

CUSTOMARY OFFENSES AND THEIR SANCTIONS IN INDONESIA: Analysis of Bengkulu City Regional Regulation No. 29 of 2003 and Rejang Lebong Regency Regional Regulation No. 5 of 2018

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Abstract: This research aims to describe the advantages and disadvantages of customary regulations in the city of Bengkulu and Rejang Lebong district, as well as to provide alternative solutions for the improvement of customary regulations so that they are not overlapping with higher regulations and can be deeper in absorbing the laws that live in society, without neglecting justice, expediency, and legal certainty applicable in Indonesia. This research is included in the form of normative juridical research. This type of research is qualitative. The approach used in this research is a statutory approach (statue approach). As a result, the implementation of customary law in Bengkulu city with regard to customary violations has gone quite well, for example in the case of Cempalo Tangan in the form of stealing or damaging (article 21 of Bengkulu City Regional Regulation No. 29 of 2003). Whereas in Rejang Lebong, it has also worked well, for example in other serious cempalo cases such as killing (article 25 of Rejang Lebong Regency Perda No.5 of 2018). In the review of Islamic law, sanctions for customary violations that occur in Bengkulu city are generally not contrary to Islamic law, and are in line with the principle of *zawajir*. In the review of positive law in Indonesia, the punishment for thieves with customary fines in the form of apologies, compensation, and performing the traditional ceremony of *tepung Setawar Sedingin*, this is contrary to article 362 which stipulates a maximum prison sentence of 5 years, and if accompanied by violence/threats, shall be sentenced to a maximum imprisonment of 9 years (Article 365 of the Indonesian Penal Code).

Keywords: customary offenses; Islamic law; positive law

Abstrak: Penelitian ini bertujuan untuk mendeskripsikan kelebihan dan kekurangan yang ada pada Perda Adat di kota Bengkulu dan kabupaten Rejang Lebong, sekaligus memberikan solusi alternatif untuk perbaikan Perda Adat tersebut agar tidak *overlapping* dengan peraturan yang lebih tinggi dan bisa lebih dalam menyerap hukum yang hidup dalam masyarakat, tanpa mengabaikan keadilan, kemanfaatan, dan kepastian hukum yang berlaku di Indonesia. Penelitian ini termasuk dalam bentuk penelitian yuridis normatif. Jenis penelitian ini adalah kualitatif. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan perundang-undangan (statue approach). Hasilnya, implementasi hukum adat di kota Bengkulu yang berkenaan dengan pelanggaran adat sudah berjalan cukup baik, contohnya dalam kasus Cempalo Tangan berupa menculik (mencuri) atau merusak (pasal 21 Perda Kota Bengkulu No. 29 Tahun 2003). Sedangkan di Rejang Lebong, sudah juga berjalan baik contohnya pada kasus cempalo berat lainnya seperti membunuh (pasal 25 Perda Kabupaten Rejang Lebong No.5 Tahun 2018). Dalam tinjauan hukum Islam, sanksi terhadap pelanggaran adat yang terjadi di kota Bengkulu secara umum tidak bertentangan dengan hukum Islam, dan sejalan dengan prinsip *zawajir*. Dalam tinjauan hukum positif di Indonesia, hukuman bagi pencuri dengan denda adat berupa permohonan maaf, ganti kerugian, dan melakukan upacara adat *tepung setawar sedingin*, ini bertentangan dengan pasal 362 yang menetapkan hukuman penjara selama-lamanya 5 tahun, dan jika disertai kekerasan/ ancaman, dihukum penjara selama-lamanya 9 tahun (Pasal 365 KUHP).

Kata kunci: pelanggaran adat; hukum Islam; hukum positif

Introduction

In Indonesia, apart from adhering to the dominant National legal system, in its application it also adheres to two other legal systems, namely

the Islamic legal system and the Customary legal system. The application of these two legal systems is also a manifestation of the legal system in the world. Just as the national legal system was

adopted from the Civil Law System, the customary law system was adopted from the Common Law system, and the Islamic legal system was adopted from the Islamic Law System.¹

In Bengkulu Province, out of 10 cities and regencies, 6 of them such as Bengkulu City, Mukomuko Regency, North Bengkulu, South Bengkulu, Lebong and Kaur already have local regulations (hereinafter abbreviated as *Perda*) that regulate local customs in accordance with local wisdom that has been going on for generations.

Basically, these customary regulations are made to accommodate and preserve the local wisdom of each region so that they have a legal umbrella, so that customary institutions such as the Customary Consultative Body can gain legitimacy and be obeyed and be able to play a greater role in regulating indigenous peoples and preserving local culture. In addition, these customary regulations are also intended to fill the legal vacuum in the community for cases that are not regulated in existing laws and regulations, as well as to improve them. And on the other hand, there are also customary regulations, especially those relating to customary offenses and their sanctions, which are allegedly different from the provisions of Islamic law. In fact, the indigenous people in the six cities and regencies in the province are predominantly Muslim.

For example, in the case of Cempalo Tangan in the form of stealing or damaging (article 21 of Bengkulu City Regional Regulation No.29 of 2003). “In the event that a person takes or damages another person’s goods without the permission of the owner, the *dapek salah* is subject to customary fines in the form of an apology, compensation, and performing the traditional ceremony of *tepung Setawar Sedingin*. Excluded from the provisions of this article, if the goods taken belong to close family, or the goods taken are eaten or the *dapek* wrongdoer is a child, then the *dapek* wrongdoer is only subject to an apology *dendo*.² Exceptions

to theft or damage to other people’s property committed by close relatives with light sanctions are certainly very different from the provisions of Islamic criminal law and criminal law applicable in Indonesia which are without exceptions.

Rendi Harizona’s work entitled “The Effectiveness of Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs in Settling Cempalo Tangan Disputes in Bengkulu City”.³ This study explains that Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs in resolving CempaloTangan disputes in Bengkulu City is quite effective, because Cempalo Tangan disputes that occur in each region of Bengkulu City are resolved by customary law through *rajo penghulu* by giving customary sanctions based on the consensus decision of *rajo penghulu*, this is because *rajo penghulu* has the authority to resolve Cempalo Tangan disputes based on Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs. In addition, there are several factors that inhibit the implementation of the regulation.

