



Restorative Justice Paradigm of Kanayat'n Dayak Customary Law on Environmental Damage Caused By Shifting Cultivation

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Info Artikel	Abstract
<p>Masuk: 2022-08-12 Diterima: 2022-08-30 Terbit: 2022-09-25</p> <p>Keywords: Restorative Justice; Customary Law; Shifting Cultivation</p>	<p><i>The culture of farming and clearing land has existed since the transition of primitive humans to the modern age, as has the agricultural culture of the Dayak Kanayat'n indigenous people, which has been handed down from their predecessors for generations is currently evolving. The Kanayat'n Dayak are a sub-tribe of the Dayak who reside primarily in West Kalimantan on the island of Kalimantan. The Dayak Kanayat'n indigenous people are predominantly traditional farmers using traditional farming techniques. Agriculture is a part of the culture; agricultural techniques give rise to a farming culture, which absorbs local practices in cultivating the land. The pattern of land clearing can deduce the traditional nature of this agriculture. Conventional Dayak kanayat'n farmers clear the ground by identifying the area, chopping down the vegetation, and burning the remnants. This method of land clearance employed by the indigenous Dayak Kanyat'n is also known as shifting cropping. This shifting cultivation activity has a positive aspect, namely the development and preservation of traditional Dayak kanayat'n agricultural culture customs. Still, it also has a wrong side, environmental damage, if carried out in large quantities and without measurement. This research focuses on the sociological juridical approach. Methods of data collection employing both primary and secondary legal materials. Article 80 of the Provisions for the Traditional Deliberation in Sengah Temila District, dated March 12-13, 2010, stipulates the administration of restorative justice to farmers who violate Dayak Kanayat customary law and cause forest fires. The sanction is Siam Pahar Pangalabur Temenggung.</i></p>
<p>Kata kunci: Keadilan Restoratif; Hukum Adat; Ladang Berpindah</p> <p>Corresponding Author: Agustinus Astono</p> <p>E-mail: agustinusastono@upb.ac.id</p> <p>DOI: 10.38043/jah.v5i2.3918</p>	<p>Abstrak</p> <p><i>Budaya berladang dan membuka lahan sudah ada sejak peralihan manusia primitif ke zaman modern, begitu pula budaya pertanian masyarakat adat Dayak Kanayat'n yang diturunkan dari nenek moyang secara turun temurun saat ini terus berkembang. Dayak Kanayat'n adalah sub-suku Dayak yang tinggal terutama di Kalimantan Barat di pulau Kalimantan. Masyarakat adat Dayak Kanayat'n sebagian besar adalah petani tradisional yang menggunakan teknik pertanian tradisional. Pertanian adalah bagian dari budaya; teknik pertanian memunculkan budaya pertanian, yang menyerap praktik-praktik lokal dalam mengolah tanah. Pola pembukaan lahan dapat menyimpulkan sifat tradisional pertanian ini. Petani Dayak kanayat'n konvensional</i></p>

	<p><i>membersihkan lahan dengan mengidentifikasi area, menebang vegetasi, dan membakar sisa-sisanya. Metode pembukaan lahan yang digunakan oleh masyarakat adat Dayak Kanayat'n ini juga dikenal sebagai perladangan berpindah. Kegiatan perladangan berpindah ini memiliki aspek positif yaitu pengembangan dan pelestarian adat budaya pertanian tradisional Dayak kanayat'n. Namun juga memiliki sisi salah, kerusakan lingkungan, jika dilakukan dalam jumlah banyak dan tanpa pengukuran. Penelitian ini berfokus pada pendekatan yuridis sosiologis. Metode pengumpulan data menggunakan bahan hukum primer dan sekunder. Pasal 80 Ketentuan Musyawarah Adat di Kecamatan Sengah Temila, tanggal 12-13 Maret 2010, mengatur tentang penyelenggaraan keadilan restoratif bagi petani yang melanggar hukum adat Dayak Kanayat dan menyebabkan kebakaran hutan. Sanksinya adalah Siam Pahar Pangalabur Temenggung.</i></p>

