



The Process of Resolving Criminal Acts of Taking Human Life Based on Hatam Tribe Customs in Manokwari

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Abstract: This study analyzes the process of resolving criminal acts of taking human life based on the customary law of the Hatam tribe in Manokwari, employing a normative juridical and socio-legal approach. As a living law sustained through collective legal consciousness, Hatam customary law prioritizes harmony, ancestral values, and restorative justice over retribution. The findings show that the Hatam community classifies the taking of life as a severe violation that disrupts cosmic balance, requiring settlement through customary institutions led by hereditary leaders. Customary sanctions ranging from material fines to ritual purification—aim to restore relationships between families and prevent inter-clan conflict. Through a socio-legal lens, this study demonstrates how customary mechanisms operate in parallel with national criminal law, offering a culturally rooted model of dispute resolution that often proves more effective in achieving lasting peace than formal punitive processes. However, challenges remain in harmonizing customary sanctions with positive law. The study argues for greater formal recognition of customary dispute-resolution mechanisms through regional regulations to strengthen culturally responsive, restorative justice practices within Indonesia's pluralistic legal system.

Keywords: Hatam Customary Law, Homicide Settlement, Manokwari, Restorative Justice, Socio-Legal Approach

1. Introduction

The customary legal system is based on unwritten rules that grow and develop and are maintained through the legal awareness of its people. Customary law is traditional and stems from the will of ancestors. Therefore, as a benchmark, every action is always returned to the sacred will of the ancestors. The unwritten source of customary law makes it straightforward and flexible, able to adapt to changing times. The main principles of customary law are propriety and harmony in community life. According to van Vollenhoven, customary law is described as a set of rules regarding the behavior of indigenous people and foreigners that have sanctions (because they are legal) and are not codified (Wulansari & Gunarsa, 2016a).

In customary law, authority is generally held by customary leaders or recognized customary institutions within a community. This authority is often hereditary and traditionally passed down, granting them the legitimacy to enforce customary norms and rules (Handayani & Prabowo, 2024). Customary leaders are typically respected individuals within the community for their knowledge of traditions, wisdom, and ability to understand conflict within the local cultural context. Furthermore, customary institutions, such as customary councils or customary assemblies, may also have the authority to handle violations of customary law.

Law, as a manifestation of values, means that its existence is to protect and advance the values held dear by the community (Faturachman et al., 2022). The existence and effectiveness of law are then measured by the extent to which it has realized this justice. Thus, moral justice has become the basis for legitimizing the existence and operation of law (Rahardjo, 2009). The constitutional status of customary law within the Indonesian legal system is the same as that of general law applicable in Indonesian state life

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(Widyastuti & Anam, 2024). Customary law recognizes crimes (*delik*) and explicitly states the types of crimes that must be resolved according to customary criminal law.

The national criminal law system generally has a criminal code that lists criminal offenses and applicable sanctions. The criminal justice process involves law enforcement, the prosecutor's office, and the judicial system, which are responsible for investigating, prosecuting, and trying violators (Kadri Husin & Budi Rizki Husin, 2022). National criminal law reflects societal values, moral norms, and government policies related to security and order.

Customary law has existed and is applied in the Hatam people's lives for a long time. The Hatam people interpret law as a command, which in the Hatam language is called *nikukti*. Broadly speaking, the laws or commands applicable to the Hatam people are similar to those in Arfak society in general, aiming to regulate daily life to maintain harmony and prosperity within the community. Murder is a customary crime with severe penalties in the Hatam community. In the Criminal Code (KUHP), murder is also a serious crime.

The development of customary criminal law is closely linked to the concept of restorative justice, where dispute resolution is not merely about imposing punishment, but also about restoring balance and reconciliation between the parties involved (Rochaeti & Sutanti, 2018). The socio-legal approach combines approaches from the social sciences with those recognized in law, such as studying the principles, doctrines, and hierarchy of laws. Therefore, sanctions in customary criminal law often include elements of rehabilitation, such as traditional ceremonies or customary fines for the injured party (Wiratraman, 2008). Customary criminal law, therefore, serves as a tool to strengthen social solidarity and maintain moral norms within the community.

Although several studies have examined customary law and criminal resolution in Papua in general, there is a significant gap in specific studies of the Hatam community in Manokwari. Most previous studies have focused on the customary law of the Arfak or other tribes in West Papua, leaving the unique characteristics of the Hatam—including local legal terminology, customary institutional structures, and murder dispute resolution practices—understudied. This gap raises the need to examine how the Hatam customary institutions specifically implement the resolution mechanisms for serious crimes, such as murder, including the role of customary leaders, customary procedures, and restorative values upheld by the local community.