Herlambang’s work is entitled “Building the Principles of Customary Justice (Study on the Malay Community of Bengkulu”.⁴ This research explains the importance of reviewing the principles of *adat* to anticipate the development of society, so that it does not conflict with the judicial process of the State. This research also aims to find principles of customary trials that can be used to develop the judicial process as an alternative dispute center. These principles were developed based on a model of customary values discussed in the Javanese and Malay communities in Bengkulu province. Furthermore, this research shows that the principles of customary trials were developed based on the discussive model of the Javanese and

¹ Rini Apriyani, “Keberadaan Sanksi Adat Dalam Penerapan Hukum Pidana Adat”, *Jurnal Hukum PRIORIS* vol. 6, no. 3, Februari (2018), p. 228

² Bagian Hukum Setda Kota Bengkulu, *Peraturan Daerah Kota Bengkulu No. 29 Tahun 2003 TentangPemberlakuanAdat Kota Bengkulu*, (2005), p. 32

³ Rendi Harizona, “Efektifitas Peraturan Daerah Kota Bengkulu Nomor 29 Tahun 2003 Tentang Pemberlakuan Adat Kota Bengkulu Dalam Penyelesaian Sengketa Cempalo Tangan Di Kota Bengkulu”, *Tesis, Fakultas Hukum Universitas Bengkulu*, (2014).

⁴ Herlambang, “Membangun Asas-Asas Peradilan Adat (Studi pada Masyarakat Rejang dan Masyarakat Melayu Bengkulu)”, *Kanun, Jurnal Ilmu Hukum Unsyiah*, vol. 14, no. 2, April (2014).

Malay communities in Bengkulu, which is based on the spirit of reaching an agreement.

Teguh Kayen's work entitled "The Politics of National Law towards Customary Law (Study of Rejang Customary Law Society in Bengkulu).⁵ This research explains that the implementation of legal politics towards customary law cannot be separated from the legal political system that already exists in indigenous peoples at the village level. Legislation governing the legal politics of indigenous peoples in the village has been specifically regulated which combines legal science (legal positivism theory) and recognition theory which gave birth to the Village Law. In order not to become legal formalism, the Village Law must be directed towards its role as the rule of law at the village level, especially indigenous villages. Because legal norms and examples of justice in state politics are born from the legal system in the village. The village teaches how to implement the national legal political system, the implementation of democracy, the implementation of a fair and professional dispute resolution system, and how to implement a participatory and effective village budget.

Mabrursyah's work entitled "Rejang Tribal Marriage Customs from an Islamic Perspective".⁶ This research explains that the interaction of Islamic law with Rejang tribal marriage customs has created conflict and integration. When viewed from an Islamic perspective, the meeting points of Islamic teachings with Rejang tribal marriage customs are; (1) the enactment of the *semendo rajo-rajo* form of marriage in the Rejang Tribe with consideration of benefits, (2) pre-marriage ceremonies (*mediak*, *bekulo*, *betunang*, and *sembeak sujud* and *Majok sematen /bakea mengenyan*) are not fully implemented. Here there have been changes to various elements of the implementation of the ceremony, with the inclusion of Islamic elements, such as the reading of *basmalah* and before the possession of the ceremony ends with the reading of congratulatory

prayers; (3) the marriage ceremony in the Rejang tribe (*Mengikeak* and *Uleak* or *umbung*) in its implementation found dominant Islamic symbols (*Urf Sahih*) such as the reading of *basmalah*, reading the holy book *Alqur'an*, marriage sermon, *ljab Qabul*, reading *Solawat* to the Prophet and congratulatory prayers.

Of the four previous studies, Rendi Harizona's article only discusses the effectiveness of the enforcement of Bengkulu City Regional Regulation No. 29/2003, which according to him has been quite effective without linking it to other positive legal provisions in Indonesia whose position is much higher. Likewise with the other three works, Herlambang's article does not relate customary justice to the applicable judiciary in Indonesia, while Teguh Kayen's work predominantly discusses the structure of indigenous peoples without mentioning the contents of the articles in the *Perda Adat*. Meanwhile, Mabrursyah's work only discusses the customary law in the issue of marriage from an Islamic perspective without linking it to the positive law in force in Indonesia. So in contrast to previous works, this research is focused on discussing the provisions on violations of customary law that have been codified in the form of regional regulations and sanctions in the review of Islamic law and criminal law in force in Indonesia.

Method

This research is included in the form of normative juridical research. Because in addition to using legal provisions in force in Indonesia, the opinions of experts in certain fields of law (Islamic law) related to this research are also used. So that this study is not to test hypotheses or theories, but with reference to policies and laws and regulations. This research is also called doctrinal legal research, because this research is conducted or only aimed at written regulations or other legal materials.⁷

This type of research is qualitative, which is a research approach that produces descriptive data in the form of written or oral data from people or observed behavior.⁸ In other sources it is stated

⁵ Teguh Kayen, "Politik Hukum Nasional Terhadap Hukum Adat (Studi Masyarakat Hukum Adat Rejang di Bengkulu, Tesis, Universitas Muhammadiyah Surakarta, (2016)

⁶ Mabrursyah, *Adat Perkawinan Suku Rejang Perspektif Islam*, Tangerang Selatan: Patju Kreasi, 2016.

⁷ Suratmandan Philips Dillah, *Metode Penelitian Hukum*, (Bandung: Alfabeta, 2014), p. 51

⁸ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: Remaja Rosda Karya, 1995), p.4

that qualitative studies are research intended to reveal symptoms in a contextual holistic manner through data collection from a natural background by utilizing the researcher as the key instrument. The presentation of this research is carried out descriptively, namely the researcher describes an object related to the problem under study without questioning the relationship between research variables.⁹ While the approach used in this research is a statutory approach (statue approach) which examines laws and regulations, relating to the enforcement of customary law and its sanctions in Bengkulu city and Rejang Lebong regency.

Results and Discussion

The receptie exit theory was initiated by Hazairin who argued that after Indonesia's independence and the 1945 Constitution was made the state Constitution, then all laws and regulations of the Dutch East Indies government based on the receptie theory were no longer valid, because their souls were contrary to the 1945 Constitution. Therefore, the receptie theory must exit because in addition to contradicting the 1945 Constitution it also contradicts the Qur'an and Sunnah of the Apostle.¹⁰ This theory is used to predict the existence of customary law in Indonesia and its influence on the laws that live in the community.

