

Environmental Maintenance through the Application of Adat (Criminal) Sanctions on Baduy Communities

Umi Rozah

Lecture at Department of Criminal Law, Diponegoro University, Semarang, Indonesia

Abstract

This article aims to describe the implementation of customary criminal sanctions used by the Baduy community in maintaining and preserving their nature and the effectiveness of the use of customary sanctions in preventing and overcoming actions that damage the environment of the Baduy community. It is a qualitative research to produce descriptive data, where the approach used is socio-legal research using secondary data as a normative or doctrinal approach, and uses a social approach to explore primary data in the form of values and interpret the behavior of local communities in solving customary cases. The results of this study indicate that the life of the Baduy community which is supported by agriculture and cultivation is very dependent on natural preservation. The maintenance and preservation of the environment in the Baduy community is highly respected. Various ways to preserve nature through avoidance of goods and modern lifestyle are carried out from generation to generation so as not to change the order of nature and the environment. In preserving nature, the Baduy community provides guidelines on certain actions that their indigenous people should not take, such as burning forests, cutting trees in certain areas.

Keywords: *Environmental Maintenance, Baduy Communities, Customary law, criminal sanctions*

Introduction

Indonesia as a country consisting of several ethnic groups with various customs is full of values of peace and harmony/balance in life, namely the balance between human relations with God, with the universe and the environment, with fellow humans as individuals and with fellow humans in his society. In the beliefs of indigenous peoples, spiritual life is very dominant and is placed in the most sacred place. The belief in the existence of the universe is controlled by spirituality which manifests as a macrocosm very much characterizes the lives of indigenous peoples, where every human behavior and behavior in a customary environment is always monitored by something magical. With this belief, humans in their lives who are in the microcosm circle must maintain harmony and balance between macrocosm and microcosm.

The form of consistency in maintaining the harmony and balance of the relationship between macrocosm and microcosm in indigenous peoples is how indigenous peoples take care of the natural environment so that it is both spiritually and factually preserved in their lives, so that nature is fully preserved, as practiced by the Baduy community. The principle instilled by the Baduy community in preserving nature as a gift from God to them is. "mountains may not be destroyed, and valleys may not be destroyed," and "short should not be joined, length may not be cut." This principle underlies people's understanding and awareness that forests, mountains, valleys, and their contents are the lungs of nature. The awareness of the Baduy community that life must be one with nature, implies that using nature as a source of life must also be done very wisely, including by dividing the natural types of forest, namely cultivated forest (which is taken for life), Panisan forest (forest that becomes water sources), and prohibited forest (forest that should not be touched) (Rifa'i, 2017).

Corresponding author:

Umi Rozah

umirozah.fhundip@gmail.com

In preserving nature, the Baduy community rejects modernization and the use of products and objects that come from outside, which are believed to destroy real

life, such as the prohibition of using bath soap and toothpaste and replacing them with *kecombrang* or *honje* to replace bath soap and coir coconut or betel to replace toothpaste. This is based on the assumption that soap and toothpaste contain chemicals that can destroy nature. There is a prohibition on eating goat meat because it is considered bad for health, while chicken and beef are only eaten in religious ceremonies. Another uniqueness is in treating the dead, namely being buried in the family land and after 7 (seven) days the graves are used again as cultivated gardening land, with the principle that the dead will return to land (Rahma, 2017). In using the land, not using cows or buffalo for plowing, the prohibition of four-legged animals other than dogs from entering the Baduy area is an effort to preserve nature. The nature conservation process is used strictly when building traditional houses made of wood and bamboo, using river stones as the foundation for the foundation, it can be seen from the land contour that is still sloping and not excavated to protect nature (Somantri, 2012).

In preserving nature, the Baduy community has a mechanism for customary sanctions imposed on violators. It is interesting to study related to how the customary sanctions system is applied and its effectiveness in preserving the environment in the Outer Baduy community.

This article is the result of research, which aims to describe the implementation of customary criminal sanctions used by the Baduy community in maintaining and preserving their nature and the effectiveness of the use of customary sanctions in preventing and overcoming actions that damage the environment of the Baduy community.

