



Several Customary Violations in the Waropen Customary Law Community of Papua Province

¹Daniel Tanati*

danieltanati3@gmail.com

Faculty of Law, Cenderawasih University, Jayapura-Papua, Indonesia

ABSTRACT: This study aims to determine several customary violations in the Waropen customary law community of Papua Province. The research method used is empirical, which is by observing the reality that occurs directly in the field. The results of this study reveal that several customary violations in the Waropen customary law community of Papua Province can be seen from the villages in 4 (four) districts, namely: Maserei, Urei Faisei, Waropen Bawah and Oadate districts, if classified into Offenses against the body and life, Property offenses, Offenses against a person's honor, Offenses against morality and other violations. Although the name of the offense is the same, the term in the local language and the fines are also different between one district and another. While conventional forms of sanctions develop in accordance with the sense of justice of the community. In addition, sanctions must be eliminated because they are no longer in accordance with widely accepted principles. In the villages of Waropen Regency, fines are a common form of punishment. However, during the peace process, there are traditional rituals that are believed to have sufficient power to neutralize community disturbances.

Keywords: Customary Violations, Waropen Customary Law Community.

Received: 20 March 2024

Received: 23 May 2024

Accepted: 07 August 2024

1. Introduction

Law in a broad sense is one way to regulate human life in society, as part of the values and norms of a wider society. The purpose of law as a social regulation is to maintain order. Law as a rule can be found in various forms: written and unwritten rules, judges' decisions, and decisions of other community institutions. In essence, law is the crystallization of various social forces that exist in the society concerned, which can also actually provide form and determine the form of law that applies in the society concerned.

As social beings, humans always live in groups. Everyone who lives in a group has interests, both individually and in groups, that must be fulfilled. It will be easier for them to achieve their goals or protect their interests by working together with others. Given that humans are weak creatures in facing threats to themselves or their interests, they will be stronger in facing threats if they work together with others in groups or live together. Society is a collection of people. To protect interests, society sets standards of living that regulate how people should act so as not to harm others or themselves (Soerjono Soekanto, 1983).

Humans have a desire to live orderly lives basically, although the behavior resulting from these interpersonal needs varies. In social life, a guideline or benchmark is needed to achieve this order. These views can be a container for various perspectives on order, which were previously personal views. These standards or standards are usually referred to as norms (Purnadi Purbacaraka and Soerjono Soekanto, 1983).

Legal norms determine the pattern of relationships and values of society, so that there are clear

boundaries for patterns of behavior that conflict with the values of society. Here, relationships involve interaction or mutual stimulation and individual group responses. Four types of social interactions always occur in this type of social interaction (Soedjono, 1977):

- a. Cooperation or mutual cooperation, where individual relationships work well together in social interactions so that everything runs smoothly and there is no significant tension.
- b. Competition or rivalry, where feelings of wanting to excel arise in social interactions between strong forces. Tension will certainly not occur if this happens healthily; however, if this happens the other way around, it can cause conflict.
- c. Conflict or dispute, where certain social forces fight with other social forces, causing social tension.
- d. Accommodation or re-settlement, where elements of social interaction handle tense situations, so that society is orderly again.

As a possibility that occurs in social interaction, this phenomenon can occur anywhere, including in villages in Waropen Regency, Papua Province. At certain times, there is harmony between fellow citizens, where people relate well to each other, but at other times, the actions of individuals or groups of people cause social tension. If a resolution has been attempted, the tension can be restored by forcing a restoration effort, which is carried out by the person who violated it.

In addition, Ter Haar explained that a violation (*delict*) is defined as a unilateral act that is not justified by another party, either openly or secretly, which causes a disturbance of balance (*evenwichtsverstoring*). According to Ter Haar's previous understanding, an act that is considered a *delict* must disrupt the balance of society. This imbalance includes tangible and intangible acts. In contrast, customary crime is defined by Bushar Muhammad as: "a unilateral act by an individual or group of people, which threatens or offends or disturbs the balance and life of society, material or immaterial, against an individual or against society in the form of a unit. This act results in a customary reaction" (Bushar Muhammad, 1983).

