

The Contribution of Custom Institutions in Implementing Custom Sanctions in Gorontalo

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ABSTRACT

Efforts to optimize existing customary institutions in the province of Gorontalo in law enforcement during society are significant. The organization of customary institutions needs to be addressed and arranged so that they can be enjoyed and utilized. This study uses a sociological juridical approach by obtaining data by interviewing figures from the Gorontalo traditional institutions. This research carries out by analysis through reduction, presentation of data, and conclusion—Gorontalo customary institution. The study results show that the position of traditional institutions in Gorontalo Province is one of the guidelines for people's lives. Customary institutions are the tools that are used and considered to be able to maintain the values of customary law itself. Imposing sanctions through traditional institutions is more effective because an adat institution grows based on values that live in society and recognize and adhered to for generations. In addition, customary institutions help prevent the accumulation of cases in court. The maximum of this research lies in the space given by the government to customary institutions both in ceremonial activities such as marriages and in law enforcement processes. In addition, community participation needs to maintain and utilize the presence of this traditional institution.

Keywords: Custom institutions; Custom law; Enforcement

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INTRODUCTION

The non-optimal implementation of the duties of traditional institutions in the Gorontalo region is the main reason for their weak contribution to law enforcement in Gorontalo. As an area with solid cultural characteristics, traditional institutions have a quite strategic position, including resolving customary cases or criminal acts.

Providing space for traditional institutions in the social context, including in terms of resolving cases with a traditional approach, is part of respect for the living law in society (Lau et al., 2020; Syarifuddin, 2019). These conditions are reflected in the many customary law systems still alive and used by people who believe in them (Nafi et al., 2016). Traditional institutions in the Gorontalo region have not received sufficient space as the government intends to empower traditional institutions, which can see in traditional institutions' roles. Traditional institutions in the province of Gorontalo should have more space, especially in contributing to law enforcement.

²⁴ The recognition of adat and its institutionalization cannot be separated from Article 18B paragraph 2 of the 1945 Constitution. This is based on the collective awareness that Indonesia was born from a variety of very diverse customary values, so it needs to be protected and preserved⁴ (Badu et al., 2021). Recognition of traditional institutions, one of which reflect in³ Law Number 6 of 2014 concerning Villages, places traditional institutions as institutions that carry out normal functions and become part of the original composition of villages that grow and develop on the initiative of village communities (Umbase et al., 2017). As a social organization, traditional institutions are partners of the village government in empowering, preserving, and developing local customs that support governance, community, and development (Ben & Gounder, 2019).

Law Number 7 of 2017 concerning the promotion of culture explains that regional governments, which in a governance structure oversee the village government, are also attached with obligations and responsibilities to empower, preserve and develop customs and traditional institutions. One concrete form is regulation through regional regulations.

If we look at the aspects of regional regulations in Gorontalo, the availability of regional regulations from the provincial to district level already exists. For example, Regional Regulation Number 2 of 2016 concerning Customary Institutions is at the provincial level. At the district level, there is a Regional Regulation of Bone Bolango Regency Number 8 of 2020 concerning the Implementation of Customary Institutions. the availability of arrangements regarding traditional institutions did not match with the optimal implementation of tasks from traditional institutions, including in terms of resolving customary criminal cases.

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In fact, through laws (UU) and ministerial regulations, the Indonesian government is pushing to revive traditional institutions, one of whose duties and functions is to resolve disputes between residents or members of their groups (Samsul, 2016).²¹ One of the government's policies regarding customary institutions is outlined in the Regulation of the Minister of Home Affairs Number 39 of 2007 concerning Guidelines for the Facilitation of Community Organizations, Palaces, and Traditional Institutions in the Preservation and Development²⁰ of Regional Culture. Previously there were other ministerial regulations, namely Regulation of the Minister of Home Affairs Number 3 of 1997, concerning the Empowerment and Preservation and Development of Customs, Community Customs, and Customary Institutions in the Regions.

Based on this²¹, the Gorontalo region, which has an Institutional²⁵ structure, would be able to contribute to the development of law in Indonesia. This study aims to describe the position of Gorontalo's traditional institutions in the legal system in Indonesia and the contribution of Gorontalo's traditional institutions in law enforcement, especially in the context of applying criminal sanctions for violations.

METHODS

The research conducted with sociological juridical (Huda, 2022) examines and makes observations of legal rules and norms. The approach began by analyzing laws and regulations, especially those governing traditional institutions, especially case approaches such as data from the Dulohupa Traditional Institution, Gorontalo City. The data is supported by interviews with Gorontalo traditional leaders and making observations. In order to produce a good analysis, a prescriptive legal analysis uses to assess the implementation of institutional tasks in Gorontalo in settlement of cases such as crimes and others (Ariawan, 2013).