Research Methods

This research is a qualitative research in which this research uses qualitative methods which produce descriptive data in the form of words, notes related to the meaning and value, and understanding (Kaelan, 2012). The approach used is socio legal research by using secondary data as a normative or doctrinal approach as well as using a social approach to explore primary data in the form of values and interpret the behavior of local communities in solving customary cases, which resulted from interviews with traditional leaders.

In exploring primary data, the research was carried out in the Banten area in the interior of the Outer Baduy tribe community. The informants consisted of the Outer Baduy tribe community leaders, who were determined purposively, based on the ability to know and understand the social, cultural and religious situation in the research object under study. Secondary data were analyzed deductively, namely the process of searching for general truth by using the theories used in this study, while primary data were analyzed qualitatively through data reduction, data presentation, and conclusion drawing. Triangulation techniques in the form of checking the validity of the data for checking data or comparing data are used to assess the validity of the data in this study.

Results and Discussion

Moeljatno (1984) said that certain acts which were strictly prohibited in small communities throughout Indonesia, because they brought disaster not only to those who violated them, but also to society in general, which were known as acts of abstinence, taboo, punishment etc. The concept of this action is based on spiritual beliefs that bind and control people's behavior in indigenous communities (Moeljatno, 1984; Sudarto, 1990).

Unwritten legal systems, also called customary, folk, or indigenous law, do not merely belong to the past. In many societies they are part of a complex legal constellation. They govern such diverse areas as rights to land, water and forests, kinship and inheritance, but also political offices. These systems have undergone, and still are subject to, much change, under the influence of state legal systems, and due to economic and political change. They have been subject of both heated political and scientific controversy. For indigenous peoples, customary law is an important source of identity (Benda-Beckmann, 2001).

The importance of the Customary Law System for indigenous peoples is as an important source of identity, not only in the past but also in the present through various adjustments to the legal and political system merging into the country's legal system.

The importance of customary values in filling national legal policies as a state legal system can also be studied with the mirror theory that law is a mirror

of society, which functions to maintain the social order (Tamanaha, 2001). Law must be a reflection/mirror reflection of society, as a mirror of society, the law must reflect the values that live, grow and develop in the society.

Karl Von Savigny in Chambliss & Seidman (1971) argues that:

“Law is a function of the volksgeist, custom evolved out of people, the judges merely enforce the custom. The guiding force is the common consciousness of the people, an unitary, mystical force that, like Parson’s common set of value orientation is supposed to tie together the entire community.”

The view that law is a function of the spirit of the nation (volksgeist), so that local values which are the realization of the soul of the nation in custom must fill the national legal policy as a reflection of the spirit of the nation that must be upheld.

The Baduy community is a local community with an original culture that has not been mixed with modern culture from outside. Local values that are very positive and full of policies in managing society and the environment are based on living principles. The principles of life above which are believed from generation to generation by the Baduy community have positive implications in maintaining the harmony and balance of life between humans and nature as a manifestation of spirituality that must be kept sacred. The fear of natural anger which is considered to bring disaster or disease or death for actions violating customs is deeply embedded in the minds of the Baduy community. This creates awareness in the Baduy community to use nature as a source of life very wisely. The awareness that forests, mountains, valleys and their contents are the lungs of nature causes the Baduy people to be very careful in treating the lungs of life so that they are always able to pump the breath of life. The principles of preserving nature are closely held with the awareness that nature and its environment as gifts from God which have social, economic and spiritual meanings, must be preserved and must not be changed.

The simple life of the Baduy community is supported by the awareness of managing nature independently for farming (Ngahuma) based on the concept and

practice of the original natural conservation system from their ancestors, such as managing various kinds of biological wealth based on a spatial system colored with regional sacredness. The Baduy community practices an environmentally friendly farming system based on organic farming with a native agroforestry system that is reliable in dealing with pests, weather and climate anomalies, and the penetration of the global economy that enters the Baduy rural area (Iskandar, 2012).

This principle of life is very relevant in preserving nature, where the management of agricultural land and plantations (agriculture) is the mainstay of the life of the Baduy community as a livelihood, the results of which are used collectively in the Baduy community. Management of agricultural land and plantations is carried out in a sustainable manner. As stated by Sutisna (2019) that:

“The Baduy depends entirely on the agricultural sector, where the availability of agricultural land becomes very important. Baduy people have their customs related to the existence of agricultural land and have customary rights to the area and agricultural land. Baduy people have their customs related to the existence of agricultural land and have customary rights to the area and agricultural land. To ensure sustainable agriculture, the regulation of the local agricultural system, especially land use and management of the agricultural system is essential”.

