

INDIGENOUS FIRE MANAGEMENT: LEGAL ANALYSIS AND LOCAL WISDOM IN CENTRAL KALIMANTAN

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Abstract

This study aims to analyze the position of the Press Council as a quasi rechtpraak in press freedom in Indonesia. The research method used is a qualitative method. The results showed that the handling of press cases involved special institutions that were not found in law enforcement in other cases, both ordinary and extraordinary crimes. The special institution referred to is the Press Council. According to the provisions of Article 5 paragraph (2) Law Number 40 of 1999 concerning the Press, the functions of the Press Council include determining and supervising the implementation of the Journalistic Code of Ethics and providing considerations and seeking to resolve public complaints on cases related to press coverage. However, if the case in question has been handled by the police, the Press Council will not handle the complaint. The mechanism through the Press Law has been recognized, and even based on a number of legal considerations in the Constitutional Court's decision, a case of press coverage without or not initiated through the process of using the Right to Reply or until settlement through the Press Council, is deemed incompatible with the Press Law and lawsuit or conviction. Over the case is likely to be defeated.

Keywords: Press Law, Press Council, Press freedom, Quasi-Rechtpraak, Journalism

A. INTRODUCTION

Forest and peatland fires in Central Kalimantan are caused by land clearing for oil palm plantations, the development of Industrial Plantation Forest (HTI), one million hectare peatland projects and land clearing for shifting fields. Land preparation is carried out by local communities or companies and other parties by burning. Land preparation by burning is done because it is more practical and effective, besides that it is also considered cheap, easy, fast and can fertilize the soil (Syaufina, 2008)

Dayak indigenous people in Central Kalimantan, which for generations have always relied on the method that has been done periodically, namely by burning land that has been cut down which is organic fertilizer for rice plants (Syaiyullah and Sodikin, 2014).

In burning the land used to plant rice, they have their own procedures that have been inherited from their ancestors, in which case they together with villagers to carry out the burning which later so that the fire can be maintained properly with the rule of not burning land from the Government, it is a dilemma for the local community and law enforcement, especially the Kalimantan Regional Police In the middle of applying rules that clash with the customs of the local community.

According to Firmasyah and Mokhtar (2011), there are two types of land preparation using fire, namely controlled burning and uncontrolled burning. Saharjo and Munoz (2005) stated that controlled burning is one of the methods used by smallholders in land preparation because they cannot escape fire in land preparation. Land preparation carried out by local communities using fire is carried out in a controlled manner guaranteed by law (Saharjo 2011).

Land preparation by controlled burning is usually carried out with their respective local wisdom in each region in Indonesia, one of which is in Kapuas Regency, Central Kalimantan. According to Akbar (2011), many people in Kapuas Regency, Central Kalimantan are still preparing land for farming with controlled burning. The results of research conducted by Akbar (2011) showed that most areas in Central Kalimantan in Mantangai Hilir village (95.8%), Katunjung village (95.8%), Lawang Kajang village (100%), Madara village (70.8%), and Batampang village (70.8%) cleared land for farming with controlled burning.

Legal construction that occurs in Central Kalimantan, how the perpetrators of forest and land burning carried out by indigenous Kalimantan communities (Dayak tribes) get appropriate legal treatment is not always faced with positive laws that are not in favor of local wisdom but must prioritize various parties and local customs so that the solution can be pursued by means of Restorative justice.

This is in accordance with the explanation of PP No.4 of 2001 Article 17 which reads "land fire management does not apply to indigenous or traditional peoples who clear land for their fields and plantations, unless the land fires reach outside the area of their fields and gardens. The burning was done deliberately in order to prepare fields and gardens".

B. DISCUSSION

1. Examining customary law that lives and develops in the Central Kalimantan

Examining customary law that lives and develops in the Central Kalimantan region, there is a law that is one of the bases for mutual agreement and becomes the law of unity of Dayak indigenous peoples, namely the Tumbang Anoi Peace Agreement of 1894, which contains 96 provisions of Dayak customary law.

Article 96 of the provisions of Dayak customary law, the Tumbang Anoi Peace Treaty of 1894 does not specifically stipulate customary sanctions for anyone who burns forests or clears land so as to damage forests and the environment.

1. Article 45 only regulates *related to Singer Karusak Ramu* or customary fines for damage to valuables.
2. Article 46 *Singer Hadat Tampuhan Ramu* or customary fine replacing damaged goods.
3. Article 48 *Singer Kehu Huma Lewu* or fines for burning people's homes
4. Article 49 *Singer Kehun Wreck Grave Snadung Delivery* or fine customary grave damage/fire, *brisket*.
5. Article 58 *Singer Pali Karusak Hinting* or *fine customary damage Hinting Pali*.

