



Research Article

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Restoring the Conflicts among Societies: How does Baduy Society Settle the Criminal Cases through Restorative Justice?

Rena Yulia^{1*}

Aliyih Prakarsa¹

Mahrus Ali²

¹Faculty of Law,
Universitas Sultang Agung Tirtayasa,
Banten, Indonesia

²Faculty of Law,
Universitas Islam Indonesia,
Yogyakarta, Indonesia

*Corresponding Author

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Abstract

The Baduy are indigenous people who firmly adhere to the customary law of their ancestral heritage, both in carrying out their daily lives and when conflicts or crimes occur. Even though they are part of Indonesia, the Baduy have their own legal system, which is different from positive law. Likewise in customary criminal law, the Baduy have a customary criminal justice system that is authorized to resolve customary conflicts that occur between indigenous people or those that occur in their customary territories. The conflict resolution method in Baduy customary law is called Silih Hampura. Silih Hampura's way of working is very similar to that of restorative justice which is currently being implemented in national law to resolve various types of criminal acts. This research will examine the Silih Hampura method in resolving conflicts that occur in the Baduy as an effort to explore the Pancasila values contained in the local wisdom of the Baduy customary criminal law. The research method uses normative and empirical legal research methods. Using primary and secondary data sources which are processed using qualitative data analysis. The results of the study show that the Baduy have a conflict resolution method, namely Silih Hampura. The concepts of Silih Hampura are very thick with the norms contained in Pancasila. Deliberation for consensus, creating peace, family behavior, patterns of attention to victims and no elements of revenge, prioritizing victims' apologies and apologies from perpetrators, as well as restoring the conditions of victims, society and the environment so that they can restore the disturbed nature due to crimes or conflicts that have occurred.

Keyword: Conflict resolution, restorative justice, customary law, Pancasila, Indonesia

1. Introduction

Baduy is one of the traditional tribes that still uses customary law in Indonesia. Baduy customary criminal law is not written but applies to Baduy residents. In Baduy, the national criminal law does

not apply, unless the crime really intersects with state law. For example, the perpetrators or victims involved outsiders from Baduy or the crimes committed also violated national law (Yulia & Prakarsa, 2021). The Baduy indigenous people have their own legal system which has long been adhered to and obeyed by the Baduy people, including in resolving conflicts that occur in their society. The implementation of customary sanction obligations for customary violators in Baduy must continue even though the court's decision has handed down a sentence. For example, in cases of rape, the perpetrator has a customary obligation to marry the victim, even though in this case the rape victim has died. The village where the killings and rapes occurred must be cleaned up. This customary obligation must still be carried out even if the perpetrator is not an indigenous Baduy citizen (Arianto, 2015).

There is a conflict resolution model in Baduy customary law called *Silih Hampura* (forgiving each other). *Silih Hampura* is carried out as an initial basis for conflict resolution, whereas if the conflict that occurs is considered severe and is not finished with *Silih Hampura*, then it will proceed to the next process through the traditional ritual of *Ngabokoran*. The *ngabokoran* process is a part of the Baduy customary criminal justice system, including when carrying out the process of customary obligations for perpetrators (Yulia & Prakarsa, 2021). Faturrahman (2010) showed the Baduy customary criminal law and its relevance in criminal law reform. Fitriana & Fauzi (2021) examined Baduy efforts to sustain the ecology of the baduy community, which focuses more on environmental law that can be learned from Baduy customary law. In this context, this study was conducted to examine the *Silih Hampura* method in Baduy customary criminal law will be studied in relation to the concept of Restorative Justice and Pancasila values. The study aims to analyze the settlement of criminal cases through *Silih Hampura* in the Baduy community. This study is important because apart from *Silih Hampura* it actually has the same way of working as restorative justice which is currently being loved by law enforcement officials in resolving various types of criminal acts, it is also in accordance with Pancasila values which accommodates the settlement of cases based on the local wisdom of the community.