In preserving nature, the Baduy community realizes this by dividing forest types, namely cultivated forest (which is used for life), Panisan forest (forest which is a source of water), and prohibited forest (forest that cannot be touched) (Rifa’i, 2017). The wise use of the forest environment will result in a natural balance that provides benefits, peace, prosperity and serenity for its inhabitants. On the other hand, natural disasters will arise if nature is used carelessly (Senoaji, 2004).

The attachment of the Baduy community to the environment in which they live and the relationship between community members makes each individual feel the same awareness to maintain the environment in which they live. This is in line with the research results of Hay (1998); Uzzell et al., (2002); Devine-Wright (2007); Low & Altman (1992); Giuliani, (2003); Hidalgo & Hernández (2001); Hernández et al., (2010) that:

“Place identity and place attachment are bonds that people establish with the surroundings in which they carry out their daily activities and go about their personal lives. Place identity, on the other hand, refers to a conception of the self that has been constructed on the basis of the place to which individuals belong and incorporates elements related to the public image of that place.”

“Place attachment implies affective bonds between people and their surroundings and the desire to maintain the relationship with the place over time and at different stages in their lives.”

The awareness of living with the Baduy community to preserve the natural environment and natural purity is agreed upon by the following customary prohibitions; a). It is forbidden to meet strangers; b). Use of transportation and vehicles is prohibited; c). Footwear is prohibited; d). Using electronic devices is prohibited; e). It is forbidden to nail the building; f). Machine sewing is prohibited; g). It is forbidden to build a bathroom at home; h). Building a school building is prohibited, and i). It is forbidden to build mosques (Interview with Ayah Murshid, 2017).

Baduy customary prohibitions in maintaining the purity of nature are related to preventing environmental pollution and the risk of violating the principles of life that are believed by the community. This is in line with the fact that (Ashford & Caldwell, 2015):

“The manufacturing, processing, and use of chemicals and materials in industrial workplaces are often accompanied by environmental, health, and safety hazards and risks. Occupational and environmental factors cause or exacerbate major diseases of the respiratory, cardiovascular, reproductive, and nervous systems and cause systemic poisoning and some cancers and birth defects.”

In protecting and preserving the environment against environmental pollution in the Baduy community, prohibitions on the use of chemical charcoal are stipulated and the construction of buildings or roads that are permanent in nature using building materials processed by factories. All actions that change the integrity of the natural construction are considered crimes against nature in the Baduy community, which includes (Interview with Sarpin, 2020):

1. Burning or utilizing mountains and protected forests for life;
2. To make modern buildings from permanent building materials, such as: walls with cement and sand. Buildings must use environmentally friendly materials such as wood for walls and coconut fibers as roofs;
3. Road construction with asphalt is prohibited because it changes nature;
4. Use of modern household appliances, such as gas stoves, use of soap and toothpaste, plastic or ceramic or glass cups.
5. Prohibition of clearing fields by hoeing, because it has the potential to cause landslides.
6. The use of footwear for indigenous people.
7. The burial of the body may not be made permanent, after 7 (seven) days the burial place can be opened for plantation or agricultural land;
8. It is prohibited to raise four-legged animals, such as buffalo, goats, cows and others, which are considered to have the potential to make the forest deforested to feed the livestock.

All of the aforementioned customary prohibitions must be obeyed, if they are not obeyed or violated, the customary law enforcement officers of *Baduy dalam* (inner Baduy) and *Baduy luar* (outer Baduy) will take persuasive action in the form of a warning. However, if the warning is not heeded, a trial or deliberation of the customary court will be held to impose a sentence in the form of expelling the perpetrator and his family from the Inner Baduy Traditional Village to move to the Outer Baduy Traditional Village (Interview with Ayah Murshid, 2017).