The three-element law system theory initiated by Lawrence M. Friedman states that there are three elements of the legal system that affect law enforcement, namely legal structure, legal substance, and legal culture.¹¹ The three components form a unified and complete unit, and are interconnected, or commonly referred to as a system. According to Friedman, the structural component (legal structure) is part of the legal system that moves in a mechanism, relating to lawmaking institutions, courts, investigations, and various bodies authorized to apply and enforce the law.¹²

The second component is the substance (legal substance), namely the rules, norms, and patterns of real human behavior within the system. Or it can be said to be a real result, a product produced, published by the legal system. The substance element includes the actual rules, norms and behavior patterns of the people in the system. In essence, legal substance includes legal rules, both written and unwritten, including court decisions.¹³

The third component is legal culture, namely human attitudes towards law and the legal system, beliefs, values, thoughts, and expectations. Including the meaning of legal culture are opinions, habits, ways of thinking and acting both law enforcement and society. Without legal culture, the legal system is inert, a dead fish lying in a basket, not a living fish swimming in its sea.¹⁴

Furthermore, the theory of Legal Authority Acceptance. This theory was proposed by H.A.R. Gibb in his book *The Modern Trends of Islam* which states that if a Muslim has accepted Islam as his religion, then he accepts the authority of Islamic law against him. Sociologically, people who are already Muslims accept the authority of Islamic law and obey Islamic law.¹⁵ This is to assess the compliance of indigenous people who are Muslims with City and Regency regulations governing customary law.

While the theory of *maqâsid al-syarî'ah* in terms of language means the intention or purpose of Islamic law. The main purpose of *disyarî'atkan* rules in Islamic law to people *mukallaf* is to realize *mashlahat* and reject *mudharat*. Where there is *mashalahatan*, then there is the law of Allah which always provides guidance for the community to realize their welfare and happiness.¹⁶ The priority in realizing the *mashlahat* must go through the stages of provisions that are *dharûriy*, *hâjiy*, or *tahsîniy*. The *dharûriy* provision is maintaining essential needs, intending to maintain the existence of religion, soul, mind, property, and human offspring. The provision of *hâjiy* is to

⁹ Faisol, *Format-Format Penelitian Sosial*, (Jakarta: Rajawali Press, 1992), p. 20

¹⁰ Hazairin, *Tujuh Serangkai tentang Hukum*, (Jakarta: Bina Aksara, 1985), Cet. IV, p. 29-32

¹¹ Lawrence M. Friedman, *American Law: an Introduction*, second edition, (New York: W.W. Norton & Company, 1998), p. 6

¹² Lawrence M. Friedman, *American Law...*, p. 21

¹³ Lawrence M. Friedman, *American Law...*, p. 25

¹⁴ Lawrence M. Friedman, *American Law...*, p. 7

¹⁵ H.A.R. Gibb, *Modern Trends in Islam*, Terjemahan Machnun Husein, *Aliran-Aliran Modern dalam Islam*, (Jakarta: PT. Raja Grafindo Persada, 1993), Cet. ke-3, p. 145.

¹⁶ Ahmad al-Raisuni, *Nazhariyat al-Maqâshid 'inda al-Syâthibi*, (Rabath: Dar al-Aman, 1991), p. 67

maintain the needs that can prevent humans from difficulties in their lives. While the *tahsini* provision is to maintain the needs that support the improvement of one's dignity in society and before God, in accordance with propriety.¹⁷ In his study, al-Raisuni argues that *al-Maqasidversi Syatibi* stands on two principles: First, the enumeration of *shari'ah* (*ta'ilil*) by attracting *mashlahah* and rejecting *mafsadah*. Second, *al-maqasid* as an induction product becomes the basis for *ijtihad* on cases that have not been touched by *nash* and *qiyas*.¹⁸ The theory of *maqâsid al-syar'ah* is used as a reference to assess the suitability of the substance of the articles in the *Perda* so as not to deviate from the provisions of Islamic law.

Regional Regulations on Adat in Bengkulu City and Rejang Lebong Regency Local Regulation on Adat in Bengkulu City

The recognition (enforceability) of customary law contained in Article 18B paragraph 2 of the 1945 Constitution as amended implies a condition of enforceability. Thus, empirically, it can be seen that the existence of customary law as *volkgeist* in maintaining the balance of society still exists but has developed according to the factual conditions of society in Bengkulu with its applicability based on *Pegang Pakai Adat*. But along with the times, *Dapek Salah* customary law adjusts itself as a living law, grows and develops according to its enforceability based on *Pegang Pakai Adat*. The conclusion is that the *Dapek Salah* customary law that is still obeyed by the community is part of the customary law values that still exist and remain the basis for maintaining balance and order in society. Although the community has entered modern life and activities, the patterns and paradigms of thinking of the people of Bengkulu City are still rooted and implied by the values of customary law. This can be seen factually in the lives of the people of Bengkulu City with the concept of the implementation of *Dapek Salah* customary law based on *Pegang Pakai Adat* as an identity and

characteristic of cultural aspects, aspects of social control and aspects of reflection of the National Spirit.¹⁹

The existence of Bengkulu City Regional Regulation No. 29/2003 on the Implementation of Customs in Bengkulu City automatically strengthens the position of customary institutions in Bengkulu City, because issues related to customs in Bengkulu City become their authority. The basic principles of this Regional Regulation are to encourage the empowerment of indigenous peoples, to foster initiative and creativity in resolving problems that arise in the community by using the values of local wisdom or the wisdom of customary law, to increase community participation and to develop the role and function of the Municipal and Sub-district Adat Consultative Bodies and *Rajo Penghulu* in the *Kelurahan*. *Rajo Penghulu* is a customary institution found in Bengkulu society to maintain order, tranquility and security of everyone in daily social life, especially in resolving any conflict or dispute.

The development of today's era, which tends to ignore traditional matters, as well as the lack of understanding/pride about Bengkulu's traditional culture, especially among the younger generation, is suspected of contributing to the existence of adat institutions and their role in efforts to preserve the culture of the Bengkulu community. This raises questions about the existence and role of adat institutions in Bengkulu City as mandated in *Perda* No. 29 of 2003 on the treatment of adat law in Bengkulu City and their role in cultural preservation.

In resolving violations of the *Cempalo Tangan* custom in Bengkulu City, regulated by Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs, dispute resolution needs to pay attention to the customary law that applies in the community, because if customary law is still very strongly maintained in society, the customary law mechanism will be a determining factor in the success of dispute resolution in the Bengkulu City community. The purpose of this research is to find out the effectiveness of Bengkulu City

¹⁷ Al-Syâthibi, *al-Muwâfaqât fi Ushûl al-Ahkâm*, (Beirut: Dâr al-Fikr, t.th.), Jilid II, pp. 4-5

¹⁸ Ahmad al-Raisuni, *Nazhariyât al-Maqâsid 'inda al-Imâm Syâtibi*, (Riyad: al-Dâr al-'Ilmiyyah li al-Kitâb al-Islâmî, 1992), p. 143

¹⁹ <http://eprints.ums.ac.id/86651/>

Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs in resolving Cempalo Tangan disputes, and to find out the factors inhibiting the implementation of Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs to Cempalo Tangan disputes in Bengkulu City.

