

Implementation of restorative justice in the settlement of crimes of persecution by TNI soldiers whose cases have been resolved under customary law

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Abstract

Purpose: This study aims to analyze the Implementation of Restorative Justice in the Settlement of Criminal Acts of Abuse by TNI Soldiers Whose Cases Have Been Settled According to Customary Law.

Research/methodology: In this study, the author uses a qualitative data analysis method, namely data that is described using terms that are separated based on classification to reach a conclusion. To analyze the data, the author uses phenomenology with a descriptive case study design, namely drawing actual events to get a picture of the existing research object, then analyzing it according to the provisions of related laws and regulations, legal theories and opinions of legal experts. Drawing conclusions is done using Deductive Logic.

Results: The author concludes that customary law is the basis for the Restorative Justice settlement in criminal acts of abuse committed by TNI soldiers, so the author believes that the Oditur should make and convey a legal opinion to the Case Submitting Officer which can be in the form of a request that the case be resolved according to soldier disciplinary law, or closed for the sake of law, public interest or military interest because the case has been resolved through Restorative Justice by undergoing customary law. Furthermore, after the issuance of Supreme Court Regulation Number 1 of 2024 on the Implementation of Restorative Justice in the settlement of criminal acts of abuse committed by TNI soldiers whose cases have been resolved through customary law or resolved through peace between the defendant and the victim or their heirs before the trial and all agreements have been implemented, the judge can use this as a consideration in the decision and examination process. In the settlement of criminal acts of abuse by TNI soldiers, the victim has been resolved through customary law settlement, this becomes a general requirement by the Judge in imposing a conditional/supervisory criminal sentence.

Keywords: *Restorative Justice, Criminal Acts, Persecution, Customary Law*

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1. Introduction

In accordance with the above article in the application of the Criminal Code for TNI soldiers based on article 1 of the Criminal Code. TNI soldiers who commit criminal acts of persecution will be charged

in accordance with Articles 351 to 357 of the Criminal Code. What is meant by persecution is not determined, if viewed from these articles there is no description of the elements other than only mentioning persecution, therefore if we want to elaborate according to the elements, then the term persecution should be described so that it reads "Whoever deliberately and without rights hurts or injures the body of another person, because of simple persecution, is threatened with a maximum prison sentence of two years and eight months or a fine a maximum of three hundred rupiah (x15) (S. R. Sianturi, 2020; Tarasari & Nasywa, 2021).

In the case of the crime of persecution, there are several ways to resolve it, especially minor crimes according to Article 351 paragraph (1), one of which is by deliberation or peacefully. This method is often carried out by the community because the victim or the victim's family is sympathetic or pity for the perpetrator of the crime of persecution, or the perpetrator of the crime is afraid of the threat of his actions, so the perpetrator tries to resolve his actions by deliberation or peace. Peaceful or deliberative settlement of criminal acts can also be called *Restorative Justice*.

Restorative Justice is a fair settlement that involves the perpetrator, victim, their family and other parties involved in a criminal act, jointly seeking a settlement of the criminal act and its implications, with an emphasis on restorative and not retaliation. In the military environment, *Restorative Justice* has never been applied because there is no significant explanation of *Restorative Justice*, but judging from the characteristics or principles of *Restorative Justice* in the regulations of the military environment, there are similarities about Restorative Justice settlement. Some of the remedial justice settlements in military regulations are regulated in Law number 25 of 2014 concerning military discipline law and Law number 31 of 1997 concerning Military Justice.

This is the same as the settlement of *Restorative Justice*, the settlement process carried out outside the criminal justice system is enough to be completed according to the military discipline law or closed for the sake of the law, public interest or military interests. In principle, criminal cases in trial cannot be resolved through *the Restorative Justice* process, but in practice criminal cases are often resolved through the mediation process which is an initiative of law enforcement as part of the settlement of the case. Thus, in reality, mediation can actually be carried out in the criminal justice system. Countries that have implemented *Restorative Justice* are Australia, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland, and the Netherlands, this Mediation is referred to as Penal Mediation. (Mansyur 2010). The basic idea of the existence of alternative case resolution in criminal cases is associated with the nature of criminal law itself.

In Indonesia, there are unwritten laws in addition to written ones, unwritten laws can also be referred to as customary laws, which are provisions that are commonly obeyed by the public even though they are not written. In this case, it includes most of the customary laws in Indonesia. Written laws are mostly in the form of laws. All unwritten laws are generally formed because of the habits and judgments of the elderly in the local community which can be called a kind of judiciary (Dokku & Kandula, 2021). The laws that are formed are inherited orally from generation to generation, increasingly refined in an orderly and gradual manner, in accordance with the development of the society concerned and the needs of norms.

So it can be concluded that customary law is the whole of rules or norms, both written and unwritten, that come from the customs or habits of the community. Customary law is recognized by the state as legal law. After Indonesia's independence, several rules were made contained in the 1945 Constitution, provisions regarding customary law are contained in article 18B paragraph 2 of the 1945 Constitution. "The state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law".

With the existence of article 18B paragraph 2 of the 1945 Constitution, the existence of customary law and its position in the national legal system is undeniable, even though customary law is not written and based on the principle of legality, invalid laws will still be recognized and can be realized

as long as customary law still exists and lives in society. One of the customary laws that live in the community is found in the Kalimantan region, especially the Dayak community, customary punishment carried out by the Dayak community still exists and is applied to perpetrators who violate it, including members of the TNI who persecute one of the Dayak people, are punished according to local customary provisions.

