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Construction of Village Judicial Institutions as an Alternative for Settlement of Minor Crime Based on Justice Value

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Abstract

The village judiciary institution is one of the means of solving cases outside the court. Article 95 of The Village Law where the community can form a village customary institutions which are contrary to Law No. 8 of 1982 concerning Law Enforcement of Minor Crime Cases especially article 204, 205, 206 of the Criminal Procedure Code that is associated with PERMA No. 2 of 2012 concerning the Relief of Minor Crimes where it can be resolved alternatively against articles 362 and 352 of the Criminal Code and to crimes that do not have a broad impact or its damage do not exceed IDR 2,500,000 (two million five hundred thousand rupiahs). This research method is juridical empirical with a case approach and community culture with the aim of reconstructing Law Number 6 of 2014 concerning Villages. The problems in this research include the inadequate resolution of minor criminal cases based on justice value, the weaknesses that arise in the settlement of minor criminal cases as an alternative to village justice institutions, and how to construct village justice institutions as an alternative to minor crime case resolution based on justice value. The results of this study indicate that the settlement of minor criminal cases through village court institutions as an alternative dispute resolution has not been carried out optimally. The main problem that prevents the adat village court from becoming an alternative dispute resolution system is its unclear position in the national justice system. In many areas, communities are reluctant to settle disputes in adat courts. in order to solve this, construction of the settlement of minor criminal cases through the village court institution is needed, namely the use of Article 95 of Law no. 6 of 2014 concerning Villages can be used as a legal basis in establishing Village customary institutions as an alternative to resolving minor crimes.

Keywords: Village Judicial, Minor Crime, Justice Value.

INTRODUCTION

Legal development is an effort to create public welfare. But by realizing all the weaknesses of legal arrangements in the past, the first and foremost agenda taken by the government at that time is to restore the intensity of the law. This step is important to take because the law at that time is currently very obstructed in its efforts to regulate and provide protection and justice. Whereas the law basically aims to provide the greatest happiness for as many people as possible (to provide the greatest happiness divided among the greatest number).

The objectives of legal development in Indonesia areas are contained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI of 1945) which states that the objectives of the Indonesian State include: "to form an Indonesian government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace, and social justice ".

Pancasila as a philosophical foundation formulates the abstract principle or nature of Indonesian human life which is based on five relationships of human nature as complete as possible, namely the relationship between humans and the matter of the first precept as an ontological framework where humans believe in the power of God Almighty so that they have a guide to determine what is good and evil. Then, The Relation to The second precept provides a normative framework because it contains the need to act fairly and civilized. The third precept, as an operational framework that outlines the boundaries of individual

interests, the interests of the state and the nation. The fourth precept is about state life, namely self-control over the law, the constitution, and democracy. The fifth precept gives direction to each individual to uphold justice, with others and all members of society. Thus, the principles of Pancasila principles which are mutually related are directed at a balanced arrangement in criminal matters in the perspective of Pancasila [1].

In line with the thought that the goal of the Indonesian nation's reform in 1998 wanted a change that reflected justice in the emphasis on political, legal, and economic reforms until now it appears especially in the political field, namely the change in the system of state institutions from central to rural areas that used to use a centralized distribution system and decentralization, changed to a regional autonomy system, namely the existence of BPD (Regional People's Credit Bank) at the village level as well as the economic system changing with the free market until the Bangdes (Village Bank).

But a question arises on whether legal reform so far seems to be stagnant, especially in terms of just law enforcement, the victims, and the lower-class community.

In terms of legal reform in Indonesia, it refers to the goals of the state, namely: protecting the entire Indonesian nation and all Indonesian blood, advancing the general welfare, participating in implementing world order, and creating social peace and justice. The goal of a state which is the hallmark of a nation must be able to be realized in State Law, one of which is Criminal Law through the reform of the Criminal Code. Therefore, the objectives of the National Law Reform are the protection of the community (social defense) and creating social welfare [2].

The community's disappointment with law enforcers which is very worrying is the loss of trust in police investigators. The community does not want to hand over a person who has committed a criminal act to the police investigator, the community judges, processes, and executes a person who is caught in the act. This was done because the public had seen too much about how a person who had committed a criminal act was finally released again by police investigators on the grounds that the average reported lack of evidence, did not fulfill the element of the offense, causing disappointment for the community who reported it [3].