The results of the author's research are: (1). Bengkulu City Regional Regulation Number 29 of 2003 concerning the Implementation of Bengkulu City Customs in resolving CempaloTangan disputes in Bengkulu City is quite effective, because Cempalo Tangan disputes that occur in each Bengkulu City area are resolved by customary law through rajo penghulu by giving customary sanctions based on the consensus decision of rajo penghulu, this is because rajo penghulu has the authority to resolve Cempalo Tangan disputes based on Bengkulu City Regional Regulation Number 29 of 2003 concerning the Implementation of Bengkulu City Customs. (2). There are several factors inhibiting the implementation of Bengkulu City Regional Regulation Number 29 of 2003 concerning the Application of Bengkulu City Customs to Cempalo Tangan disputes in Bengkulu City, such as: At stage 3, it is not the customary leader who notifies the other rajo penghulu members to attend the rajo penghulu consensus meeting that will be held, but the head of the RT. The sitting position of the participants in the customary deliberation is not in accordance with the mechanism of stage 4 of the rajo penghulu consensus deliberation procession manual. The customary chief only explains the customary sanctions for dapek salah and does not explain the rules of customary law as written in stage 20 of the dapek salah settlement mechanism in Bengkulu City according to the procession manual of musyawarah mufakat rajo penghulu in resolving dapek salah in Bengkulu City. Members of rajo penghulu are unable to attend, so they have to wait for rajo penghulu members who have not attended, so the procession of rajo penghulu consensus becomes slow. During the procession of rajo penghulu consensus deliberation, the family or parents of the perpetrator must be present, but in reality the family or parents of the perpetrator are unable to attend, so that the procession of resolving the Cempalo Tangan dispute is delayed.

In order to realize the goals and ideals of the indigenous people in Bengkulu City, the Bengkulu City Government enacted and stipulated Regional Regulation No. 29 of 2003 concerning the Application of Adat in Bengkulu City. With this regulation, customary institutions in Bengkulu City have duties and functions stipulated in the regulation, such as resolving dapek wrongdoings such as Cempalo Tangan, Cempalo Mulut and Cempalo Mato. The purpose of this research is to find out the types of customary violations that can be sanctioned, the settlement process in the application of customary law sanctions, and the supporting and inhibiting factors in the application of customary law sanctions after the enactment of the Perda. The type of research is empirical research with a normative sociological approach. Data collection is done by means of field studies or primary data and literature studies or secondary data. The data is processed by editing and coding data which is then carried out qualitative analysis, namely describing or describing the results of research based on existing theories and literature. The results of the study that 1) the types of customary violations that can be sanctioned are those regulated in the Perda, namely in Book IV of the Compilation of Customary Law of Bengkulu City such as Cempalo Tangan, Cempalo Mulut and Cempalo Mato. 2) The settlement process is carried out after a report or complaint is obtained, after which a customary hearing is held. which is attended by the disputing parties, customary institutions and witnesses. Then listen to the problems and testimony of witnesses. and a decision is made in the form of sanctions by Rajo Penghulu. the sanctions are in the form of reprimands, apologies, compensation, traditional ceremonies of cold setawar flour to more severe sanctions, namely ostracism or expulsion. 3) Supporting factors are government concern, the establishment of customary institutions, the community still adheres to adat. The inhibiting factors are the lack of socialization, the lack of supporting facilities and infrastructure for customary institutions, the lack of public understanding of the local regulations, and the feeling of embarrassment to convey customary problems.

Administratively, the Bengkulu City Regional Government through the Local Government of Bengkulu City through the Customary Consultative

Body together with the Bengkulu City DPRD has ratified the Bengkulu City Regional Regulation Number: 29 of 2003 concerning the Enforcement of Bengkulu City Customs. In the book *Adat Kota Bengkulu* published by the Legal Section of the SETDA of Bengkulu City in 2005 (the author was given by the Chairman of the Bengkulu City BMA in 2017).

It has taken into account the preservation of the protected forest conservation area of the Danau Dusun Besar Nature Reserve, which is the lungs of Bengkulu City, which we must “protect” together. On this occasion, the author has submitted the Bengkulu City Regional Regulation No. 29 of 2003 as one of the references for the review and consideration of the EKF Technical Team of Dusun Besar Lake CA and can be used as a reference for the management of other Conservation Areas.

In addition, in the process of the Study of the Technical Team for the Evaluation of the Suitability of Functions (EKF) of the Dusun Besar Lake Nature Reserve, on September 6, 2017 through a letter from the Head of the Bengkulu City Customary Consultative Body Number: 365/BMA-Kota/VI/2017 regarding the Decrease in Nature Reserve Status, administratively the Bengkulu City Regional Government through the Customary Consultative Body together with the Bengkulu City DPRD has ratified the Bengkulu City Regional Regulation Number: 29 of 2003 concerning the Enforcement of Bengkulu City Customs. In the book *Adat Kota Bengkulu* published by the Legal Section of the Bengkulu City SETDA in 2005 (the author was given by the Chairman of the Bengkulu City BMA in 2017).

In addition, during the review process of the Technical Team for the Evaluation of the Suitability of Function (EKF) of Dusun Besar Lake Nature Reserve, on September 6, 2017 through the Letter of the Head of the Bengkulu City Customary Consultative Body Number: 365/BMA-Kota/VI/2017 regarding the Decrease of Nature Reserve Status, which was approved by the Bengkulu City Council.

