



Law Enforcement of Sexual Violence against Vulnerable Minors: Dayak Customary Law Remedies

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<http://dx.doi.org/10.47814/ijssrr.v6i10.1573>

Abstract

Human rights violations occur in all legal subjects, including women and children. The high number of cases of sexual violence against minors needs protection and law enforcement. This empirical juridical research aims to describe the situation and analyze the forms of law enforcement for acts of sexual violence against vulnerable minors based on the customary law of the Nganju Dayak. Research instruments through interviews, literature, and documentation are employed. The Dispute Resolution Mechanism through the Customary Courts is carried out in three stages: the Pre-Conflict Stage, the Conflict Stage, and the Decision Implementation Stage. The procedure for resolving cases of sexual violence against minors goes through eight stages, namely reporting from the victim, mediation, response and lawsuit hearings, trial evidence from the plaintiff and defendant, local examination hearings, considerations of the customary council, and judgment hearings. The customary sanction is in the form of singer Karusak Bawi Tabela. In the case studied, the customary sanctions received by the perpetrators are contained in Article 79. Party A was prosecuted and fed 40 Kati Ramu (Jipen) with a value of Rp. 500,000 per kati Ramu (Jipen) for a total of Rp. 20.000.000 to the victim and is subject to a fine under Article 68 (Singer Tekap Bau Mate) customary fine covering the shame of the face and eyes that are polluted, especially for women, a fine of 10 Kati Ramu (Jipen) with The amount of Rp. 5.000.000 was paid to the victim.

Keywords: *Sexual Violence; Vulnerable Minors; Dayak Customary Law; Jipen-singer*

Introduction

The fulfillment of human rights guarantees for all citizens is one of the prerequisites for a country to be considered a state of law (1). Guarantees for the fulfillment of human rights can be formulated in the Constitution of a country or in existing laws and regulations (2). One of the human rights that is fulfilled

and guaranteed is the right to a fair settlement of cases (3). Based on the principle that all people are equal before the law, vulnerable groups, namely women and children, are also guaranteed the fulfillment of their rights. The law must provide attention and protection to them in dealing with the cases and human rights violations they face (4).

Human rights violations occur in all legal subjects, including women and children (5). This group is vulnerable to cases of violence, especially sexual violence. This can be seen from the increasing number of cases and the various types of violence that are occurring (6). The reality of sexual violence experienced by children and women is still a big problem in Indonesia (7)). According to data released by the Ministry of Women's Empowerment and Child Protection (KemenPPPA) in the Online Information System for the Protection of Women and Children (Symphony PPA), sexual violence ranks first as a type of violence that victims often experience, namely 11,016 out of 27,593 cases of violence throughout 2022. Based on gender, 80%, or 25.052 cases, were found where the victims were women, in the age group 13–17 years, or 31.9%. This figure is in the first order of victims based on age group. Furthermore, based on age status, it was found that the most victims were children, namely 57.1% (Ministry of Women's Empowerment and Child Protection (KemenPPPA), 2022).

The high number of cases of sexual violence, especially against children, requires serious attention from all parties. Sexual harassment is a violation of the law and directly injures the child physically and psychologically (8). The consequences can be in the form of prolonged trauma, which will have a negative impact in the future on the child's daily survival, hurt morally and mentally, cause the child to suffer from emotions, depression, loss of appetite, become introverted, have trouble sleeping, and so on (9). Sexual violence against children, according to End Child Prostitution Institution Asia Tourism (ECPAT) International, is a relationship or interaction between a child and an older person or adult, such as a foreigner, sibling, or parent, where the child is used as an object to satisfy the perpetrator's sexual needs (10). This act was carried out using coercion, threats, bribes, deception, and even pressure. Activities of sexual violence against children do not have to involve bodily contact between the perpetrator and the child as a victim (11).

Sexual violence against minors has become a serious threat in Indonesia. Legal protection is urgent for victims of sexual harassment, considering that this is a violation of human dignity (12). Efforts to protect women against cases of sexual violence have been pursued by the government in Criminal Code articles 284–296, which contain rape and obscenity (13). The ratification of the Draft Law on the Crime of Sexual Violence (RUU TPKS) is also a form of commitment to optimizing the prevention and handling of cases of sexual violence. The TPKS Bill regulates non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence (14). Apart from positive law in Indonesia, customary law must also protect victims of sexual harassment, such as the Nganju Dayak Customary Law in Central Kalimantan.