Furthermore, the empirical basis for the urgency of this research can be seen in the pattern and frequency of murder cases recorded in the Hatam community. Field data demonstrates that although the number of cases is relatively low compared to other regions, each incident has a significant social impact, disrupting community harmony, and requiring resolution that is sensitive to customary norms. This social context, including close kinship ties and community solidarity, makes customary law resolution mechanisms more relevant than solely national criminal justice. Therefore, this research is crucial for identifying unique murder resolution practices and contributing to the development of customary law theory based on a restorative approach in Papua.

2. Materials and Methods

This research uses a normative legal research method (normative juridical) that focuses on the analysis of positive legal norms, legal principles, the concept of legal responsibility, and customary criminal practices. The approaches applied include the statute, the conceptual, and the case approaches. The legal materials used in the research consist of: (a) Primary legal materials, namely statutory regulations; (b) Secondary legal materials, namely legal literature, scientific articles, expert opinions, and legal analyses; and (c) Tertiary legal materials, such as legal dictionaries and encyclopedias, which help explain legal terms and concepts. Data collection techniques include library research, legal document reviews, and case studies from media reports or publications.

The analysis is conducted descriptively and qualitatively, namely by describing and interpreting the legal norms found, linking them to relevant legal concepts, and assessing

the extent to which these norms and concepts have or have not been implemented in practice (based on case illustrations). The results of the analysis will be linked to the formulation of the research problem to provide a comprehensive understanding of the resolution of the crime of taking a person's life based on the customs of the Hatam tribe in Manokwari.

3. Results and Discussion

3.1. Hatam Tribe Customary Provisions Regulating the Taking of Life

According to Moeljatno, a criminal act is an act prohibited by a legal regulation, accompanied by a threat or sanction in the form of a specific penalty for anyone who violates the prohibition (Moeljatno, 2002). In this definition, a criminal act is a judgment made by the state regarding how an ordinary act becomes a crime, a theory known as criminalization.

Customary criminal law does not use a system like Western criminal law (Nurchaesar & Arafat, 2021). The difference lies in its distinct spirit and purpose. Customary criminal law is inspired by Pancasila, imbued with magical and religious kinship, where the priority is not individual justice but rather family justice. The term "customary law" was originally pioneered by Snouck Hurgronje, who coined the term "adatrecht" in his work, "De Atjhers," which discusses the customs of the Acehnese people. The use of the term "customary law" was later further promoted by Van Vollenhoven. Customary law is defined by Van Vollenhoven as a collection of rules regarding behavior that apply to indigenous people and Easterners, on the one hand, which have sanctions (because they are legal), and on the other hand, are not codified (because they are customary) (Wulan-sari & Gunarsa, 2016b).

The customary law association, or what is referred to in constitutional language as the customary law community, is a socio-political order with historical and cultural roots that existed long before the concept of the nation state, with its positive law, was implemented in the Indonesian archipelago (Agus, 2017; Lesmana, 2020). Soerjono Soekanto stated that enforcing the law is not always easy due to many influencing factors, including the following: (a) The legal factors themselves (the regulations), (b) The law enforcement factors, namely the parties who create and implement the law, (c) The means or facilities that support law enforcement, (d) The community factors where the law is enforced or implemented (Mertokusumo, 1986).

Customary criminal sanctions are an effort to restore magical balance within customary law communities. In other words, these customary sanctions are an attempt to neutralize the turmoil that occurs as a result of customary violations (Apriyani, 2018; Kosmas, 2024). Thus, customary sanctions function as a stabilizer to restore balance between the physical world and the spiritual world. The forms of customary sanctions vary depending on the values and sense of justice of the community concerned. Ter Haar uses the term *delik*, or customary offense, to refer to a unilateral act that is expressly or implicitly regarded by another party as an action that disrupts the prevailing balance (Hadikusuma, 2003).

The Hatam tribe developed from the riverbanks (Minyei) Wariori (Udob or Udoba), precisely between Minyambouw and Catubou, namely Srat Village, Catubou District, Binggrayut Village, Catubou District, Kaungwam Village, Catubou District, Coisi Village, Minyambouw District, and its surroundings, Bukkwati Village, Ujehk Village, and its surroundings. Each village in the Manokwari area, in general, and in the Arfak tribe, is the smallest legal unit. Traditional leaders consist of formal leaders and informal leaders. Formal traditional leaders in the Arfak tribe generally consist of Menir or tribal chief, Moskur (deputy tribal chief), Runa ensis (war chief), and Dwebabah (head of hunters). Menir is the person who heads his tribe in the village from generation to generation, and as a traditional leader. The tribal chief's role is to resolve customary matters such as marriage, adultery, fines, land clearing, and land rights. He also serves as Otko Roffuroka (governing authority) and Syaukona Onetep (war leader). These duties are done for the benefit of both the villagers and other villagers.