6. Article 87 *Singer Karusak Pahewan, Karamat, Rutas, and Tajahan* or customary fines of damage.
7. Article 96 "*Kasukup Singer Belom Bahadat*" which means "completeness of fines, customs, living courtesy/ethics/high morals".

Article 96 is very *flexible* to fill the legal void that has not been regulated in the Tumbang Anoi Peace Agreement, actions that are considered deviant and contrary to the expression *belom bahadat* then *these actions can be categorized as acts against customary law, this is the same as against material law or against unwritten law, because according to the explanation of the expression* *belom bahadat* is the key positive to the traditional personality value of the original heritage of the region, the hereditary heritage that covers the scope of fairy life and life and humanity in the physical, mental and spiritual sense. All actions that have not been regulated in the provisions of the Tumbang Anoi peace agreement, the implementation of which will be applied in accordance with the standard principles *of belom bahadat*, this will be used by local customary stakeholders to achieve harmony, sustainability and balance of the natural environment, birth and mind.

Based on several formulations of the provisions of customary criminal law articles contained in the Tumbang Anoi Peace Agreement of 1894 above, all of them are material crimes which means focusing on protected legal consequences, namely the prohibition of damage from actions committed, be it damaging valuables, damaging sacred or something sacred, burning houses, and destroying, although basically this Dayak customary law does not use criminal terms. In Dayak customary law contained in the Tumbang Anoi Peace Treaty of 1894, there is no distinction between customary civil law and customary criminal law, but reviewing the formulation of the provisions containing these provisions, plus provisions regarding customary rituals that must be carried out if they have violated the provisions of the articles in the Tumbang Anoi Peace Agreement of 1894 (Field of Law and Advocacy of the Dayak Traditional Council of Palangka Raya City, 2018)

Using the term treaty has a meaning and meaning that what is stated and written in the Tumbang Anoi Peace Agreement in 1894 is a law or regulation that is agreed upon and must be obeyed by the Dayak indigenous people in Kalimantan, especially Central Kalimantan. This thinking is in line with the opinion that law is born of agreement as the theory of the birth of the state according to Plato with the philosophy of idealism argues that the purpose of the state is born from the diverse wants and needs of humans so that they must work together to meet these needs. This unity of mind is called society or state (Soehino, 1998)

The essence of the state is a large family that maintains unity and constitutional theory is born from common desires and ideals that are agreed upon as consensus and subsequently embodied in the constitution or rule of law (Jimly Asshiddiqie, 2015). The theory of community agreement as a common will to obey the law is born based on consensus (Lili Rasjidi and Ira Thania Rasjidi, 2007). Based on the foregoing, the Tumbang Anoi Peace Agreement of 1894, apart from containing customary law that regulates the rights and obligations of all Dayak indigenous peoples on the island of Kalimantan, also as an agreement between Dayak tribes in

Kalimantan to stop slavery, inter-tribal wars and prohibit all kinds of bloodshed among Dayak tribe communities spread throughout the island of Kalimantan and even outside Kalimantan. This customary law is obeyed until now by all Dayak indigenous peoples, so that the Tumbang Anoi Peace Agreement in 1894 reflected the meaning that this law was born mutually agreed upon and obeyed together as a tool to achieve order and peace.

The Tumbang Anoi Peace Agreement of 1894 in writing does not regulate *Singer* to perpetrators who burn forests or land, because the indigenous Dayak people of Central Kalimantan have local customs or wisdom in terms of clearing forests or moving land for farming or agriculture or plantations by burning. This local wisdom has been carried out by indigenous Dayak people for generations, in relation to forests or land being opened to fulfill daily life, planting rice, vegetables, fruits and other plants. It is also the background to the absence of *singers* for anyone who burns forests or land for agricultural or plantation purposes in the Central Kalimantan region.

Burning forests or land by indigenous Dayak people in Central Kalimantan, is not a violation of customary law because it is carried out measurably and limited to only the land to be planted, burning forests is also not arbitrary but uses certain customary rituals so that the balance of magical religious life is not disturbed. Burning land is also believed to make the land fertile and easy to cultivate, and avoid pests or diseases.

