

Psychological Analysis of Jenang Kutei Judges in Delivering a Verdict of Matai Bilai and *Cuci Kampong* (Purification Ritual) in Rejang Lebong Regency, Bengkulu Province, Indonesia

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Abstract

Jenang Kutai judges or judges of custom law are judges that are selected from traditional leaders, community leaders or religious leaders. They are highly respected as they are considered as a role model and are prestigious in the society. Well-mannered characteristics owned by custom law judges is underpinned by their maturity balanced with applicable norms in the society. As a judge, *Jenang Kutai* judge should be calm, assertive, fair, and bold in making decision or delivering a verdict. This is done in order to enforce the law. Even though sometimes such judges psychologically have sympathy for the defendant, they have to pass sentence because people they believe that God's punishment through hazard disaster will come for those who commit the crime and do not enforce the law.

Keywords: Psychology, Jenang Kutei, Tempung Mata Bilai Verdict, Cuci Kampong, Rejang Lebong Society

Introduction

The acknowledgement of custom law is officially ruled by and stated in the second amendment of The 1945 constitution of the republic of Indonesia article 18B paragraph (2) that states "*The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.*"⁽¹⁾

According to Soerojo Wignjodipoero, the existence of custom law is underpinned by the decisions in the society, particularly decisions made by society leaders concerning law enforcement activities.⁽²⁾ The aforementioned decisions are made for any kind of disputes and should be based on the result of deliberation. Such decisions are made by considering the values exist in the society and applicable within the society itself.⁽³⁾

Katrina Cuskelly defines custom law as "the custom and usage with law enforcement power". However, there is a possibility that custom law refers to custom acceptance and appropriateness since certain society members have already obliged to certain custom or after being regulated by state court. These two interpretations may result different meaning. In this case, the most comprehensive understanding on the definition of custom law is given by the constitution of Papua New Guinea.⁽⁴⁾

The definition states that an ethnic custom law is indigeneous law that is specifically applicable for certain society or ethnicity. On the other hand, Islamic law is certain law that is applicable along with the custom law and is applied based on the religion of its citizens. Oji continue states that the application of these laws dualism is influenced by British colonial law.⁽⁵⁾

Law of the Republic of Indonesia about village regulates the formation of institute of indigeneous village (Article 95) and village people (Article 96) under certain conditions. Therefore, there are efforts in discussion how to apply custom law along with common law, even though such efforts are not significant yet.

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The existence of *Jenang Kutei* as an indigeneous institution and *Kelpeak Ukum Adat Ngen Riyan Ca'o Kutei Jang* as the guidance for the people of *Rejang* tribe is in line with the statement of Von Savigny in which this called as *Volkgeist* or the core of the state. In this case, law is a reflection of *Volkgeist*, or the battle of human and space and time. *Volkgeist* is a concept of faith, context and locality⁽⁶⁾.

As a law enforcer in a court, a judge should have high integrity and be professional. Moreover, a judge also needs to gain trust from the society and justice seekers in order to perform his duty fairly. One of the characteristics that the society considers in trusting a judge is from his behavior, both in workplace and in daily life. In this case, integrity and dignity are closely related to personal trait and well-mannered character.⁽⁷⁾ Concerning the selection of *Jenang Kutei* judges, only selected people or the society leaders having comprehensive understanding about its custom and healthy psychology that may be selected for this position⁽⁸⁾.

Therefore, this present article aims to analyze how the psychological condition of *Jenang Kutei* judges in making decision of *Tempung Matai Bilai* and *Cuci Kampung* (a form of purification ritual) in *Rejang Lebong* regency, *Bengkulu* province.

Method

This study was a legal research in health. It employs qualitative, non-doctrinal approach.⁽⁹⁾ Data were collected using study of documentations or secondary data, then analyzed descriptively.