The implementation of Regional Regulation 29 Year 2003 can be carried out in accordance with its intentions and objectives. It is the hope of current and future generations that the conservation forest areas in the city of Bengkulu are maintained and

managed in a way that prioritizes sustainability. In Book IV. Cempalo / Dapek Salah consists of an explanation of hand cempalo, mouth cempalo, mato cempalo, implementation of customary dendo against cempalo actions. Article 31, Obligation to Protect the Environment, explains that: “In the event that any person deliberately cuts down, damages, defiles, fences, plants vegetation, or puts something into a place or land, place or pond or sea, lake, nature reserve, protected forest, which is a source of livelihood for many people, without the permission and or without the knowledge of the local village apparatus, the wrongdoer may be subject to “Dendo Adat” reprimand, and or apology and or compensation. If the act in question is not committed for the first time, or has been planned in advance, then the wrongdoer, in addition to being obliged to fulfill the obligations referred to in this article, may be subject to other customary dendo determined in the Rajo Penghulu’s consensus. If the act in question harms the general public, then the wrongdoer may be subject to other customary dendo determined in the Rajo Penghulu’s meeting.”²⁰

Customary Regional Regulations of Rejang Lebong Regency

The Rejang Lebong Regency Regional Government has issued Regional Regulation no. 5 of 2018 concerning Recognition and Protection of Traditional Law Communities in Rejang Lebong Regency. This research was conducted to describe who the recognized social units are and what function these local regulations have for the protection of customary territories. This research uses a normative juridical approach, namely legal research carried out by examining library materials or secondary data. The results of this research show the conclusion that: First: Kutei is an original social unit recognized in Regional Regulation no. 5 of 2018 concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency, this recognition is the recognition of kutei

²⁰ https://www.researchgate.net/publication/348733048_PEMBERLAKUAN_ADAT_KOTA_BENGKULU_SEBAGAI_PERAN_PERATURAN_DAERAH_KOTA_BENGKULU_DALAM_PENGLOLAAN_SUMBER_DAYA_ALAM_DI_BIDANG_KONSERVASI_SUMBER_DAYA_ALAM_DAN_EKOSISTEM_IMPLEMENTATION_OF_ADAT_KOTA_BENGKULU

as legal subjects and can be burdened with rights and obligations. Second: This regional regulation also functions to protect their customary territory because it states the obligation of customary law communities to preserve the environment and natural resources in a sustainable manner as regulated in the Rejang customary law.

Rejang Lebong Regent Ahmad Hijazi said that of the seven regional regulations that had just been passed by this council, there was one regional regulation that attracted his attention, namely the one that regulates the legal system of customary communities, such as customary assets, one of which is clan land. "Later we will make an inventory of existing customary assets. in Rejang Lebong to be re-managed by traditional communities as regulated in this regional regulation," said Hijazi. Chairman of the Bengkulu Indigenous Community Alliance (AMAN), Deff Tri stated that this traditional regulation regulates customary territories, traditional communities, equipment, customary laws and institutions. "The point for implementing this regional regulation is the formation of a customary law community committee led directly by the Rejang Lebong Regent so that it is hoped that it can implement it to determine who will be appointed as indigenous people," he said. Previously, since the issuance of Law Number 5 of 1979 concerning Village Government, Customary Law slowly began to erode because it was rarely used again. Then the belief in the importance of Customary Law was strengthened again through Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities.

The Rejang Lebong Archipelago Indigenous Community Alliance (AMAN), in collaboration with the Rejang Lebong Regency Government, held a socialization of Regional Regulation Number 5 of 2018 concerning Recognition and Protection of Customary Law Communities in Rejang Lebong Regency. The socialization activity which took the theme "accelerating the formation of customary law community committees in Rejang Lebong Regency" was opened directly by the Chair of the DPRD, M. Ali, ST, which was attended by Deff Tri, Chair of AMAN Bengkulu and Chair of

the Traditional Deliberative Body (BMA), with Maxpinal's socialization resource person, Head of Legal Affairs for the Rejang Lebong Regency Government, Dr. Panji Suminar, Chair of the Regional Research Council (DRD) of Bengkulu Province, Siman, SH, MM, Head of Culture at the Education and Culture Service and Dr. Danur Seto²¹.

In this socialization activity which was attended by representative participants from 15 sub-districts in Rejang Lebong Regency, Maxpinal in his presentation explained the importance of the role of the sub-district to village/sub-district officials after the socialization was carried out and the formation of a customary law community committee to immediately identify, inventory and validate data for legal existence. as a form of contribution to the implementation of these customary regulations.

"The role of the sub-district to village or sub-district officials after socialization and the formation of a customary law community committee is to immediately identify, inventory and validate data for legal existence as a form of contribution to the implementation of these customary regulations, he explained. Furthermore, Deff Tri, Chairman of Aman Bengkulu, explained that in the draft Regent's Decree regarding the community committee, it will involve all stakeholders, in the sense of Regional Apparatus Organizations (OPD) which have direct contact with indigenous communities. And the implementation will not only talk about territory, but also in a cultural context that produces art, lifestyle patterns and all the rights inherent in indigenous communities themselves. "In the draft draft of the Regent's Decree regarding the customary law community committee, it will involve all stockholders, in the sense of Regional Apparatus Organizations (OPD) which have direct contact with indigenous communities. And the implementation will not only talk about the region, but also in the context "culture that produces art, lifestyle patterns and all the rights inherent in indigenous communities themselves," he explained.²²

²¹ <http://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v4n2.18>

²² <https://sumatra.bisnis.com/read/20180814/533/828153/rejang-lebong-kini-miliki-perda-perlindungan-masyarakat-adat>

The existence of customary justice in Rejang Land has been going on for quite a long period of time, long before Islam entered Rejang Land starting during the Ajai and Bikau era. During the colonial period, customary justice persisted as a form of “indigenous” justice vis-à-vis “gouvernement rechtsspraak” justice, especially in areas controlled by the Dutch, but there was recognition by the Dutch government of customary justice, this recognition was carried out differently from its legal basis. Each. After Indonesia became independent, these customary courts became powerless after the enactment of Emergency Law No. 1 of 1950 which abolished several courts that were not in accordance with the Unitary State or gradually abolished independent courts in several regions and all customary courts.²³

Sociologically, the aspects of customary law and justice in the life of the Rejang community are seen as maintaining balance, the balance in question is a harmonious life between members of society and between society and nature. Therefore, the judiciary is seen as a medium for maintaining balance rather than an institution providing and guaranteeing justice as understood in modern law or positive law. It is within this framework that the Rejang customary law community views customary law as one of the three elements that maintain balance alongside state (government) law and religious law.²⁴

In the history of the Rejang Customary Law, the legal process covers all aspects of the lives of its citizens which not only regulates sanctions but further regulates the rights and obligations both with fellow members of the community and with certain beliefs which usually have a magical character, thus the Customary Law found in Jurukalang is a traditional realm of thought which generally cosmic and totalitarian in nature, there is no separation of various kinds of prohibitions on life, there is no separation between the world of birth and the unseen world and there is no separation between humans and other creatures, everything is mixed up, interrelated and influences

each other, which is most important if you look further. In Jurukalang law can be a manifestation of balance, harmony, harmony (evenwicht), anything that disturbs this balance is a violation of the law.²⁵

General standards in the Customary Law system in Rejang refer to;²⁶

1. True customs, which are called true customs, are customs left by ancestors or forebears which are often said to be undamaged by rain and not faded by heat. These are customs that are carved along the lines, grounded in character, planted within the fence, walking along the heart of the road and said in Adat
2. Customs that are adopted are additional customs to the true customs, both of which are regulations from Tuai Kutai, which are the result of agreements and deliberations in Kutai as well as certain customs which have become traditional customs, such as sharing equally, having equal faces and giving birth in a pot, swearing, promising to be faithful and the most important thing is losing custom because of the promise.