In the process of upholding the law through customary courts in cases of decency, rape, or sexual harassment, the statement from the woman or victim must be considered true by the customary authorities until there is sufficient rebuttal to prove that the statement is wrong. Women and children who are victims of violence must receive protection from traditional leaders until their dignity is restored through the punishment of the perpetrators and peace is created. One of the cases of sexual abuse of minors that occurred in Tumbang Tanjung Village, Katingan Regency, Central Kalimantan, was resolved using the Nganju Dayak customary law. This case was resolved by the customary mantir's decision regarding violations of Dayak customary law with a customary peace decision, and no positive legal process was continued. According to the issue's background, it is crucial to see how the law enforcement procedures for cases of sexual abuse of minors are based on Nganju Dayak customary law.

Research Method

This study uses an empirical juridical research method that seeks to examine the implementation of legal provisions factually in each particular legal event (15). The main aspect of this research focuses more on the goal of describing the situation clearly and precisely and analyzing the situation referred to in this case, which is the law enforcement of acts of sexual violence against vulnerable minors based on Dayak customary law. In this study, the data used is primary data, namely data obtained directly from the first source through face-to-face interviews with the informants and respondents (16). In addition to primary data, secondary data is also collected through library research on documents related to research problems, such as official publication documents, books, the results of research reports, and so on. The analysis of this research uses a qualitative method with a descriptive approach, which is a study that intends to classify and select data obtained from literature studies and interviews, which are then connected with theories, principles, and legal principles.

Results and Discussion

Law Enforcement Procedures through Dayak Customary Law

The damang and mantir who are entrusted with solving cases carry a great responsibility. Soerjono Soekanto said that in order to maintain and enforce the law, a stipulation decision from the authorized legal officer is required (17). Damang and Mantir are responsible for ensuring that the principles of customary justice are upheld in every customary dispute resolution process (18). The enactment of a legal regulation is contained in the decision (determination) of legal officials, for example, village group decisions, village head decisions, village peace judge decisions, religious official decisions, and so on, each in its own field of competence (19). The Dayak people put their trust in the Damang and Mantir Adat to solve their problems fairly and correctly to achieve justice (20).

Referring to the guidelines of the Central Kalimantan customary law court, the dispute resolution mechanism through the customary courts can be carried out in 3 stages, namely the pre-conflict stage, the conflict stage, and the decision implementation stage (21). The pre-conflict stage consists of a process of negotiation, mediation, and reconciliation. The conflict stage is in the form of the reporting process, case examination, and decision. The next stage is the implementation stage of the decision, namely the reading of the decision and the peace or reconciliation ceremony after the implementation of the decision. At the pre-conflict stage, a case can be resolved by Mantir Let Adat through negotiation, mediation, and reconciliation. If this pre-conflict cannot be resolved, then the next stage is a case and ends with the implementation of the decision. Negotiation and mediation are always carried out by traditional leaders before a conflict becomes a case. Pre-conflict is carried out to keep togetherness as a big family maintained, social cohesion is guaranteed, and the cosmic balance remains stable as expressed in the Betang culture (22).

When it comes to sexual abuse against kids, traditional leaders follow the following procedure:

First, The party who believes his rights have been violated reports his complaint to the Mantir/Let Adat in his village at the start of the Adat judicial process. Victims or family members who feel wronged can file this report. This report will subsequently be used by the Let Adat Mantir or the Adat Head Damang to present this matter to the Adat court process. In serious circumstances, the mantir and damang can secure the culprits in a safe area under the supervision of the mantir or damang and with the assistance of the batamad. The parties must have prepared evidence and witnesses during this first stage. In the Central Kalimantan Dayak Adat trial, evidence is presented in the form of confessions from the parties, witnesses, letters, and traditional oaths.