RESULTS AND DISCUSSION

Position of the Gorontalo Customary Council in the Legal System

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This provision of Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects customary⁴ law community units and their traditional rights. Community development¹³ and the principle of unity of the Republic of Indonesia produce laws that mean that the state recognizes the existence of customary law and its constitutional rights in the Indonesian legal system.

Hazairin in Wahidah (2015) describes customary law communities as a unit²⁸ with the completeness to stand independently. It has a legal, government, and³³ environmental unit based on shared rights to land and water for all its members. In Law Number 5 of 1960, some regulations touch⁶ indigenous peoples (Suwahyuwono, 2018). These regulations can be related to the agrarian law that applies to earth, water, and space. Customary law, as long as it does not conflict with the interests of the nation and state based on national unity, with Indonesian

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socialism, and with the regulations contained in this law. Moreover, with other laws and regulations, everything with due regard to elements originating in religious law.

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Such an arrangement guarantees recognition and respect for customary law if it fulfills the following conditions: 1) reality requirements, namely customary law is still alive and by community development (Manarisip, 2013); 2) ideality requirements, namely by the principles of the unitary state of the Republic of Indonesia, and enforceability regulate in law (Abubakar, 2014).

³⁰
Based on the undeniable fact that customary law grows from the ideals and thoughts of the Indonesian people. This is the case with the Gorontalo custom, which the community believes has grown since the group existed. Historical evidence for the birth of adat in Gorontalo is the result of research ²² forward by Van Vollenhoven, who places Gorontalo adat within 19 (nineteen) customary law ²² circles in Indonesia. The position of Gorontalo adat, which includes the circle of customary law in force in Indonesia, is a legal, cultural reality that has existed since ancient times before Indonesian independence.

Based on the findings in the field, Gorontalo's traditional institutions do not yet have regulations that can provide ⁸ strong foundation in the regulatory framework. It generally acknowledges a Regional Regulation of the Province of Gorontalo Number 2 of 2016 concerning the Implementation of Customary Institutions. However, the substance of the Perda does not yet cover the broad duties, functions, and powers of the Adat institutions in Gorontalo. The provisions in the regional regulation already have the customary institution's functions, duties, and powers. However, they are not direct according to the intent of establishing the regional regulation itself.

In providing an interpretation of these provisions, Ashiddiqie (2003) states that ¹⁵ is necessary to note that this recognition is given by the state as follows: 1) To the existence of a customary law community and its traditional rights; 2) The recognized existence is the existence of customary law community units. Recognition must be given to each of these units; therefore, customary law must be specific. 3) Indigenous peoples are still alive (still alive). 4) In specific neighborhoods too. 5) Recognition and respect are given without neglecting the size of human worthiness according to the level of development of the nation's existence. For example, certain traditions that are no longer worth preserving cannot be left behind from the progress of civilization simply because of sentimental reasons. 6) Recognition and respect must not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia.

In the life of the people of Gorontalo Province ³², the regional government recognizes as having drafted the Gorontalo Province Regional Regulation Number 2 of 2016 concerning the Organization of Traditional Institutions. Establishing customary institutions in districts and cities throughout the province of Gorontalo followed this. One of the Gorontalo City Government policies issuing Gorontalo City Mayor Regulation Number 10 of 2020 concerning implementing the Dulohupa

Traditional Institution in Gorontalo City. Likewise, the Government of Bone Bolango Regency has established Regional Regulation of Bone Bolango Regency Number 8 of 2020 concerning implementing Customary Institutions.

Likewise, the Government of Gorontalo Regency has a regulation on the formation of traditional institutions, namely the Decree (SK) of the Regent of Gorontalo Number 236/01.3/IV/2021. Concerning the Establishment of the Uduluwo Tou Limo Lo Pohala'a Traditional Institution, even though the regulations made and issued were only limited to the District Regent's Decree. Gorontalo, but this has shown a solid commitment to protecting and maintaining traditional institutions. In statutory regulations, the order or hierarchy of laws know. Compared to other regions in Gorontalo Province, Gorontalo Regency has not yet had the opportunity to ratify it through a Regional Regulation. However, efforts lead to the establishment of regulations through Regional Regulations.

Various regulatory policies issued by city and district governments in the Province of Gorontalo governing traditional institutions are not a problem that needs to contest. The most important thing is the willingness of the region itself to maintain and empower traditional institutions. The Gorontalo Government's policy of paying particular attention to community rights by establishing customary institutions is significant for the development and continuity of customary law itself.

In the customary law system, there is no separation of criminal law from other laws as in the western legal system; sentencing solely carries out to establish the law in the form of customary sanctions to restore violated customary law. Standard criminal law reference in Article 5, paragraph 3 of Law no. 1/Drt/1951.