Findings and Discussion

The abundance of problems or conflicts happen in the society requires indigeneous judges or *Jenang Jutei* as the decision maker to fairly participate and decide the case according to the applicable custom law. They have to consider their decisions according to the *Kelpeak Ukum Adat Ngen Riyan Cao Kutei Jang*. For example, if there is a man who commits sexual assault, he will be charged with certain punishment in custom law as follow:

(1) *Conducting certain purification rituals. Those activities are not allowed to be conducted at night (however, in the case of Tempung matai bilal, the activities are no longer conducted as they were considered extreme under the new BMA leader)*⁽¹⁰⁾.

The other sanctions are fined as much as murder case (2) fine charged to female criminals is based on the demands approved by the male side. (3) The criminals are whipped 10 times by using a hundred pieces of small sticks⁽⁷⁾.

Another example of punishment is given to someone committed premarital sex. For such criminal, she is obliged to slaughter a goat. The slaughter is conducted after the baby is delivered. For the family who does not obey the law, a simple punishment is available. According to *Kadirman*, the punishment is limiting their social interaction⁽¹¹⁾.

Jenang Kutei judges should be selected from traditional leaders, community leaders or religious leaders. They are considered as selected person that this selection is officially authorized and stated in the decree of reagent. Currently, there are only three *Jenang Kutei* judges. Formerly, there were 20 judges, and then it remained five judges, and now there are only three judges. As judges, *Jenang Kutei* are highly respected as they are considered as a role model and are prestigious in the society.⁽⁷⁾

This make they are considered have stable state of psychological condition. As the results, they are trusted to make wise decisions. Their wisdom proves that such judges are able to survive in the middle of new culture diversity. Such judges have the ability to accommodate the elements of other culture and integrate their own culture with the development of other aspects in life⁽¹²⁾.

Well-mannered characteristics owned by custom law judges is underpinned by their maturity balanced with applicable norms in the society. Well-mannered person always use his/her sense, thought and careful consideration in everything he/she does. In other words, each action that is performed is logical. Noble attitude of judges indicates that being a judge is a noble job or *officium Nobile*. A profession particularly that is based on professional ethics and has been recognized by public is considered as a noble job or *officium nobile* if it consists of following aspects: solid professional association, professional standard, professional ethics, public recognition and formal educational background.⁽¹³⁾ The main duty of a judge is to fairly adjudicate every case filed to the court according to the applicable law without distinguishing people based on their ethnic, religion, race, profession or social status.

Judges' duty in adjudicating cases actually has two

interpretations; enforce justice and enforce the law. In term of enforcing justice, the main duty of a judge is to enforce justice without having extension to the law. As a law enforcer, a judge not only has to enforce justice but also have to reinforce the broken law⁽¹⁴⁾. One of the examples is concerning sanction for adulterer or rapist that is decided by the Village Consultative Body. The decided sanction is to conduct *Cuci Kampung*, a form of purification ritual and *Tempung Matai Bilai*

In delivering sentence or making decision toward the violation of custom law, the decisions made depend on the minority or majority of the violation itself. For minor violation, some sanctions given include reprimand, warning letter, apology or obligation to conduct alms giving ceremony or purification rituals. For more severe, major violation, the decided sanction usually include being excommunicated or outcasted from the society.⁽¹⁵⁾

Aharon Barak states that the duty of judges is not only to resolve disputes, but judges also have responsibility to bridge the gap between citizen and the law⁽¹⁶⁾.

According to Glendon Schubert, judges are ordinary people. Thus, it is assumed that judges and people involved in a case are human biological substance in term of personality. In this case, there are three main psychological function of personality substance, namely perception, cognition, and decision-making. Glendon Schubert employs behavioral jurisprudence analysis in analyzing judges' behavior.⁽¹⁷⁾ The result shows that there is a process of interaction and communication, interest articulation and aggregation. It also explains that personality variable is correlated with social and cultural spaces. Cultural spaces refer to widely-accepted pattern of faith and social values such as myth, custom and law. The contents of social spaces itself tend to be ideological values instead of direct, observable activities.

