

Research Article

Adat Badamai in the Banjar Community as One of the Alternatives for Criminal Case Resolution

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Abstract

This article discusses Adat Badamai as a form of dispute resolution commonly practiced by the Banjar community. Adat Badamai refers to the outcome of a deliberative or consultative process aimed at reaching a decision to resolve a problem. In Indonesian criminal law, previously, the resolution of criminal cases always emphasized formal judicial processes, without accommodating alternative methods of dispute resolution outside the judicial process. However, with the ratification of the national criminal law, it is now stated that criminal cases can be resolved outside of judicial proceedings, meaning that if a criminal case is resolved outside the judicial process, the right to pursue legal action is waived, and the case is considered closed. Adat Badamai, which prioritizes a deliberative approach toward consensus, reflects the spirit of the Sultan Adam Law. Under this custom, when a dispute arises—whether civil or criminal—the village elders will take the initiative to bring together the families of the conflicting parties. A ceremony is held, during which the parties exchange apologies, and sometimes a pact is made to prevent further escalation of the dispute. On various occasions, they engage in what is called "maangkat dangsanak", meaning they are bound together as family or kin.

Keywords: Adat Badamai, Customary Law, Restorative Justice, Criminal Case.



INTRODUCTION

The Unitary State of the Republic of Indonesia is one of the countries characterized as a state of law. This is clearly reflected in the 1945 Constitution of the Republic of Indonesia, which has been amended to emphasize in Article 1, Paragraph (1), that Indonesia is a unitary state in the form of a republic. Article 1, Paragraph (2) states that sovereignty is in the hands of the people and is exercised according to the Constitution. Article 1, Paragraph (3) further declares that Indonesia is a state of law. In the explanation of the 1945 Constitution, it is stated that Indonesia is a country based on law (*Rechtsstaat*), not based merely on power (*Machtsstaat*).

As a state of law, which has adopted Pancasila as its philosophy and the 1945 Constitution as the foundation of the state, all state regulations must be sourced from or inspired by Pancasila and the 1945 Constitution. These foundational principles are so fundamental that they must be approached with comprehensive, wise, and thoughtful consideration. The hope is that these principles can serve as a foundation for achieving a just and prosperous society.

The preamble of the 1945 Constitution is a fundamental part of the development of national law, which aims toward the ideals of a state of law in line with the values and principles of a constitutional state. The type of state of law that is being developed is not an absolute *Rechtsstaat* but a *demokratische rechtsstaat* (a democratic state of law). Law is created not just to regulate, but more importantly, to achieve noble goals such as justice, happiness, and the welfare of the people.

Currently, Indonesia is heading toward a state of anomie, both on a personal, social, and institutional level. Anomie refers to a condition where people no longer know what behavioral standards to follow, or a state of normlessness. On a personal level, individuals become easily suspicious of others, behave recklessly, as though there are no longer rules to follow or truths to believe in. Actions such as slandering, defamation, looting, murder, vigilantism, and others have become commonplace. Even murder is committed amidst a definition that we are a civilized nation. On a social level, the nation is developing and applying a blind homogeneous communal society. Personal sentiments are often viewed as group sentiments, and as a result, conflicts involving ethnicity, religion, and race (SARA) have become a new trend in this nation. On an institutional level, there is a visible incapacity of law enforcement agencies to prevent such trends of anomie. Law enforcement officers (police, prosecutors, judges, and legal professionals) are powerless to create both formal justice and substantial justice. We realize that our legal system often focuses more on formal justice than on substantial justice. As a result, the law deals only with technical and procedural matters, while the human aspect of law is lost. The law has been reduced to simplistic dichotomies such as right-wrong, black-white, win-lose, lawful-unlawful, pay-not pay.

To this day, Indonesia continues to apply four legal systems: customary law, Islamic law, civil law, and common law. Customary law is applied in Indonesia because it is the indigenous law that emerged from the culture and lives within the Indonesian community. According to Van Vollenhoven in his book *Het Adatrecht van Nederland*, customary law consists of a set of behavioral rules applicable to indigenous people and foreign Asians, which is enforceable and not codified. Customary law comprises three elements: unwritten law, religious elements, and statutory provisions. Unwritten law lives in society and is visible in everyday

behavior, realized in the actions of law functionaries. Religious elements include those from Islam, Christianity, Catholicism, and Hinduism, while statutory provisions may include regulations such as *awig-awig* (traditional village laws) and village regulations. Customary law does not recognize the distinction between public and private law. The system of customary law includes laws on persons, marriage, kinship, inheritance, debt, land laws, land transactions, and other related legal matters.