Punishment is not just to trap perpetrators who violate the principles of environmental preservation, but more than that punishment is needed to prevent violations of environmental offenses by other community members. This is as stated by Bentham (1962) who takes a crime approach with an economic approach, where by Ross Harrison (1989) explains in his brief outline of Bentham’s thought:

"[...] punishment is not retribution for past action, but prevention of future harms; obedience to the state is not because of some past promise, but to prevent future harms."

K. Von Benda-Beckmann (2001) said that:

Unwritten legal systems, also called customary, folk, or indigenous law, do not merely belong to the past. In many societies they are part of a complex legal constellation. They govern such diverse areas as rights to land, water and forests, kinship and inheritance, but also political offices.

The customary sanctions imposed on violators of environmental conservation are in the form of:

1. Birth Sanctions

This birth sanction consists of sanctions according to custom in the form of being excommunicated for 40 days at the Customary Head's House. Violators here are required to stay at the Customary Head's House to help with the work of the Customary Head. In addition, criminal sanctions are also imposed as threatened in the Law on Environmental Management as state law.

2. Inner Sanctions

This mental sanction is in the form of a Customary Ritual Ceremony called *Ngabokoran* in front of the customary institution. This *Ngabokoran* is followed by a statement that he will not repeat his actions which is called *Sumpah Batin*. With this inner vow it is believed that it will result in death, life without blessings, and sickness to the offspring. This sanction is believed to be more effective in protecting the environment because it is related to the mystical. It is the *Ngabokoran* sanction that makes environmental violations in Baduy very rare. If the perpetrator of the Baduy environmental customary violation dies before carrying out the *Ngabokoran*, then the *Serah Pati* sanction is carried out by the offspring of the perpetrator. *Serah Pati* sanctions are also imposed on perpetrators who repeat violations against the environment.

In the Baduy Customary Law, violations against the environment are categorized as serious offenses, because they are related to disturbances to the natural environment. So the settlement is also through customary

courts for serious cases. The belief in karma or a reward in kind for the perpetrator and his descendants if they commit a violation of nature preservation underlies a serious offense and the imposition of severe punishment for the perpetrators.

The resolution of these serious offenses must be carried out by customary courts, and it is not allowed for the settlement of deliberations between families. This is because a serious offense is considered an offense that is not only related to the individual perpetrator and victim, but this offense disturbs society and shakes or destroys the cosmos or spirituality and invites the anger of nature or ancestral spirits.

The resolution of this serious offense was carried out by the customary court which involved all customary court officials, the families of the perpetrators and the families of the victims, community leaders, and all structures of the indigenous peoples. Where the perpetrator must repent asking forgiveness from God and Nature which he destroyed through a *Ngabokoran* Traditional Ceremony.

Customary Sanctions held by the Baduy Customary Court, accompanied by criminal sanctions as stipulated in the Law on Protection and Management of the Environment Number 32 of 2009, which aims at keeping the environment in the Baduy community, namely protecting the territory of the Republic of Indonesia from pollution and/or environmental damage. In the context of realizing a preserved living environment, environmental protection and management shall be carried out based on the principles of state responsibility, the principles of sustainability and the principles of justice. In the context of economic, social and cultural utilization of the environment and natural resources, it must be carried out with the principles of prudence, environmental democracy, decentralization, recognition and respect for local and environmental wisdom.