2. Methodology

The research method used is a sociological normative research method. Normatively, it is carried out on legal principles, namely on legal principles that are based on inappropriate behavior or behavior (Soerjono & Mamudji, 2007). Namely reviewing the existing laws and regulations in positive law. Sociologically, it is a study of the norms that exist in indigenous peoples (Baduy). Normative-sociological legal research is legal research regarding the enactment or implementation of normative legal provisions in action in every particular legal event that occurs in society. Implementation in action is an empirical fact and is useful for achieving predetermined goals (Abdulkadir, 2004). Sources of legal research are divided into research sources in the form of primary legal materials and secondary legal materials (Marzuki, 2016). The primary source of law is the result of interviews and observations in the Baduy Customary Tribe and the secondary source of law regarding positive criminal law. The analysis technique uses normative analysis which essentially emphasizes the deductive method as the main guideline and the inductive method as a supporting work procedure. Normative analysis uses literature as a source of research. Related to primary sources of law will be analyzed sociologically in order to find out how the law is implemented including the law enforcement process (Amiruddin, 2004). Data were analyzed using analytical descriptive regarding penance *hampura* in Baduy customary law and described in a prescriptive manner regarding restorative justice from Baduy, restorative justice based on Pancasila for criminal law reform in Indonesia.

3. Results

The Baduy tribal community is an indigenous community in Banten whose existence is still

maintained in Indonesia today. The Baduy community is divided into two parts, namely what is known as the "Outer Baduy" and "Inner Baduy". The number of Baduy residents, both Baduy Luar and Inner Baduy, continues to grow every year. However, the number of villages in the Baduy Dalam cannot be increased, only 3 villages namely Cikeusik, Cibeo and Cikartawana villages, unlike the case with the Baduy Luar which are allowed to have additional villages. As indigenous peoples, the Baduy have a legal system that is not codified in a law. They still adhere to unwritten laws and preserve them by instilling these legal values from generation to generation through oral cultural practices and customary traditions. Even though it is not written down, the Baduy indigenous people have rules that their citizens live by and obey. Whether it contains advice, obligations, orders, prohibitions, or manners, patterns of life behavior that must be carried out by the community both towards fellow humans and nature. Including regarding customary violations or criminal events that occurred in customary territories. The customary law that applies is not only about rules of conduct but also regulates the resolution of conflicts that occur in indigenous peoples. Without separating civil or criminal conflicts.

Customary law is the soul of the nation. The soul of the nation is reflected in Pancasila. Pancasila is explored from the view of life of the Indonesian nation which is the soul and personality of the Indonesian nation which is the soul and personality of the Indonesian nation itself. The basis of the Pancasila State is made of domestic material or materials which are pure originals and are the pride of the nation. The basis of the Indonesian State is not imported from outside, even though it may be influenced from abroad (Darmodiharjo, 1996). In the mind of customary law, in the minds of the nation, ancestors, individuals are valued and protected; his personality receives respect and protection, not only for his friends and citizens, but also for the unity of his association of life. In a series of ideas launched by the Head of State/Great Leader of the Indonesian Nation, Soekarno starting from Free Politics, New Conception, Guided Democracy, Indonesian-style Socialism, until it was closed by Indonesian Personalities. The personality of a nation is known through its culture. If Soekarno said that we must return to the personality of the nation, then that means returning to the past. Therefore we must examine the personality of the Indonesian nation in the past through the culture of the Indonesian nation. Therein lies the importance of customary law. Customary law is a very important material, because in customary law there is a statement by the Indonesian nation about the relationship between individuals and individuals; about fair and unfair; primarily about the place of the individual in his social life (Kartohadiprodo, 1965). Thus, leading to a life in the future must be guided by returning to Indonesian Personality. It can mean that building and updating laws must be based on customary law.