I. Introduction

The culture of farming and clearing land has existed since the transition of primitive man to modern times, as well as the agricultural culture of the indigenous Dayak Kanayat'n community, which the generation from generation has passed down. The Kanayat'n Dayak are a sub-tribe of the Dayak who live mainly in West Kalimantan on the island of Borneo. The Dayak Kanayat'n indigenous people are primarily traditional farmers who use traditional farming techniques. Agriculture is part of the culture; agricultural techniques gave rise to a farming culture, which absorbed local practices in cultivating the land. The pattern of land clearing can infer from this traditional nature of agriculture. Conventional Dayak kanayat'n farmers clear the ground by identifying the area, cutting down the vegetation, and burning the remains. The land-clearing method used by the indigenous Dayak Kanayat'n is also known as shifting cultivation. In West Kalimantan, shifting cultivation involves clearing fertile forest land and burning it to ashes. Ash from burning will play a vital role in fertilizing the soil.¹ This practice of shifting cultivation is very suitable for use in West Kalimantan, where the soil structure contains a certain level of acidity because burning ash can increase soil pH.

Shifting cultivation activities can be used as a natural fertilizer and absorbed by the soil. This shifting cultivation activity has many positive aspects, including development and preservation. The traditional Dayak Kanayat'n agricultural culture and the indigenous Dayak Kanayat'n people farming organically or naturally do not damage nature by providing chemical fertilizers due to the remnants of ash from the soil. The practice of shifting cultivation has not only a positive impact but also a negative impact. The negative effect of the rule of shifting cultivation is forest fires. Forest fires occur when the fire initially used to clear land spreads to areas that are not agricultural,

¹ Rifqi, M. (2017). Ladang Berpindah Dan Model Pengembangan Pangan Indonesia Studi Kasus Daerah Dengan Teknik Ladang Berpindah Dan Pertanian Modern. *Seniati*, 3(2): E22.1-E22.7 DOI: <https://doi.org/10.36040/seniati.v3i2.1940>, p. E22.1

causing forest fires.² The regulation of this forest fire in Article 187 of the Criminal Code explicitly states that if the forest fire is threatened with a maximum imprisonment of 12 years if the forest fire causes a general hazard to goods, the entire 15 years imprisonment if it endangers the lives of others. It is threatened with imprisonment for a maximum of life or a certain period of a maximum of 20 years if the forest fire endangers the lives of others and causes death. In addition to the criminal law code, the prohibition of land burning is in Article 69, paragraph (1), letter H of the Law on Environmental Protection and Management, which allows land clearing if local customs are taken into account.

The practice of shifting cultivation as a traditional tradition of the Dayak Kanayat'n community has a feature in the magical religious mind which is believed that the forest is a manifestation of another realm. The forest is considered a *jubata'* or a large entity.³ Forests are interpreted as being able to provide life for all people who use wood in a good and proper way. The magical religious nature of the forest is in the Dayak philosophy, which reads just *ka' talino, bacuramin ka' saruga, basengat ka' jubata*.⁴ This philosophy explicitly states that the indigenous Dayak community, especially the Dayak Kanayat'n, must always apply justice to each human being. It reflects on the nature of heaven, or good things can find this justice. Justice in the minds of the Dayak Kanayat'n indigenous people is not separated only from fellow humans but from other entities such as forests, considered to have minds and souls.

The tradition of shifting cultivation of the Dayak Kanayat'n indigenous peoples, which is religious, is regulated by customary provisions. In the practice of shifting cultivation, if it causes damage to nature, the perpetrator will be punished by customary sanctions. This customary trial can be called the mediation or restorative justice method in which the customary court is opened and heard by the elders and traditional leaders of the Dayak Kanayat'n.

II. Research methods

This study aims to reveal how the Restorative Justice Paradigm of Kanayat'n Dayak Customary Law on Environmental Damage Caused By Shifting Cultivation. This research focuses on the *sociological juridical approach*. The data sources used in this study are divided into two, namely primary data sources and secondary data sources. Primary data sources such as observations, interviews, surveys, or questionnaires are distributed to data sources or respondents. At the same time, secondary data sources are obtained from books, laws and regulations, documents, and other writings related to the problem being studied.