Recognizing traditional values in positive law is a policy direction that places customary law as part of the existing legal system in Indonesia (Aditya, 2019). Customary law recognizes as a source of law that applies amid society, especially in the community association itself.

²⁷
Based on this, customary law, including the position of customary law in Gorontalo, is part of the positive legal system that applies in Indonesia. Recognition of this can see from one source of applicable law, one of which is the custom that applies in society from generation to generation. This custom is none other than customary law, and one of the supports for enforcing customary law is the customary council or institution. Thus the position of the council or customary institution is significant in the legal system in Indonesia in general.

The customary council or institution is a tool that is used and considered to be able to maintain the values of customary law itself. Thus, customary institutions expect to be able to provide the best solutions to problems arising from violations of the values that live in society.

Contribution of Gorontalo Traditional Institutions in Implementing Violation Sanctions

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Customary criminal law is a living law followed and obeyed by indigenous peoples continuously, from generation to generation (Hanim & Noorman, 2018). Violation of these rules of conduct sees as causing shock in society because they disturb society's cosmic balance. Similarly, Kurniawan (2016) said that long before the implementation of the Criminal Code nationally, in several regions in Indonesia, there was a norm that lived in association and, over time, became rules and laws that bound the behavior of local people, this norm is known as customary law. In this customary law, a provision must be obeyed and not violated by the local community.

The Community Practice in Gorontalo. Traditional institutions are one of the components that implement and maintain Gorontalo's traditional values. The presence of traditional institutions in Gorontalo Province seems to have been followed up by almost all regions at the city and district levels to form traditional institutions.

The duties, functions, and authorities of traditional institutions recognized in the Gorontalo Province area are still limited to formal events such as weddings, funerals, and the awarding of traditional titles. This means that the duties and functions of traditional institutions are still ceremonial because they still focus on more or less monotonous routines, and there is no innovation. In other words, they do not develop as a means of solving problems that arise due to violating the values that live in society.

¹⁰
Strictly stated in the provisions of Article 54 paragraph 1, letter c of the Criminal Code Bill stipulates, "punishment aims to resolve conflicts caused by criminal acts, restore balance, and bring about a sense of peace in society." The judge must consider this dimension in deciding so that the overall judge's decision has dimensions of legal justice, moral justice, and social justice.

In the context of Indonesian criminal law, the existence of customary justice raises two critical questions: that the application of customary justice means the application of customary offenses as a (non-customary) offense settlement mechanism or through customary justice mechanisms (Kleffner, 2003; Kurniawan, 2016; Schabas, 2012). The form of settlement through customary justice in traditional communities is still the primary choice compared to formal justice mechanisms (Ben & Gounder, 2019). This reality is not only a reality that belongs to the Indonesian people but is shared by many rural communities in many places worldwide.

The life of a community is still submissive. It recognizes traditional values is not surprising to place customary councils or institutions as one of the trusted means of resolving disputes or problems in society (Boege et al., 2009). This can

be seen in indigenous peoples' existence. It even sanctions those violating the traditional values of the community.

Conditions that provide more space for traditional institutions to resolve or even punish people who violate the values that live in society must be positively welcomed because at least problems that should resolve without going to court end up in traditional institutions. Such a situation also gives advantages to each court in that it turns out that specific issues do not need to resolve in court. (Samsul, 2016) states that traditional institutions' development originates from customary law.

The fact experienced the history of indigenous peoples in Boalemo Regency, Gorontalo Province (Badu et al., 2021). Traditional sanctions are passed down from generation to generation. They have changed from year to year, by the leadership carried out then, namely, in 1931, the retainer Marjuang died. With the death of Marjib as their leader, they held deliberations. After several months, community and religious and traditional leaders deliberated on replacing Marjuang's position with his son Ismail Maturgas. Then in 1956, Ismail Marjib died and was replaced by Bando Cindra, based on deliberations by the Bajo community (Tijow et al., 2021). Bando Cindra led the indigenous people in Boalemo Regency, Gorontalo Province, until 1965. He resigned because he did not live in a place or a village. Then in 1965, a leader was born without being based on deliberations and only appointed directly by Jagugu Tilamuta or what is now called the Camat, namely Rais Huwolo. That year, there was also a change in the village's name from 1965 to 1972, which Mr. Rais led. In 1972 Rais Huwolo resigned as village head due to his old age. So that a few months later, Abdullah Hamu was appointed directly by Jagugu Tilamuta as village head in Boalemo Regency, Gorontalo Province. Abdullah Hamu led the Bajo village from 1972 to 1980. Then in 1980, Abdullah Hamu moved to Dulupi. Hence, the people of Bajo Village proposed to hold village/village head elections which eventually gave birth to Mr. Nasrun Kampe as village head or head of Bajo Village. Over time, from 1980 until now, Bajo village has been led by several village heads. Regions that still uphold customary law, such as indigenous peoples in Boalemo District, Gorontalo Province, still impose customary sanctions in the form of fines. If the parties are proven to have committed an act of violating adat, they are required to pay a fine, but the customary fine is not.

