offspring (*hifz nasl*), and preserve honor (*hifz al-`irdh*). While in the case of fights with customary fines and compensation for the treatment of victims until they recover, including efforts to preserve the soul (*hifz al-nafs*).

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