Based on the description mentioned above, this study will further discuss the facts that occur various problems that arise from TNI soldiers regarding the roles, functions and duties of TNI soldiers and then from the applicable legal provisions, such as legal events that are currently occurring in the community, namely a form of criminal acts of persecution committed by TNI soldiers against the community that have been resolved by customary law but are still criminalized in the Military Court Decision Number: 37-K/PM. I-05/AD/VI/2022. For example, the case of persecution carried out by 2 TNI Soldiers of Raider Battalion 642/Kapuas against civilians, the persecution has been resolved in a family manner and customarily punished to pay a fine of Rp. 500,000,000,- (five hundred million rupiah) and has been paid by the perpetrator, but after completing the customary law, the soldier is still being processed in a military court with a charge of persecution according to Article 351 paragraph (1) of the Criminal Code.

In the case mentioned above, the criminal act of persecution committed by TNI soldiers is an act that cannot be criminalized anymore because it has been resolved according to customary law, this is because the soldier has carried out customary punishment, so it can be called *Restorative Justice*, in principle the settlement of the crime of *Restorative Justice* Similar to customary law or settlement that is carried out outside the criminal justice system by involving the victim, the perpetrator, the victim's family and the perpetrator, the community and parties interested in a criminal act that occurred to reach an agreement and settlement, the event should have been completed and supported by the view that the act of persecution or in this case is a form of customary punishment, so that it cannot be subject to criminal law regulated in the Criminal Code but is specialized in customary law or can also be called *Nebis In Idem*. The Criminal Law contains details of acts that include criminal acts, perpetrators of criminal acts that can be punished, and various punishments imposed on law violators. In other words, the law is fair, by not discriminating which group the violators of the law come from, ranging from the top to the lowest, from civil society and state apparatus, and community welfare (Hermawan, Respationo, Erniyanti, & Fadlan, 2022; Istahar, Aulia, Dermawan, & Akim, 2023).

Based on the description of the event and the legal norms, it will have an impact on a form of justice and legal certainty from TNI members in a criminal act of persecution committed against the community if it has been subjected to customary law, in other words, it can be resolved through *Restorative Justice*, so the author raises a title related to **"Implementation of Restorative Justice in the Settlement of Crimes of Persecution by TNI Soldiers whose Cases Have Been Resolved According to Customary Law"**.

1.1. Problem Formulation

Based on the description of the background of the problem above, the main problems in this study are:

1. Can the principles of *Restorative Justice* be applied to the crime of persecution by TNI soldiers whose cases have been resolved according to customary law?
2. How is the implementation of *Restorative Justice* in resolving the crime of persecution by TNI soldiers whose cases are resolved according to customary law?

2. Literature Review

2.1. Restorative Justice

Understanding *Restorative Justice* The above can be identified as having several dementias, including the recovery in question is the restoration of the relationship between the victim and the perpetrator; recovery or healing can also be interpreted as recovery of the victim's losses or damage caused by the perpetrator's actions; while justice dementia is aimed at individual justice, namely victim justice (Siagian, Riza, & Lubis, 2023; Sukardi, 2020).

Restorative Justice As one of the efforts to find a peaceful resolution of the conflict outside the court, it is still difficult to implement. In Indonesia, there are many customary laws that can be *Restorative Justice*, but its existence is not recognized by the state or codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the parties to the conflict. The emergence of ideas *Restorative Justice* as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in conflict resolution. The victim remains a victim, the perpetrator who is imprisoned also raises new problems for the family and so on (Utomo, 2016; Wulansari, 2023). Settlement of criminal acts through *Restorative Justice* A conflict or damage arising from a criminal act is seen as a conflict that occurs in the relationship between members of the community that must be resolved and restored by all parties together. The settlement circle is centered on balance through providing opportunities for victims to play a role in the process of resolving criminal acts.

2.2. Legal Standing on the Implementation of Restorative Justice

Restorative Justice As one of the efforts to find a peaceful resolution of the conflict outside the court, it is still difficult to implement. In Indonesia, there are many customary laws that can be *Restorative Justice*, but its existence is not recognized by the state or codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the parties to the conflict. The emergence of ideas *Restorative Justice* as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in conflict resolution. The victim remains the victim, the perpetrator who is imprisoned also raises new problems for the family and so on (Suartama & Dewi, 2023; Utomo, 2016).

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2.3. Criminal

According to S.R. Sianturi, the definition of a criminal act is an act at a certain place, time and circumstance, which is prohibited (or violates the necessity) and is criminally threatened by law, is unlawful and contains elements of wrongdoing committed by a person who is able to take responsibility (Natamiharja, Panjaitan, & Setiawan, 2025; S.R. Sianturi, 1983). From the description above, it can be concluded that there are five elements when a person commits a criminal act, namely the existence of a perpetrator/subject, the existence of a mistake made, unlawful, the action taken is an act that is prohibited or required by law that is carried out at a certain time, place and circumstance.

In simple terms, it can be said that a criminal act is an act for which the perpetrator must be punished. Criminal acts are formulated in law, including the Criminal Code. For example, Article 338 of the Criminal Code stipulates that "whoever deliberately takes the life of another person is threatened with murder with imprisonment for a maximum of fifteen years" where it contains the crime of murder, namely the act of taking the life of another person, which is committed intentionally by the perpetrator (Harefa, Idham, & Erniyanti, 2023; Maramis, 2012).