² Robiyanto, A., Suwarni and Syaifulloh, A. (2022). Perubahan Pola Perladangan Suku Dayak Djongkakng Di Desa Empiyang Kecamatan Jangkang Kabupaten Sanggau Kalimantan Barat Tahun 1998-2017. *Historica Didaktika: Jurnal Pendidikan Sejarah, Budaya Sosial*, 2(1): 55-66, p. 64

³ Sinaga, F., Winangsit, E., and Putra, A. (2021). Pendidikan, Seni, dan Budaya: Entitas Lokal dalam Peradaban Manusia Masa Kini. *Virtuoso: Jurnal Pengkajian dan Penciptaan Musik*, 4(2): 104-110, DOI: <https://doi.org/10.26740/vt.v4n2.p104-110>, p. 108

⁴ Olendo, Y., Dewantara, J., and Efriani (2022). Tradition, ritual, and art of the Baliatn: The conceptualization of philosophy and the manifestation of spirituality among the Dayak Kanayatn. *Wacana*, 23(2): 491-518, DOI: [110.17510/wacana.v23i2.1059.492](https://doi.org/10.17510/wacana.v23i2.1059.492), p. 492

III. Results and Discussion

The discussion about justice has never stopped since ancient Greece until now, and justice has various forms. Aristotle argues that justice is equality of status, rights, and obligations, where the priority is on subjects who obey written and unwritten laws.⁵ In line with this, the philosopher Ulpianus argues that justice is an original will or an absolute will that exists when a human being lives in the world so that each has its part.⁶ Based on some of the justice that the philosophers have explained, it is justice in general and is still not specific. The understanding of justice is then divided into retributive justice and rehabilitative justice. The knowledge of the two justices then gave birth to a new concept of justice, or known as restorative justice.

The emergence of restorative justice is based on dissatisfaction and frustration with the formal justice system. In the Indonesian context, patterns of restorative justice approach to resolving criminal cases have been practiced in various traditional communities (customary communities) in Indonesia. Indigenous peoples deliberate to reach a consensus on the essential value of restorative justice to resolve problems that arise.⁷ The concept of restorative justice has rooted in the life and culture of Indonesian society, which is the soul and personality (*volkgeist*) of Indonesian society. The essence of restorative justice is to eliminate a judicial system that is considered rigid and is intervened by the state. It is constantly influenced by certain interest groups so that a concept of settlement of criminal acts outside the court (mediation) is formed. It is intended to find a way to enforce a more just punishment system and balanced. The example is between the interests of the perpetrator, the victim, and the community.⁸ Restorative justice is based on the belief that parties to a conflict should be actively involved in resolving and mitigating adverse consequences. In some cases, restorative justice is based on a desire to return to local community decision-making and preserve customary law and traditional justice practices.⁹

Traditional judicial practices to provide restorative justice are also found in the Dayak Kanayat'n indigenous peoples. In line with Article 18B of the Constitution of the Republic of Indonesia and Law Number 48 of 2009 concerning Judicial Power which recognizes the existence of indigenous peoples, as well as customary justice institutions as long as they do not conflict with the 1945 Constitution.¹⁰ Customary justice is a judicial

⁵ Adlhiyati, Z., and Achmad (2019). Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls. *Undang: Jurnal Hukum*, 2(2): 409-431, DOI: <https://doi.org/10.22437/ujh.2.2.409-431>, p. 411

⁶ Manan, A. (2018). *Dinamika Politik Hukum di Indonesia*. Jakarta: K E N C A N A, p. 29

⁷ Aryadi, D. (2020). Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Sebagai Perwujudan Nilai-Nilai Yang Berwawasan Pancasila. *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan*, 9(2): 138-154, DOI: <https://doi.org/10.24252/ad.v9i2.15046>, p. 142

⁸ Azhar, A. (2019). Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2): 134-143, DOI: [10.24235/mahkamah.v4i2.4936](https://doi.org/10.24235/mahkamah.v4i2.4936), p.136

⁹ Syaufi, A. (2020). *Konstruksi Model Penyelesaian Perkara Pidana yang Berorientasi pada Keadilan Restoratif*. Yogyakarta: Penerbit Samudera Biru, p. 61