Basically, not all acts of burning forests or land are not prohibited, everything that is done in an excessive way, especially to disturb the balance of human life with nature, the act of burning forests or land will definitely be prohibited and get punishment for contradicting the expression *belom bahadat*. Although the exception to the prohibition is not clearly stipulated and contained in the 1894 Tumbang Anoi Peace Treaty, it only exists on the measure of propriety values that live and develop within the indigenous Dayak community through the expression *belom bahadat*.

At present there is a shift, where humans are increasing and forests are getting fewer, while the need and awareness of a beautiful and healthy environment is the focus of the government and the international community, so that the government has a legal policy to preserve forests and the environment and maintain a balance between humans and nature so as not to be damaged and will actually harm humans themselves. Forest or land burning at this time in the Central Kalimantan region has been banned by the government so that anyone who burns forest or land will be subject to criminal sanctions.

The birth of a regulation that prohibits clearing forests or land for agricultural and plantation purposes by burning automatically changes the habit of indigenous Dayak people not to clear land or forests by burning. Forest or land burning causes haze and disrupts respiratory health and traffic activities both land, water and air. Forest fires in the Central Kalimantan region are among the largest, in addition to damaging flora and fauna and killing and damaging all kinds of living things that exist in their original life also forest or land fires can cause global warming which has become an international focus that must be prevented and overcome.

Forest or land fires in the Central Kalimantan region are very difficult to overcome, apart from the area that is burned very widely or fire spots spread throughout almost the entire Central Kalimantan region, forests or land in Central Kalimantan are mostly peatlands which if burned will cause very thick and dense smoke, peatlands that are burned are very difficult to extinguish due to the thickness of peat that enters below the soil surface, The fire has been extinguished above the surface but below the ground surface the fire remains burning and creating smog. Based on satellite data from the Meteorology, Climatology and Geophysics Agency on September 18, 2019, the number of hot spots in the Central Kalimantan region reached 11040 hotspots (Antara News, 2019)

The number of hot spots recorded by satellite images indicates that many forests or land in the Central Kalimantan region are burned, resulting in haze covering most of Central Kalimantan. This indicates that forest fires have become a disaster that must be overcome immediately. The phenomenon of forest and land fires that occurred in Central Kalimantan became a major idea behind the importance of Dayak customary criminal sanctions against perpetrators of forest or land burning. Customary criminal sanctions themselves are born due to criminal acts that are considered a violation of customary criminal law.

According to Nyoman United Putra Jaya, Ter Haar BZN's opinion is that to be called a customary crime, it must cause shocks in the balance sheet of society. The shock is not only found when the rule of law in a society is violated, but also when the norms of decency, religion, and manners in society are violated. Van Vollenhoven mentions customary offenses as impermissible acts (Lilik Mulyadi, 2012)

The criminal act according to national law is an act that violates criminal rules and is threatened with crime and the act can be held criminally responsible or criminal sanctions (Andi Hamzah, 2015). So that customary criminal acts are unilateral acts of a person or group of individuals, threatening or offending or disturbing the balance and communion life is material or immaterial towards one person or against a community in the form of unity. This action resulted in a customary reaction (Widnyana, 2013).

While the definition of customary criminal law is as the original Indonesian law that is not written in the form of legislation containing religious elements, followed and obeyed by the community continuously. Violating customary criminal law causes shock in society, because criminal acts disturb the cosmic balance of society, so that perpetrators are given customary reactions, customary corrections or customary sanctions or obligations by indigenous peoples through customary institutions or customary administrators.¹⁴

The concept of customary criminal law still refers to the concept of national criminal law, it's just that the difference is that customary criminal law originates from customs and is influenced by the flow of beliefs or beliefs, while national criminal law originates from laws and is closely related to the principle of legality. The term Criminal comes from the Dutch word straf or can be interpreted as punishment which in a narrow sense is suffering that is deliberately given, while according to Roeslan saleh then criminal can be interpreted as a reaction that occurs in the offense manifested as a sorrow that is deliberately inflicted by the state on the offense,

Sudarto argues that crime is suffering that is deliberately imposed on people who commit actions that meet the conditions certain (Wafdah Vivid, 2017)

This means that Dayak customary criminal sanctions are applied because they violate the Dayak customary criminal law in the Central Kalimantan region. Customary criminal sanctions themselves have an understanding as a customary reaction imposed on someone who has violated the provisions of customary crimes. The purpose of customary criminal sanctions is to restore the balance between the birth world and the supernatural world to bring a sense of peace in society (Widnyana, 2013). While the definition of criminal according to R. Soesilo, is a bad or miserable feeling imposed by the judge with a sentence to people who have violated the criminal law (Erdianto Effendi, 2011)

