



Prevention of Criminal Action of Corruption through the Initiation of the Dayak Ngaju Traditional Laws

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Abstract:

Given the complexity of the problem of corruption, it must be treated seriously through a balance of rigorous and precise steps. This step is not only taken by the government and law enforcers, but also by involving the participation of indigenous peoples. In the indigenous Dayak Ngaju community, they are familiar with the principle of not having a bahadat. This principle means that the behavior of life that upholds honesty, equality, togetherness and tolerance and obeying the law (state law, customary law and natural law). According to the author, the existence of the principle of Belom Bahadat can be used as a preventive instrument for the prevention of corruption by government officials in Central Kalimantan Province. This means that there is a contribution of customary law norms to the government's efforts to prevent the occurrence of criminal acts of corruption through the initiation of the belom bahadat principle of Dayak Ngaju customary law.

Keywords:

prevention; corruption crime; Belom Bahadat principles; customary law; Dayak Ngaju

I. Introduction

The development of acts of corruption from both the quota side and the qualities of these adults can be said that corruption in Indonesia is no longer an ordinary crime, but it is an extra ordinary crime.¹ According to Krisna Kharp, he explained:² “Actions of corruption also worsen the image of the government in the realm of the people that are reflected in the form of disbelief and inability to maintain that they are not legal, if the condition is not true, it is not true that life is not legal, if it is not true. Corruption burdens the people of Indonesia, especially the poor. Corruption also creates high macro-economic risks, hinders financial stability, compromises security and law and public order, and above all corruption reduces the reputation of the country.”

Be aware of the complexity of the corruption problem in the midst of a multi-dimensional crisis and the real threat of realism will occur, that is, from this incident, it appears that the act of corruption appears to be on the scene which must be addressed seriously through the balance of the tough and clear steps that are not only done by the government and law enforcement, but also by overcoming all the legal principles including the potential of customary law. Even in the perspective of customary law, corruption is a disgraceful act, harming society and other negative impacts on the State.

¹ Nyoman Serikat Putra Jaya, 2008, *Bahan Kuliah Sistem Peradilan Pidana (Criminal Justice System)*, Program Magister Ilmu Hukum, Semarang, P. 92.

² Krisna Harahap, 2006, *Pemberantasan Korupsi Jalan Tiada Ujung*, Grafitri, Bandung, P. 15.

As an archipelago in the form of a Republic, Indonesia has a diversity of cultures and tribes which still adhere to their respective customary laws. One of the tribes that still exist in Indonesia is the Dayak Ngaju tribe with its communal center in Central Kalimantan. Just like other tribes or customary law communities, the Dayak Ngaju tribe also has its own customary laws and is still valid, in line with and in synergy with positive laws that apply nationally. According to Sabran Ahmad, explaining that: "Dayak customary law in Central Kalimantan is in line and synergizes with the positive law applied in Indonesia, so that both can be in line in its application. National legal instruments have provided space for customary law so that they can play a role in society. Most of the problems in the community have been summarized in customary law, especially in Palangka Raya City, Central Kalimantan Province".³

As a community group, the Dayak Ngaju customary law community has and upholds the principle in living their life, namely the principle of not bahadat. According to the Regional Regulation of Central Kalimantan Province Number 16 of 2008, defines the principle of Belom bahadat, as follows: "What is meant by the philosophy of life of the Huma Betang Culture or Belom Bahadat is the behavior of life that upholds honesty, equality, togetherness and tolerance and obeying the law , customary law and natural law) ". If you have been able to carry out the life behavior of "Belom Bahadat", it will be actualized with the form of "Belom Penyang Hinje Simpei", namely living side by side, in harmony and peace for the common welfare. By upholding the principle of Belom bahadat, all actions that are not in accordance with these principles, then the actions that are carried out are disgraceful, including if the actions carried out are corrupt. The Dayak Ngaju customary law community views corruption as a despicable act and injures the feelings of the customary law community groups. This means that the act of corruption is an act that contradicts the principle of belom bahadat as a principle adhered to and firmly upheld by the Ngaju Dayak community in Central Kalimantan Province.