Customary law customs are not written, as is the case for the Rejang customary law community. This customary law is also not written, so in 1862 Van Bossche established written rules which were then called the Simbur Cahayo Law. There were several problems with this Simbur Cahayo Law so that in 1866 Assistant Resident A. Pruys Van Der Hoevan asked the Chiefs for their opinion. It turns out that many clans are not in accordance with the applicable Rejang Customary Law, therefore many changes have been made.

In resolving a case, usually the rules referred to above are only a reference where the Customary decision is held by the Tuai Kutai which is the result of deliberations between each Sukau Chief who, in certain cases involving members of his tribe, acts as the Defender. The beetle rooster flies at night and sits on the thick wood, never going up or down, not tied down, don't pull it, doesn't have a stem, don't carry it, if it is pulled long, if it is pulled apart, it breaks and the white chicken flies

²³ https://kbr.id/nusantara/08-2018/perda_masyarakat_adat_kabupaten_rejang_lebong_disahkan/96906.html

²⁴ <https://betvnews.com/perda-masyarakat-adat-mulai-disosialisasikan/>

²⁵ <http://amarta.wordpress.com/2007/11/14/hello-world/>

²⁶ Emma Ellyani, *Penyelesaian Sengketa Adat Berbasis Prinsip Deliberatif*, (Yogyakarta: Genta, 2021)

during the day and sits on the dry wood, moves up, runs down, bright and bright. In fact, the name clearly guilty is a traditional saying used to refer to the term presumption of innocence before the legal status of a dispute is determined.

Traditional Peace is called Mulo Bangun or Mulo Tepung, so in its implementation it means laying down, determining and carrying it out or in the term Pengipar Wing Menukat Paruh which means covering the payment or burden that is left. There are several main things in the Rejang Customary Law system, including; Kill build, Wrong debt, Gawal Mati, Wounding flour, Hose Discharges, Sounding Bagiak, Cleft Titip, Broken Kipal, Losing Customs Because of Promises, Giving Just Runs Out, Bad Puar Aling Jelupuh, Broken, Growing, Disappearing²⁷

Meanwhile, customary criminal offenses are often known as iram bleeding (cases that bleed) and iram tiado bleeding (not bleeding), Payar wake up for cases that take someone's life and cepalo for cases of immorality, in the implementation of this customary law the role of the chairman Sukau often act as defenders of the community or clan in the process of determining permanent customary law where social sanctions are very dominant, usually decided by the Kutai Head or Traditional Leader after the customary justice or peace process is carried out by asking for opinions from village elements such as clever people, religious scholars, shamans, artisans. , this shows a holistic case resolution involving the parties in achieving balance as a result of a pecalo carried out by someone and has an impact on all elements in the community, proof of the resolution of the case and determining the peaceful outcome of the village is betel and areca nut accompanied by serawo and carrying out Tepung Setawar.²⁸

The practices of implementing customary settlements that are usually carried out by the Rejang customary law community are generally regulated as follows;²⁹

1. The Jang Indigenous Community is a family unit that arises from a unilateral system (usually handed down to one party only) with a patrilineal lineage system (from the male side) and an exogamous way of marriage, even though they are everywhere
2. Kutai is one of the legal units of the indigenous Jang community which stands alone, genealogically and where the jurai-Jurai or tribes live.
3. Jang customary law is a norm that grows and develops and is obeyed and binds the Jang customary community in one unified Jang customary legal area, which contains the values of family, mutual cooperation, deliberation, consensus, propriety, magic, religion, wisdom and wisdom in resolve any problems that arise within the boundaries of the Jang customary law area
4. The Jang Customary Court is a dispute resolution mechanism in the Rejang traditional community that creates balance and encourages coercive power for residents to comply with the rules that exist in that community.
5. Kelpiak Ukum Adat is a collection of documents containing the rules for resolving customary disputes that occur in one Jang customary legal territory.
6. Jenang Kutai is a customary justice apparatus consisting of several personnel who are representatives of the Jang customary government structure and have the authority and capacity to implement the customary legal system.
7. The place for dispute resolution is carried out in the Jang customary law area where the dispute or dispute occurs or the place where the customary case occurs

In implementing and resolving customary conflicts, Rejang customary law recognizes the following legal principles;³⁰

1. Sharia Jointed Custom, Sharia Jointed Kitabullah means; Customs based on religious

²⁷ <https://akar.or.id/hukum-adat-rejang-catatan-riset-aksi-meniti-jalan-pengakuan-masyarakat-hukum-adat-rejang/>

²⁸ Aliansi Masyarakat Adat Rejang Topos Pat Petulai (AMARTA). Laporan Proses Simulasi Peradilan Adat di Desa Talang Donok. (2007)

²⁹ Akar Foundation-HuMA. Laporan proses Konsultasi Publik Draf Ranperda Peradilan Adat. (2013)

³⁰ Akar Foundation-HuMA. Draf kluster Hukum Adat. (2013)