Secondly, the mantir or damang investigates a matter in the second stage. If the case is serious, the mantir or damang requests that the parties involved make a statement stating that they have willingly opted to address the matter through customary courts. This declaration is put in writing and stamped. If the parties agree to use an Adat court, the Adat mantir or Damang recommends Peace as a mediator or negotiator. The reporting party is required to produce numerous traditional objects as proof of conformity with the kedamaian norms while reporting the matter. *The third* stage involves notifying the parties that the Adat court will be held, and the usual judge will invite all of its members to discuss the prosecution's report. This meeting will determine when it is appropriate to summon the plaintiffs and, in particular, the offenders to begin the trial procedure. In *the fourth* stage, the usual judge summons both the prosecution and the offender to appear in court. The typical judge began questioning the prosecution about the facts of the case as well as the offenders regarding the validity of the prosecution's claim against them.

In the *fifth* stage, after the parties, both the mandawa (claimant/plaintiff) and the tandawa (reported/defendant) are present, and before entering the main case, the Mantir Let Adat, or Damang, as the customary judge, once again offers peace with a variety of sufficient reasons if the case is opened. If both parties accept the offer to make peace, the mediator forms a peace agreement. The damang makes a peace decision that is signed by both parties, as well as a statement not to repeat the stamp duty wrongdoing. If it is possible to resolve it at the Mantir level, the Mantir can make a decision known as the Mantir Peace Deed. The case (basara) does not need to be tried under the Mantir peace treaty. *Sixth* stage, If the parties still refuse to reconcile, the session is opened by the typical judge, who begins by reading out the plaintiff's claim. In the *seventh* stage, after the evidence and witnesses have given information, the mamir or damang is required to examine the truth of the evidence or witnesses. As a result, the customary justice process takes place in an open, honest, and responsible manner, allowing litigants to seek justice. If something prevents witnesses from being summoned in *the eighth* stage, the mantir or damang can approach the batamad for assistance, and the costs will be borne by the party who needs the witness' testimony. After hearing all of the witness statements and evidence, the damang and traditional mantir convene in *the ninth* stage to make a decision. When the deliberation occurs, traditional stakeholders may include other traditional leaders, both men and women.

The tenth stage, after deliberation and decision-making, is the announcement of the decision. This announcement must be attended by all parties, witnesses, and male and/or female community leaders. The reading of the decision is carried out in a hearing that is open to the public. The party found guilty is subject to a fine, the amount of which is according to the regulations of each damang. As part of an effort to strengthen the role of customary justice, the decision to settle the case is recorded in an archive and a case registration book. attended by both parties and traditional leaders. The presence of traditional leaders acts as a witness that the decision of the customary court judge has been carried out. In the twelfth stage, the implementation of the judge's decision ends with a traditional ceremony, according to the regulations of each damang.

The above steps can be shortened according to the needs of each village. assisted by community leaders by way of negotiation or mediation. Likewise at the damang level, however, every customary dispute settlement in deciding cases at the village/kelurahan level still cooperates with the damang in the sub-district and is known to the damang in the Malan Island sub-district in terms of cases involving not too heavy a burden with 3 Mantir Adat (23). The Adat Court is a dispute settlement mechanism based on Adat law and the customs of the Adat Law Community, or the local wisdom of the Dayak people in Central Kalimantan. The emphasis is not on the institution but on the settlement mechanism for disputes. The implementation of customary justice is to provide protection and justice to members of the legal community (24).

Enforcement of Traditional Sanctions for Perpetrators of Sexual Violence against Minors through Dayak Customary Law

In the customary law of the Dayak Ngaju, the act of taking other people's girls who are underage without the knowledge of their parents and committing immoral acts against these children is included in the violation of customary decency (25). Referring to the guidelines of the Central Kalimantan customary law court, violations of customary decency include: Habandung (adultery) that is mutual; rape; sexual harassment; Tungkun (taking, depriving, other people's wives, husbands, potential wives, and husband candidates); pregnancy out of wedlock (plague/discord, parallel, other people's wives, widows, bachelors, and so on) (26). With regulations and law enforcement related to sexual violence as an immoral crime against minors, Dayak Customary Law has a procedure or mechanism for its settlement.