2.4. Crime of Persecution

Crime of Persecution in General Crimes The title of Chapter XX Book II of the Criminal Code is Persecution. In this chapter, the meaning of persecution is not determined, as well as in the sense of Article 351 of the Criminal Code which is the core of Chapter XX, there is no description of the

elements other than just being called persecution. What is meant by persecution is not determined, when viewed in Articles 351 to 357 there is no description of the elements other than only mentioning persecution. Therefore, if we want to elaborate according to the elements, then it is better to describe the term persecution so that it reads: "Whoever deliberately and without rights hurts or injures the body of another person, because of simple persecution, is threatened with a maximum prison sentence of two years and eight months or a maximum fine of three hundred rupiah (x15). Therefore, if we want to elaborate on the meaning of persecution, then the act of persecution should be interpreted.

A doctrine interprets persecution as an act done deliberately aimed at causing pain or injury to the body of another person, the result of which is solely the goal of the perpetrator. From this understanding, persecution has the following elements:

- a. There is intentionality.
- b. There is an act.
- c. The consequences of the act (intended) are: pain, discomfort to the body, wounds of the body.

Wounds are present when there is a change in the shape of the human body that is different from the original shape. In pain, it is only enough that the person feels pain, without any change in body shape. The mental attitude of the perpetrator in the form of intentional persecution, in addition to being aimed at his actions, must also be aimed at causing pain or injuries to the person's body. According to Wirjono Prodjodikoro, intentionality in persecution is narrower and different from intentionality in murder, where intentionality in murder (Article 338 of the Criminal Code) is included in 3 forms of intentionality, namely intentionality as an objective, as certainty, and intentionality as a possibility.

Intentional actions cause pain or injury, but if that is not the goal, but as a means to achieve the proper goal, then there is no persecution here. Proof of "persecution" is sufficient, if it is contained, that the perpetrator has deliberately committed certain acts that can cause pain or injury to the body, as the purpose or will of the perpetrator. In Chapter XX Book II of the Criminal Code (KUHP), there are 6 (six) types of persecution, namely:

- a) Common/modest persecution (Article 351 of the Criminal Code),
- b) Misdemeanor persecution (Article 352 of the Criminal Code),
- c) Premeditated persecution (Article 353 of the Criminal Code),
- d) Severe persecution (Article 354 of the Criminal Code),
- e) Planned serious persecution (Article 355 of the Criminal Code),
- f) Persecution of special objects, which is burdensome (Article 356 of the Criminal Code).

2.5. Customary Law

Customary law consists of two words, namely law which means a set of rules, provisions and instructions. Meanwhile, adat means community habits that are carried out continuously, namely community behavior that always occurs. So customary law is a law that lives in society (*Living Law*) which is conceptualized as a legal system and formed from the empirical experience of society in the past, which is considered fair and has gained legitimacy so that it is binding (normative) (Hadikusuma, 1980).

The process of compliance with customary law is due to the assumption that every human being born on earth, since then he is surrounded by norms that govern the personal behavior of every legal act and legal relationship in a social interaction. The scope of customary law includes all legal rules related to the preservation process in the form of passing on and transferring material and immaterial wealth from generation to generation (Moechthar, 2019).

In the legal system in Indonesia, customary law is recognized as one of the sources of law in Indonesia, which is not made by a legislator but formed by the customary law community of a wailayah and preserved for generations (Moechthar, 2019). However, in the development of customary law, most of the laws are unwritten, it turns out that there are many shifts in customary law for the realization of a sense of justice for customary law communities.

2.6. Legal Standing Towards Customary Law

The affirmation of the strengthening of the existence of customary law in post-reform national law is the inclusion of two new articles in the second amendment to the 1945 Constitution, namely Article 18 B paragraph (2) which states that: "The state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law"

Next, Article 28 1 paragraph (3) which states that the cultural identity and rights of traditional communities are respected in line with the development of the times and civilization. Regarding customary law, it is also regulated as a human right as stated in article 6 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which reads:

"In the context of upholding human rights, differences and needs in customary law societies must be considered and protected by the law, society, and government".

3. Research Methodology

3.1. Types of Research and Nature of Research

The type of research used in the preparation of this research is the normative juridical method, meaning that the problems raised, discussed and described in this study are focused on applying principles in positive law, legal systematics, legal history by examining various kinds of formal legal rules such as laws, theoretical conceptual literature which is then connected to the problems that are the subject of discussion (Marzuki, 2005).

This study uses a qualitative phenomenological approach with a descriptive case research design, namely drawing actual events to get an overview of the existing research object and then analyzing it according to the relevant legal provisions, legal theories and opinions of legal experts.

3.2. Legal materials

- 1) The Constitution of the Republic of Indonesia in 1945;
- 2) Law Number 1 of 1946 concerning the Criminal Code (KUHP);
- 3) Law Number 39 of 1947 concerning the Military Criminal Code (KUHPM);
- 4) Law Number 8 of 1981 concerning the Criminal Procedure Code;
- 5) Law Number 31 of 1997 concerning Military Courts;
- 6) Law Number 34 of 2004 concerning the Indonesian National Army;
- 7) Law No. 48 of 2009 concerning Judicial Power; and
- 8) Law Number 25 of 2014 concerning the Law on Military Discipline.
- 9) Law Number 12 of 2011 concerning the Establishment of Laws and Regulations
- 10) Presidential Regulation of the Republic of Indonesia Number 10 of 2010 concerning the Organizational Structure of the Indonesian National Army.
- 11) Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.
- 12) Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.
- 13) Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Judging Criminal Cases Based on Restorative Justice.
- 14) Decision of the Military Court II-06 Pontianak Number 37-K/PM. I-05/AD/VI/2022.