Starting from the framework of understanding above, according to the philosophers of enlightenment, the legal system that is in the minimum form meets the following criteria. First, the law must not only be a tool to achieve rationality, but the law itself must be rational. And rational law is a law that is truly capable of realizing the purpose of its presence in the social environment where it is needed. Second, to ensure that a rational law can realize its goals, it must be supported by efficient action by the law enforcement apparatus. Third, the importance of including the substance in the form of law is closely related to the influence of the social structure of society because, in that law, it is supposed to be made to realize its goals.

Legal reform, in this case, is needed as it also refers to the process of resolving minor crimes at the village level. Law enforcement on minor crimes as stipulated in KUHAP articles 204, 205, and 206 which are examined according to these articles are cases that are punishable by a maximum of three (3) months of imprisonment or a maximum fine of seven thousand five hundred rupiahs where the case processing takes 10 days which consists of 3 days at the level of investigation and 7 days for the determination of the case's trial, but in reality there are many confusion or contradictions that injured the fairness for both the suspect and the victim's money and time. Although the Indonesian Law System adheres to Monodualism, light criminal cases are minor which that can be resolved peacefully, as it is in line with the Village Law No. 6/2014 concerning the authority of the Village Head as peace judge, however, it is still difficult to implement because of the tug of war of interests from law enforcers themselves which leads to abuse of power (Abuse of Power).

This problem is caused by the lack of components of civilian personnel that need to be put forward, especially in resolving cases that are minor in nature and will not have an impact on greater losses, especially in rural areas that still stick to their customary law, therefore, it is necessary to apply Restorative justice which has legal force, including:

1. The 1945 Constitution, Article 18 Letter B (1) The State recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law invite.
2. Article 8 of the Law on Justice of 2005. The multi-dimensional law is limited to one term, namely for the sake of justice based on the One Godhead.
3. Article 103 Law No. 6 of 2014 affirms the form of village authority as a legal community unit and articles 1 (1) and (2) PP No. 72 2005 The village head has the authority to reconcile community disputes in the village.
4. The concept of the New Criminal Code in 2014 the termination of prosecution authority at out-of-process settlement (E) has been paid a maximum of a criminal fine (F) a criminal punishable by a

maximum imprisonment of one year or a fine category (3).

5. Supreme Court Decree No. 824 K / Pid / 2013 Restorative Justice is used to provide justice for the community on the condition that the settlement of cases is out of court and suspects do not have to be punished.
6. Police Chief Policy No. KEP 737 / X / 2005 concerning strategies for implementing the community policing model in a concrete manner or applying legal values that exist in society by forming a community policing communication forum at the lowest level.

The problems as mentioned above are what urges the author to study the problems further as it is necessary in order to build a better criminal law wherein this study is concentrated on 3 main problems as follows:

1. Why is the resolution of minor criminal cases as an alternative is not yet based on the value of justice?
2. What are the weaknesses that arise in the settlement of minor criminal cases as an alternative to the Village Court institution?
3. What is the construction of the Village Court as an alternative to minor criminal case resolution based on justice value?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (socio-legal approach). The sociological juridical approach (socio-legal approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [4].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources, While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed, among other things, in the form of Legislation related to regional policies in poverty alleviation [5].
2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies.

RESEARCH RESULT AND DISCUSSION

Reason Why The Resolution Of Minor Criminal Cases As An Alternative Is Not Yet Based On The Value Of Justice

Indonesia is a rule of law state that provides a consequence that obliges to every state apparatus to act based on law and every citizen must obey the laws in force in Indonesia. Criminal law, which is a form of public law in Indonesia, has a broad meaning in substantive or material terms which can be found in the Criminal Code and the Criminal Procedure Code.

The country of Indonesia is currently experiencing a legal crisis, meaning that the applicable law has not shown its effectiveness. The law is blunt to the upper-caste and sharp towards the lower caste, there are different strategies for dealing with the law, however, settlement is still deemed unfair and far from society's expectations. The problem of legal settlement certainly has an impact on society. The law that runs is not in accordance with the legal objectives to be achieved, namely creating order and peace in society.