Starting from the description of the principle of not bahadat in the indigenous Dayak Ngaju community, according to the author, it can be a preventive instrument for the prevention of corruption in Central Kalimantan Province. Prevention is not only carried out by the government through law enforcement officials, but can also be done through the participation of indigenous peoples. This means that customary law norms contribute to the government's efforts to prevent corruption. In a positive law, the implementation of the eradication of corruption has been supported by the construction of national law with the formation of various laws and regulations in Indonesia, including:

1. MPR RI Decree No. XI / MPR / 1998 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism;
2. Law Number 28 of 1999 concerning State Administrators who are Clean and Free of Corruption, Collusion and Nepotism;
3. Law Number 31 Year 1999 which is further enhanced by Law Number 20 Year 2001 concerning amendments to Law Number 31 Year 1999 concerning Corruption Eradication;
4. Law Number 15 Year 2002 concerning the Crime of Money Laundering; and
5. Presidential Decree No. 127/1999 concerning the Establishment of the Wealth Examination Commission for State Administrators and the Secretariat General of the Commission for the Investigation of State Officials.

³ Sabran Ahmad, 2015, *Ketua DAD: Hukum Adat dan Negara Sejalan*, Sumber: <https://kalteng.antaranews.com>, Diakses Jum'at 02 Oktober 2020, Pukul 22.58 WIB.

On the other hand, it is necessary to have out of the box in the prevention of criminal acts of corruption, one of which is through the initiation of customary laws that still exist and are recognized, such as the customary law of the Dayak Ngaju as described above. According to the author, the existence of the principle of not having *bahadat* in the indigenous Dayak Ngaju community can be used as a preventive instrument for the prevention of criminal acts of corruption by government administrators in the area of Central Kalimantan Province. This means that there is a contribution of customary law norms to the government's efforts to prevent the occurrence of criminal acts of corruption through the initiation of the principle of not *bahadat* customary law of Dayak Ngaju. This needs to be done, considering that an act of corruption is an act that is detrimental to other people, even the life of society at large and is against the principle of *Belom bahadat*.

II. Research Methods

The research method used in this research is the empirical legal research method, namely research in which the law is not conceptualized as an autonomous normative phenomenon, but is understood as a social institution that is real (real) related to other social variables. In such a context, law as an empirical socio-symptom is studied on the one hand as an independent variable that causes effects on various social lives, and on the other hand as a dependent variable that appears as a resultant of various kinds of forces in social processes (study of law in process).

III. Results and Discussion

3.1 The Meaning of the Criminal Act of Corruption

Ethimologically⁴ According to Fockema Andreae, corruption originates from Latin's bastards, namely corruption or *corruptus*, and the older term of Latin's term is called *Corumpere*. From the Latin tribe, it has descended to various words in Europe. In English, corruption means bribery or seduction, French: corruption, and corruption and corruption, which later descended into Indonesians becoming corruption. The meaning of the word is rottenness, ugliness, corruption, dishonesty, can be viewed, does not morale, distortion of holiness.

The essence of understanding corruption both from a juridical perspective and general understanding is actually the same. It's just that in a juridical sense it is more directed to the elements of offenses as formulated in the laws and regulations, while corruption is generally interpreted as bribery, abuse of authority or against the law that benefits oneself, trading influence and other disgraceful nature. Sudarto has the view that corruption means "damage, or points to rotten things or works. The practice of corruption is widely considered to be dishonest by someone in the financial sector".⁵

Leisle Pamer, interpreted corruption as follows:⁶ *"the use of public power private provit... in a way that constitutes a break of law... "This cover the case not only of an official who receives bribes either to act or not to act, but also of the one who takes none, but uses his offices to enrich himself illegally". Further explained that "the term of private is to be understood as not limited to the official, but also including a group or class with which he identifies, while profit should be taken to cover all forms of advantage or benefit, not merely financial"*.