Van Vollenhoven distinguishes 19 customary legal environments, including Aceh, Gayo, Batak, Minangkabau, South Sumatra, Malay, Bangka Belitung, Kalimantan, Minahasa, Gorontalo, Toraja, South Sulawesi, the Maluku Islands, Ternate, West Papua, Timor Island, Bali, Lombok, East Java, Yogyakarta, and West Java.

Islamic law was originally followed by the Arab community as the beginning of the spread of Islam. It then spread to other countries in Asia, Africa, Europe, and the Americas, both individually and in groups. Islamic law has been applied in Indonesia since the introduction of Islam to the archipelago. Given the majority Muslim population in Indonesia, Islamic law or Sharia has dominated in areas like marriage, inheritance, and family law. The application of Islamic law in Indonesia has also been influenced by widespread resistance to the infusion of Islamic law into customary law, as it would place Islamic law in a subordinate position to customary law.

The civil law system was introduced to Indonesia with the arrival of the Dutch in the archipelago, and thus, the Dutch legal system was directly or indirectly brought to Indonesia. The influence of civil law can be seen in areas such as civil law, criminal law, and commercial law, particularly in the codification of laws. Common law, on the other hand, has been applied through international agreements or conventions that Indonesia is a part of, as well as through agreements between entrepreneurs, the creation of new financial institutions, and the influence of legal scholars educated in Anglo-Saxon countries like the United States and Australia. Thus, the law in Indonesia is a mixture of European legal systems, religious law, and customary law, creating a complex and broad legal system that consists of interconnected and mutually influential elements.

When discussing customary law, Soekanto defines it as the customs that are mostly unwritten, not codified, and non-mandatory, but still carry legal consequences (*rechtsgewolf*). In line with this, Bushar Muhammad emphasizes that customary law is a set of unwritten norms governing behavior in society, such as manners, etiquette, and morality, which carry legal consequences.

Customary law, as a non-statutory law, is largely common law and partly influenced by Islamic law. Common law includes laws based on judicial decisions, containing principles of environmental law, and decisions made in cases rooted in traditional culture. General law is the law that lives within society, achieving true justice for humans. According to R. Soepomo, the term *common law* is used synonymously with unwritten law, which exists in social contracts, judicial decisions, and the customary law practiced in towns and villages.

Customary law represents the laws of traditional society and incorporates the actual life needs and worldviews of the community where it applies. Although most customary law is unwritten, it holds significant force in the community, with certain sanctions for violations. Customary law can be considered the civil law of the Indonesian people.

Customary law does not distinguish between public and private law. Public

law, which concerns the public interest, includes constitutional law that regulates the duties of the state in relations between state institutions and government duties, and civil law, which regulates relationships between individuals and between individuals and legal bodies such as the state. Public law is enforced by the government, while civil law is maintained by individuals. Customary law does not differentiate between public and private interests or who maintains those interests.

Customary law also does not distinguish between property rights and personal rights. Property rights (*Zakelijke rechten*) refer to rights over tangible items, while personal rights (*persoonlijke rechten*) refer to the rights of an individual to demand actions or inactions from others concerning their rights. In customary law, property and personal rights, whether tangible or intangible (such as the right to life, honor, intellectual property, etc.), are not absolute individual rights, as the individual's personal status is closely linked to their family and kinship.

Customary law does not distinguish between civil and criminal violations. It does not differentiate between acts that are civil violations or criminal violations. Thus, a single case may be examined and decided upon by both civil and criminal judges in a single proceeding, rather than separating them.

In Indonesia, one of the laws that serve as the national identity is the tradition of consensus, a custom that has become the spirit of the nation for centuries. This is reflected in the principle of *Bhinneka Tunggal Ika*, meaning "unity in diversity." This tradition continues to develop and is used to regulate societal progress in line with folk tales and the moral fabric of the society. In customary law, sanctions are not viewed as urgent, as in general law, where punishment is a way to restore balance to society. Thus, customary law seeks to restore equilibrium and resolve issues without creating further problems.

When there is social interaction, it becomes a tradition that reflects the community's collective feelings. Subsequently, the community creates these customs as habits that all members must follow and observe. Therefore, customary law is a behavior accepted and must be implemented or observed by the community involved.