- or customary law that applies in the customary community as intended.
2. The Coa Melkang Keno Panes, Coa Mobok Nukoi Ujen customs are metaphors containing the values held by the Jang indigenous people which apply consistently and firmly in any condition.
 3. Saleak Cong Bepapet is a figure of speech containing the values held by the Jang traditional community to restore balance to disputes or disputes or the occurrence of customary cases within the Jang customary legal area.
 4. The Aleak Nukoi Janjai custom is a metaphor containing the values held by the Jang indigenous community to state that customs are bound by a system of agreements that have been agreed upon by the parties.
 5. Saleak Kunuak Tebangun is a metaphor containing the values held by the Jang indigenous people to state that as a result of the act of taking someone's life, they are obliged to pay a fine called "Bangun" and consists of:
 6. Wake up Mayo, namely when someone dies due to someone else's actions which were planned
 7. Bangun Penuak (full), namely a person who dies as a result of someone's actions that were not previously planned
 8. Bangun Soa or Bangun Sesalan (regret), a person who dies who was not wanted or beyond the ability of the perpetrator and still has a kinship relationship between the two.
 9. Piawang Mecuak Timbo, Nukum Lipet is a condition where a customary violation is committed by an honorable person because they have a position and responsibility within the Jang customary structure or government structure and religious apparatus, so the sanctions imposed are double the sanction provisions if committed by ordinary people.
 10. Setabea flour is a set of equipment used to restore a person's health condition consisting of: sergayu leaves or cold leaves, betel leaves, kundur leaves, tied together and placed in a bowl then given water and then sprinkled on someone who has been fighting or in the state of being conscious or having awakened from fainting as well as people who are still unconscious.
 11. Selengan-Arm Dendo Adeba Iben Desaghen Sebenek-Benek Dendo Adeba Bangun Mayo is a figure of speech which states that every act that violates customs or violates customary law, those who violate it will definitely receive sanctions in the form of:
 12. The lightest sanction is Iben Desaghen or a set of betel leaves consisting of seven or nine betel leaves, folded lengthwise, tied with three-colored thread, plus other betel accessories and put in a SELUP (small basket).
 13. The highest sanction for resolving a problem that can be given by Jenang Kutai is Bangun Mayo or a customary fine if someone dies as a result of another person's actions which were planned beforehand.
 14. Benek Mbeak Temambeak Mbeak Mapoi's arms are a metaphor for a reference to action which means something heavy should not add to the burden and something light should not be taken lightly.
 15. Neak Ipe Bumai Nelat Diba Lenget Jenunjung This statement implies that wherever we are, we must follow, implement and respect and prioritize the customs of the community where we live.
 16. Check Accurately, Promise Menughau, Menginjem Mengelek, Debt Mengsen, Mengelai Abis Bae, Bepanuo Neak Atai Dalen, Betareak Ngen Maet Lem Ga'isexpressed this contains the meaning:
 17. We must obey the words we have said.
 18. We must fulfill promises we have made or agreed to.
 19. If you borrow something, you must return it.
 20. If you owe a debt, you must pay the debt.
 21. If we give something to someone, we say that what we gave is finished and we cannot ask for it back.
 22. If you are doing something that is like walking, then you have to walk on the right path.
 23. If we sculpt and measure, we must follow the existing lines.

Meanwhile, the principles of Rejang customary law include;³¹

1. So Samo Kamo Bamo is a basic principle that recognizes collective rights, the principle of kinship and prioritizes the interests of many people
2. Tiep-tiep ade de do the Macau traditional tradition of te'ang ngen sudo is an action and the resolution of disputes or disputes in indigenous communities should not be carried out in secret or concealed.
3. The Tulung Menlung custom and the Rian Batau Mbatau custom are acts of helping each other in good things both within the family and with other indigenous communities
4. Banyakia Inde Beneu Bemulan Inde Jalai is a figurative strategy for finding the true essence of the issue or problem in an effort to resolve the dispute or dispute that occurs.
5. Pendok Dik Sudo Panjang Gik Igai is a term to state that problems that have been resolved through customary justice will not give rise to derivative problems either in the world or in the hereafter
6. Betimbang Samo Benek, Bekilo Samo Kelengan is a decision of conscience in making a decision regarding a problem at hand, so that the decision we take, apart from being fair, has also been carefully and deeply considered regarding the disadvantages and benefits, and can be accounted for to God.
7. Mu'eak Kakane Ade, Beripit Kakea Ne Coaini is a principle in determining material sanctions for a case by considering the economic capabilities of the parties to the dispute
8. Bepatet Bekenek, Bejenjang Tu'un explained that the dispute resolution process must follow the rules that have been outlined, such as climbing the steps one by one, so we must not rush or overstep existing rules.

The scope of Rejang customary law consists of;

1. Hok Kutai. Hok Kutai in the form of Taneak Tanai, Imbo Piadan is an expression to explain

procedures for managing natural resources in customary territories consisting of land, water and forests:

- When managing land, you must obtain permission to work from traditional stakeholders
 - Cultivated land must be given certain signs as a form of ownership and territorial boundaries
 - Management of natural resources in the form of land, water and forests based on traditional wisdom and agreed norms
2. Voting Rights, the details of which are as follows;
 - Hok Suwarang Bagiak is property or wealth obtained during marriage, for the Jang Customary Law Community it is called Hok suwarang (Susung means both husband and wife). If a divorce occurs, the assets must be divided based on customary agreements.
 - Serang Nelek, which is meant by attack in the Jang Customary Law Community, is property inherited in marriage, whether brought by the wife or brought by the husband. If any of those who brought assets into their marriage dies and by chance they do not have children and at the time of the marriage there was no marriage agreement, then the inherited assets must be returned to the family of the deceased.
 3. Private rights are individual ownership that is independent of customary communal rights, consisting of livestock, plants, land and the like which must be managed based on customary wisdom and agreements between individuals.
 4. Hok Piawang. Known as the Piawang's Rights or Shaman's Rights or People of Position are obliged to adhere to customs and civility, ask for help by offering betel, if the disease has been cured they are obliged to pay a dowry as thanks, in accordance with the shaman's instructions.
 5. Tukua Menukua. Tukua menukua nakau amen ade kecek kecek kundoik dik menjuwoa ngen dik menukua Buying and selling becomes valid

³¹ Akar Foundation-HuMA. Draf kluster Hukum Adat. (2013)

if there is an agreement between the seller and the buyer.

In the midst of a wave of violence, greed and a crisis of local cultural identity which has completely destroyed the bonds of humanity and togetherness in many places in the country and in the midst of a national legal crisis in Jurukalang for example, there is still strength that continues to be maintained to strengthen cultural examples and wisdom among the community customs, wisdom in resolving conflicts and disputes through a very noble approach to humanity and brotherhood. Cultural wisdom is in the form of a tradition of using the medium of plain flour in resolving conflicts.