Law in Indonesia must guarantee and uphold the values contained in the Preamble to the 1945 Constitution which is a reflection of Pancasila and the principles contained in the Body of the 1945 Constitution and its explanation. Pancasila is thus synonymous with truth and justice for the Indonesian people, so it is very appropriate if Pancasila is used as a source of law and order (Darmodiharjo, 1996; Fernando et al., 2022). The link between Pancasila in the Preamble of the 1945 Constitution and the well-known doctrine of basic norms (*grundnorm*) is understood as the opinion of Indonesian legal scientists who constructed Pancasila within the framework of Kelsen's theory of view in the interest of forming national law. The view used in the formation of national law is none other than Kelsen's well-known theory of basic norms. Based on Kelsen's thinking, the position of Pancasila in the Preamble to the 1945 Constitution is interpreted as Kelsen's *grundnorm* (Sumakto, 2014). Using Kelsen's Stufentheorie, Pancasila is then constructed not only as the basic norm of Indonesian legal order, but also as the basic norm of other norms. Such as moral norms, decency norms, ethical norms and so on. Therefore Pancasila requires a harmonious legal order and contains these norms (Sumakto, 2014)

Attamimi (1990) uses Stufentheorie from Kelsen and Theorie vom Stufenaufbau der Rechtsordnung from Nawiasky in explaining the position of Pancasila as the highest norm in the Indonesian legal system. Based on Nawiasky's theory, Pancasila is then not only constructed as a norm, namely Pancasila as Kelsen's *grundnorm*, but also as Nawiasky's Staatsfundamentalnorm

(fundamental state norm) at the same time. It seems that Attamimi (1990) is of the view of identifying the Nawiasky's state fundamental norms with the Kelsen's *grundnorm*. Sumakto (2014) view that these two terms are terminologically and substantially different from one another. Regardless of the differences in views of Indonesian scientists on the position of Pancasila as a fundamental norm or basic norm. What is important and must be remembered are the norms that have lived in society from the past until now, even though they are not written down, they are still obeyed and carried out by the indigenous people of Indonesia. Pancasila in the sense of being a legal ideal is a source of legal order. These Pancasila values in the legal ideals are further elaborated in the main thoughts of the Preamble of the 1945 Constitution, and these four main thoughts are none other than the five precepts of Pancasila. In other words, Indonesia's *staatsfundamentalnorm* is the Preamble to the 1945 Constitution because it contains the formulation of Pancasila as the basis of the State (Darmodiharjo, 1996). Pancasila occupies the highest position, namely as the ideals and outlook on life of the nation and state. Pancasila as a measure in assessing the law. The legal rules applied in society must reflect awareness and a sense of justice in accordance with the personality and philosophy of life of the Indonesian nation (Darmodiharjo, 1996). Pancasila as the source of all sources of law certainly does not only recognize the law in writing behind, in fact the rich diversity of Indonesian culture created as a result of human interaction, noble habits that become customs, culture and wisdom from existing localities, which were created from one generation then passed on and preserved to the next generation, not least of which is in the form of oral tradition.

Pancasila as the state ideology with the aims and objectives of everything related to the life of the state must be based on the starting point of its implementation, limited in its implementation, and directed towards achieving its goals with Pancasila. This statement has been proven by the incarnation of Pancasila in basic law, both written basic law and unwritten basic law, so that Pancasila is declared as the source and all sources of law (Supadjar et al. 1996). The Indonesian nation is a plural nation consisting of various cultures, customs and groups, the birth of these various diversity will actually cause problems such as division, if it is not based on a national philosophy, namely Pancasila. As the philosophy of the nation, Pancasila is a basic norm which is used as the source of all sources of law in Indonesia (Efendi & Mashdurohatun, 2020). The philosophy of Pancasila develops in Indonesian culture and civilization, especially as the soul and spiritual principle of the nation in the struggle for independence from colonialism-imperialism, the Pancasila philosophy both as a way of life (philosophy of life, *weltanschauung*) of the nation, and as the soul of the nation (*volksgeist*, national identity) provides identity and integrity and personality of the nation in the culture and civilization of the modern world as well as a source of motivation and spirit of struggle for the Indonesian nation. The Indonesian people believe in the spirit of Pancasila and the values of Pancasila. Both are contained in the nation's socio-culture in the form of national values that prioritize the principles of belief in God, kinship, deliberation, mutual cooperation, and so on which are at the same time national identity and national personality. This shows the position of the objective value of Pancasila. Pancasila is a kind of life axiom derived from four main ideas, various theorems and then translated into articles of the 1945 Constitution as principles or laws, which are then elaborated in the national development plan.