Problem Formulation:

1. What is the position of *Adat Badamai* as Customary Law in the Banjar Community within the National Legal System?
2. How can *Adat Badamai* be considered as one of the alternative methods for resolving criminal cases?

METHOD

The type of research used in this study employs a normative juridical approach. Normative juridical research is qualitative in nature and refers to legal norms found in legislation, court decisions, and norms that live and develop within society. The approach used is the statute approach, which involves studying the available legal materials. Normative or library-based research is a method used in legal research that involves reviewing existing literature.

To provide a deeper understanding, this study uses a descriptive qualitative approach regarding the position of *Adat Badamai* in the Banjar community, which has been passed down through generations as a method for resolving disputes, both civil and criminal. The research will explore the process and the outcomes obtained from deliberation or consensus-building, where the dispute is resolved without any lingering resentment and the situation can be restored. This means prioritizing

restorative efforts over judicial processes that take considerable time and cost, and do not lead to new issues.

The data sources for this study come from various primary and secondary references relevant to the research topic, specifically *Adat Badamai* in the Banjar community, which is an implementation of the Sultan Adam Law and has been practiced in the Banjar community. Additionally, it is also linked to new national law, namely Law Number 1 of 2023 concerning the Criminal Code and Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, as well as the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, which are also crucial in this analysis. Secondary data sources include scientific articles, books, research reports, and other documents discussing *Adat Badamai* as customary law in the Banjar community and its relationship with the Indonesian legal system, which will be used to gain a deeper perspective on *Adat Badamai* and its application.

The data collection techniques to obtain relevant data for this research include library research. The data is gathered from various sources related to the research topic, including books and literature. Additionally, data is obtained from important documents and existing regulations. The data collected is then processed by structuring, describing, and systematizing the data in two stages: The technical stage, which involves gathering, organizing, and presenting positive legal rules based on the hierarchy of legal sources to build a legitimate foundation for interpreting positive legal rules using logical methods, resulting in a coherent system. The teleological stage, which involves systematizing legal rules based on legal substance by reorganizing and interpreting legal materials from a teleological perspective, making the system clearer and more developed by applying teleological methods as a systematic benchmark.

RESULT AND DISCUSSION

a. The Position of *Adat Badamai* as Customary Law in the Banjar Community within the National Legal System

In terms of etymology, *Adat Badamai* is a compound word derived from the terms *adat* and *badamai*. Another term for *adat* is *urf*, which, in language, means something that is known, considered good, and accepted by common sense. According to the *Encyclopedia of Islamic Law*, *adat* refers to customs or traditions practiced by a community repeatedly over generations. The term *adat* is commonly used without distinguishing between those with sanctions, such as customary law, and those without sanctions, simply referred to as *adat*.

Badamai comes from the root word in the Banjar language, *damai*, which means peace, calm, and prosperity. The word *badamai* is a derived form in Banjar, originating from *damai* with the addition of the prefix *ber* to form *berdamai*. In the *Encyclopedia of Islamic Law*, *damai* is equivalent to *ka as-sulh*, meaning an agreement made to resolve a dispute or conflict into peace. In another sense, it refers to an effort made in a peaceful manner. In Banjar language, *badamai* is analogous to words like *berjalan* (to walk) and *bermain* (to play).

Adat Badamai is a compound term that refers to a peace-making effort carried out repeatedly and becoming an institutionalized habit within the Banjar community. It can evolve into customary law when the community views the act of *badamai* as

something that must apply to the Banjar people, meaning it becomes something that must be done.

Adat Badamai is one form of dispute resolution commonly practiced by the Banjar community. It also refers to the result of a deliberation or consultation process aimed at reaching a decision to resolve a problem. *Adat Badamai* is conducted to avoid conflicts that could disrupt social order. The *Badamai* decision, reached through the deliberation mechanism, is an alternative effort to find a solution to societal problems. In the Banjar community, when disputes arise among citizens, or if there are acts of violence or violations of norms (customary laws), or even traffic violations, the community is reluctant to resolve the conflict through litigation (court proceedings). The *Adat Badamai* is recognized as effective in settling disputes, eliminating grudges, and creating safety, order, and peace. This customary practice is also commonly referred to as *babaikan*, *baparbaik*, *bapatut* or *mamutut*, *baakuran*, and resolutions through *suluh*.