The principle of speedy justice is still based on the Guidelines for Customary Courts so that the parties in dispute can resolve quickly and get justice as fairly as possible, and the perpetrators of customary crimes must carry out the decisions that have been stipulated. The Central Kalimantan Dayak Customary Court applies customary sanctions known as Jipen or "Singer. Jipen is a customary law sanctioned against people who violate customary law in the Dayak community. This punishment is usually in the form of a fine or an open statement of apology to members of the indigenous Dayak community by violators of these customary laws (27). The provisions for implementing jipen legally are regulated in the Regional Regulation of Central Kalimantan Province Number 16 of 2008 concerning Dayak Customary Institutions in Article 8 Letter C that:

“The customary head is tasked with resolving disputes or customary violations; it is also possible that problems are included in criminal cases, both in the first examination and in the final settlement session as usual according to applicable custom..”

The Dayak people have an institution of kadamaman, or customary Dayak institutions, that carry out their duties, functions, and authority to carry out their customary law. These institutions are tiered at the national, provincial, district/city, sub-district, and village/kelurahan levels (28). Dayak customary institutions are structured and have a hierarchy that is a driving factor, supporting and able to increase community participation as a form of government support for indigenous Dayak people who will feel fully appreciated so that they are encouraged to take responsibility for a sense of justice, prosperity, and peace in the life of the community and their environment (29). The nominal size of Jipen is determined by the customary law of the Dayak tribe, which has been codified in a number of 96 articles of fallen anoi that have become customs that are adhered to and maintained by the Dayak people. The sanctions imposed are quite strict on perpetrators who create an imbalance in people's lives. Everything is arranged as concisely and easily as possible through predefined procedures. The distinctive features of law, especially customary law, so that it can be differentiated from customary law, are sanctions or fines. Customary Courts do not punish but solve problems, restore natural balance (30), and provide informal legal education to all members of the Customary Law Community, including foreigners who live in the customary territory of the customary law community (31).

The customary sanctions for immoral crimes of sexual violence against minors are in the form of: first, *singer Karusak Bawi Tabela* (customary fines for damaging underage women by rape) (32). For example, if a man forces adultery on an underage woman or rapes her, this act can be prosecuted and punishable under this article. The penalty for men is 45–90 *kati ramu* for women; if the woman is underage (before the child's menstruation) *Karusak Bawi Tabela* (customary fines for damaging underage women by rape). For example, if a man forces adultery on an underage woman or rapes her, this act can be prosecuted and punishable under this article. The penalty for men is 45–90 *kati ramu* for women; if the woman is underage (before the child's menstruation), then she is subject to 90–150 *kati ramu*. Second, Article 68, *Singer Tekap Bau Mate* (a traditional fine covering the embarrassment of the

face and eyes that are polluted specifically for women), For example, a man who dares to seduce and run away from a girl without the knowledge of parents and relatives elopes, or is called *hatamput*. The sanction for this act is that marriage preceded by a man pays or realizes the value of this article (*tekap bau mate*) a fine of 30-45 *kati ramu* for the woman's family. Only after that can a consensus be reached regarding the Hindu way of marriage and the wedding party. The men bear the cost of the traditional peace ceremony and the costs of the trial.

Procedure for Settling Cases of Sexual Abuse of Minors According to Ngaju Dayak Customary Law

In the case study of abuse of minors that occurred in Tumbang Tanjung Village, Pulang Pisau Regency, in 2019, the perpetrator was a UPT member. Malan Island, Buntut Bali Village (Residents of Transmigration), Buntut Bali Village with the initials A (initials) who committed sexual harassment against a minor named V (initials), a resident of Tumbang Tanjung village out of wedlock and without the knowledge of the victim's parents. According to the customary law of the Dayak Ngaju, Pulau Malan District, Katingan Regency, the procedure for resolving the sexual harassment case was completed in eight stages, namely reporting from the victim, mediation, response and lawsuit hearings, evidence hearings from the plaintiff and defendant, local examination hearings, consideration of the *damang adat* council or *mantir*, and trial judgment. It began with a report from the victim through the village (*Mantir Adat Density*). The suspicion of the victim's parents, whose children who went to school in Tumbang Samba Village did not return home to Tumbang Tanjung for several days, Both of the victim's parents received information from V's friends in Tumbang Samba Village that V was taken to the boarding house/barracks owned by perpetrator A. Knowing the location of the child's two victims' parents, they immediately went to the perpetrator's boarding house/barracks, and it turned out that both V and A were in the boarding house. The barracks were alone together, so the victim's parents did not accept it, so the victim's parents went to the local customary *mantir* and reported that the victim was taken away without the knowledge of the victim's parents and without permission.