These values are passed on or passed on by the community from one generation to the next, because it is considered good in carrying out relationships among living things. However, not all Indonesian people are still able to pass on these values as a whole (as they are), because this is also influenced by factors that exist in society, such as technological developments or even laws that apply in a country (Sabandiah & Wijaya, 2018). Communities that are still strong, who continue and maintain traditional values inherited from their ancestors can be understood as customary law communities. Indigenous peoples are also known as traditional communities or the indigenous people or some even call them indigenous peoples (Sabandiah & Wijaya, 2018). The existence of customary criminal law in society reflects the existence of customary law in their lives. Each indigenous community has its own customary criminal law, as are the customs that apply in their respective indigenous communities. It should be remembered that the characteristic of customary

law is that it is not written down, therefore, it needs to get more attention considering the concern over its existence (Burns, 2007). The implementation of customary criminal justice is a mechanism for the operation of customary law institutions starting from reports, summoning parties, witnesses, conducting deliberations, until then to making decisions by the leaders of traditional institutions. this process is carried out to achieve the goal of settlement efforts through customary law (Syarifuddin, 2019)

For example in the indigenous Baduy community. when a crime occurs, they still use their customary system. As applied in the murder case of a Baduy girl. Cases of murder and rape are serious criminal incidents, therefore they are resolved by traditional institutions and through traditional rituals. In the case of the murder of a Baduy girl, the perpetrator who is an outsider of the Baduy has been processed using the national criminal law and also carried out customary obligations. The same thing happened in the murder case by Sadim, a member of the indigenous Baduy Dalam community who killed a grandmother named Kamsinah and injured her child named Yadi the next day. The incident occurred in 2005. In this case, Sadim was sentenced to prison under the national criminal law for 7 months and 8 days. However, after serving his sentence, Sadim also carried out the Baduy customary criminal law in the form of social work that would be fostered by the village head appointed by the customary institution which is called the diangkakeun process for 40 (forty) days. During the guidance and supervision of Jaro Dangka, the perpetrators were required to carry out activities ordered by Jaro Dangka, a type of social work, such as cleaning, caring for traditional fields, assisting traditional processions, looking for firewood or farming. It aims for mental development and inner awareness of the perpetrators. Apart from that, there is also the process of surrendering starch, which is a ritual of cleansing the mind for committing a serious offence. There is something different in the case of the murder of a Baduy girl and Sadim. The perpetrators of killing and raping Baduy girls are outsiders of Baduy, so national law still applies. Then Baduy customary law must still be implemented. Because the recovery of victims, nature and cosmic balance is one of the objectives of implementing Baduy customary law. Based on the results of an interview with Jaro Saija, rape victims in Baduy customary law must be married to the perpetrator. This is an attempt to restore the balance of nature that has been damaged. In this case, the victim dies, therefore the perpetrator still has to carry out the customary obligation, namely marrying the victim who has died.

The three perpetrators of killing the Baduy girls were not Baduy citizens, therefore the perpetrators did not carry out exile for 40 days. However, because the act of rape requires the perpetrator to marry the victim. Jaro Sami, as one of the Baduy traditional leaders, explained that the marriage was carried out by summoning representatives of the perpetrators to perform the Kabul consent, this was because the perpetrators were currently serving sentences for the verdict of the panel of judges at the Rangkasbitung district court. In addition, because the perpetrators were not members of the indigenous community and also differed in religion from the victims, the wedding procession was carried out by a priest from outside the Baduy. The Penghulu will marry one by one the representatives of the perpetrators, after being approved then the representatives will undergo the Ngabokoran process by bringing several conditions in the form of Malaysian ringgit currency, lemongrass and a wage that are placed in the bowl and then after that do the Pati Transfer, namely in the form of surrendering to purification of victims and perpetrators of crimes by asking for an apology from the perpetrators to the victims so that the souls of the victims who have died can return to peace. When the whole procession is finished, the last thing is the representative representing the perpetrators to marry the victim immediately mentalak or divorce the victim so that his spirit can be free again.