The terms *Baparbaik* and *Bapatut* are more related to the resolution of criminal cases, such as cases of assault, fighting, or traffic violations. However, the term *badamai* carries a broader meaning, referring to the resolution of any issue, including civil matters or legal relations between individuals. *Suluh*, on the other hand, is more closely associated with the concept of *Ishlah* in religious terms, which can be applied in civil matters, such as inheritance distribution or other civil issues.

In the Sultan Adam Law, it is stated:

Article 21: Every village, in case of disputes within the village, the village elders must be instructed to mediate and reconcile with other elders of the village. If reconciliation fails, the case can then be brought to the judge.

Article 21: Each village, when a dispute occurs, is instructed to reconcile (*mamatut*) with the village elders. If this does not succeed, the case will be brought to the judge.

Article 21 of the Sultan Adam Law remains the legal foundation for *Adat Badamai* and continues to serve as the basis for norms and behaviors in the Banjar community. Even today, it remains a tradition for *mamatut*, a traditional dispute resolution practice that has become institutionalized to reconcile conflicts and prevent feelings of animosity between the parties involved.

The formation of customary law begins with the behavior of individual members of society. There are actions and reactions that are polarized in the relationships between individuals, forming social interactions. Some repeated behaviors influence others, creating relationships within this social process. If social relationships are carried out systematically, these social interactions become part of a social system. When there is social interaction, it becomes a tradition that embodies the community's collective feelings. The community then forms these customs into habits that all members must follow and apply customary law. Therefore, customary law is a practice accepted by society and must be observed by the community involved.

On the other hand, legal literature also notes that law, in its broad sense, can be categorized into two parts: written law and unwritten law. Customary law falls into the second category. However, the issue is that there is no article in the body of the 1945 Constitution (UUD 1945) that regulates the position of unwritten law. In fact, many articles in the body of the 1945 Constitution mandate that their provisions be regulated further by law (organic laws). The instruction to further regulate the

provisions in the 1945 Constitution through legislation implies that Indonesia prioritizes written law. Recognition of unwritten law was initially only explained or included in the General Explanation of the 1945 Constitution, Paragraph I, which states that the Constitution is a written fundamental law, while alongside this written law, there also exists an unwritten fundamental law—rules that arise and are maintained in the practice of state administration, even though they are unwritten.

Article 18B, Paragraph (2) of the 1945 Constitution Amendment states: "The State recognizes and respects the unity of customary law communities along with their traditional rights as long as they remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law." According to this article, the customary law recognized is one that is still alive, with clear materials and the scope of the customary community. The provision in Article 18B, Paragraph (2) above can be understood to mean that the 1945 Constitution prioritizes written law over unwritten law. This means that the recognition of customary law that is still alive in a community must be regulated in written legislation.

To analyze the position of *Adat Badamai* in the Banjar community within the legal system, it is essential to consider one legal theory, namely, sociological jurisprudence, as proposed by Eugen Ehrlich. The basic conception of Ehrlich's theory of law is what he calls "living law." A good and effective positive law is one that aligns with the living law of the community, reflecting the values alive within it.

Given the plural legal systems in Indonesia, Koesnoe believes that customary law should be the foundation of the national legal system. It is explained that the customary law referred to is not law derived from judicial decisions, nor law that has materialized in real behavior, commonly referred to as customs, but rather a part of customary law that serves as the source of validation for all concrete provisions of customary law. Thus, the basic ideas, ideals, and principles guiding customary law lead to more concrete legal provisions, ultimately reflecting the realities in society.

Studies on law as a system of social control in society have been extensively conducted by anthropologists. Therefore, it is said that anthropologists have made significant contributions to the development of legal concepts applied in society. Anthropologists study law not just as a product of abstract logic formulated by a group of people with authority in the form of regulations, but more importantly, as social behavior. Law is studied as an integral part of the overall culture, as a product of social interactions influenced by other cultural aspects, such as politics, economics, religion, and more. In this way, law is studied as a social process that takes place in the life of society.

The reform in National Criminal Law on January 2, 2023, with the ratification of Law No. 1 of 2023 concerning the Criminal Code, considers that national law must align with legal policies, the conditions, and developments of social, national, and state life, aiming to honor and uphold human rights, based on the belief in one God, humanity that is just and civilized, the unity of Indonesia, democracy led by wisdom in deliberation/representation, and social justice for all Indonesians.