⁴ Andy Hamzah, 1991, *Korupsi di Indonesia Masalah dan Pemecabannya*, Gramedia Pustaka Utama, Jakarta, P. 7.

⁵ Sudarto, 1979, *Hukum dan Hukum Pidana*, Alumni, Bandung, P. 122.

⁶ Leslie Palmier, 1985, *The Control of Bureaucratic Corruption, Case Study in Asia*, Allied Publishers Private Limited, New Delhi Bombay Calcuta Madras Bangalore Hyderabad Ahmedabad, P. 1.

Robert Klitgard, Ronald Maclean - Abaroa, H. Lindsey Parris has the opinion that:⁷ “Corruption means collecting money for service that should be given, or using authority to achieve unauthorized goals. Corruption does not carry out tasks because it is wrong or accidental. Corruption can result in wrong and incorrect activities. Corruption can occur in the body of an organization (for example, misappropriation of money) or outside the organization (for example, exploitation). Corruption increases efficiency, inequality and inadequacy”.

According to the International Translation, the definition of corruption is:⁸ “The abuse of power and trust of the public for personal gain. So that three elements, namely: 1). Managing power; 2). Believed power (in the public and private sectors); and 3). Personal benefits (does not always mean only for individuals who abuse power, but also members of the family and colleagues). Other thinkers using corruption with different thoughts, Herman F. Woltring and Hiroyuki Shinkai, think that corruption includes:⁹

1. *Bribery, Which refers to conventional bribery of and by public officials, in other words, corruption in a narrow sense;*
2. *Abuse of office, which is a wider concept and includes nepotism, patronage, legislative and/or bureaucratic conflict of interest, the wrongful awarding of governmental contract, lying to the media, improper election campaign finance; and*
3. *Business corruption, which includes kick backs, fraud and embezzlement in the private sector.*

The definition of corruption according to the PTPK Law of 1999, namely: "Everyone who is categorized as against the law, commits an act of self-enrichment, benefits himself or another person or a corporation, misuses his / her authority or opportunity or means because of a position or position that can harm state finance or state economy ". While the understanding of corruption according to the 2001 PTPK Law is “an act against the law by means of self-abuse, other people, or corruption which causes harm to the state or the country's economy.”.

3.2 The Principle of Belom Bahadat in the Dayak Ngaju Customary Law Community

Belom Bahadat (civilized life) is one of the most frequently pronounced terms, especially by regional officials and people from the National Dayak Adat Council (MADN) and the Dayak Adat Council (DAD). What is meant by being unfamiliar? In the Dayak Ngaju language, Bahadat comes from the root word hadat. According to the explanation of Article 10 paragraph (2) letter (e) Regional Regulation of the Province of Central Kalimantan Number 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan, that: "what is meant by the philosophy of life" Huma Betang Culture or Belom Bahadat "is a living behavior that upholds the high honesty, equality, togetherness and tolerance and obeying the law (state law, customary law and natural law). If you have been able to carry out the life behavior of "Belom Bahadat", it will be actualized in the form of "Belom Penyang Hinje Simpei", namely living side by side, in harmony and peace for the common welfare.”

⁷ Robert Klitgaard (at.al), 2002, *Penuntun Pemberantasan Korupsi dalam Pemerintah Daerah*, alih bahasa Masri Maris, Yayasan Obor Indonesia & *Partnership for Governance Reform in Indonesia*, Jakarta, P. 3.

⁸ Jeremy Pope, 2003, *Panduan Transparency International 2002: Strategi Memberantas Korupsi, Elemen Sistem Integrasi Nasional*, alih bahasa Masri Maris, *Transparency International* dan Yayasan Obor Indonesia, Jakarta, P. 6.