Developments that occur in the indigenous Dayak communities of Central Kalimantan, especially related to the habit of burning forests or land for agricultural needs, are no longer relevant, because the consequences of forest or land fires can cause haze disasters so that it may be considered to violate the value of propriety in the lives of indigenous peoples of Central Kalimantan, apart from the national law made by the government that prohibits burning forests or land, So it is appropriate for Dayak indigenous peoples through customary institutions and their tools to make customary law regulations that also prohibit burning forests or land and provide customary law sanctions in the form of *singers and* carry out customary rituals to everyone who violates customary criminal law, so that forests and the environment are maintained and sustainable.

This Dayak customary law regulation is carried out to harmonize Dayak customary law and national law so that there is no conflict regarding the prohibition of burning forests or land for agricultural or plantation purposes, as well as to emphasize that according to Dayak customary law there can no longer be forest and land burning in the Central Kalimantan region. The consideration for the imposition of customary criminal sanctions against perpetrators of forest or land burning is a conflict with the value of propriety that exists in indigenous Dayak peoples today. Dayak indigenous people actually become victims of haze disasters caused by forest or land burning. The environment has been damaged by forest fires, air pollution is at dangerous and unhealthy limits, indigenous Dayak people are blamed for the forest fires that occur.

Burning forests or land for agricultural or plantation purposes is a criminal offense under national law, and is a formal unlawful act because it is regulated in writing in the provisions of laws and regulations. Based on its understanding, formal unlawful acts are acts that violate laws and regulations, while material unlawful acts are unwritten unlawful acts, namely customary or customary law, propriety values, decency, decency and legal values that live and develop in society (*The Living Law*) (Nyoman, 2016).

While the unwritten law that regulates the order of life of the Dayak community in Central Kalimantan is the principle of *belom bahadat*. Anyone who commits an act contrary to this principle will be tried and punished. The sanctions of the Central Kalimantan Dayak customary criminal law are basically influenced by the beliefs of the Dayak indigenous people related to religion and beliefs held by most Dayak indigenous peoples. Dayak customary criminal law in

the Central Kalimantan region does not recognize any crimes against the body, but with customary fines or customary sanctions, namely in the form of *singers* and religious rituals that must be carried out to purify and restore the original state as before the violation of customary law or in other words rehabilitate something that has been damaged so that it becomes good again and rituals can be interpreted to correct mistakes that have been committed by perpetrators of violations of customary criminal law (Upara, 2014)

The basis for the application of customary criminal law to perpetrators of forest or land burning is against material law, namely violating the values of propriety that exist in Dayak indigenous peoples (*the principle of belom bahadat*). Forest or land burning was not prohibited, even allowed for land clearing with a certain or limited area and not excessive, while for large-scale and unlimited burning of forests or land, let alone excessive burning to disrupt human life and cause disasters, of course, it is still prohibited and violates the order of life and propriety values that exist in Dayak indigenous peoples. This means that Dayak indigenous communities also do not absolutely allow to burn forests or land, but still punish those who burn forests if done inappropriately (Upara, 2014)

Dayak indigenous people in their lives are very side by side with nature, Dayak indigenous people become one unity with nature and cannot be separated from each other, because the order of life of Dayak indigenous people always maintains the balance of humans with nature. Basically, everything that is done excessively will result in and bring bad things. For example, carrying out a massive hunting of animals will reduce game in their natural habitat and make their development less and will even lead to extinction. The measure to declare the act considered an act against customary law is the extent to which the act disturbs the balance of the order of human life with the creator, man with man and man with the surrounding nature.

These values are referred to as the values of propriety that exist in indigenous Dayak people. in this case Dayak customary norms which contain orders or prohibitions on doing things that disturb the order of life of the Dayak indigenous people. Morals are teachings about good and bad that are accepted by society, while norms are commands and prohibitions that must be obeyed (Santyoso, 2012). Dayak indigenous people are morals that are reflected in the order of life of the Dayak indigenous people themselves who live side by side with nature and the surrounding environment, and always prioritize goodness, truth and always do justice to others.

2. Comparison of Law and Local Wisdom about Forest Burning in Central Kalimantan region

The basis for the enactment of customary law in Indonesia is recognized as an unwritten law and has its own characteristics from each ethnic group that exists throughout Indonesia. Each customary law varies depending on the customs that have been traditionally maintained by each group of customary law peoples. The existence of customary law is clearly stated in the constitution of the 1945 Indonesian Constitution and other laws and regulations, so that customary law has its own scope and territory within the unity of national law. The existence of customary law is recognized by the state as long as it does not conflict with applicable laws and regulations.