Soepomo did not set any limits on customary crimes in the meantime. It was only explained that in the customary law system, any action that is contrary to customary law regulations is considered unlawful. In addition, customary law recognizes efforts to improve the law if the law is violated (Soepomo, 1983). In this article, the concept of customary crimes is defined as an act that violates the sense of justice and propriety that exists in society, thus disrupting the peace and balance of society and requiring customary reactions to restore that peace and balance.

An explanation of the customary society can certainly be found in the literature on customary law which contains a comprehensive view of customary law. This shows that before continuing with the discussion of positive law and the relevant society, an explanation of the problem of customary law society is needed. Soepomo responded to this problem by saying that to know the law, one must primarily investigate how and where the legal association body in which people who are controlled by the law live their daily lives.

Custom violations are not something new, they have existed since ancient times, whether in any part of Papua, there must be violations of customs and rules and sanctions applied in the midst of its customary law community. Both the sanctions that have been set also already exist, only in each region or tribe in Papua, including Waropen, they have their own terms for actions or violations made, as well as the sanctions and fines applied must be different from one to another.

2. Theoretical Overview of the Main Concepts

According to Ter Haar (Ter Haar, 1978), violation (*delik*) is defined as any unilateral disturbance (*eenzijdig*) to the balance and any clash and bias against the material and immaterial life goods belonging to an individual or many people who form a group. Such acts cause reactions whose nature and magnitude are determined by customary law, namely customary reactions, because the reaction is balanced and can be restored by paying compensation in the form of goods and money.

According to Ter Haar, (Ter Haar, 1978) what is considered a violation (delict) is: "every one-sided disturbance (eenzijdig) of the balance and every one-sided collision of the material and immaterial life goods of a person, or of a multitude of people who form a single unit (a mob); such actions give rise to a reaction the nature and extent of which is determined by customary law, namely customary reaction (adatreactie).

Legal officials must take action if something disturbs this balance. With the emergence of new regulations, customary criminal acts can emerge, develop, and then disappear with changes in the sense of justice in society. Changes will roll along with the development of society over time. In the same way, conventional crimes emerge, develop, and eventually disappear. This means that things that were initially considered violations can eventually no longer be considered violations. All of this happens after a sense of justice emerges in the society concerned. In essence, a sense of justice also develops along with the development and progress of community life, which is always influenced by external factors (Soepomo, 1983).

The sense of justice of the community has changed along with the form of customary sanctions. In addition, sanctions must be eliminated because they are no longer in accordance with widely accepted principles. In the villages of Waropen Regency, fines are a common form of punishment. However, during the peace process, there are customary rituals that are considered strong and can neutralize community disturbances. Here, what is meant by the process of resolving the fulfillment of customary obligations is the settlement process carried out by the customary law community where the customary law applies.

The sense of justice of the community has changed along with the form of customary sanctions. In addition, sanctions must be eliminated because they are no longer in accordance with widely accepted principles. In the villages of Waropen Regency, fines are a common form of punishment. However, during the peace process, there are customary rituals that are considered strong and can neutralize community disturbances. Here, what is meant by the process of resolving the fulfillment of customary obligations is the settlement process carried out by the customary law community where the customary law applies. The judicial power of the judicial body must be discussed first to get a better picture. The judicial power of the judicial body must be discussed first to get a better picture. Legal norms not only determine patterns of relationships between people but also determine community values so that behavioral patterns that conflict with these values are limited. The relationship here involves reciprocal interaction or interstimulation and individual group responses. Four types of social interactions always appear in social interactions that take place in this way (Soedjono1977), namely:

- a) Cooperation or cooperation, when individuals in social interaction work together well so that everything functions harmoniously, in harmony, and there is no tension.
- b) Competition or rivalry, when elements in social interaction begin to feel superior between strong forces.
- c) Conflict or dispute, where certain social forces conflict with each other to the point of causing tension, but will not occur if it takes place healthily.
- d) Accommodation or re-settlement, where the conflict is handled by elements of social life, so that society is orderly again

3. Methodology

The research method used is empirical, where we observe the reality that occurs in the midst of society directly, especially in the customary law community of Waropen Regency regarding customary violations, where there are differences between one village and another in terms of the types of violations and customary fines.