Criminal law, in a broad sense, consists of criminal law (substantive or material) and criminal procedure law (formal criminal law). Material criminal law can be found in the KUHP and formal criminal law as the implementer of material criminal law is regulated in the KUHAP. Criminal law in Indonesia recognizes the existence of criminal acts. Crime is an act that is prohibited by a legal rule, the prohibition which is accompanied by a sanction in the form of certain punishment for whoever violates the prohibition, the prohibition is aimed at an act (a situation or event caused by a person's behavior), while a criminal threat is aimed at the person who caused the incident [5].

Criminal acts are divided into 2 (two), namely ordinary crimes and minor crimes. This research focuses on minor criminal cases. Mild criminal acts are determined by the form of the act in the Criminal Code and the threat of punishment as a form of material

criminal law. Meanwhile, the settlement of the minor level case is regulated in the Criminal Procedure Code as the formal criminal law and the case examination procedure system is through a quick examination procedure.

The articles which are categorized as minor crimes in Book II concerning crimes have one thing in common, namely the limitation of losses from the crimes that have been committed. This limit states that the value of the losses resulting from the crime does not exceed Rp. 25.00. The Supreme Court then increased the limit on the value of losses to Rp. 2,500,000 through the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the amount of fines in the Criminal Code [6].

The case that the author mentioned above are such case Number 375 / Pid.B / 2013 / PN.Mks, for example, which in essence was that Abd. Rachim Dg. Lili damaged Hariadi Winantea's talking board with the words "The Land Is Owned To Hariadi Winantea's" by repeatedly beating the concrete foundation on which the talking board stood with a hammer until the foundation where the talkboard was destroyed so that the talkboard collapsed to the ground and the concrete foundation it can no longer be used.

The public prosecutor, based on Article 406 paragraph (1) of the Criminal Code regarding Destruction in which in this case the verdict at the first level stated that the defendant was found guilty by imposing imprisonment for 1 (one) month. This case continued until the cassation trial in which the verdict was stating that the defendant's action was proven to be the guilt against him, but the act was not a criminal act. The case verdict further stated that releasing the defendant from all legal charges and restoring the defendant's rights ability, position, and dignity.

In this case, the author considers that the prosecutor's demands in the case of the destruction of property overrides the element of justice for the defendant and prioritizes the interests of the victim for the losses caused by the criminal act. This is because the indictment made by the Public Prosecutor does not consider the nominal amount of the object value of the criminal case as contained in the provisions of the legal rules in PERMA RI No. 2 of 2012. As well as the cassation efforts made by the public prosecutor, in this case, did not reflect simple, fast, and low-cost judicial principles.

The settlement of the criminal procedure, in this case, still applies the usual examination system, this is due to the ineffective application of the Supreme Court Regulation No. 2 of 2012 at national legal institutions for the settlement of minor criminal cases in the Criminal Code. The fundamental weakness in the application of this regulation is that the regulation is only a binding regulation (regeling) for internal judges in the Supreme Court, namely in the District Court (PN) and the High Court (PT). Consequently, in observing criminal cases, the head of the court also considers the value of the object of the criminal dispute when he receives the transfer of cases of theft, fraud, embezzlement, and detention from the public prosecutor.

In addition, the integrated justice system must be implemented properly. An integrated justice system is an integration between law enforcers. Integration is intended so that the judicial process can be carried out effectively, efficiently, mutually supporting in finding the right law to guarantee satisfactory decisions for justice seekers and according to the viewpoint of awareness or legal realities that live in the society in general [7].

Weaknesses That Arise In the Settlement of Minor Criminal Cases as An Alternative To The Village Court Institution

Law is the whole norm in which the rulers of the community who are authorized to stipulate law, are declared or considered as binding regulations for part or all of certain members of society, with the aim of establishing an order as desired by the ruler. Law is anything that creates rules that have a force that is coercive, that is, if they are violated, they will get a firm and real sanction [8].

Law cannot be separated from society but it has a reciprocal relationship with society [9]. Broadly speaking, the legal function can be classified into three stages, namely a). The function of law as a means of public order and order; b). The function of law as a means of realizing social justice physically and spiritually; and c). The law functions as a means of driving development [10].

The legal settlement is the process of making an effort to uphold or function legal norms in a real way as a code of conduct in traffic or legal relations in the life of society and the state.