3.3. Data Collection

Data collection is carried out through library materials, namely secondary data. This method of literature is carried out by visiting various libraries, such as the library of the Military Law College and the National Library to read, study, and study literature and other sources related to the material discussed in the research with the intention of obtaining theoretical materials related to the formulation of the problem that will be used as a theoretical basis.

3.4. Data Analysis and Drawing Conclusions

In this study, the author uses a qualitative data analysis method, namely the data described using terms separated by classification to arrive at a conclusion. To analyze the data, the author uses phenomenology with a descriptive case research design, namely drawing actual events to get an idea of the existing research object and then analyzing it according to the relevant legal provisions, legal theories and opinions of legal experts. Conclusions are drawn using Deductive Logic, namely by drawing specific conclusions from questions that are general in nature (Gultom 200).

3.5. Results of Research on Customary Law in the Settlement of Persecution Crimes and Military Court Decisions Number: 37-K/PM.I-05/AD/VI/2022

3.5.1. The principles of restorative justice in the crime of persecution of cases are resolved by customary law

Dispute resolution can be done through two processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (*cooperative*) outside the court. The litigation process produces an agreement that is *adversarial* in nature that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires high costs, is unresponsive and causes hostility between the parties to the dispute (Usman, 2013).

Meanwhile, through the out-of-court process, a *win-win solution* is produced, the confidentiality of the parties' disputes is guaranteed, delays caused by procedural and administrative matters are avoided, and problems are resolved comprehensively in togetherness and maintain good relations (Pruitt & Rubin, 2004). Regarding the basis of the implementation of *Restorative Justice* in the settlement of criminal acts of persecution whose cases have been resolved according to customary law, the principles of customary law, the principles of criminal law and the principles of *Restorative Justice* are explained, the explanation of these principles is as follows:

3.5.2. Implementation of Restorative Justice in Persecution Crimes whose Cases Have Been Resolved Under Customary Law

1) Legal Construction of Settlement of Criminal Acts in Customary Law

The customary hierarchy or arrangement of customary devices in the Dayak Kaninjal Customary Law is divided into several levels, ranging from the highest level to the lowest level. The hierarchy of customary or customary devices in the Dayak Kaninjal Customary Law starting from the highest level to the lowest is as follows:

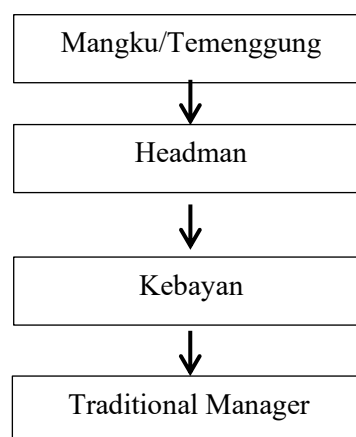


Figure 1. Arrangement of customary instruments in the Dayak Kaninjal Customary Law

The Mangku/Temenggung level is the highest level of customary justice in the Kaninjal Dayak Customary Law, so any decision handed down by Mangku/Temenggung is absolute, and the decision handed down by Mangku/Temenggung must be accepted and implemented by both parties to the dispute. Basically, the process of customary trials starting from the stage of explanation of sitting

cases by the two parties who are in dispute to the stage of issuing decisions both at the level of customary administrators, Kebayan, village heads, and at the Mangku/Temenggung level is the same.

2) Legal Construction of Restorative Justice Settlement of Crimes

The *restorative* approach in Indonesia already exists and is rooted in customary law. The *restorative* approach through customary law is directed to reparations, restoration of damages, losses suffered as a result of criminal acts and initiating and facilitating peace. This is to replace and avoid decisions against the winner or loser through the adversarial system.

Regulations regarding the conditions for implementing *Restorative Justice* are regulated in the Indonesian National Police Regulation Number 8 of 2021 and the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020. The requirements contained in Police Regulation Number 8 of 2021 will be applied during the implementation of criminal investigation, investigation, or investigation functions. Meanwhile, the conditions contained in Kejari Regulation Number 15 of 2020 will be applied during the prosecution stage by the public prosecutor.

Based on Police Regulation Number 8 of 2021, it can be known that to implement *Restorative Justice* there are general and/or special requirements. The special requirements explain the additional requirements for certain criminal acts such as drugs, traffic, and information and electronic transactions. Meanwhile, the general requirements consist of material requirements and formal requirements.

3) Strengthening Legal Arguments According to Experts

According to Prasetyo and Barakatullah (2011), during an interview at Pelita Harapan Karawaci University on July 8, 2024, discussion *Restorative Justice* In the case of persecution, judging from the theory of dignified justice, the purpose of the law of dignified justice is to humanize human beings (nguwongke uwong) as an effort to humanize human beings, dignified justice provides a philosophical foothold as a way to humanize human beings by *Restorative Justice*, so one way to humanize humans is a form of *Restorative Justice* Discretion can be differentiated, can be reconciled, legal remedies can be clemency, it is an effort to humanize human beings, looking for a dignified legal format that *win-win solution*. So the relevance in *Restorative Justice* Dignity justice provides a policy that the law must humanize human beings, one of the ways is that you see with *Restorative Justice*.