A few days later, a summons was made to the parents of the victim and the perpetrator. The statement that the perpetrator had a wife and children surprised the victim because, so far, he did not know that the perpetrator had children and a wife. The victim knew that the perpetrator only worked in Tumbang Samba, and based on the victim's statement, it became the basis for *Mantir* or *Damang* to decide this case that there had been immorality while he lived in the perpetrator's boarding house or barracks with an element of coercion from the perpetrator. After obtaining information, mediation is carried out by forming a mediator who resolves the problem. If the mediation is approved or agreed upon, then both parties are reconciled. However, if it is not agreed upon or does not produce results, it will proceed to the next trial in the sense of continuing or going up to the case. Therefore, the local customary *mantir* summoned the perpetrators and victims and their parents to carry out mediation, deliberation, and consensus by bringing the two parties together.

The results of the mediation between the plaintiff and the defendant agreed not to resolve the case in positive law but to settle it according to customary law by imposing *Jipen* sanctions or imposing fines according to customary law. After the customary meeting of deliberation and consensus on victims and perpetrators, there were several articles of customary sanctions that were accepted by the perpetrators and reached a joint decision. Then enter the next stages, namely trial answers and lawsuits, and trial evidence from the plaintiff and the defendant, who presented witnesses at the trial to get clarity on the chronology and details of the case. The next stage is the trial examination at the scene. After a series of trials, the *Damang* or *Mantir Adat Council* adjudicates the points of demand and considers those based on the Central Kalimantan Dayak Customary Law Book. In the customary provisions of the village of Tumbang Tanjung for cases of sexual harassment of minors with obscene acts, it is commonly known as *Singer Rusak Bawi Tabela Underage*, meaning that the settlement of this case in the village already has rules so

that if it occurs, it is related to a sexual harassment case, in addition to violating positive law. The Dayak Ngaju custom also has provisions, namely that *singer Rusak Bawi Tabela* is underage.

After obtaining the results of the decision, a court decision is made. The Mantir or Damang again summoned both parties to read out the decision. Based on the decree of the Customary Mantir of Tumbang Tanjung Village, Pulau Malan District, Katingan Regency The customary sanctions received by the perpetrators are contained in Article 79 (*Singer karusak Bawi Tabela Underage*) Party A in Law/Fine 40 *Kati Ramu (Jipen)* with a value of Rp. 500,000 (Five Hundred Thousand Rupiah) per *Kati Ramu (Jipen)* with a total of Rp. 20,000,000 (Twenty Million Rupiah) to Party V (Women's Party) and subject to fines Article 68 (*Singer Tekap Bau Mate*) Customary fines for closing embarrassment of the face and eyes that are especially polluted on the part of women are subject to a fine of 10 *Kati Ramu (Jipen)* with an amount of R. 5,000,000 (Five Million Rupiah) paid to Party V (Women's Party). Points Article I and II amount to 25,000,000 (Twenty Five Million Rupiah) and have been accepted by party A of the Decision.

Conclusion

The Dispute Resolution Mechanism through the Customary Courts is carried out in three stages: the Pre-Conflict Stage, the Conflict Stage, and the Decision Implementation Stage. The procedure for resolving sexual harassment cases was completed in eight stages, namely reporting from the victim, mediation, hearings on answers and lawsuits, hearing evidence from the plaintiff and defendant, hearings on local examinations, consideration of the adat damang or mantir council, and hearings on judgments. The customary sanctions are in the form of *Singer Karusak Bawi Tabela* (traditional fines for damaging underage women by rape). In the case studied, the customary sanctions received by the perpetrators were contained in Article 79. Party A was prosecuted and fed 40 *Kati Ramu (Jipen)* with a value of Rp. 500,000 per *Kati Ramu (Jipen)* for a total of R 20,000,000 to Party V (Women's Party) and subject to a fine of Article 68 (*Singer Tekap Bau Mate*). Customary fines cover the embarrassment of faces and eyes that are polluted, specifically for women, to be fined 10 *Kati Ramu (Jipen)* with an amount of Rp. 5,000,000 paid to the victim. Articles I and II points total Rp. 25,000,000.

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