Customary law has existed and been applied in the Hatam community for a long time. The Hatam people define law as a command, known in the Ha-tam language as *nikukti*. Broadly speaking, the laws or commands applicable to the Hatam community are the same as those in Arfak society in general, aimed at regulating daily life to maintain harmony and prosperity within the community. The Hatam and Arfak communities as a whole recognize 10 (ten) commandments or regulations to regulate community life. These ten commandments include: (a) *Prenta gom, anggimang mun au* (The first commandment: Thou shalt not steal) (b) *Prenta can, acutut hi nitnem au* (The second commandment: Thou shalt not commit adultery) (c) *Prenta ningai, ahwen mun au* (The third commandment: Thou shalt not kill), (d) *Prenta bitai, Apai pai wai or ambrap mbrap wai au* (The fourth commandment: Thou shalt not speak carelessly), (e) *Prenta muhwi, ayai/ abon mun di kinei au* (The fifth commandment: Thou shalt not take or do things carelessly), (f) *Prenta muhwindagom, asibut au* (The sixth commandment: Thou shalt not be angry/evil carelessly), (g) *Prenta muhwindacan, angon mpo au* (The seventh commandment: Thou shalt not be bitter/do not hold a grudge against others), (h) *Prenta muhwindaningai atri lindin au* (The eighth commandment: Thou shalt not sell property to kill someone/do not sell or bribe someone) (committing murder to others), (i) *Prenta muhwindatai, ambers kep hiter au* (The ninth commandment is not to reject problems to others), which actually means not to judge or accuse others. (j) *Prenta simnai, apigau hanjop au* (The tenth commandment is not to transgress boundaries).

In community life, the Hatam people recognize several things that are considered customary crimes. These customary crimes include the following: (a) Adultery (*ikos datyam nghapti*); (b) Murder (*ikimu kepyam/itodyat*); (c) Killing an animal (pig) without the owner's permission (*ingimang hide mindehe mikusi*); (d) Theft (*ingimang*); (e) Rape; (f) False accusations or slander (*mingon ko*); (g) Crossing land boundaries (*injilek hanjob*); and others.

In Hatam customary law, the act of taking another person's life is classified as a serious violation or customary sin that can threaten the safety of the entire community (a threat to natural and spiritual balance). Customary provisions generally differentiate sanctions based on intentional killing (*waya*) committed with premeditation or malicious intent. Customary sanctions are the most severe, often requiring exorbitant fines or even death, although this principle is often negotiated. Accidental killing (*nggai*) occurs due to negligence, accident, or a fight without intent to kill. Customary sanctions are lighter but still require a ransom for purification and reparation.

Cases of loss of life must be resolved through customary institutions, led by tribal or clan chiefs. The primary goal is to prevent tribal warfare and restore kinship between the victim's and perpetrator's families. The primary sanction is a customary fine, which the perpetrator's family must pay to the victim's family. The components of this fine are specific, including cash, pigs, traditional plates, or oriental cloth. The fine is not only material but also symbolic, serving as a cleansing of blood stains and a ritual to end mourning. The amount of this customary fine is determined through intense negotiation in customary courts.

Upon closer examination, customary criminal law often emphasizes the principle of restorative justice, which focuses on restoring social relationships rather than solely punishing. It reflects the distinctive character of indigenous communities, which prioritize social harmony and balance. However, in the context of a modern constitutional state, customary criminal law faces challenges in terms of harmonizing with the positive legal system, particularly the centralized and formal nature of national criminal law. Resolving violations of customary law is a process involving norms and rules recognized by a community based on customs and traditions passed down through generations.

Based on the expansion of the principle of legality, the latest Criminal Code implements living law as a manifestation of this expansion. It is stated in Article 2, paragraphs (1) and (2), which read: (a) "The provisions as referred to in Article 1 paragraph (1) do not reduce the validity of the existing law in society, which determines that a person should be punished even though the act is not regulated in this law; (b) The existing law in so-

ciety, as referred to in paragraph (1), applies in that legal place and to the extent not regulated in this law and in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by civilized society.