4. Discussion

In the customary law community in the villages of Waropen Regency, there are various acts that are considered as customary violations in addition to minor violations. The classification of acts as crimes in

the villages in 4 (four) districts, namely: Maserei, Urei Faisei, Waropen Bawah and Oadate districts, if classified, are included in:

- a. Offenses against the body and life;
- b. Offenses against property;
- c. Offenses against a person's honor;
- d. Offenses against morality; and
- e. Other violations.

However, in each village/district, the naming of the offenses is different according to the respective regional languages. The following are the names of acts that are classified as customary violations in each district:

- 1) Maseirei District consists of the Mambai Tribe, Papado Tribe, Risei Tribe, Sewobari Tribe, Bokadaro Tribe, Oadate Tribe, Papai Tribe, Aniboi Tribe, Mayawahedo Tribe, Urato Tribe, Sinonnde Tribe, Koweda Tribe, Sauri Sirame Tribe and Rowiare Tribe.

Actions that can be identified as customary violations are:

No	Classification	Name/term in local language	Sanctions	Information
1.	Crime against body and life	1. Abuse (Munio) 2. Abuse using a tool (Famunio) 3. Abuse resulting in death (Munifero)	Fine Fine Handed over to the police	Traditional institutions, village heads and security forces determine the amount and form of the fine.
2.	Crimes against property	theft (Humamana)	Fine	sda
3.	Offense against a person's honor	Ghadadumana (insulting name of village head)	Fine	sda
4	Offenses against morality	a. Divorcing a husband/wife without a valid reason (Wererai) This crime category is divided into two parts, namely the first is a husband divorcing his wife without a clear/valid reason (Ri Bingga) and the second is a wife divorcing her husband without a valid reason (Ri Mangga). b. Adultery (Omamana).	Fine	sda
5	Other violations	Yai Iningga (pets/cattle that get loose and then eat other people's crops, causing losses)	Fine	sda

- 2) The Faisei Saubowoa Tribe, Nubuai Tribe, Mambui Tribe and Woyui Tribe are part of the Ureifaisei

District.

Actions that can be identified as violations of customary law, namely:

No	Classification	Name/term in local language	Sanctions	Information
1.	Crime against body and life	Persecution (Fameio), other languages Kifaniu, Kimonio, Kifamei	fine money or plate	Sera was assisted by Sera Titibi and Eso in issuing fines
2.	Crimes against property	1. theft committed together/more than 1 person (Bumemana) 2. theft committed by only 1 person (Humamana)	Fine	obligation to hand over the roof or roof for a long time
3.	Offense against a person's honor	Swanggi (the perpetrator of harassment) and Onaruruwai are acts of harassment committed against women.	Fine	-
4	Offenses against morality	Minarei (adultery) if committed by people who are not yet married, is called Wimabo-Waribo.	Married	If you don't want to get married, you will be fined with goods and money by customary law.
5	Other violations	recognizing the rights of others (Raika Rongu)	Fine	-

3) Sawai, Wairo, Saimua, Imbiri, and Watofa are included in the Lower Waropen District.