In Indonesia itself, the legal settlement is very slow, very far from what was expected. Apart from experiencing problems with their professionalism and integrity, the complex route, accompanied by long bureaucratic requirements, creates a situation that is not conducive to an efficient and effective legal settlement program. If sorted chronologically, the cause of the slow legal settlement program, especially in the context of eradicating corruption cases, lies in almost all levels of law enforcement institutions, from courts to prosecutors, to become executors.

One thing that illustrates the sluggishness of the law can be seen in cases where many corruptors have been convicted by the court, but they do not stay in prison because the prosecutor failed to execute court decisions. Whereas the execution of court decisions is an integral part of the series of legal settlement processes, the implementation of which is mandatory. If law enforcement officials fail to carry out their obligation to execute, they could be considered to have violated the law because they ignored statutory orders.

This research focuses on minor crimes. Minor offenses are described in Article 205 paragraph (1) of the Criminal Procedure Code as follows: "What is examined according to the investigation procedure for minor criminal acts is a case which is punishable by imprisonment or imprisonment for a maximum of three months and/or a maximum fine of seven thousand five hundred rupiahs and minor humiliation except as provided for in Paragraph 2 of this Section".

The main problem that prevents the adat village court from becoming an alternative dispute resolution system is its unclear position in the national justice system. In many areas, communities are starting to be reluctant to settle disputes in adat courts. Usually, this is caused by doubts over the strength of the validity of customary judicial decisions, because there are no officials who can enforce their enforcement. However, a number of weaknesses that are currently found in customary courts are more due to the absence of state recognition of their existence.

However, that does not mean that customary courts do not have problems or challenges in its implementation. First, the main problem is the issue of oversight of the implementation of customary courts. The second challenge in carrying out customary justice is the issue of the jurisdiction of the customary courts. The third challenge is overcoming the problem of injustice from the institutionalized customary structures. The fourth challenge is the bureaucratization of the customary courts. Government acceptance of the existence of customary courts as one of the mechanisms for resolving cases faced by the community is usually followed by adopting values and standards that need to be followed by customary stakeholders who administer customary justice.

Construction Of The Village Court As An Alternative To Minor Criminal Case Resolution Based On Justice Value

Harmonization of law is an effort or process to adjust legal principles and systems, in order to realize legal simplicity, legal certainty, and justice. Harmonization of law as a process in the formation of laws and regulations, overcoming contradictory matters and irregularities between legal norms in statutory regulations, so as to form harmonious national laws and regulations, in the sense that they are harmonious, harmonious, balanced, integrated, and consistent, and obey the principles [11].

Systemic steps to harmonize national law, based on the paradigm of Pancasila and the 1945 Constitution which gave birth to a constitutional system with two fundamental principles, the principles of democracy and the principle of a rule of law which is idealized to create a national legal system with three components, namely legal substance, legal structure, its institutions, and legal culture. On the one hand, this systemic step can be translated into the harmonization of laws and regulations and on the other hand, this systemic step can be described in the harmonization of laws and regulations and on the other hand implemented in the framework of the legal settlement.

Through legal harmonization, a legal system will be formed to accommodate demands for legal certainty and the realization of justice. Likewise in terms of the legal settlement, legal harmonization will be able to avoid overlaps for the judicial bodies exercising judicial power, with government agencies that are empowered to carry out judicial functions according to statutory regulations.

The basis and orientation in every step of legal harmonization is the goal of harmonization, legal values, and principles, as well as the purpose of the law itself, namely harmony between justice, legal certainty, and according to objectives (doelmatigheid). In the end, the implementation of legal settlement needs to pay attention to the actualization of the values contained in the constitution and the principles of good law enforcement governance.

In the direction of a good legal settlement, legal harmonization must be able to reflect integration in the application of laws and regulations, which consists of regulatory mechanisms, regulatory administration, the anticipation of changes, and vice versa, harmonization of legal settlement is reflected in this integration. Legal and institutional aspects in a good legal settlement are manifested in the harmonization of inter-institutional legal settlement interactions. Because the interaction between legal and institutional settlement occurs in every component of the activity and also between components of the activity, this integration must be endeavored to manifest at every level of legal and institutional settlement. If legal integration can be realized, then integration in its application must always lead to a good legal settlement. Institutional integrity will always be a guarantee for the implementation of good law enforcement governance harmonization.