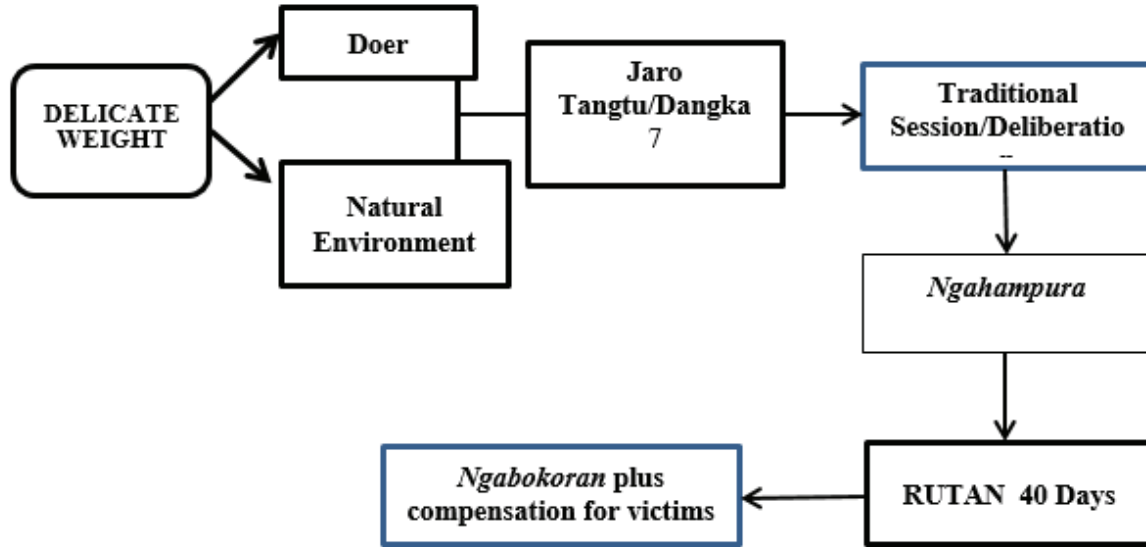
The process of imposing penalties for perpetrators of violations of nature conservation is carried out by customary officials. David Garland defines crime as a legal process in which offenders of a criminal law are reprimanded and subject to sanctions according to certain categories and legal procedures. This process is very complex, differentiated and composed of a chain of processes from the making of laws, the criminal process,

the imposition of crimes and the execution of crimes. Furthermore, it is said that:

“it involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions

and agencies for the enforcement of sanctions and a rhetoric of symbols, figures, and images by means of which the penal process is represented to its variation audiences.

The settlement scheme for Customary Environmental Violations in the Inner and Outer Baduy Communities



The serious offense settlement scheme through the Baduy Dalam and Outer Baduy customary courts shows that there is a settlement of offenses based on customary conferences for serious offenses that occur in the Outer Baduy and Inner Baduy areas which involve both the outer Baduy and Inner Baduy customary law enforcement officers. Even though they are in a different customary area, in resolving the serious offense, the customary law enforcers in the Outer Baduy and Inner Baduy areas are jointly administering the customary court/customary deliberation in resolving the offense.

In the event of serious offenses such as violations of the preservation of the natural environment involving spiritual interests, the roles of PUUN Cibeo, PUUN Cikertawana and PUUN Cikeusik as judicial leaders for cases brought by Jaro Tangtu Cibeo, Jaro Tangtu Cikertawana and Jaro Tangtu Cikeusik as public prosecutors. PUUN in the village where the case took place will lead the judiciary in assembly

with PUUN from other villages, in deliberations to take decisions, PUUN is assisted by Baresan, namely representatives from each village consisting of 9 (nine) people (each Cibeo village, Cikertawana, and Cikeusik 3 (three) people). Baresan is the party that gives consideration to PUUN on the charges and demands of Jaro Tangtu, in making decisions on the results of customary deliberations. In the implementation of customary justice, it must be attended by all structures of indigenous peoples and community leaders of Outer Baduy and Inner Baduy, as well as victims and perpetrators as well as victims ‘families and perpetrators’ families are required to attend.

Conclusions

The life of the Baduy community which is supported by agriculture and cultivation is very dependent on natural preservation. The maintenance and preservation of the environment in the Baduy community is very unique, where the principle of life from generation to

generation is upheld. Various ways to preserve nature through avoiding goods and modern life styles are carried out from generation to generation so as not to change the natural structure of nature and its environment. In preserving nature, the Baduy community provides guidelines for certain actions that their indigenous people should not do, such as burning forests, cutting trees in certain areas. The offenses were made into serious acts of which the punishment was in the form of *birth punishment* related to society and *inner punishment* which was spiritual in nature.

Conflict of Interest: There is no conflict of interest.

Source of Funding: This research was funded by the Diponegoro University Faculty of Law Research Grant Fund for the 2020 Fiscal Year.

Ethical Clearance: Ethical clearance from the institutional ethical committee obtained for the study.