¹⁰ Rochaeti, N., and Sutanti, R. (2018). Kontribusi Peradilan Adat dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia. *Masalah-Masalah Hukum*, 47(3): 198-214, DOI: [10.14710/mmh.47.3.2018.198-214](https://doi.org/10.14710/mmh.47.3.2018.198-214), p. 199

institution that lives according to local customs.¹¹ Customary courts in the Kanayat'n Dayak community are led by customary heads and customary elders or customary law authorities. In customary decision-making carried out by the customary assembly. Before carrying out customary justice, a traditional ritual is carried out in the form of *nyagahatn* (praying to ancestors and nature). As for prosecuting the perpetrators of violations of customary law, the customary heads or traditional elders, from now on referred to as customary judges, discuss the violations that the perpetrators have committed by referring to the provisions of the Customary Deliberation (*Musdat*).¹² The Dayak Kanayat'n Customary Deliberation is a re-formulation of cultural values in arrangements related to customary sanctions adopted by the Kanayat'n Dayak indigenous people, most of which are written in the form of traditional consultations.

The provisions of the Customary Deliberation (*Musdat*) are the result of a popular opinion poll of the entire Kanayat'n Dayak community, which contains articles related to customary violations, ranging from mild to severe customary violations. Violations in the Customary Deliberation include theft, rape, murder and destruction of nature. The destruction of nature referred to in the Kanayat'n Dayak Customary Consultation, among others: Article 86 Provisions for the Kanayat'n Customary Deliberation regarding the protection of palm trees; Article 81 The provisions of the Kanayat'n Customary Deliberation regarding pollution of water; and Article 80 Provisions for the Kanayat'n Customary Deliberation regarding Forest Burning.

Day of the Dayak Kanayat'n Indigenous Peoples. The articles on the destruction of nature in the Dayak Kanayat'n Customary Deliberation give the importance of nature to the indigenous Dayak Kanayat'n community; the forest is considered the center of life for humans, animals, and plants which must be preserved because the forest is used for daily needs. Violation of the destruction of forests is considered to be disastrous. It destroys the balance of relations between this nature and other (unseen) nature; as a result of the damage from this relationship, it has logical consequences, namely that many plants and animals die as a result of violations of customs that occur so that the forest does not survive. It is again a place for the indigenous Dayak Kanayat'n people to hang their lives.

Violation of the Dayak Kanayat'n customs, which have been destroying the environment, especially forests, are shifting cultivation activities carried out without regard to customary norms. The process caused the land clearing, which initially burned for specific areas, to spread to other forest areas not for land agriculture.¹³ Traditionally, farmers who will clear land prepare water irrigation canals or create boundaries around the land to be burned so that the fire does not spread to other places. However, in reality there are still some traditional farmers who ignore the custom due to lack of human resources and money due to several traditional rituals in the shifting cultivation system

¹¹ Kastama, I., and Dewi, N. (2021). Keputusan Damang Pada Masyarakat Adat Dayak Dalam Menyelesaikan Kasus Perceraian di Kalimantan Tengah. *Kertha Patrika*, 43(2): 182-196, DOI: <https://doi.org/10.24843/KP.2021.v43.i02.p05>, p. 189

¹² Hadi, K. (2021). Pemikiran Dan Praktek Pemerintahan Adat Suku Dayak Ma'Anyan Di Kalimantan Tengah. *Governabilitas (Jurnal Ilmu Pemerintahan Semesta)*, p. 34