This national criminal law also regulates the balance between public or state interests and individual interests, between the protection of the perpetrators and victims of criminal acts, between the act itself and the mental attitude, between legal certainty and justice, between written law and the law that lives in society, between national values and universal values, and between human rights and human duties.

It is stated that one of the considerations of the new national criminal law is its

regulation of the relationship between written law and the law that lives in society, as well as between national and universal values. *Adat Badamai*, as explained earlier, is a custom that prioritizes deliberation to resolve general issues, including criminal matters. Therefore, in practice, *Adat Badamai* is recognized in the national criminal law, although its implementation will still be adjusted to the conditions of the region and the situation when issues or disputes arise.

b. Bentuk adat Badamai dapat dijadikan sebagai salah satu alternatif penyelesaian perkara pidana.

Tentang penanganan perkara pidana di Indonesia telah diatur di dalam Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana dan Peraturan Perundang-Undangan lain yang bersifat khusus. Namun aturan tersebut masih bersifat formal, dimulai dari adanya laporan yang diterima dari masyarakat atau yang ditemukan sendiri oleh aparat penegak hukum (penyelidik/penyidik), kemudian dilakukan penyelidikan dan penyidikan, diteruskan ke penuntutan oleh jaksa penuntut umum sampai dengan proses pemeriksaan di persidangan dan berakhir di jatuhnya putusan oleh hakim di pengadilan dan eksekusi oleh jaksa penuntut umum apabila putusan pengadilan tersebut telah berkekuatan hukum tetap.

Proses ini tentunya memerlukan waktu yang tidak sebentar dan juga biaya yang tidak murah, disamping itu akan memunculkan persoalan-persoalan baru apabila sampai ke lembaga pemasyarakatan yaitu terjadinya over capacity pada hampir di semua lapas di Indonesia, belum lagi persoalan-persoalan lainnya. Kini telah muncul alternatif penyelesaian perkara pidana dengan melibatkan pelaku, korban, keluarga pelaku, keluarga korban, tokoh masyarakat, tokoh agama, tokoh adat atau pemangku kepentingan untuk bersama-sama mencari penyelesaian yang adil melalui perdamaian dengan menekankan pemulihan kembali pada keadaan semula yang disebut dengan Keadilan Restoratif. Pada tataran ini tentunya ada beberapa syarat yang harus dipenuhi yang meliputi persyaratan umum dan/atau persyaratan khusus.

Persyaratan umum meliputi materiil dan formil. Persyaratan materiil meliputi : tidak menimbulkan keresahan dan/atau penolakan dari masyarakat; tidak berdampak konflik sosial; tidak berpotensi memecah belah bangsa; tidak bersifat radikalisme dan separatisme; bukan pelaku pengulangan tindak pidana berdasarkan putusan pengadilan; dan bukan tindak pidana terorisme, tindak pidana terhadap keamanan negara, tindak pidana korupsi dan tindak pidana terhadap nyawa orang lain.

Persyaratan formil meliputi : perdamaian dari kedua belah pihak, kecuali tindak pidana narkoba; dan pemenuhan hak-hak korban dan tanggung jawab pelaku, kecuali tindak pidana narkoba. Perdamaian dari kedua belah pihak dibuktikan dengan surat kesepakatan perdamaian dan ditanda tangani oleh para pihak. Sedangkan pemenuhan hak-hak korban dan tanggung jawab pelaku dapat berupa : mengembalikan barang; mengganti kerugian; menggantikan biaya yang ditimbulkan dari akibat tindak pidana; dan/atau mengganti kerusakan yang ditimbulkan akibat tindak pidana. Pemenuhan hak dibuktikan dengan surat pernyataan sesuai dengan kesepakatan yang ditandatangani oleh pihak korban.

Pada tingkat penuntutan proses penanganan perkara pidana, juga telah diatur dengan Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif. Dalam peraturan ini apa yang dimaksud dengan Keadilan Restoratif adalah penyelesaian perkara pidana dengan melibatkan pelaku, korban, keluarga pelaku/korban, dan pihak lain yang terkait untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan kembali pada keadaan semula, dan bukan pembalasan.

Penutupan perkara demi kepentingan umum adalah merupakan wewenang Penuntut Umum. Salah satu penutupan perkara demi kepentingan hukum dilakukan dalam hal telah ada penyelesaian perkara di luar pengadilan (*afdoening buiten process*) yang dapat dilakukan dengan ketentuan : untuk tindak pidana tertentu, maksimum pidana denda dibayar dengan sukarela sesuai dengan ketentuan peraturan perundang-undangan; atau telah ada pemulihan kembali keadaan semula dengan menggunakan pendekatan keadilan restoratif.