⁹ Herman F Woltring dan Hiroyuki Shinkai, *Approaches Towards Analysis in The International Context*, dalam *Responding to Corruption: Social Defence, Corruption, and The Protection of Public Administration and The Independence of Justice*, updated documents of the XIII International Congress on Social Defence Lecce (Italy) 1996, di edit oleh Paolo Bernasconi, 2000, P. 72.

Silvanus Subandi, from the Diocese of Palangka Raya City, formulated the term not bahadat as "the basic principle of life that upholds the values of customs that emphasize moral and spiritual values such as respect for parents, others, the universe and the Creator". Silvanus Subandi named this basic principle of life as "the principle of an inclusive and pluralist life" and covers two areas, namely the fields of ethics, morals and spirituality.¹⁰ For example, in the fields of ethics and morals, Silvanus Subandi is respect for parents, for others, honesty, tolerance. Meanwhile, moral values express oneself in the form of respecting the togetherness of living in society, seeing others equally.

The spiritual sphere includes reverence for the universe and reverence for the Creator. Respect for the universe is inseparable from respecting the interests of social life. Because the impact of natural damage caused by his disrespect will hit many people. Whereas reverence for the Creator means obeying the paths shown by Him and sent down through various Prophets. This path is the way to guide the human child he created. If a human child does not respect his Creator, he will deviate from the path of the Creator, so that things that are dangerous will occur (not cultured, not upholding the values of hadat). The path of the Creator is a holistic path, covering all areas of life.¹¹

Between the meaning of Belom bahadat in the explanation of Article 10 paragraph (2) letter (e) of the Regional Regulation of the Province of Central Kalimantan Number 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan and the opinion expressed by Silvanus Subandi, there is a difference. The difference between the two formulations above lies in that one considers not bahadat as behavior, while the other, Silvanus Subandi, sees it as a basic principle of life. From this basic principle of life that behavior begins.

From the formulation according to Silvanus Subandi, it appears that not bahadat is upholding the values of hadat, and includes relationships between people, relationships with nature and relationships with the Creator, three relationships summarized by philosophy. This philosophy was born and developed based on the path shown by the Creator, as a form of respect for Him. Then using this philosophy to answer the problems of life, hadat was born. Judging from the process of birth, hadat and customary law as such, it appears that the purpose is none other than a guide to life, so that life can be carried out in a civilized manner according to the philosophy which embodies the path of the Creator as a source. Therefore, hadat, besides having ethical and moral characteristics, it also has a spiritual character or religiosity.

If you read the history of Dayak culture, that the formation of Dayak culture aims to humanize oneself, life and society. The goal of humanizing oneself, life and society has been carried since Maharaja Bunu as the first human on earth (Saran Danum Kalunen), after leaving Saran Danum Sangiang, he and his descendants carried the same mission. So hadat is actually nothing but a form of cultural product of a society to make society civilized, dangerous or human. In addition to the form of culture as a complex of patterned behavioral activities of humans in society, hadat is also a form of culture as a complex of ideas, ideas of values, norms, regulations, and so on.

¹⁰ Silvanus Subandi, *Bedah buku Falsafah Hidup Budaya Huma Betang dalam Membangun Kerukunan Hidup Umat Beragama di Kota Palangka Raya, Kalimantan Tengah*, disampaikan pada 13 April 2012, sebagaimana dikutip oleh Kusni Kuling, *Ibid.*

¹¹ *Ibid.*

The central idea or idea of hadat lies in the effort to humanize oneself as a human being, life and society. How to civilize speech and behavior of community members in order to create a civilized society. So that when viewed from this goal, hadat is first of all ideas, ideas, basic principles, which are embodied in terms accepted as a social consensus by which society's life is regulated, including how to behave in front of others, the environment, the universe and The Creator. Behavior is only a form of embodiment of whether this basic principle of life is implemented or not. Those who do not perform will be called him bahadat and will be subject to social sanctions. With the existence of social sanctions as a law for those who do not implement this social consensus, hadat implicitly describes a type of human being desired by a society in a certain era and space.