In the midst of an increasingly advanced era, customary law still continues to survive with all its characteristics and problems, customary law that has a dynamic nature and always follows developments in society is required to be able to solve all problems that exist in the community side by side with national law. According to Van Dick, customary law has its own style, namely traditional nature, can change and adapt, which means customary law has a dynamic nature.

The function of law is basically to regulate and regulate people's lives and solve problems that arise in society. Expert opinion on the function of law: Lawrence M. Friedman argues that law functions as social control, dispute resolution and social engineering. Theo Huijbers, law has the function of maintaining the public interest, safeguarding human rights, realizing justice and means of social change. Satjipto Raharjo, the law serves as a confirmation of patterns of habits and behaviors found in society, directing to the desired goals, eliminating habits that are no longer appropriate, and creating new patterns. While the purpose of law according to Van Apeldorn is to regulate the order of public life peacefully and fairly. Aristotle's goal of law was justice determined by an ethical awareness of justice and unfairness. Soebekti, the purpose of law is to serve the will of the state, bring prosperity and happiness to the people (Efran Helmi June, 2012).

Dayak customary law regulation related to burning forests or land for agricultural or plantation purposes is needed and very important because it aims to bring order and change the habits of indigenous peoples so as not to burn forests or land, provide education to the community to protect forests and the surrounding environment so that they are not damaged and always beautiful and sustainable. The application of Dayak customary law must provide benefits to the community, as the school of utilitarianism states that the main purpose of law is benefit and happiness for the community (Darji Darmodiharjo, 1999)

Dayak customary law in Central Kalimantan must be able to respond to existing conditions in the community regarding the prohibition of forest or land clearing by burning, in addition to prohibiting, Dayak customary law must provide solutions for Dayak indigenous peoples in terms of forest or land clearing, facilitating the community in changing habits that have been carried out for generations and which are no longer in accordance with the current situation, Formerly gardening, farming, or farming can now turn into livestock or cultivate fisheries, this is presumably Dayak customary law in Central Kalimantan is in line with responsive legal theory that accommodates the wishes and conditions within the community to get justice (Philip Selznick, 2010)

Dayak customary law today should be in harmony with the situation of Dayak indigenous peoples who are affected by modernization and adjustment to the national legal system. So that Dayak customary law itself must also dynamically follow the development of changes that exist in society, as well as the theory of fundamental legal changes related to (1) elements of legal substance, the scope of legal rules, legal rules and legal principles, (2) elements of legal structure or institutions and their organization, and (3) elements of legal culture, namely the mindset and behavior of legal actors. For example, in national law has prohibited the clearing of forests or land by burning, Dayak customary law should also be harmonized with national law,

According to T.B. Bottomore, the theory of social change includes elements of social values, changes in social norms, changes in behavior patterns, changes in social organization, changes in the composition of social institutions, changes in layers of society, changes in power and changes in social interaction. In line with that, according to Grossma and Grossmann, changes in social rules include changes in individual rules, changes in group rules and changes in community rules, so that the law always dynamically follows and adjusts to the development of social change because the law functions to maintain, protect and serve the legal interests of the community and solve conflicts or conflicts that arise in society (Achmad and Wiwie, 2012)

At present, it is good for the Dayak customary law of Central Kalimantan to be used as the law that the Dayak indigenous people aspire to (*ius constituendum*) in the future that will respond and accommodate the wishes and conditions of the Dayak indigenous people in order to prosper and bring the Dayak indigenous people to a peaceful and peaceful life.²⁵ This customary law applies not only to indigenous Dayak peoples but to anyone living on the island of Kalimantan, and in the context of everyone who carries out forest or land clearing activities by burning, whether it is carried out by any person or legal entity, namely oil palm companies, mining companies and other companies operating in the Kalimantan region.

Dayak customary law has a role in overseeing sustainable development and as a form of strengthening national law, so it is not excessive if customary law is also applied side by side with national law in this case Dayak customary criminal law, where in the future discourse that forest or land arsonists are subject to national criminal law are also subject to Dayak customary crimes. The nature of the punishment that will be received by the perpetrator is layered, for example after undergoing a general court it will face Dayak customary court. Criminal confinement and fines are carried out by national criminals as usual while Dayak customary penalties will provide *singer or customary sanctions in the* form of customary fines determined from the high and low verdict of national criminal penalties and the severity of the perpetrator's actions or carried out independent examinations in Dayak customary courts, as well as perpetrators will be punished to perform customary rituals to rehabilitate from the external and spiritual side the situation that has been damaged.