Apart from marrying the offender to the victim which aims to reconcile the souls of the victims and also the perpetrators, there are other customary obligations that must also be carried out, namely the ritual of purifying the scene of the crime. This procession is also the same, namely with Ngabokoran and Serah Pati, but this is held at the scene of the incident. After the ritual is completed, the hut where the murder and rape of the victim occurred is immediately burnt down, this aims to eliminate the evil auras in that place and the hope is that no more crimes will occur either in that

place or in other parts of the village. The two processes were carried out before the Traditional Institutions, both Baduy Luar and Inner Baduy.

The purpose of customary obligations is to restore the cosmic balance that has been disrupted as a result of customary violations. Therefore, the customary obligations that must be carried out by perpetrators of customary violations, are not only aimed at punishing the perpetrators, but even further to restore natural conditions that have been disrupted due to crime. Especially also to restore the condition of victims who suffered as a result of violations. This is certainly different from the purpose of imposing sanctions in the national criminal law. In addition to providing a deterrent effect, it also improves the behavior of criminals. In contrast to punishment in positive law, the application of sanctions in customary law is intended as an attempt to restore the cosmic state which has been disrupted due to acts committed that cross the boundaries of the cosmos. The application of customary sanctions is an attempt to restore the disturbed balance. There is no element of coercion but only an adherence of indigenous people to their customary law.

In cases of murder and rape of Baduy girls, customary obligations are carried out with the aim of restoring cosmic balance, not merely punishing the perpetrators. The marriage that must be carried out for rape victims is a principle of acknowledging the existence of victims in conflict resolution. Also as an effort to restore the damaged relationship as a result of the crime of rape. Even when the victim dies, the marriage must still be carried out as a customary obligation. because the goal to be achieved is not merely to punish the perpetrators, but to restore the disturbed cosmic balance. Protection of victims must still be carried out even though they have died (Albariansyah et al., 2022) Such behavior of the Indonesian people illustrates that this nation highly upholds moral-religious values. Respect for these moral values is reflected in the ideology of the Indonesian nation, namely Pancasila. The religious and moral values contained in the first precepts mandate that the Indonesian nation's morals manifest religious teachings. The second precept, which has human-moral values, conveys the message that the morals of the Indonesian nation greatly respect and respect human rights, as well as the moral value of unity in the third precept, which highly upholds the unity of the entire Indonesian nation.

4. Discussion: Restorative Justice and Customary Criminal Law in Baduy

The purpose of carrying out customary obligations in Baduy customary law is to resolve criminal conflicts solely, not to punish but to restore balance, both victims and indigenous peoples and the environment polluted by crime. These principles can be said to be substantially similar to restorative justice (Ferdiles, 2019). According to Howard Zehr, restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible (Budiyanto, 2016). Furthermore, Cowie & Jennifer (2007) provide the main elements of restorative justice, namely (1) repair, as justice, not about winning or accepting defeat, blaming, or revenge; (2) restoration of relations, is a process of direct and open communication between victims and criminals, this communication can have the opportunity to change the way they relate to each other, not actions that have the nature of punishing criminals by taking responsibility for mistakes and then correcting them with various method; (3) reintegration, in broad terms, namely providing space for children and parents to get a fair process. This is intended to be able to obtain lessons related to the consequences of violence and crime, as well as to understand the consequences for other people (Budiyanto, 2016).