Based on the history described above, the traditional institutions that existed in Bajo Village at that time or Boalemo Regency at this time had the function of imposing customary criminal sanctions for those who violated traditional values in society. The function carried out by the customary institution or council at that time was not said to be disrespectful to the applicable positive law or criminal law but was seen as a way of resolving violations that did not need to resolve in court.

The approach used is using traditional institutions as customary sanctions to help resolve violations which are more simply to maintain traditional values in society (Rosyadi et al., 2022). In addition to optimizing traditional institutions in providing customary criminal sanctions against customary violations to maintain

the dignity of court institutions, not all cases that arise in society must end in court. However, cases that can resolve through customary institutions help prevent the accumulation of court cases (Jurdi, 2022).

Based on the current reality, the practice that once occurred in the Bajo village is now challenging to find. Traditional institutions, in which almost all regions in Gorontalo Province have recognized these traditional institutions, are busier, with activities such as traditional wedding parties or funeral ceremonies carried out according to custom. In resolving criminal cases through customary law, the nature of kinship and the principle of peace are always put forward. People find peace and good life in a society based on the principles of harmony, peace, and sincerity.

Achievement of the customary law system stems harmony of the conflicting parties, the harmony of the community as a whole, and the harmony between society and its natural environment. Settlements through traditional institutions have several main weaknesses, namely arbitrariness and lack of supervision. Although social authority is a core strength over non-state justice, its uncontrolled implementation is a significant weakness. Lack of clear procedures, norms, and accountability will leave the weak and marginalized underserved without alternatives.

Based on research²⁹ in Gorontalo Regency approximately 5 (five) years ago, customary institutions played an essential role in the impeachment of the Deputy Regent of Gorontalo at that time by recommending the DPRD of Gorontalo Regency to deactivate the Deputy Regent at that time. This event gave birth to an unusual practice by the customary institution. As a result, a new customary institution emerged as a rival to the customary institution that gave the recommendation. It also notes that it turned out that the results of the recommendation given by the customary institution at that time were used as one of the grounds by the DPRD of Gorontalo Regency at that time to write to the Ministry of Home Affairs to dismiss the Deputy Regent.

Based on these events, the functions and duties of traditional institutions have experienced extraordinary development, regardless of the pros and cons of customary institutions entering into the political area of making regional political policies. Through regional autonomy and village laws, customary institutions give sufficient space to develop and guard the traditional values that live in society. According to Harun (2017), legal dynamics are constantly developing along with developments in people's lives, so it is almost inevitable (written) that law is always left behind compared to community dynamics.

Unfortunately, the space granted and legitimized by these laws and regulations is not in line with what is desired by both the legislators and the regional government itself. Practices such as institutions that enter the political area avoid maintaining the institution's good name or the adat council itself. This can be seen in Gorontalo District's case, where traditional institutions have functioned beyond

the authority granted by law because they have provided interpretations that have had a political impact on the government.

CONCLUSION

¹⁷
The position of customary law in Gorontalo is part of the positive legal system that applies in Indonesia. The position of traditional institutions in Gorontalo Province is very significant in the legal system in Indonesia. So far, the contribution of traditional institutions in the province of Gorontalo is limited. First, on the role of giving the traditional title "Pulangga" for the work "Ilomat." Second, the role in the wedding ceremony/ *tuja'i* in the traditional wedding ceremony is the "Mopodiyambango" stage, which is the stage when the bride and groom leave the dressing room to the aisle. Third, the role of the death ceremony, or *tauwa lo lahuwa*, namely (the best son). Customary institutions are tools that are used and considered to be able to maintain the values of customary law itself. Customary institutions grow based on values that live in society and are recognized and adhered to for generations. In order to optimize customary institutions in imposing customary criminal sanctions against customary violations, not all cases that arise in society must end in court. However, cases that can resolve through customary institutions help prevent a buildup of cases in court.

In order to maximize the results of this research, the government must provide more space for traditional institutions to play a role in society to solve problems that arise. Traditional institutions do not only function in ceremonial activities such as marriage customs and death customs but also law enforcement processes. To the legislators, especially those forming regional regulations, in making regulations not only placing traditional institutions to fill in everyday activities but also in regulations giving space for traditional institutions to oversee law enforcement in the Gorontalo Province region. The need for community participation in maintaining and utilizing the presence of traditional institutions in Gorontalo Province.

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