The basis for carrying out Dayak customary justice for forest or land burners is the decision of a general court that has permanent legal force or the implementation of Dayak customary court conducting examinations autonomously is not affected by court decisions, but examines and considers and imposes customary sanctions based on mistakes that have been committed by perpetrators in accordance with customary justice mechanisms that have been implemented.

Forest and land burning is a criminal offense according to Indonesian laws and regulations including:

- 1) Article 187 of the Criminal Code, intentionally causing a fire and Article 188 for negligence causing a fire.
- 2) Article 69 letter h of Law 32 of 2009 concerning Environmental Protection and Management.
- 3) Article 50 paragraph 3 letter d of Law Number 41 of 1999 concerning Forestry.
- 4) Article 56 of Law Number 34 of 2014 concerning Plantations.
- 5) Article 2 of Regional Regulation of Central Kalimantan Province Number 5 of 2003 concerning Forest and / or Land Fire Control.

In 2008 there was a Central Kalimantan Governor Regulation which was considered very controversial with local wisdom propositions that allowed land clearing in the Central Kalimantan region by burning, namely Central Kalimantan Governor Regulation Number 52 of 2008 concerning Guidelines for Land and Yard Clearing for Communities in Central Kalimantan, which clearly contradicted the higher regulations above. However, with the issuance of Central Kalimantan Governor Regulation Number 49 of 2015, the Governor's Regulation allowing land clearing by burning has been revoked and declared no longer valid, so that people who clear land by burning will be subject to criminal sanctions as previously existing rules, namely Article 50 Paragraph (3) Letter d jo Article 78 Paragraph (3) of Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry *jo*. Regional Regulation Number 5 of 2003 concerning Forest and / or Land Fire Control.

Enactment of Central Kalimantan Governor Regulation Number 52 of 2008 concerning Guidelines for Land and Yard Clearing for Communities in Central Kalimantan *jo*. Central Kalimantan Governor Regulation Number 15 of 2010 concerning Amendments to Central Kalimantan Governor Regulation Number 52 of 2008 concerning Guidelines for Land and Yard Clearing for Communities in Central Kalimantan, is not without clear consideration. This Governor's Regulation responds to the situation of Dayak indigenous peoples and provides space for Dayak indigenous people to implement and carry out local customs or wisdom that have been passed down for generations in accordance with Article 69 paragraph (1) letter h of Law Number 32 of 2009 concerning Environmental Protection and Management which reads: "Everyone is prohibited from clearing land by burning and Article 69 paragraph 2 of the provisions referred to in paragraph (1) letter h pay close attention to local wisdom in their respective areas."

In terms of consideration in the past, forest clearing or land by burning can still be done because there are still many forests and there are still few people, in contrast to the current situation there are more and fewer humans and fewer forests, and if most of the indigenous peoples in Central Kalimantan clear land by burning, it will obviously cause haze disasters and do not rule out the possibility of causing casualties due to disturbances respiratory or respiratory infections due to breathing unhealthy air as a result of burning forests or land. In addition, there are parties

who take advantage of the Governor's Regulation that allows the clearing of forests or land by burning because in terms of the consequences caused by burning forests or land will threaten the survival of living things and the surrounding environment. So it stands to reason that the Governor's Regulation that allows communities to clear forests or land by burning is revoked and declared invalid because it is no longer relevant to the current situation.

The purpose of implementing Dayak customary criminal sanctions, in the form of fines (singers) *and customary rituals against perpetrators of forest and land burning in the Central Kalimantan region*, is to "Restorative Justice" compensate, rehabilitate, educate, and to protect the interests of perpetrators without harming victims of damage caused by forest or land fires and restore the balance of nature with humans through *the implementation of Dayak customary rituals* (Elwi Danil, 2016). Because as the purpose of law according to Gustav Radbruch is justice for balance, certainty for accuracy and expediency for happiness. Furthermore, Dayak customary criminal law also does not recognize corporal crime or confinement sanctions, there are only fines and performing customary rituals (Erwin, 2012)

According to the national crime, burning forests is a criminal offense as per Article 50 Paragraph (3) Letter d jo Article 78 Paragraph (3) of Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry:

Threatened (3) Whoever intentionally violates the provisions as referred to in Article 50 paragraph (3) point d, shall be threatened with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). The concept of implementing customary crime is to protect indigenous peoples from the threat of criminal sanctions as per the forestry law.