References

- Ashford NA, Caldart CC. Environmental Protection Laws. Oxford: Oxford Academic Press. 2015.
- Benda-Beckmann KV. Folk, Indigenous, and Customary Law”, in N.J. Smelser and P.B. Baltes (Eds.), International Encyclopedia of the Social and Behavioural Sciences (pp. 5705-5708). Oxford: Pergamon. 2001.
- Bentham J. Principles of Penal Law. In J. Browning (Ed.), *The Works of Jeremy Bentham 1748-1832*. N.Y.: Russell & Russell. 1962.
- Chambliss WJ, & Seidman RB. *Law, order, and power*. Reading, MA: Addison-Wesley. 1971.
- Devine-Wright P. Reconsidering Public Attitudes and Public Acceptance of Renewable Energy Technologies: a Critical Review. School of Environment and Development, University of Manchester. 2007. Available at: http://www.sed.manchester.ac.uk/research/beyond_nimbyism.
- Giuliani MV. Theory of attachment and place attachment. In M. Bonnes, T. Lee, & M. Bonaiuto (Eds.), Psychological theories for environmental issues (pp. 137–170). Aldershot: Ashgate. 2003.
- Harrison R. Jeremy Bentham. In: Eatwell J., Milgate M., Newman P. (Eds.) *The Invisible Hand*, (pp. 53-60). London: Palgrave Macmillan. 1989.
- Hay R. Sense of place in developmental context. *Journal of environmental psychology*. 1998;18(1):5-29.
- Hernández B, Martín AM, Ruiz C, del Carmen Hidalgo M. The role of place identity and place attachment in breaking environmental protection laws. *Journal of Environmental Psychology*. 2010 Sep 1;30(3):281-8.
- Hidalgo MC, Hernandez B. Place attachment: Conceptual and empirical questions. *Journal of environmental psychology*. 2001;21(3):273-81.
- Interview with Ayah Murshid, the traditional leader of the Baduy Dalam, Kanekes September 30, 2017.
- Interview with Sarpin, the traditional figures Baduy Luar, July 14, 2020.
- Iskandar J. Baduy farming ecology: sustainable custom-based forest management [Indonesian]. Bandung: Alumni. 2012.
- Kaelan H. Interdisciplinary Qualitative Research Methods in the fields of Social, Culture, Philosophy, Arts, Religion and Humanities [Indonesian]. Yogyakarta: Paradigma. 2012.
- Low SM, Altman I. Place Attachment. In Altman I., Low S.M. (Eds.) *Place Attachment. Human Behavior and Environment (Advances in Theory and Research)* (pp. 1-12), vol 12. Springer, Boston, MA. 1992.
- Moeljatno P. Principles of Criminal Law [Indonesian]. Jakarta: Bina Aksara. 1984.
- Rahma R. Belajarlah dari Prinsip Hidup Suku Baduy. *Detik*. 29 Dec 2019. Available: https://travel.detik.com/dtravelers_stories/u-3786746/belajarlah-dari-prinsip-hidup-suku-baduy/4/.
- Rifa'i B. Tradisi Seba dan Prinsip Suku Baduy Jaga Keseimbangan Alam. *Detik*. 29 Apr 2017. Available: <https://news.detik.com/berita/d-3487454/tradisi-seba-dan-prinsip-suku-baduy-jaga-keseimbangan-alam>.
- Senoaji G. Pemanfaatan Hutan Dan Lingkungan Oleh Masyarakat Baduy Di Banten Selatan (the Uses of Forest and the Environment by Baduy Community in South Banten, Indonesia). *Jurnal Manusia dan Lingkungan*. 2004;11(3):143-9.
- Somantri RA. Sistem Gotong Royong pada Masyarakat Baduy di Desa Kanekes Provinsi Banten. *Patanjala*. 2012;4(1):137-51.
- Sudarto S. Criminal Law I [Indonesia]. Semarang: Yayasan Sudarto, Fakultas Hukum Universitas

- Diponegoro. 1990.
22. Sutisna T. The local farming system based on custom and tradition to achieve sustainable agriculture in Baduy indigenous community. In *IOP Conference Series: Earth and Environmental Science* (Vol. 383, No. 1, p. 012032). IOP Publishing. 2019.
 23. Tamanaha BZ. *A general jurisprudence of law and society*. Oxford: Oxford University Press on Demand. 2001.
 24. Uzzell D, Pol E, Badenas D. Place identification, social cohesion, and enviornmental sustainability. *Environment and behavior*. 2002;34(1):26-53.