3.3 Corruption in the Perspective of the Belom Bahadat Principles of the Dayak Ngaju Customary Law

Corruption as a despicable act must be prevented from all aspects both from national legal regulations, education at all levels and through customary law in regions in Indonesia. With regard to customary law, the norms contained therein can contribute to efforts to prevent criminal acts of corruption in the area. One of the principles of Ngaju Dayak customary law is that it can be used as a means of preventing corruption by officials and administrators of the Central Kalimantan Province through the initiation of the principle of not bahadat.

In the Dayak Ngaju Customary Law, the principle of belom bahadat is known, which means living civilized or living in accordance with prevailing customs. Belom Bahadat is one of the principles contained in the Dayak customary law contained in the 1894 Tumbang Anoi Peace Agreement, so that Belom Bahadat is included as the soul of the Indonesian nation which always upholds legal values. The principle of not having bahadat is in line with Pancasila as the ideology of the Indonesian nation, which includes divine values, human values, unity values, democratic values and justice values. Belom Bahadat as a source of unwritten law and a foundation or foundation for the philosophy of the Dayak indigenous people in living the order of life, whether it is obeying laws that come from God or laws made by humans.¹²

This principle has existed since the Tumbang Anoi Agreement was mutually agreed upon by Dayak tribal communities throughout Kalimantan. According to the principle of Belom, the criminal act of corruption is betrayal of the duties and responsibilities entrusted by God and by humans. The indigenous Dayak people believe and believe that God wants people to live in the world for good and noble purposes for others.¹³ In Article 96 of Dayak Ngaju Customary Law, there is no direct recognition of the term corruption, but the norms of Dayak Ngaju customary law prohibit taking advantage of the proceeds of crimes committed by other people, including:

1. Singer Takau Suhup (Article 34 of the Anoi Tumbang Agreement);

Singer Takau Suhup (Fines of seizing / cheating, stealing, keeping, confiscating other people's belongings in the house). "House" in this article can be likened to a region / city. This penalty can be imposed due to acts of theft, fraud or seizure of goods that occur in the house of someone who is, no one is there or is awaited by parents (elderly) or small children. This condition describes someone who takes the

¹² Results of Interviews with interviewees: Citranu, Dosen Pengajar Fakultas Dharma Sastra Institut Agama Hindu Negeri Tampung Penyang Palangka Raya, Date: 11 January 2021.

¹³ Citranu, 2019, *Perjanjian Tumbang Anoi 1894 Sebagai Sumber Hukum Pidana Adat Dayak Ngaju, Tampung Penyang*, Vol 17 No. doi: <https://doi.org/10.33363/tampung-penyang.v17i01.395>. Accessed on Friday, 02 October 2020, at 22.58 WIB.

opportunity above the ignorance of others. It can be likened to the abuse of authority by an official who misuses people's money or government funds that are actually intended for the people.

2. Singer Tadahan Ramu (Article 59 of the Tumbang Anoi Agreement);

Singer tadahan ramu when translated is a customary fine for buying and selling stolen goods.¹⁴ Si A kehilangan barang bernilai, kemudian diketahui barang itu ada ditangan C, dibelinya dari B. Maka A dapat menuntut berdasarkan pasal ini melalui pemangku adat agar barang yang ada pada C diperiksa dan diperkara adatkan. C dan B dapat dianggap sekongkol mencuri, barang kembali kepada si A terkecuali kalau C mampu membuktikan bahwa dia tidak bersalah. Jual beli antara C-B menjadi batal, B dihukum bayar denda singer adat 75-180 *kati ramu*, jika barang itu bernilai 500 kati ramu. Ditambah dengan biaya pesta adat damai seperlunya dan biaya perkara ditanggung oleh yang bersalah.¹⁵