Justice here can be divided into justice for perpetrators, justice for victims both indigenous Dayak peoples, the state and the natural environment, because indigenous peoples who are directly affected are related to haze and respiratory disorders, the next victim is the state or the Indonesian government because the customary jurisdiction of Kalimantan is the territory of the Unitary State of the Republic of Indonesia and the existing natural resources belong to the state, Furthermore, the victims that must be prioritized are the burning natural environment and must be immediately rehabilitated to maintain the balance of life of living things. The value of legal certainty (Dirdjosisworo Soedjono, 1983) must also be enforced to ensure that perpetrators who violate Dayak customary law are punished and treated in accordance with the provisions of Dayak customary law that applies to victims.

The value of expediency is a very important consideration, namely Dayak customary law provides benefits to all Dayak indigenous peoples, provides the pleasure of managing natural resources in the Dayak customary law area of Central Kalimantan, gets clean air health regardless of smog, avoids natural disasters caused by humans, lives happily gets a sense of security because it is protected by Dayak customary law itself which is an indigenous custom society according to its religious beliefs. The goal of the highest law is justice, where everything is put in proportion, while the highest justice is God's justice which is absolute and indisputable by every creature.

The application of law is the implementation of legal norms on legal facts as a parameter to answer problems that arise (Abintoro Prakoso, 2015). The essence of the application of Dayak customary criminal sanctions against perpetrators who violate the values of decency that live and develop in Dayak indigenous communities is to maintain the balance of the life order of Dayak indigenous people, be it humans with God, humans with humans and humans with the surrounding nature. This is a very important value and is used as the basis for the implementation or application of a rule of law as Aristotle's thought on his philosophy of value, *Eidemonia*, which focuses on good and bad judgments if the goal is directed to happiness, if the goal is not happy then it is considered bad (Muhammad Alfian, 2013)

An even more important benefit in the application of Dayak customary criminal law is to foster a sense of legal awareness in the community (Ali Achmad, 2009) regarding the importance of protecting and preserving the natural environment, so that it no longer burns forests or land.

C. CONCLUSION

The life of the Dayak indigenous people is carried out based on Dayak customary law and based on beliefs derived from God almighty. The life of the Dayak indigenous people always maintains the balance of human life with nature. Dayak indigenous people always live side by side with nature, so that if anyone disturbs and disturbs the balance of the order of life, they will be subject to customary law sanctions, namely customary fines (*singer*). Acts that burn forests or land excessively resulting in haze disasters, health disruption and environmental damage are violations of Dayak customary law so that they can be said to be Dayak customary crimes and can be subject to *singers*. The measure on which the act can be categorized as a customary criminal act is to violate the unwritten law of Dayak custom in the form of propriety values in the form of disruption of the balance of humans with creators, humans with humans, and humans with their natural environment, so it is necessary to update the provisions of the 1894 Tumbang Anoi Peace Agreement which regulates the provisions of Dayak customary law that adapts to circumstances and changing times Aligned with the Dayak indigenous people's philosophy of life. Meanwhile, the benefits of implementing customary criminal sanctions against perpetrators of forest or land burning are maintaining the continuity of living things and the surrounding environment, as well as maintaining the balance and order of life.

Bibliography

- 1) Achmad, Ali. "Uncovering legal theory and judicial theory including interpretation of legislation legislation." *Bandung: Kencana*, 2009.
- 2) Achmad, Ali, and Heryani Wiwie. "Exploring the empirical study of law." *Jakarta: Kencana Prenada Media Group*, 2012.
- 3) Agus Santoso, H M. "Law, Morals & Justice: A Study of Legal Philosophy." Jakarta: Prenada Media Group. p-ISSN, 2012.
- 4) Alfian, Muhammad. "Introduction to the Philosophy of Value." *Bandung: Pustaka Setia*, 2013.
- 5) Legal and Advocacy of the Dayak Customary Council of Palangka Raya City. *Standard Operating Procedures for Dayak Customary Dispute Resolution in Palangka Raya City*. Palangka Raya: Dayak