By looking at the principles and working mechanisms of restorative justice, it can be seen that the working principle of Baduy customary criminal law in implementing customary obligations for perpetrators of customary violations has the same goal of repairing relationships, healing, restoring relationships and not just about revenge punishment but about justice. . This can be seen from the implementation of the fulfillment of customary obligations which not only involve the perpetrators, but also the victims, and what is equally important is the community. All of that in terms of efforts to restore the cosmic balance that has been disrupted due to violations of legal interests within

indigenous peoples. The application of two sentences at once, both the national criminal law and customary criminal law in the case of the murder of a Baduy girl, may at first glance be considered *Ne bis in Idem*, in which a person cannot be prosecuted a second time for the same act that has already been sentenced by a judge (Conway, 2003; Van Bockel, 2010; Lelieur, 2013). This provides legal certainty for the accused in law enforcement. Article 18 paragraph (5) of Law 39 of 1999 concerning human rights also emphasizes that no person can be prosecuted a second time in the same case for an act that has obtained a court decision that has permanent legal force.

The prohibition of applying *Ne bis in idem* is regulated in article 76 of the Criminal Code, (1) Except in cases where a judge's decision is still possible to be repeated, a person may not be prosecuted twice for an act which an Indonesian judge has tried against him with a decision that becomes permanent. In the sense of Indonesian judges, including judges at the autonomous and customary courts, in places that have such courts; (2) If the decision that becomes permanent comes from another judge, then against that person and because of that crime too, no prosecution may be held in terms of (a) The verdict is in the form of acquittal from charges or release from lawsuits; (b) The verdict is in the form of a sentence and has been served in its entirety or has been given pardon or the authority to carry it out has been deleted because it has expired. This is misappropriately associated with the legality principle with customary criminal law. There is a difference in the philosophical basis between customary criminal law which is based on the philosophy of harmony and communal morality with the basis of the principle of legality which is based on the definition of a crime, punishment in accordance with the crime, the doctrine of free will, death penalty for several perpetrators, no research empirical and the definition of sanctions which are all characteristics of the classical school (Nasir et al., 2019). However, in a contemporary sense, the principle of legality has a different spirit from the original, namely by being more democratic through foresight, restorative justice, natural crime and integrative. The application of the principle of legality is not solely interpreted as *nullum delictum sine lege* but must be interpreted as *nullum delictum sine ius*, which is seen not only as limited to formal legality but also material legality, namely through the recognition of customary criminal law as unwritten law. used as a source of law (Masril & Kosasih, 2019).

Implementation of Baduy customary obligations in cases of murder and rape of Baduy girls is not *nebis in idem*. This is because the Baduy people have their own unwritten laws that must be implemented and obeyed. In addition, Baduy customary law is not integrated with national law, which is different from other indigenous peoples in Indonesia. For example, Balinese custom, if a case has been decided by the court, the customary institution has no right to decide again and vice versa. In Baduy customary law it is not like that, Baduy customary law still applies even though the national criminal law has been imposed if it is related to crimes that disturb the cosmic balance of the Baduy nature and involve Baduy residents both as perpetrators and as victims. The application of customary law is expressly recognized in article 5 paragraph (3) letter b of Emergency Law No. 1 of 1951. It can be understood that the laws that apply in Indonesia, especially criminal law, not only laws, also apply laws that live in society which is called customary law. However, in its implementation, customary law is different from the implementation of the Criminal Code. This difference relates to the nature and nature of punishment adopted by the two criminal law systems. One side of the Criminal Code is based on criminal threats in accordance with those contained in the principle of legality. a necessity for the existence of a law that defines in detail the actions that are prohibited and subject to punishment. On the other hand, customary criminal law is not written, there are no written provisions prohibiting criminal acts and threats (Christianto, 2012). Regarding the purpose of making criminal rules, both community members and indigenous people are fully aware of the rules that have been made and their sanctions. The only difference is that ordinary people do this because they are afraid of the sanctions that have been determined, while indigenous people avoid doing things that are prohibited because of their adherence to customary rules. Furthermore, Regulation of the Minister of Home Affairs No. 3 of 1997 concerning Customary Institutions, stipulates that a social organization, whether intentionally formed or growing and developing in the community concerned

or in a certain customary law community, has the right and authority to regulate, manage and resolve various life problems related to customary law.