According to Mr. Salim Senawar, the traditional leader of Jurukalang Topos village, if there is conflict, violence that injures each other, by using the tradition of plain flour, conflicting people can make peace with each other and get along again. Then he told, experience of conflict between young people from Topos village and young people from neighboring villages during a wedding party. The two young men had injured each other even though no one had been killed. The conflict between the two young men has developed into a conflict between indigenous communities within one clan. However, local traditional leaders immediately took the initiative to meet the warring families to find out the truth about the origins and causes of the dispute. After being found, he said, the traditional leader from the guilty party then went to the family of the other conflicting party while bringing “iben/betel”, namely as a tool or means that must be given to the family of the victim or innocent person in the conflict, in it a complete set of betel and a pack of cigarettes.³²

The betel or iben is a form of expression of regret and apology to the victim’s family. If this iben is brought, usually the victim’s family feels satisfied and respected and immediately accepts the expression of apology with open heart without

any feelings of resentment. After giving the iben, it is then continued with the tradition of plain flour and eating serawo or raw arbor, the young men or people who are fighting with each other then rub each other’s bodies with plain flour. After that, the two young men who are fighting are considered to be part of their own brothers. After carrying out the tradition of raw arbor and plain flour, the conflict which had become increasingly heated then subsided, said Mr Salim. He himself, as a traditional leader, quite often becomes an ‘ambassador’ for peace and carries out such local traditions. “If all conflicts have to be resolved legally, in fact it will be more troublesome and give rise to derivative conflicts, apart from the fact that state officials are slow, require more costs and the community is also less satisfied, the results are much more effective with a traditional or local cultural approach,” said Mr Salim. This plain flour media does not only apply to communities with the same cultural identity, but can also be carried out by outsiders who happen to have disagreements or conflicts with the Jurukalang traditional people.

The implementation of customary law in the city of Bengkulu relating to customary violations has gone quite well, for example in the Cempalo Tangan case in the form of mencilok (stealing) or vandalism (article 21 of the Bengkulu City Regional Regulation No. 29 of 2003). “In the event that someone takes or damages another person’s property without the owner’s permission, the dapek is wrongly subject to a customary fine in the form of an apology, compensation for losses, and carrying out the traditional ceremony of sebar cold flour. Exempted from the provisions of this article, if the item taken belongs to the immediate family, or the item taken for food or dapek is a child, then the person who was wrongly dapek is only subject to an apology. Meanwhile, in Rejang Lebong, things are going well, for example other heavy cempalo such as killing (article 25 of Rejang Lebong Regency Regional Regulation No.5 of 2018). In this case there are two types of murder. Firstly, killing intentionally, the perpetrator is subject to a fine of one hundred 80 ria, if converted into rupiah it is the same as Rp. 24 million. Then secondly, there is also accidental killing, the perpetrator is subject to a fine of half a half’s regret, if converted into rupiah

³² Erwin Basrin. Laporan Wawancara Pengumpulan Data dan Informasi tentang Penguasaan Tanah (Rapid Land Tenure Assessment) di Eks Marga Jurukalang Kabupaten Lebong, Propinsi Bengkulu. Akar Foundation. (2010).

it is the same as IDR 12 million. There are also cempalo who kill two people, for example killing a pregnant person, the perpetrator is subject to a fine of wake up duwei anggep or IDR 33 million.

In reviewing Islamic law, sanctions for customary violations that occur in the city of Bengkulu generally do not conflict with Islamic law, and are in line with the zawajir principle. For example, in the Cempalo Tangan case, it was stealing (stealing) or damaging (article 21 of the Bengkulu City Regional Regulation No. 29 of 2003). "In the event that someone takes or damages another person's property without the owner's permission, the dapek is wrongly subject to a customary fine in the form of an apology, compensation for losses, and carrying out the traditional ceremony of sebar cold flour. This kind of punishment is included in the ta'zir category, because the theft does not meet the requirements for being subject to a had, while the damage that occurred was also small. Meanwhile, for customary violations and sanctions that occur in Rejang Lebong, some are in accordance with Islamic law for immoral cases, but for cases of murder (article 25 of the Rejang Lebong Regency Regional Regulation No.5 of 2018) which are punished with fines, this is not in accordance with Islamic law requires qishas or diyat. Because the number of this diyat is determined by the heirs who were killed. Not by traditional leaders.

In a review of positive law in Indonesia, the punishment for thieves with customary fines is in the form of an apology, compensation for losses, and carrying out the traditional ceremony of cold setawar flour, this is contrary to article 362 which stipulates a maximum prison sentence of 5 years, and if accompanied by violence/threats, sentenced to imprisonment for a maximum of 9 years (Article 365 of the Criminal Code). Meanwhile, for the act of damaging other people's property, the perpetrator can be sentenced to imprisonment for a maximum of 2 years and 8 months or a fine of a maximum of IDR 4,500. (Article 406 of the Criminal Code). The punishment for murderers is a customary fine of Rp. 12 million for unintentional murder, Rp. 24 million for intentional murder, and Rp. 33 million for the murder of 2 lives at once, this is contrary to positive law in Indonesia. There

is no compensation/fine, because criminal law is absolute public law whose resolution is entirely the right of the state. For ordinary murder which is not planned and is not accompanied by other crimes, the threat of imprisonment is a maximum of 15 years (Article 338), murder accompanied by other criminal acts, the threat of life imprisonment or a maximum of 20 years (Article 339), and premeditated murder with a maximum threat death penalty (Article 340). The real sentence is decided by the judge.

Conclusion

From the previous results and discussion, it can be concluded that the implementation of customary law in the city of Bengkulu regarding customary violations has gone quite well, for example in the Cempalo Tangan case in the form of mencilok (stealing) or vandalism (article 21 of the Bengkulu City Regional Regulation No. 29 of 2003). Meanwhile in Rejang Lebong, things are also going well, for example other heavy cempalo such as killing (article 25 of Rejang Lebong Regency Regional Regulation No.5 of 2018). In view of Islamic law, sanctions for customary violations that occur in the city of Bengkulu generally do not conflict with Islamic law, and are in line with the zawajir principle. Meanwhile, for customary violations and sanctions that occur in Rejang Lebong, some are in accordance with Islamic law for immoral cases, but for cases of murder (article 25 of the Rejang Lebong District Regulation No. 5 of 2018) which are punished with fines, this is not in accordance with Islamic law requires qishas or diyat. Because the number of this diyat is determined by the heirs who were killed. Not by traditional leaders. In a review of positive law in Indonesia, the punishment for thieves with customary fines is in the form of an apology, compensation for losses, and carrying out the traditional ceremony of cold setawar flour, this is contrary to article 362 which stipulates a maximum prison sentence of 5 years, and if accompanied by violence/threats, sentenced to imprisonment for a maximum of 9 years (Article 365 of the Criminal Code). Meanwhile, for the act of damaging other people's property, the perpetrator can be sentenced to imprisonment for a maximum of 2 years and 8 months or a fine

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