Sama halnya dengan proses penghentian perkara pidana yang dilakukan pada tingkat penyidikan oleh penyidik, dimana dalam penghentian penuntutan oleh Jaksa Penuntut Umum dilakukan dengan memperhatikan : kepentingan korban dan kepentingan hukum lain yang dilindungi; penghindaran stigma negatif; penghindaran pembalasan; respon dan keharmonisan masyarakat; dan kepatutan, kesusilaan, dan ketertiban umum. Sedangkan pertimbangan dilakukannya penghentian penuntutan berdasarkan keadilan restoratif yaitu : subjek, objek, kategori, dan ancaman tindak pidana; latar belakang terjadinya/dilakukannya tindak pidana; tingkat ketercelaan; kerugian atau akibat yang ditimbulkan dari tindak pidana; cost and benefit penanganan perkara; pemulihan kembali pada keadaan semula; dan adanya perdamaian antara korban dan tersangka.

Pada BAB IV Bagian Kesatu Pasal 132 ayat (1) huruf g Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana menyebutkan bahwa Kewenangan penuntutan gugur jika telah ada penyelesaian diluar proses peradilan sebagaimana diatur dalam Undang-Undang. Yang dimaksud dengan penuntutan adalah proses peradilan yang dimulai dari penyidikan. Hal ini membuktikan bahwa Hukum Pidana Nasional Indonesia telah memberikan ruang kepada penyelesaian perkara pidana diluar proses peradilan yang formal yang harus berakhir di persidangan.

Adat Badamai sebagai hukum adat pada masyarakat Banjar yang sudah dilaksanakan secara turun temurun tidak mengenal perbedaan antara hukum publik dan privat. Yang ada adalah hukum adat. Demikian pula tata pemerintahannya. Tidak mengenal pembagian atau pemisahan kekuasaan. Semua kekuasaan di satu tangan yaitu kepada adat yang sekaligus menjalankan pemerintahan, membuat petunjuk-petunjuk, dan memutus sengketa. Untuk menjalankan kekuasaannya, kepala adat dibantu oleh tetua adat atau rembug adat (rembug desa). Tetua adat atau rembug desa memberikan saran-saran kepada kepala adat. Tetapi dalam praktek, saran-saran tersebut sebenarnya merupakan keputusan yang harus dijalankan kepala adat.

Karena tidak mengenal perbendaan antara hukum privat dan hukum publik,

maka apabila terjadi sengketa atau perselisihan cara penanganannya juga tidak berbeda, dimana apabila terjadi sengketa atau perselisihan baik itu menyangkut kasus-kasus yang berhubungan dengan privat maupun hukum publik, dalam prakteknya di masyarakat Banjar, maka para tetuha atau tokoh masyarakat akan berinisiatif untuk mempertemukan keluarga kedua belah pihak yang saling berkonflik/bersengketa. Diselenggarakanlah acara selamatan, bermaaf-maafan, dan terkadang disertai dengan perjanjian untuk tidak memperpanjang lagi persengketaan. Dalam berbagai kesempatan, mereka saling “maangkat dangsanak”, maksudnya adalah mereka dipertalikan atau dibuhul sebagai keluarga atau bersaudara. Pihak yang dibelakang hari melanggar kesepakatan ini, akan mendapat sanksi, paling tidak akan dikucilkan dari pergaulan masyarakat sekitarnya.

Jikalau ditelusuri lebih lanjut, cara penyelesaian seperti ini ditemukan dasar dan landasannya dalam Pasal 3 dan 21 Undang-Undang Sultan Adam yang menyatakan :

“Perkara yang ketiga tiap-tiap tatuha kampung kusuruh akan memadai anak buahnya dengan bamufakat, astamiyah lagi antara kerabat supaya jangan banyak bicara dan perbantahan”

Pasal ini menjadi landasan bagi tetuha kampung untuk saling menasehati khususnya keluarganya dan anak buahnya agar selalu bermufakat dan bermusyawarah supaya tidak terjadi perselisihan dan percekcoan. Sangat jelas bahwa Sultan menekankan prinsip musyawarah sebagai salah satu prinsip untuk mengatur kehidupan bermasyarakat sebagai salah satu prinsip untuk mengatur kehidupan bermasyarakat dan bernegara. Demikian pula dengan essensi pasal 21 yang merupakan landasan musyawarah bagi setiap orang dalam menghadapi sengketa. Pasal 21 ini bersifat antisipatif dan persuasif, sekiranya dalam forum berdamai tersebut diperoleh kata sepakat. Sedangkan materi pembicaraan yang berkaitan dengan ketentuan normatif dari sengketa tersebut juga demikian jelas landasannya dalam praktek di masyarakat yaitu adanya kesediaan memberikan restitusi atau Ganti rugi atau denda sebagai hak adami yang diberikan kepada keluarga korban.