With the push to criminalize an act, the latest draft of the Criminal Code (KUHP) incorporates a different formulation from the legality principle in the current Criminal Code. The new Criminal Code includes provisions that emphasize that the application of the legality principle does not diminish existing laws within society. With the inclusion of these provisions, criminal acts based on existing laws are recognized. This serves as a form of fulfilling the sense of justice within society, which was previously known as customary law. The implementation of changes to the criminal articles within it will impact community life. One of the criminal articles in the new Criminal Code is the living law article, namely Article 2 of the Criminal Code, which states that the legality principle in criminal law is extended to include customary law within the community.

3.2 Socio-Legal Analysis of the Settlement of Criminal Acts of Loss of Life Through Customary Law

The biggest challenge in the Indonesian legal system is harmonizing the centralized and legalistic national criminal law with the local and contextual nature of customary criminal law (Rubi et al., 2024). The socio-legal approach serves as a bridge to understanding the intersections and conflicts between these two systems, not only identifying normative differences but also examining how indigenous communities interpret and respond to state regulations, as well as how law enforcers practically enforce customary law (Hutajulu, 2025).

Etymologically, socio-legal is an interdisciplinary approach that views law not only from a legal perspective but also through the perspectives of other disciplines (Mulyani, 2010). According to Banakar, socio-legal is an interdisciplinary approach that combines legal studies with social sciences, such as sociology, anthropology, and political science, to understand how law is applied in real life.

The essence of the socio-legal approach is examining the interaction between law and society and how law is practiced, accepted, or transformed by existing social and political dynamics. The fundamental differences between customary criminal law and national criminal law lie in their origins, sources, and scope. Customary criminal law is a legal system that grows and develops within a particular community, based on the traditional norms and cultural values held by that community. Meanwhile, national criminal law is a legal system recognized and implemented by a country to regulate behavior deemed to violate government-established norms.

In terms of legal sources, customary criminal law stems from traditions, customs, and local norms passed down through generations. Customary criminal law often reflects local values and focuses on harmony within society (Fadli, 2024; Handayani & Prabowo, 2024). In contrast, national criminal law is based on legislation enacted by a country's government. The sources of national criminal law include the constitution, criminal laws, and official regulations that bind all jurisdictions within the country.

In customary legal systems, authority is generally held by customary leaders or recognized customary institutions within a community. This authority is often hereditary and traditionally passed down, granting them the legitimacy to enforce customary norms and rules. Customary leaders are typically respected individuals within the community for their knowledge of traditions, wisdom, and ability to understand conflict within the local cultural context. Furthermore, customary institutions, such as customary councils or customary assemblies, may also have the authority to handle violations of customary law.

A socio-legal approach can be used to understand customary criminal law, a legal system that develops within a community (Sumanto, 2018). This approach can help understand the challenges in implementing criminal law, particularly related to social and cultural factors. The existence of social institutions that regulate the conduct and

order of society in Indonesia is reflected in the provisions of Customary Law, and similarly, the provisions of criminal law are contained in Customary Criminal Law (Wahab et al., 2024). Its existence as a social reality is a living law, followed and obeyed by customary communities continuously, from one generation to the next. Violations of the rules of order (customary criminal law) are seen to cause unrest in society because they are considered to have disturbed the cosmic balance; therefore, those who violate the crime are given customary reactions, customary corrections, or customary sanctions (Widnyana, 1993).

Customary criminal law often prioritizes the principle of restorative justice, which focuses on restoring social relations rather than solely on punishment. This reflects the distinctive character of indigenous communities, which prioritize social harmony and balance. However, in the context of a modern state governed by the rule of law, customary criminal law faces challenges in terms of harmonization with the positive legal system, particularly national criminal law, which is centralized and formal.

To fully understand this dynamic, a socio-legal approach is highly relevant. This approach not only examines the normative aspects of customary law and state law but also examines how these laws are implemented, interpreted, and accepted in social practices. In other words, socio-legal analysis attempts to bridge social reality and legal norms, thereby providing a more comprehensive picture of how customary criminal law is implemented and how it exists within the national legal system. The socio-legal approach is a method of legal analysis that combines normative legal studies with social science approaches. This approach views law not only as written texts or norms but also as social practices that exist within society.

In the customary law, this approach is highly relevant because customary law is essentially living law, not always written down but practiced and recognized by customary communities in their daily lives. Customary criminal law does not always conform to the formal and legalistic logic of national criminal law. Instead, customary criminal law stems from local values and is used to restore social balance. Therefore, a normative analysis alone is insufficient to understand how customary criminal law is implemented, accepted, and functions in society.

Despite being recognized as living law through law, customary criminal law faces serious challenges from the state's centralization and formalization. The state tends to incorporate customary law into the national legal framework, which risks distorting its restorative and local essence. A socio-legal approach plays a critical role by identifying the social impacts of these formalization efforts, which can weaken the authority of customary leaders or eliminate the contextual specificity of customary sanctions (Magnis-Suseno, 1984).