The result of the settlement of the persecution case is that customary law has achieved dignified justice because in the case of persecution an agreement has been reached between the two parties, if they agree, yes, it has become an agreement format, if they do not agree, then dignified justice will not be achieved, so the peace is through an agreement, if the agreement is made, it is already dignified because it is one of the *Restorative Justices* There is an agreement between the two parties, what will be done by the perpetrator to the victim who causes a loss, then how the customary law decision is linked to positive law, of course because there is an agreement here, this customary court decision as a consideration of the judge in examining the case, the judge's consideration can be in the form of mitigating can be in the form of releasing because it has been tried in the customary court, The act is an unlawful act, but with a probationary crime, it can also be done and this customary court decision cannot be examined in the military court because the original military court is positivistic.

Dignity justice has been fulfilled in the implementation of *Restorative Justice* in the crime of persecution whose case has been resolved according to customary law because there has been an agreement from customary law and dignified justice has been achieved, but this customary agreement does not negate punishment in military courts, it is still a process, but what is done in this customary court is *Restorative Justice* who are looking for the best solution to be studied in dignified justice, the act is considered by the judge, the judge's consideration can be released can be mitigated or probationary and can be returned to Ankum to be sentenced to disciplinary punishment and/or military administrative law to increase the propriety of the act.

Effectiveness *Restorative Justice* In the crime of persecution whose case has been resolved according to customary law, it has a deterrent effect on the perpetrator because he gets a customary fine of Rp.500,000,000,- (five hundred million rupiah) and the victim receives compensation for the perpetrator's actions suffered by the victim, if the perpetrator repeats the act cannot be done *Restorative Justice* and will get a heavier punishment, because one of the conditions to do *Restorative Justice* is not a repetition of the crime. Effectiveness in *Restorative Justice* This creates a deterrent to soldiers who commit criminal acts of persecution and so that they will not repeat the act.

According to Prof. Teguh's opinion in the view of the theory of dignified justice for cases that have been resolved by customary law, whether it is necessary to resolve them again with criminal law/positive law in Indonesia, the Indonesian state adheres to positivistic law, so cases of persecution committed by members of the TNI must be examined in military courts to provide legal certainty, but the decision of this customary law agreement is a factor that can liberate, mitigating or providing disciplinary penalties and/or military administrative laws, are still examined in court because we adhere to the principle of legality, all cases must go through legal channels.

4. Results and Discussions

4.1. Analysis of the Application of Restorative Justice Principles in Crimes of Persecution whose Cases Have Been Resolved Under Customary Law

In the context of resolving crimes of persecution by TNI soldiers whose cases have been resolved according to customary law, the application of this principle aims to restore social balance, restore damaged relationships, and ensure that justice is achieved through restoration, not just punishment. This principle emphasizes the importance of admitting wrongdoing by the perpetrator, understanding the impact of his actions on the victim and the community, and committing to redress the harm caused. In the *Restorative Justice* approach, the perpetrator is encouraged to publicly admit his actions, understand that his actions have caused harm, and show remorse. This recognition is not just a formality, but a first step towards restoration and reconciliation. In the customary law process, confessions of wrongdoing are often made publicly in front of the victim, the victim's family, and the community. This not only gives the victim a sense of justice but also builds trust in the community that the perpetrator is genuinely remorseful and committed to change.

The principle of perpetrator responsibility also includes a deep understanding of the impact of his or her actions. The perpetrator must be aware of how the crime of persecution affects the physical, emotional, and psychological impact of the victim, as well as its impact on the community. In *Restorative Justice*, this form of redress can be varied, ranging from financial compensation, community work, to sincere apologies. The responsibility of perpetrators in *Restorative Justice* does not stop at compensation; rehabilitation and social integration are also an important part. Responsible perpetrators must show a commitment to improve themselves and avoid a repeat of the crime in the future. In some cases, this may involve participation in rehabilitation programs, counseling, or skills training that help the perpetrator develop positive behaviors. Reintegration into the community is also facilitated through customary mechanisms, such as reconciliation ceremonies that mark the re-acceptance of the perpetrator by the community after fulfilling his or her responsibilities.

In customary law, compensation is often adjusted to local norms and values, which can be in the form of payment of money, goods, or services to victims and their families. This commitment shows that the perpetrator not only admits the mistake verbally but is also willing to take concrete action to recover the harm caused.

The application of *Restorative Justice* in the context of customary law must be integrated with the formal legal system to ensure legal certainty and protection of human rights. In the case of TNI soldiers, this means that the outcome of settlements through customary law must be recognized and respected by the military and civilian justice systems. This integration requires cooperation between customary institutions and state institutions to ensure that justice achieved through customary mechanisms does not conflict with national laws and international standards. Thus, the settlement process not only meets local needs but also conforms to broader legal principles.

In the context of resolving the crime of persecution through customary law, this theory demands that the process not only focus on punishing the perpetrator, but also on restoring social relations and dignity of the victim and the perpetrator. This approach is in line with the principles of *Restorative Justice*, which seeks to recover losses and improve relations between the parties involved. Meanwhile, legal certainty is a fundamental principle in the modern legal system, which requires that the law must be clear, consistent, and predictable. In the context of customary law, the main challenge is to ensure that settlements through customary mechanisms remain consistent with national legal frameworks and do not violate human rights. Legal certainty also demands that the results of customary settlements be recognized and respected by the formal judicial system.