No	Classification	Name/term in local language	Sanctions	Information
1.	Crime against body and life	persecution (Munggaiwara)	Customary fines Plate or money	sanctions in the form of expulsion for people outside the village.
2.	Crimes against property	theft (Humamana), fraud (Yokoharo)	Plates or money as customary fines	-
3.	Offense against a person's honor	-	-	-

4.	Offenses against morality	1. Youmamana (Adultery) 2. Marriage is prohibited for those who are consanguineous	Customary fines Plate or money	-
5.	Other violations	not knowing the customary rules (Nigogoko or Niyaro)	fine	-

The results of the interview with the Chief of the Sawai Tribe, Mr. Gharak Rumabin Anthonius Rumboisano, showed that this type of violation is also included in customary crimes or customary violations. The settlement is carried out in the presence of the customary leader and village head. All decisions are made based on deliberation and consensus in a customary ritual called "Waisowosiyo", which means "let's sit together to solve the problem". The Waisowosiyo ritual has many meanings for customary violations such as "fights" or abuse. Indigenous people in the villages of Waropen Bawah District believe that the formal judicial process for customary cases only resolves problems superficially and has not resolved the problem completely. In addition, this ritual is carried out to prevent the victim's family and descendants from taking revenge.

- 4) Oadate Regency comes from the words "Owa furu" and "date", which means "people who know nothing" or "wanderers", and "date" means a group of people who are on the mainland. Oadate means the bond of mainlanders. The term "mainlanders" more often refers to the difference between the coastal Waropen population and the plains population on the Waropen mainland. However, it is important to remember that the Oadate indigenous people believe that all people originated from the mainland before most moved to the coast. Oadate Regency consists of five villages and approximately 1984 people live there. There are approximately 18 tribes in Oadate Regency, but this study only looks at 4 (four) tribes: the Demisa Tribe, the Choria/Oa Tribe, the Sapuni/Kuriye Tribe, and the Nubuai Tribe, which is the West Kai tribe.

Among the Demisa tribe, the Customary Council is headed by a great chief called "Date Teadiya". The highest customary commander, the high customary court, and the field war commander assist the great chief. A boy in the Demisa tribe must go to customary school before getting married. Customary school used to last up to twelve, six, three, and one years. Now it is only three months, because the Demisa tribe is worried that this customary school activity can be considered breaking the rules. A person is considered to have become an adult ("basire") if they complete their study obligations at the customary school. People who do not attend public school are called "boose".

The Demisa tribe's traditional flow teaches various skills, such as war science and attack strategies, recognizing enemies, adapting to nature and the environment, and transforming into animals such as rats, crocodiles, or cassowaries. They are also taught to summon certain animals. Considering the explanation above, it is clear that the traditional flow is closely related to the circumstances and conditions of the past where tribe members had to be able to defend themselves from enemy attacks and hunt to survive.

There is no term known to the tribes in the Oadate district to describe an act as a violation of custom or a crime. "Kaowamero" is only used as a term for ordinary offenses, be it theft, assault, or murder. Among the Oa/Choria tribe, breaking customs is called "Birimdate" or "Datefiyae," which means a

bad person. In the past, violation of customs was always threatened with death by the absolute chief. The chief ("Oa") was assisted by "Oedate" or "Oweidate" as his deputy, as well as "Kumambe," who were the war people, and "Oboadamo," who were the general people. The Oa/Choria tribe also has a traditional school, but the time is different from the Demisa tribe. Their traditional school only lasts one year, then changes to six months, and only lasts seven days after religion and government come in. However, the material taught in the traditional school is the same as the material taught in the Demisa tribe's traditional school. The Oa/Choria people call violation of custom "Dilimdamo", which means violating customary rules.

Interestingly, this study found that there are two (2) customary peace methods to resolve customary violation cases: "Sarohe", or customary peace bananas. Sarohe bananas are burned together in this ritual, indicating a conflict between two parties. After the bananas are ripe, everyone stands up and the tribal leader begins to speak, before they swear not to get involved in the conflict. After that, the bananas are cut, and everyone receives the remaining portion. Among the Oa/Choria tribe, peace is called "Atayumero", which means "exchange peace". In cases of marriage or fights, this settlement pattern is usually used. The method is to exchange certain languages, which are usually "wemo" (dog) and "jubi" (arrow).