Settlement of Minor Crimes Cases in Village Judiciary Institutions in accordance with Law No. 6 of 2014 concerning Villages, namely:

1. The victim immediately reports to the village
- Received by the village foreman (Village Police)
- Village police report to the Village Head, Customary Head, The Bhayangkara Fostering Public Security and Order (Babinkamtibmas) Officer

2. If the report is accepted for completion, is it completed through FKPM elements and a letter of mutual agreement is made known to the village head. According to his authority, the village head has the authority to become a judge in his village. In accordance with Law number 32 of 2004 the position of the village head as a peace judge with a maximum period of 3 days x 24 hours.
3. After 3 days of complaints or not wanting to be resolved in the village, they are appointed and reported to the Sectoral Police (Polsek) for investigation. With a maximum time of 3 days. Subsequently, it is reported to the court to wait for the verdict day of 7 days.

Based on that, the Construction of Village Judiciary Institutions as an Alternative for minor level Criminal Case Settlement based on justice value are as follows:

Article	**Weaknesses**	**Construction**
Article 95 of Law No.6 of the year 2014 concerning Village Government and Village Communities can form Village customary institutions: The Village customary institution as referred to in paragraph (1) is an institution that carries out the traditional Village functions and is part of the original Village structure which grows and develops on the initiative of the Village community. The Village customary institution as referred to in paragraph (1) is tasked with assisting the Village Government and as a partner in empowering, preserving, and developing Village customs as a form of recognition of Village customs.	Not all village case settlement institutions have been formed as an alternative to minor criminal settlement as In general, village customary institutions have not yet been established and function as case resolution including the settlement of minor criminal cases.	Village Administration in accordance with Article 95 of Law no. 06/2014 concerning Village Government can be used as a legal basis in establishing Village customary institutions as an alternative to resolving minor crimes
National Police Policy No. KEP 737 / X / 2005 concerning strategies for implementing a concrete model of community policing or applying legal values that exist in society by establishing a community policing communication forum at the lowest level.	Due to the absence of a Village institution, to accommodate or accommodate community inspiration, the community will act independently as even though a structured communication forum has been formed in each village to the District (RW) level, its implementation is less effective wherein the settlement of minor crimes and other disputes in their implementation, they take place of attraction and sometimes they are carried out at Mako Polres (Great-District Police Office) or Polsek and sometimes carried out in villages even in Head District (RW) houses.	To avoid a tug of war, places or institutions in resolving minor criminal matters or other disputes should be directed and made a special room in the village as a forum for solving these problems.

In addition to that, a form of alternative dispute resolution is also needed to achieve Peace as a cessation of hostilities with kinship without violence to make decisions, agreements, and deliberations through restorative. The ADR (Alternative Dispute Resolution) is aimed at, among others:

1. Kindness of the disputing parties.
2. Reducing the costs or delays if the dispute is resolved conventionally.
3. Preventing legal disputes by not filing the case to court in accordance with Law No. 30 of 1999 concerning Arbitration that the violation of the criminal law is categorized as minor or has a criminal fine.

CONCLUSION

1. The settlement of minor criminal cases as an alternative is not yet based on the value of justice due to the ineffective application of the Supreme Court Regulation No. 2 of 2012 at national legal institutions for the settlement of minor criminal cases in the Criminal Code.
2. Weaknesses that arise in the settlement of minor criminal cases as an alternative to village judiciary

institutions that the village justice institutions still have challenges. First, the main problem is the issue of oversight of the implementation of customary courts. The second challenge in carrying out customary justice is the issue of the jurisdiction of the customary courts. The third challenge is overcoming the problem of injustice from the institutionalized customary structures. The fourth challenge is the bureaucratization of the customary courts. Government acceptance of the existence of customary courts as one of the mechanisms for resolving cases faced by the community is usually followed by adopting values and standards that need to be followed by customary stakeholders who administer customary courts.

3. Construction of the Village Judiciary Institutions as an Alternative for a minor level Criminal Case Settlement, namely by making Article 95 of Law no. 6 of 2014 concerning Villages as a legal basis in establishing Village customary institutions as an alternative to a minor criminal settlement and to avoid a tug of war, places or institutions in resolving minor criminal matters or other disputes should be directed and made a special room in the village as a forum for solving these problems.

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