As such, there is a need to build bridges between customary law and formal legal systems to ensure that the principles of *Restorative Justice* are applied consistently and fairly. The settlement process must respect the dignity of all parties involved and ensure that the outcome is in accordance with national and international legal standards. Thus, the integration of customary law and the principles of *Restorative Justice* can strengthen efforts to resolve conflicts more humanely and fairly.

4.2. Analysis of Restorative Justice Principles can be applied to the Crime of Persecution by TNI Soldiers whose cases have been resolved according to customary law

The author's opinion in resolving criminal acts of persecution committed by TNI soldiers by means of *Restorative Justice* and customary law is basically a settlement process that is carried out outside the criminal justice system (*Criminal Justice System*) by involving victims, perpetrators, victims' families and perpetrators, the community and parties interested in a criminal act that occurs to reach an agreement and settlement.

Judging from the principles of *Restorative Justice* and customary law, it is the same as a restoration of relationships and redemption of wrongs that the perpetrator of the crime (his family) wants to do against the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the criminal act can be resolved properly by reaching an agreement and agreement between the perpetrators of the crime. parties. The application of this principle aims to restore social balance, restore damaged relationships, and ensure that justice is achieved through restoration, not just punishment. This principle emphasizes the importance of admitting wrongdoing by the perpetrator, understanding the impact of his actions on the victim and the community, and committing to redress the harm caused.

In the *Restorative Justice* approach, the perpetrator is encouraged to publicly admit his actions, understand that his actions have caused harm, and show remorse. This recognition is not just a formality, but a first step towards restoration and reconciliation. In the customary law process, confession of wrongdoing is made publicly in front of the victim, the victim's family, and the community. This not only gives the victim a sense of justice but also builds trust in the community that the perpetrator is genuinely remorseful and committed to change.

The author's opinion in the case of persecution by TNI soldiers against the Dayak indigenous people that has been resolved according to customary law is a settlement of criminal acts through *Restorative Justice* according to Positive Law in Indonesia. The application of the principles of *Restorative Justice* in the case of persecution by TNI soldiers against the Dayak Kaninjal indigenous people in Nanga Pinuh that has been resolved through customary law shows that this approach can provide more comprehensive and restorative justice, both for the victims, perpetrators, and the community. Integration between customary law and positive law is also important to ensure that justice is comprehensively enforced, respecting local cultural values as well as national laws. the achievement of a fair agreement agreement for all parties as well as indigenous peoples and Kaninjal Dayak traditional leaders, the result of deliberation and consensus that produces peace, the achievement of harmony and balance for the Dayak indigenous peoples and the perpetrators are subject to customary sanctions by paying customary fines of Rp 500,000,000 (five hundred million rupiah) and erecting a peace treaty monument as a symbol of peace between the perpetrators and victims. Thus, the principles of the Dayak Kaninjal Customary Law in Nanga Pinuh have been applied consistently and

fairly to the cases of persecution committed by the TNI Soldiers, in other words the principles of *Restorative Justice* can be applied in the crime of persecution whose case has been resolved according to customary law.

4.3. Analysis of the Implications of Restorative Justice in the Settlement of Persecution Crimes whose Cases Have Been Resolved Under Customary Law

Restorative Justice Settlement is a restoration of relationships and redemption of wrongs that the perpetrator of the crime (his family) wants to do against the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the criminal act can be resolved properly by reaching agreement and agreement between the parties so that peace and justice. This approach emphasizes the active participation of all parties involved, i.e., victims, perpetrators, and communities, to achieve more holistic justice. In the context of Indonesia, where customary law is still recognized and applied in various communities, the application of *Restorative Justice* can be an effective way to integrate local cultural values.

Implementation Restorative Justice In settling the crime of persecution that has been resolved according to the customary law according to the regulation mentioned above, both legal standing restorative justice and customary law also show the commitment of the Military Court to support more humane legal reform. By providing space for customary settlements, the courts not only enforce the law rigidly but also consider humanitarian and restorative aspects. This is in line with the goal of restorative justice which focuses not only on sentencing, but also on restoration and reconciliation.

Overall, the Decision of the Military Court II-06 Pontianak Number 37-K/PM. I-05/AD/VI/2022 is a concrete example of how restorative justice can be applied in cases of persecution crimes involving TNI Soldiers. This approach not only provides a fair legal solution but also strengthens social cohesion and provides a more holistic recovery for victims and perpetrators. This kind of implementation is expected to be a model for the settlement of similar cases in the future, both in the military and civilian environment.

4.4. Analysis of the Implementation of Kaninjal Dayak Customary Law in the Crime of Persecution

The Keninjal Dayak Tribe community in Nanga Pinuh Village, Melawi Regency, is still bound by the provisions of customary law which is used as an instrument to control the local social life and natural resources. Anyone who violates the provisions of customary law will face a customary court. Any conflict, dispute or dispute among the Dayak Keninjal indigenous people is resolved through customary court decisions decided by traditional leaders in accordance with the provisions of the customary law of the Dayak Keninjal people.