Criminal (customary) law covers acts that are considered violations of customary norms. These acts include violations of property, body, and life, morality, and honor of a person. In four districts (Maseirei, Urei Faisei, Waropen Bawah, and Oadate), customary violations are actually general crimes and are regulated in the Criminal Code. However, from the perspective of the customary community, these violations are customary crimes that are resolved according to local customs.

The sense of justice of the community has changed along with the form of customary sanctions. In addition, sanctions must be eliminated because they are no longer in accordance with widely accepted principles. In the villages of Waropen Regency, fines are a common form of punishment. However, during the peace process, there are customary rituals that are considered strong and can neutralize community disturbances. Here, what is meant by the process of resolving the fulfillment of customary obligations is the settlement process carried out by the customary law community where the customary law applies. The judicial power of the judicial body must be discussed first to get a better picture.

According to the author, although there are differences in the terms of names or designations for violations committed by indigenous peoples in each region or tribe from one to another, but more or less the same crimes or customary violations are almost the same which always occur in the midst of the customary law community, the resolution is also different, some are handled by the tribal chief or village head alone, and some must be resolved by the authorities. The point is to create a conducive, safe, peaceful and peaceful atmosphere for now and the future. Hopefully customary violations can be reduced from year to year, and also the customary law community, especially Waropen, can live in mutual respect and appreciation between fellow tribes in Waropen Regency.

5. Conclusions

Several customary violations in the Waropen customary law community of Papua Province can be seen from the villages in 4 (four) districts, namely: Maserei, Urei Faisei, Waropen Bawah and Oadate districts, if classified into Offenses against the body and life, Property offenses, Offenses against a person's honor, Offenses against morality and other violations. Although the name of the offense is the same, the term in the local language and the fines are also different between one district and another. While conventional forms of sanctions develop in accordance with the sense of justice of the community. In addition, sanctions must be eliminated because they are no longer in accordance with widely accepted principles. In the villages of Waropen Regency, fines are a common form of punishment. However, during the peace

process, there are traditional rituals that are believed to have sufficient power to neutralize community disturbances. Differences in terms of names or terms for violations committed by customary law communities in each region or tribe between one and another, but more or less the crimes or customary violations that occur are almost the same and always occur in the midst of customary law communities, the resolution is also different, some are handled by the tribal chief or village head himself, and there are also some that must be resolved by the authorities.