¹³ Citranu. (2020). Penerapan Sanksi Tindak Pidana Adat Dayak (Singer/Denda) Terhadap Pelaku Pembakaran Hutan dan Lahan Di Wilayah Kalimantan Tengah. *El-Mashlahah*, 10(1): 64-78, DOI: <https://doi.org/10.23971/maslahah.v10i1.1786>, p. 65

that must be passed, while the stages of the process include: The first stage process of determining the location of shifting fields by praying and asking for Jubata's blessing by preparing offerings. In the form of grilled chicken at the site of land clearing, *tumpi* and *bontong* (typical cakes of the Dayak kanayat'n indigenous people), and *lemang* (rice cooked in bamboo); The second stage is a process of burning land, before the land is burned, the boundaries of the land must be cleared first, and ditches or irrigation canals where water flows. The process of land clearing is also accompanied by traditional elders who, while the ground is burned, pray to expel the evil spirits in the land. The prayers of these traditional elders are believed to prevent the fire from spreading to other; The third stage is the process of inserting seeds into the ground that has been burned using wood must be completed within 1 (one) day, so it must be done together; The fourth stage is process of cleaning the grass after the rice is planted and the grass begins to grow, we tend the grass that grows together; The fifth stage is process of harvesting rice, in which the harvested rice will be collected in the rice barn; and the last stage gratitude process and the joy of the successful harvest. The traditional ritual process in the shifting activities of the Dayak Kanayat'n indigenous people must be carried out in accordance with the stages determined by customary law. If violated, customary sanctions will be imposed.

The provisions of customary sanctions related to shifting cultivation activities that cause forest fires have been regulated in Article 80 of the Dayak Kanayat'n Customary Deliberation. Reads: "Whoever because of his actions caused the forest to burn may be subject to the *Siam Pahar Pangalabur Temenggung* customary penalty. The conditions for the *Siam Pahar* customary punishment include 12 white plates, 5 pieces of pork or 12.5 kilograms, 1 chicken, *palantar* (rice, eggs, silver money, lamp, water in a glass, and flour), as well as eyes for advice or giving sincere wages to friends. *Panyangahatn* (customary priest) is someone who is considered to have supernatural powers so that he can say mantras and prayers to *Jubata* in Dayak Kanayat'n traditional ceremonies".¹⁴ The explanation related to forest fires is also described in the Dayak Kanayat'n Customary Deliberation. The forest in question is *bawas* forest or forest cleared by means of shifting cultivation. It is forbidden to reopen it for a relatively short period, *lalang* forest or forest overgrown with weeds which will cause a lot of smoke and be harmful to the lungs, forests that already have owners and *pararoatn* forests or young forests where young plants have just overgrown the forest, so it is forbidden to open it by burning.¹⁵

IV. Conclusion

Restorative Justice is carried out through discretion and transfer, namely the transfer of the criminal process outside the formal process to be resolved by deliberation. Settlement through consultation is not new to Indonesia. Even customary law in Indonesia does not distinguish between the territory of criminal and civil cases. In this case, the justice achieved or aspired is the result of ideas and values from the ancestors of the Dayak Kanayat'n customs that are appropriate and contained in the Pancasila

¹⁴ Wina, P., and Habsari, N. (2017). Peran Perempuan Dayak Kanayatn Dalam Tradisi Upacara Naik Dango. *Agastya*, 7(1): 104-126, p. 110

¹⁵ Magiman, M., Sulisty, A., and Francoise, J. (2021). The Meaning of Nyangahatn Ritual of Dayak Kanayatn Community for Disaster Mitigation. *International Journal of Cultural and Art Studies (IJCAS)*, 5(2): 64-78, DOI: <https://doi.org/10.32734/ijcas.v5i2.7249>, p. 93

philosophy. Based on this, applying restorative justice according to the customary law of the Dayak Kanayat'n is to achieve the goal of obtaining a cosmic balance or restoring a state with a majestic religious character.

As for the application of restorative justice in the problem of shifting cultivation that causes environmental damage: the paradigm of the Dayak Kanayat'n customary law is as follows:

1. Before holding a customary trial, the customary judge will perform the traditional ritual of *nyagahatn* (praying and asking for instructions to *jubata*).
2. After opening, the customary judges discussed with each other to find the appropriate customary sanctions while still referring to the provisions of the Dayak Kanayat'n customary deliberations.
3. Suppose the perpetrator is proven to have committed forest destruction in terms of the shifting cultivation system that causes forest fires and in the process of shifting cultivation that is not by the procedures and rituals of the Dayak Kanayat'n custom. In that case, the perpetrator will be sanctioned by *Siam Pahar Pangalabur Temenggung*.

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