Customary law is still embraced and enforced in the community of Dayak Keninjal customary law, which is actually guaranteed by the 1945 Constitution. Article 18B paragraph (2) of the 1945 Constitution, which stipulates: "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law". The provisions of Article 18B paragraph (2) of the 1945 Constitution do provide subjective rights to the existence and traditional rights of customary law communities. However, it must meet the objective requirements: (1) as long as it is alive and in accordance with the development of society; (2) in accordance with the principles of the Unitary State of the Republic of Indonesia, and ; (3) regulated in law.

Therefore, the occurrence of cases of criminal acts of persecution that are resolved through customary law courts has given rise to a separate law enforcement delemistic. On the one hand, according to the Dayak Keninjal customary law ruling, if the case of the crime of Persecution has been resolved through customary court or customary agreement, then the case is declared to have been completed and will not be continued to the general criminal court.

On the other hand, according to the provisions of the material and formal criminal law, general acts and special criminal acts must be resolved through criminal justice. In other words, the crime of Persecution that is resolved through customary courts or peace agreements according to custom, basically does not negate/delete/stop criminal lawsuits against the perpetrators of criminal acts. However, there is a legal umbrella to resolve criminal acts through customary law, in customary law decisions are decisions with permanent legal force, in other words it can be called *ne bis in idem* or it should not be prosecuted 2 (two) times or prosecuted again for the same act, this is based on Article 76 paragraph (1) of the Criminal Code which states: "Except in the case that the judge's decision may still be repeated, a person should not be prosecuted twice for an act that an Indonesian judge against him has been tried with a permanent verdict. In the sense that Indonesian judges, including judges of *swapraja* and customary courts, in places that have these courts".

In other words, the existence of a customary law decision on a peace agreement or the settlement of criminal cases according to customary law, in principle, is a decision recognized by article 76 paragraph (1) of the Criminal Code, including the judges of the *swapraja* and customary courts. However, in its application, there are still people who have been convicted of customary crimes still being punished with positive crimes in Indonesia. The same thing happened in Melawi Regency. It turns out that cases of persecution crimes are not only resolved through customary law, but also resolved according to the Military Criminal Court

Such as the case raised by the author based on the Decision of the Military Court II-06 Pontianak Number 37-K/PM. I-05/AD/VI/2022 on Tuesday, September 12, 2022 stated that defendant-1 Pratu Ahmad Peri NRP 31160288990994 and defendant-2 Prada Afrudin Tami NRP 31190589270997 legally and convincingly proven guilty of committing the crime of "Persecution together" and criminalizing the defendants, therefore defendant-1 is sentenced to imprisonment for 6 (six) months stipulates that as long as Defendant-1 is in temporary detention deducted entirely from the sentence imposed, Defendant-2 Imprisonment for 6 (six) months stipulates that while Defendant-2 is in temporary detention, all of the sentences imposed are deducted from the sentence imposed and charge the Defendants a case fee of Rp7,500.00 (seven thousand five hundred rupiah) each.

The case has been resolved through a customary settlement on Sunday, May 15, 2022 through a customary agreement, which states that both parties, namely Markus B in this case acting for and on behalf of the Victim's Family and Paulus Rahmayuda (the victim of persecution) are hereinafter referred to as the first party with Teruman in this case acting and on behalf of the families of Pratu Ahmad Peri and Prada Afrudin Tami as the first party (Perpetrator of Persecution) hereinafter referred to as the first party second. Based on the results of deliberation and consensus from both parties (the perpetrator's family and the victim's family) related to the death of Roni Krisno's brother and the persecution of Paulus Rahmayuda's brother as stated in the joint agreement letter dated May 15, 2022, it was agreed to resolve the persecution case by giving customary sanctions to party I.

Thus, this Letter of Collective Agreement is made and signed in a conscious state, without any coercion or pressure from any party. Signed on the *matrai* by the first party (Markus B and Paulus Rahmayuda) and the second party (Taruman (family of the perpetrator)) witnessed by (1) Sopian Hadi, S.Sos., Msi., (2) Bulun, (3) Jindil, S.Sos, (4) Vicarius Abang, (5) M Usman, (6) Suandi S.Pd and knowing the Chairman of the Dayak Customary Council of Melawi Regency a.n Drs. Kuisen, Dandim 1205/Sintang a.n Lieutenant Colonel Inf K Suharwiyono and Danyon 642/Kapuas a.n Lieutenant Colonel Inf P.A Trihatmoko

The author's opinion is that based on the settlement through the imposition of customary law sanctions and the peace agreement dated May 15, 2022 between the Defendants and the victims, resulting in the Defendants' guilt has been erased as a positive law or the law applicable in the state of Indonesia.

Based on the 1945 Constitution Article 18 letter b paragraph (2): "The state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law".

Thus, it can be interpreted that with the imposition of the customary sanction, the case should not be prosecuted twice because the act that the Indonesian judge against him has been tried with a permanent decision or a decision of the Keninjal Dayak customary law. Thus, the perpetrators of the crime of persecution whose cases have been resolved according to customary law should be exempted from charges and charges, in other words, there is no need to be re-imposed.

4.5. Analysis of the Implications of Restorative Justice in the Settlement of Persecution Crimes

Understanding *Restorative Justice* in Indonesia, it is explained in several laws and regulations such as Article 1 number 6 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads: "Restorative Justice is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation".