References

- [1] Abdurrahman. 1978. *Kedudukan Hukum Adat dalam Rangka Pembangunan Nasional*, Bandung: Alumni.
- [2] Bushar Muhammad. 1983. *Pokok-pokok Hukum Adat*. Jakarta: Pradnya Paramita.
- [3] Lauer, Robert H. 1989. *Perspektif Tentang Perubahan Sosial*. Jakarta: Bina Aksara
- [4] Purnadi Purbacaraka dan Soerjono Soekanto. 1983. *Perihal Kaidah Hukum*. Bandung: Alumni.
- [5] Poesponoto, Soebakti. 1987. *Asas-asas dan Susunan Hukum Adat, Cetakan Kesembilan*. Jakarta: Pradnya Paramita.
- [6] Soerjono Soekanto. 1983. *Penegakan Hukum*, Jakarta: Binacipta.
- [7] Soerjono Soekanto dan Soleman B. Taneko 1983. *Hukum Adat Indonesia*. Jakarta: Rajawali.
- [8] Soedjono. 1977. *Pokok-pokok Sosiologi Hukum Sebagai Penunjang Studi Hukum*. Bandung: Alumni.
- [9] Soepomo 1963. *Hubungan Individu dan Masyarakat dalam Hukum Adat*. Jakarta: Gita Karya.
- [10] _____. 1983. *Bab-bab Tentang Hukum Adat*. Jakarta: Pradnya Paramita.
- [11] Soetoprawiro, Koerniatmanto. 1994. *Pemerintahan dan peradilan di Indonesia, Asal-usul dan perkembangannya*. Bandung: Citra Aditya Bakti.
- [12] Scheunemann, Rainer. 2004. *Fajar Merekah Di Tanah Papua "Hidup Dan Karya Rasul Papua Johann Gottlob Geissler (1830 - 1870) Dan Warisannya Untuk Masa Kini"*, Panitia Jubelium Emas 150 Tahun Hari Pekabaran Injil di Tanah Papua, Jayapura.
- [13] Ter Haar. 1978. *Azas-azas dan Susunan Hukum Adat (Beginnselen en Stelsel van het Adatrecht)*, terjemahan Soebakti Poesponoto, Jakarta: Pradnya Paramita.
- [14] Ter Haar, Bzn. 1960. *Bab-bab tentang Hukum Adat*. Jakarta : Djambatan
- [15] Tanati, D. (2019). The Pattern Settlement of Adat Delict of Waropen Tribe. *JL Pol'y & Globalization*, 89, 14.
- [16] Tanati, D. (2019). The Forms of Custom Offense (Sanctions) of Waropen Tribe of Papua. *JL Pol'y & Globalization*, 83, 84.
- [17] Tanati, D., & Palenewen, J. Y. (2024). Penyelesaian Konflik Agraria Pada Masyarakat Adat Papua.
- [18] Tanati, D. (2023). Membuka Jendela Nilai Dan Norma Masyarakat Adat Kabupaten Waropen.
- [19] Tanati, D., Rongalaha, J., & Palenewen, J. Y. (2022). Penerapan IPTEKS Tentang Penyelesaian Sengketa Tanah Ulayat Pada Masyarakat Hukum Adat Melalui Jalur Non Litigasi Di Kampung Asei Besar Distrik Sentani Timur Kabupaten Jayapura. *Jompa Abdi: Jurnal Pengabdian Masyarakat*, 1(4), 42-51.
- [20] Tanati, D., & Palenewen, J. Y. (2022). Penerapan IPTEKS Tentang Penyelesaian Sengketa Batas Tanah Ulayat Melalui Jalur Litigasi Dan Non Litigasi Pada Masyarakat Hukum Adat Di Kampung Nendali. *AMMA: Jurnal Pengabdian Masyarakat*, 1(09), 1133-1138.
- [21] Tanati, D. (2023). Land Ownership Rights According to Indigenous Peoples in Kwadeware Village, Waibu District Jayapura Regency. *International Journal of Multicultural and Multireligious Understanding*, 10(1), 629-634.
- [22] Tanati, D., Palenewen, J. Y., Pondayar, Y., Thesia, E. H., Solossa, M., & Rongalaha, J. (2023). Legal Counseling Law Number 30 of 1999 About Arbitration And Alternative Dispute Resolution In Nendali Village, East Sentani District Jayapura Regency. *Jurnal Pengabdian Masyarakat Bangsa*, 1(8), 1331-1337.

- [23] Tanati, D. (2024). Patterns Of Resolution Of Customary Rights Disputes For Traditional Law Communities In Waropen District Papua Province. *Russian Law Journal*, 12(1).
- [24] Tanati, D. (2023). The Faisei Saubowoa Indigenous People's Kinship System in Sangei Village Waropen Regency. *International Journal of Multicultural and Multireligious Understanding*, 10(2), 140-144.
- [25] Tanati, D. (2023). The Role of Customary Institutions in Settlement of Customary Land Disputes between Wonatorey and Watopa Clans in Waropen Regency. *International Journal of Multicultural and Multireligious Understanding*, 10(3), 278-283.
- [26] Tanati, D. (2024). Ownership Patterns of Land Rights from the Perspective of Customary Law Communities in Waropen Regency Papua Province. *Journal of Law, Politic and Humanities*, 4(3), 355-363.
- [27] Tanati, D. Customary Jurisdiction In Special Autonomy For Papua Province.