3. Singer Teren Katulas Huang (Article 44 of the Anoi Fall Agreement);

Singer teren katulas huang is imposed on anyone who has the heart or deliberately neglects the obligation to help other people who are in danger or calamity, can be categorized as acts of corruption towards funding for people who are affected by disaster or funds that are intended to build public facilities such as hospitals, markets, community settlements, and others. The application of this article also applies to damangs who are supposed to adjudicate cases according to their duties and functions, on the contrary committing a corruption crime of abuse of authority, so damang will be subject to criminal weighting as a consequence of the abuse of authority committed.¹⁶

3.4 Efforts to Prevent Corruption through the Initiation of the Belom Bahadat Principles of Dayak Ngaju Customary Law

As previously explained, one of the principles of the Dayak Ngaju customary law which can be a means of preventing corruption by officials and regional government administrators in Central Kalimantan Province is through the initiation of the principle of not bahadat. The principle of not having bahadat includes the values of justice that live in society, so the concept of thinking is that if the Law in Book is left behind by Living Action, you can respond to it using The Living Law.¹⁷ Belom bahadat as The Living Law of the Dayak Ngaju indigenous people or as the principle of the Dayak Ngaju customary law, so that all actions that are contrary to the principle of Belom bahadat can be punished.

Based on the views of the Damang, Adat Mantir and Dayak Traditional Law Academicians that the team gathered, an idea was formed as an effort to prevent corruption through the initiation of the principle of belom bahadat Ngaju Dayak customary law. Implementation of the principle of belom bahadat, can be carried out in the process or inauguration of regional officials accompanied by an oath according to the customary Dayak Ngaju law, namely a promise to uphold the principle of belom bahadat accompanied by the heaviest type of sanction in Dayak customary law for violators. The customary sanctions can take the form of:

¹⁴ Herlambang, 2011, *Kontribusi Norma Hukum Adat Dalam Pembaharuan Tindak Pidana Korupsi Di Indonesia*, Jurnal Penelitian Hukum Supremasi Hukum, Volume 2 (20) Agustus 2011, Fakultas Hukum Universitas Indonesia, <http://repository.unib.ac.id>, Accessed on Friday 02 October 2020, at 22.58 WIB.

¹⁵ *Ibid.*

¹⁶ Results of Interviews with interviewees: Suparan Agaman, Mantir Adat Kecamatan Jekan Raya Kota Palangka Raya, Date: 10 January 2021.

¹⁷ Hidayat, 2019, *Tampung Penyang*, Volume XVII Nomor 01 Tahun 2019, Edisi Januari-Juni 2019, <https://ejournal.iahntp.ac.id/index.php/tampung-penyang>, Accessed on Friday 02 October 2020, at 22.58 WIB.

1. Ostracized;
2. Expelled from the indigenous community (expelled);
3. Revocation of title.

The above sanctions are a form of internal responsibility of the perpetrator for his customary violations which will forever be remembered by the local indigenous community and known to their children and grandchildren.

IV. Conclusion

According to the principle of *belom bahadat*, the criminal act of corruption is betrayal of the duties and responsibilities entrusted by God and by humans. Therefore, corruption in the perspective of the Dayak Ngaju customary law is equated as the act of *Singer Takau Suhup* (Article 34 of the *Tumbang Anoi Agreement*), *Singer Tadahan Ramu* (Article 59 of the *Tumbang Anoi Agreement*), *Singer Teren Katulas Huang* (Article 44 of the *Tumbang Anoi Agreement*). The indigenous Dayak people believe and believe that God wants people to live in the world for good and noble purposes for others. When there is an act of corruption committed by a regional government administrator or an abuse of authority by a *damang / mantir*, then the act is contrary to the principle of *Belom bahadat*. So that the person concerned is eligible to be subject to customary sanctions according to the customary law of the Dayak Ngaju. In addition, efforts to eradicate criminal acts of corruption from the perspective of *Belom bahadat* Dayak Ngaju customary law can be carried out by integrating oaths according to Dayak customary law in the process or the inauguration of regional officials containing a promise to uphold the principle of *belom bahadat* accompanied by the heaviest type of sanction in Dayak customary law for the offender, as a form of internal responsibility of the perpetrator for his customary violations..

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