In regard to legal culture, Lawrence M. Friedman defines it as legally oriented values, ideas, attitudes and behavior.⁽¹⁸⁾ The overlapping socio-psychological segment between personality and social system is closely related to individual socialization and recruitment. Such segment is also correlated to one's attributes and behavior

Psycho-cultural segments in which personality and cultural system are overlapping is one's individual conception of his roles and ideology. Therefore, its three subsystems namely personality, social and culture share the same meeting point with segments of socio-

psychological, psycho-cultural and sociocultural. Due to the complexity of the problem judges and court may encounter, it is no longer comprehensive if the theory frameworks that are used to analyze the case are legal sociology and anthropology approach. Instead, it also needs legal psychological approach.⁽¹⁸⁾

Legal psychology or psychology of law perceives law as an embodiment of one's developmental psychology. This discipline analyzes one's legal behavior that may become the representative of certain psychological symptoms as well as the psychological basis underpinned that certain behavior. The study of legal psychology emphasis on psychological factors that influence one or people's behavior in every legal action they do. For example is judge's behavior or attitude in investigating, adjudicating and making decision. Judge's psychological condition may affect his ability in making decision or delivering the verdict. This situation is also applicable for the other law enforcement officers. As for the last segment, sociocultural segment is closely related to social and cultural system that represents the organizational pattern and accommodation and regulation output function from one's behavior.⁽¹⁹⁾

The use of custom law as the legal basis to solve cases occurred in society is considered due to the characteristic that custom law is not contradictory with society's interests. That is why there is a correlation between legal existence and its effectiveness. Legal effectiveness refers to a condition that certain law has achieved its goals. It means that the certain law has been completely, legally applicable.⁽²⁰⁾ In this case, custom law is applicable because it is a part of law originated from customs, social principles that are made and protected by authoritative leaders and functioned to control legal relations within the society.

Village people always identify themselves as an integrated part of the universe in a related, dependent and influential relation. The most important thing is how they can create harmonic, balanced atmosphere between society and the surrounding area. In other words, it can be said that the reputation of Indonesian people is formed and built from the reputation of village people.⁽²¹⁾

Conceptually, the core and the meaning of law enforcement is in the actions of balancing the correlation between values described in consistent, manifest principles and people's behavior as the elaboration of the last value. This is aimed to create and maintain peace

As a judge, *Jenang Kutai* judge should be calm, assertive, fair, and bold in making decision or delivering a verdict. This is done in order to enforce the law. Even though sometimes such judges psychologically have sympathy for the defendant, they have to pass sentence because people they believe that God's punishment through hazard disaster will come for those who commit the crime and do not enforce the law.

It is in line with what is stated by the law "... after a decision has been determined, Tepung Tawar ritual or purification ritual is conducted as a form of purification or the village people called as a way to make the situation in harmony as former/ original situation. According to the traditional leader, in Tepung tawar ritual, a bowl of rice water added by sergayau (an endemic plant), turmeric and pumpkin leaves are used. The traditional leader, then, splashes the mixed water into the palms of the people in dispute. It is done to symbolize that the dispute is settled without acrimony."⁽²²⁾

Conclusion

Jenang Kutei judges should be selected from traditional leaders, community leaders or religious leaders. They are considered as selected person that this selection is officially authorized and stated in the decree of regent. As judges, *Jenang Kutei* is highly respected people as they are considered as a role model and are prestigious in the society.

As a judge, *Jenang Kutai* judge should be calm, assertive, fair, and bold in making decision or delivering a verdict. This is done in order to enforce the law. As a judge, *Jenang Kutei* should be psychologically assertive in making decision and giving sentence. That is why only selected people (traditional or religious leaders) that have good condition of psychology ad socio-culture that is eligible to be a judge in custom law.

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