“Perkara yang kedua puluh satu tiap-tiap kampung kalau ada perbantahan isi kampungnya ija itu tatuha kampungnja kusuruhakan membitjarakann mupaqt-mupaqt lawan jang tuha-tuha kampungnja itu lamun tiada djuga dapat membitjarakan ikam bawa kepada hakim”

Menurut pasal 21 ini, bilamana terjadi sengketa di dalam kampung maka diperintahkan untuk mendamaikan (mamatut) dengan tetuha kampung, bilamana tidak berhasil dibawa kepada hakim. Dalam masyarakat Banjar sampai sekarang masih menjadi suatu tradisi “mamatut” yaitu mendamaikan antara kedua belah pihak yang bersengketa, seperti kasus pelanggaran hukum, perkelahian. Lembaga hukum berdasarkan tradisi dalam penyelesaian persengketaan untuk dirukunkan kembali, sehingga tidak terjadi perasaan dendam antara kedua belah pihak. Dengan demikian penyelesaian sengketa yang diselesaikan berdasarkan adat badamai ini memenuhi rasa keadilan, kepastian dan kemanfaatan. Lembaga bapatut ini dihadiri oleh kedua belah pihak dan seluruh kerabat/keluarga dekat yang bersengketa yang dipimpin

oleh tetuha kampung. Bilamana tidak terdapat penyelesaian, barulah dibawa kepada hakim. Kalau ini terjadi maka kerukunan bermasyarakat membahayakan sebab perasaan dendam tidak dapat dihapuskan.

Dengan demikian sebenarnya adat badamai sebagai suatu kebiasaan yang dilaksanakan secara turun temurun dan dijalankan untuk menyelesaikan persengketaan dalam bentuk musyawarah yang dilakukan oleh para tetuha kampung yang didasarkan kepada Undang-Undang Sultan Adam bisa menjadi landasan dalam menjalankan hukum pidana nasional, dimana proses peradilan yang formal adalah bisa dilaksanakan apabila tidak ada pilihan lagi (*ultimum remidium*) bukan *premium remidium* yang justru akan menambah persoalan-persoalan baru. Hukum pidana nasional yaitu Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana telah sejalan dengan budaya Bangsa Indonesia dimana didalam menyelesaikan semua permasalahan mengedepankan musyawarah untuk mencapai mufakat.

Sebagai langkah menuju peradaban hukum yang lebih baik dimasa depan, dimana keadilan yang harus diutamakan daripada kepastian, pemberdayaan hukum-hukum adat sebagai hukum yang lahir, tumbuh dan berkembang dan diakui Bangsa Indonesia dapat lebih eksis lagi mengingat politik hukum kita sudah berubah, bukan lagi berfokus pada pembalasan dan penghukuman pelaku (*retributive*) namun sudah lebih fokus kepada pemulihan hubungan antara korban dan pelaku serta masyarakat (*restorative*).

CONCLUSION

Based on the discussion above in this study, the following conclusions can be drawn:

- a. The position of *Adat Badamai* as part of the customary law of the archipelago holds a recognized and respected place within Indonesia's national legal system, particularly regulated in Article 18B, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Although unwritten, customary law serves as an important source of law and is considered in judicial decision-making, as well as an inspiration for the development of national law.
- b. *Adat Badamai* can be considered as an alternative method for resolving criminal cases. In practice, when a dispute or conflict arises, whether civil or criminal, *Adat Badamai* resolves it in the same manner. The village elders will take the initiative to bring together the families of the conflicting parties. A ceremony is organized, which includes mutual forgiveness, and sometimes an agreement is made not to prolong the dispute. On various occasions, they perform "*maangkat dangsanak*", meaning they are bound together as family or kin. This form of resolution through deliberation or consultation is an implementation of Indonesia's national criminal law, focusing more on restorative justice rather than retributive justice.

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