- Traditional Council of Palangka Raya City, 2018.
- 6) Danil, Elwi. "The constitutionality of the application of customary law in the settlement of criminal cases."
 - 7) *Journal of the Constitution* 9, no. 3 (2016): 583–96.
 - 8) Darmodiharjo, Darji. "Dan Shidarta, 1999." *Fundamentals of Legal Philosophy, What and How of Indonesian Legal Philosophy*, 1999.
 - 9) Effendi, Erdianto. *Indonesian Criminal Law: An Introduction*. Refika Aditama, 2011.
 - 10) "The existence of customary law in the country's constitution after the amendment." *Pulpit of Law*, 2010. <https://doi.org/10.22146/jmh.16235>.
 - 11) Erwin, Muhammad. "Legal Philosophy: Critical Reflection on Law, Jakarta." Rawali Press, 2012.
 - 12) Hamzah, Andi. "Criminal Law." *Medan: PT Sofmedia*, 2015.
 - 13) Ibrahim, Johnny. "Theory and Methodology of Normative Legal Research." *Malang: Bayumedia Publishing* 57 (2006).
 - 14) Jaya, Nyoman United Men. "Customary Criminal Law (Sanctions) in the Reform of the National Criminal Law." *Legal Matters* 45, no. 2 (2016): 123–30.
 - 15) Jimly Asshiddiqie. *State constitution, dignified and democratic state praxis*. Malang: Setara Press, 2015.
 - 16) June, Efran Helmi. "Philosophy of Law." *Bandung: Pustaka Setia*, 2012.
 - 17) Latipulhayat, Atip. "Khazanah: Friedrich Karl von Savigny." *Padjadjaran Journal of Law* 2, no. 1 (2015).
 - 19) Marzuki, Mahmud. *Legal Research: Revised Edition*. Pretone Media, 2017.
 - 20) Mulyadi, Lilik. "The Existence of Customary Criminal Law in Indonesia: Principles, Theoretical Studies, Procedural Norms." *Journal of Law and Justice*, 2012.
 - 21) Prakoso, Abintoro. "Philosophy of Logic and Legal Argumentation." LaksBang, Yogyakarta, 2015. Rasjidi, Lili, and Ira Thania Rasjidi. "Using theories / concepts in analysis in the field of
 - 22) Legal Science." *Monograph, Padjadjaran University, Bandung*, 2007.
 - 23) Selznick, Philippe Nonet-Philip. "Law and Society in Transition, 1978, Responsive Law." *Translated by Raisul Muttaqien, Nusa Media, Bandung*, 2010.
 - 24) Soedjono, Dirdjosisworo. "Introduction to Legal Science." *Rajawali Press, Jakarta*, 1983. Soehino. *State Science*. Yogyakarta: Liberty, 1998.
 - 25) Susanti, Dyah Ochtorina, and others. *Legal Research*, 2015.
 - 26) Upara, Abdul Rahman. "The application of customary criminal sanctions against perpetrators of adultery is reviewed from the customary criminal law and national criminal law on the Tobati indigenous people in Jayapura." *Legal Pluralism: Journal of Law Science* 4, no. 2 (2014).
 - 27) Vivid, Wafdah. "Integration of Criminal Social Work in National Legal Systems."
 - 28) *Justitia Law Journal*, 2017. <https://doi.org/10.30651/justitia.v1i2.1148>.
 - 29) Widnyana, I Made. *Customary Criminal Law in Criminal Law Reform*. PT. Fikahati Aneska in collaboration with BANI Arbitration Center (Badan~..., 2013.
 - 30) www.antaraneews.com. Accessed date 19 September 2019.
 - 31) https://www.antaraneews.com/berita/1071136/11040-titik-panas-terpantau-di-wilayah-Central_Kalimantan

- 32) Law Number 48 of 2009 concerning Judicial Power
- 33) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles
- 34) Law Number 32 of 2009 concerning Environmental Protection and Management
- 35) Law Number 41 of 1999 concerning Forestry Law Number 39 of 2014 concerning Plantations
- 36) Regional Regulation of Central Kalimantan Province Number 5 of 2003 concerning Forest and / or Land Fire Control
- 37) Central Kalimantan Governor Regulation Number 15 of 2010 concerning Amendments to Central Kalimantan Governor Regulation Number 52 of 2008 concerning Guidelines for Land and Yard Clearing for Communities in Central Kalimantan
- 38) Central Kalimantan Governor Regulation Number 49 of 2015 concerning the Revocation of Central Kalimantan Governor Regulation Number 52 of 2008 concerning Guidelines for Land and Yard Clearing for Communities in Central Kalimantan and Central Kalimantan Governor Regulation Number 15 of 2010 concerning Amendments to Central Kalimantan Governor Regulation Number 52 of 2008 concerning Land and Yard Regulation for Communities in Central Kalimantan