The rights and powers of customary institutions are regulated in Article 9 paragraph (1) representing the outside community, namely in matters relating to customary interests and influences; managing customary rights and/or customary assets to improve the progress and standard of living of the community towards a more proper and better one; and resolving disputes concerning matters of customs and habits of the community as long as the settlement does not conflict with the applicable laws and regulations (Sihotang, 2019). Therefore, implementation of customary obligations in cases of murder and rape of Baduy girls cannot be seen as *Ne bis in idem*. Although the perpetrators were not only sentenced by the district court but also had to carry out the customary obligations of the Baduy customary institution. In this case, keep in mind that the perpetrators are not Baduy citizens, so positive criminal law applies to the perpetrators. Representatives of the Baduy customary institution have handed over the perpetrators to be processed under the national criminal law because the perpetrators are not members of the indigenous Baduy community. This handover is a form of respect for the national criminal law by the Baduy indigenous people.

The implementation of customary obligations is a form of cosmic religious restoration and restoration of relations between perpetrators and victims who are Baduy residents. This customary obligation is in the form of customary sanctions given by customary institutions to the perpetrators with the aim of spiritual peace for victims and perpetrators as well as peace for customary territories so that they can return to their original state and be free from evil auras. It can be seen that the purpose of customary sanctions is more to restore the original state of the parties, victims and indigenous peoples. The purpose of recovery as contained in Baduy customary criminal law is indeed different from the purpose of punishment contained in the national criminal law. In the development of criminal law, it is precisely the goal of recovery as in customary law that is the desired goal of punishment today. This goal is then considered to be contained in the principles of restorative justice which incidentally originates from the West. Thus, it can be seen that the purpose of implementing customary obligations in customary criminal law is the goal of modern punishment that can be adopted in national criminal law as a form of effort to reform criminal law.

The Indonesian government has attempted to respond and adapt the important principle of *adat law* into the national legal order (Serfiyani, et al 2022). The July 2022 version of the Criminal Code Draft has also included articles relating to the existence of customary law in Indonesia. Article 2 paragraph (1) and (2) of the Criminal Code Draft regulates recognition of the enactment of laws that live in society which determine that a person should be punished even though the said act is not regulated in law. The law that lives in that society applies where the law lives and as long as it is not regulated in law, in accordance with the values contained in the Pancasila of the 1945 Constitution, human rights, and general legal principles that are recognized by civilized society. This provision gives recognition to the application of customary law in indigenous peoples, where they grow and live their lives by complying with customary law that has been in effect so far. The traditional tribe that until now has been obedient to using its customary law is the Baduy Indigenous Community located in Banten Province. This provision is known as the principle of legality, which then develops into the principle of material legality with the recognition of living laws in society. This means that the source of law declaring an act as a crime is not only based on the principle of formal legality alone or on law, but on the principle of material legality, namely living law/unwritten law. Therefore, the principle of formal legal certainty is weighed against substantive legal certainty. That is, the legitimacy of the act must be based on a formal basis (formal legality), but does not affect the existence of an unlawful act (material legality) (Jaya, 2016). The draft Criminal Code places customary obligations into two functions. The first function is to support legal ideas that live as a basis for punishment for people who commit acts that violate community norms (customary law) even though they are not regulated in law. The second function is to place customary obligations as an additional punishment that can be imposed in addition to the main punishment (Pradhani, 2021). Regarding customary obligations, the July 2022 version of the Criminal Code Draft places fulfillment of local customary obligations in

an additional criminal article. This additional punishment is imposed in the event that the imposition of the principal sentence is not sufficient to achieve the goal of sentencing. Additional punishment for local customary obligations is prioritized if the crime committed fulfills the provisions of Article 2 paragraph (2) above. Even though it is not stated in the formulation of the law, local customary criminal obligations can still be imposed.

Provisions related to the application of customary law and fulfillment of customary obligations regulated in the Criminal Code Draft are a form of renewal of criminal law that originates from the values and norms of the Indonesian nation. The Criminal Code Draft recognizes the existence of criminal acts on the basis of the law that lives in society or unwritten law. This acknowledgment of unwritten law is solely to realize justice for the people, bearing in mind that in Indonesia there are still many indigenous peoples who use customary law as a guide in carrying out their lives. Baduy customary criminal law is an unwritten law and is still alive and valid today. Thus, the implementation of customary obligations for perpetrators of rape and murder of Baduy girls is a process of upholding customary law that prioritizes the goal of restoring cosmic religious balance, restoring relations between victims and perpetrators, as well as improving the condition of the Baduy people and nature itself. This working principle the researchers call the Baduy style restorative justice model.