A socio-legal analysis examines how Hatam customary law interacts with positive law (the Criminal Code) in resolving murder cases. The Hatam tribe's customary settlement process has proven highly effective in achieving restorative justice. This success lies in the ritual of imposing fines that compels reconciliation and collective acknowledgment of wrongdoing. This settlement results in sustainable peace at the grassroots level, an outcome often unattainable through the retributive approach of the state legal system alone.

In the context of customary criminal law, sociological and anthropological dimensions are highly dominant. Violations of customary norms (customary offenses) are not merely seen as unlawful acts but as actions that disrupt the cosmic balance or social harmony within the community. Customary responses (sanctions) are therefore not solely aimed at revenge (retributive), but fundamentally at restoring the disturbed balance, both between the disputing individuals and between individuals and nature or ancestral spirits. A socio-legal approach helps unpack this logic of restoration, which is deeply tied to local cultural value systems (Rahardjo et al., 2004).

Customary sanctions in the Hatam tribe take the form of fines or specific rituals aimed at purifying or restoring the victim's honor. It differs from the primary sanction under national criminal law, which is imprisonment. Through a socio-legal approach,

these differences can be analyzed not only structurally but also in relation to the social function of each sanction. Prison serves to separate the offender from society, while customary sanctions often aim to reintegrate the offender into the community after undergoing a process of recovery.

4. Conclusions

Hatam customary law views the loss of life as a serious violation that threatens communal and spiritual balance. These customary provisions are powerful in classifying crimes and have the primary goal of achieving lasting peace and restoring harmony (restorative justice). A socio-legal analysis of the resolution of loss of life cases reveals a functional dualism between customary law and positive law (the Criminal Code), operating in parallel. Although criminal investigations are still conducted by law enforcement officials, resolution through customary courts is a mechanism more trusted by local communities to prevent revenge and restore kinship ties.

Hatam customary law views the loss of life as a serious offense that threatens communal and spiritual balance. These customary provisions are very strong in classifying crimes and have the primary goal of achieving lasting peace and restoring harmony (restorative justice). A socio-legal analysis of the resolution of cases of loss of life reveals a functional dualism between customary law and positive law (the Indonesian Criminal Code), operating in parallel. Although criminal investigations are still carried out by law enforcement officials, resolution through customary courts is a mechanism more trusted by local communities to prevent revenge and restore kinship ties.

With the enactment of Article 2 of the new Indonesian Criminal Code, which recognizes "living law," there are important normative implications for the scope of Hatam customary resolution. This recognition legitimizes customary resolution practices as long as they align with national legal principles, allowing customary actions and sanctions—such as customary fines, healing rituals, or kinship reconciliation—to be officially accommodated without conflicting with the Indonesian Criminal Code. This strengthens the position of customary law as a restorative instrument that can synergize with positive law, while also providing legal certainty for the Hatam community in handling criminal acts of murder.

5. Recommendations

Encouraging regional initiatives to integrate customary dispute-resolution mechanisms into the framework of Regional Regulations (Perda) serves as a form of formal recognition and legal protection for the existence of customary institutions. Such regulations may grant discretionary authority to customary bodies to resolve minor criminal offenses or offenses with strong socio-cultural dimensions before the cases proceed to the general judiciary. This approach aligns with the concept of *living law* recognized within the national legal system. By applying a culturally informed restorative justice approach in handling cases in Manokwari—particularly those involving inter-clan offenses—local justice processes can be strengthened and made more contextually appropriate.

Encourage regional initiatives to integrate customary settlement mechanisms within the framework of Regional Regulations (Perda) as formal recognition and legal protection for the existence of customary institutions. Perda can grant discretionary authority to customary institutions to resolve minor criminal cases or crimes with strong socio-cultural dimensions, before the cases are tried in general courts. This aligns with the concept of living law recognized in the national legal system. This is done by implementing a culturally informed restorative justice approach in handling cases in Manokwari, particularly those involving inter-clan crimes.

The socio-legal approach emphasizes the understanding that the Hatam community places greater trust in customary mechanisms because customary practices are rooted in cultural values, community solidarity, and strong kinship structures. Settlement through customary courts is considered more effective in preventing retaliation or ongoing conflict because it targets restoring relationships between disputing parties, rather than

simply imposing sanctions. Thus, the integration of a socio-legal approach in the formulation of local policies can explain why customary institutions obtain high social legitimacy, while also providing an empirical basis for local governments to support formal customary settlement practices through Regional Regulations.

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