Fulfillment of local customary obligations must still be enforced to achieve the goal of punishment in customary law. The regulation of local customary criminal obligations in the Draft Criminal Code is a necessity in efforts to renew criminal law based on local wisdom. The orientation of restorative justice is the main way to improve the face of law in Indonesia, the principles of restorative justice that are embedded in indigenous peoples should not be negated and should go hand in hand to become one of the values that can be adopted by national law. The important thing about *Silih Hampura* in Baduy society is not limited to the types of crimes committed. As long as it involves the perpetrators and victims of indigenous Baduy residents, then they still have to go through the process of alternating hampura. Requirements such as restorative justice are not given in national law. For example, recidivists, losses under two million and five hundred and other conditions that have been determined. The *Silih Hampura* method is indeed a conflict resolution method that has been adhered to as long as they exist and is proven to be able to resolve conflicts and restore cosmic conditions that have been disrupted due to crime.

In contrast to the type of crime that is a violation of adat, compensation is done to purify oneself and restore the state of nature to its original state. It is no longer the relationship between residents but already with traditional heads, nature and rituals which must be carried out as a form of restoration to its original state. To restore peace, tranquility and balance. Positive law enforcement and customary obligations in cases of murder and rape of Baduy girls are a model of criminal conflict resolution in Baduy customary criminal law. The application of these customary obligations is a way to achieve the goal of punishment in Baduy customary law, namely the fulfillment of customary obligations for perpetrators as a form of punishment, the ritual process of marriage for rape victims as reparation for victims, and village cleaning ceremonies as repairs to the environment polluted by crime. All of them are the restoration of the cosmic religious balance which has been disrupted due to evil. The working principle of Baduy customary criminal law is similar to the working principle of restorative justice. Therefore, it is assumed that the implementation of customary obligations for criminals in Baduy is the Baduy version of restorative justice. Such matters can be adopted as criminal law renewal by including it in positive law arrangements. Exploring the restorative justice model in Baduy customary criminal law finds the fact that it turns out that indigenous peoples with their customary law have implemented the restorative justice formulation, Baduy customary sanctions clearly state that sanctions are given to restore the state of both perpetrators, victims and customary territories back to their original state, namely returning to the values of goodness, there is no revenge orientation in any customary sanctions given to the perpetrators but for purification again.

5. Conclusion

Baduy has its own method of conflict resolution which is different from the Indonesian national criminal law, namely *Silih Hampura*. The concepts in *Silih Hampura* are very thick with the norms contained in Pancasila. The highest source of law in Indonesia, basic and fundamental norms. Among other things, deliberation for consensus, creating peace, family behavior, patterns of attention to victims and no elements of revenge, prioritizing victims' apologies and apologies from perpetrators, as well as restoring the conditions of victims, society and the environment so that they can restore nature that was disrupted due to crime or conflict. that happened. All of this is contained in customary law, law that was in effect before national law existed. Therefore, to reform national law, it is necessary to return to Indonesian personality, namely to return to customary law. so that in updating the law it can be based on the values contained in the personality of the nation, namely Pancasila.

Silih Hampura is a model of conflict resolution from Baduy customary law which contains the principles and values of Pancasila which can be used as legal material for the renewal of criminal law in the future. If restorative justice originating from abroad can be used as a method of punishment, then compensation for hampura originating from within the country can certainly be used as a new legal method in resolving criminal conflicts. The results of digging into customary law should be used as a reference to form criminal law reforms. for example the *Silih Hampura* method in Baduy customary law, can be used as a method of conflict resolution in Indonesian national law as a form of criminal law renewal originating from customary law that has been in effect in Indonesia for hundreds of years ago.

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