In addition, *Restorative Justice* is also explained in Article 1 number 3 of State Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice which reads: "Restorative Justice is the settlement of criminal acts by involving the perpetrators, victims, families of the perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just solution through peace by emphasizing restoration to the original state".

Article 1 number 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice which reads: "Restorative Justice is an approach in handling criminal cases that is carried out by involving the parties, both the victim, the victim's family, the defendant/child, the defendant/child's family, and/or other related parties, with a process and purpose that seeks recovery, and not just retaliation".

In accordance with some of the above definitions, in simple terms *Restorative Justice* It is a process of resolving criminal cases by involving parties involved in a criminal act to find a fair solution by seeking restoration to the original state and not just retaliation for the perpetrator. In restorative justice is known for restitution or compensation to the victim, including the restoration of the relationship between the victim and the perpetrator. The restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey the losses he has suffered and the perpetrator is given the opportunity to make up for it, through compensation mechanisms, peace, social work, and other agreements, in this case the victim and the perpetrator to actively participate in solving their problems. Every indication of a criminal act only boils down to a criminal verdict or *punishment*. Thus restorative justice (*Restorative Justice*) is an effort to seek a peaceful resolution of the conflict outside the Court.

Meanwhile, in the realm of criminal law, the principle of restorative justice (*Restorative Justice*) has been adopted by both the Supreme Court, the Attorney General's Office, the National Police of the Republic of Indonesia, and the Ministry of Law and Human Rights has adopted the principle of restorative justice (*Restorative Justice*) as one of the ways to resolve a criminal case through a Memorandum of Agreement with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia Number 131/KMS/SKB/X/2012, Number HH-08. HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of Adjustment of Limits on Minor Offenses and the Amount of Fines, Rapid Examination Procedures and the Implementation of Restorative Justice (*Restorative Justice*), which regulates the settlement of criminal cases through the principle of restorative justice (*Restorative Justice*).

The peace agreement process is considered by the judge to impose a conditional/supervised sentence in accordance with laws and regulations (Article 19 paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024). In the event of a peace process that achieves the imposition of conditional / supervised sentences in accordance with laws and regulations, there are general conditions and special conditions (Article 19 Paragraph (3) and paragraph (4) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024).

The author's opinion that based on the above explanation from the investigation/investigation stage, the prosecution stage and the court stage, it can be concluded that the purpose of the *Restorative Justice* It is not focused on retaliation for the perpetrators of criminal acts, but seeks a fair solution by emphasizing restoration to the original state. Then, the conditions that must be met to apply *Restorative Justice* At the time of the implementation of the criminal investigation, investigation, or investigation function, that is, there is an agreement between the parties to make peace, not a repetition of the crime, the rights of the victim have been fulfilled, and the application of the *Restorative Justice* This did not receive rejection from the community.

Furthermore, the conditions that must be met to implement the *Restorative Justice* at the prosecution stage, that is, peace has been created and restoration has been created for the victim, the threat of imprisonment is not more than 5 years, the losses incurred are not more than Rp2,500,000.00 (two million five hundred thousand rupiah), and it is not a repetition of the crime. Moreover *Restorative Justice* cannot be applied to criminal acts that threaten state security, corruption, crimes against human life, environmental crimes, and criminal acts committed by corporations.

Faced with a case of persecution committed by TNI soldiers against members of the Dayak Caninjal community whose case has been resolved according to customary law, it is a settlement of criminal acts in a *Restorative Justice* in other words, the imposition of customary law on TNI soldiers who commit the persecution is a settlement of criminal acts in a *Restorative Justice*, that the purpose of *Restorative Justice* It is not focused on retaliation for the perpetrators of criminal acts, but seeks a fair settlement by emphasizing that the restoration to the original state has been achieved with the imposition of customary sanctions of Dayak Kaninjal with a fine of Rp. 500,000,000,- and the creation of a peace treaty monument.

According to the author's opinion based on the information above, it is related to the conditions that must be met to apply *Restorative Justice* at the investigation/investigation stage. A criminal act with a maximum penalty of 5 (five) years in prison in one of the charges, including the crime of jinayat according to qanun. In the event that the persecution committed by TNI soldiers is a minor persecution according to article 351 paragraph (1), namely Persecution is threatened with a maximum prison sentence of 2 (two) years and 8 (eight) months or a maximum fine of four thousand five hundred rupiah, in other words, the criminal act of persecution committed by TNI soldiers, the threat of punishment under 5 years in prison means that the requirements for judges to apply guidelines for adjudicating criminal cases based on restorative justice have been fulfilled

Thus the implementation analysis *Restorative Justice* in the criminal acts committed by TNI soldiers against the indigenous Dayak Caninjal from the investigation/investigation stage, the prosecution stage and the court stage have basically been fulfilled, so that according to the author, the criminal acts of persecution committed by TNI soldiers can be resolved in a timely manner. *Restorative Justice* either in the investigation/investigation stage or the prosecution stage or the court stage so that the soldier does not need to be worn or tried again in a military court

4.6. Analysis of the Implications of Restorative Justice in the Settlement of Crimes of Persecution by TNI Soldiers whose Cases Have Been Resolved Under Customary Law

In the military environment, basically never implement the settlement of criminal acts *Restorative Justice* Due to the absence of regulations that explain in a logical way about *Restorative Justice*, However, judging from the characteristics or principles *Restorative Justice* In the regulations of the military environment there are similarities in the principles of settlement of the *Restorative Justice*.

Some solutions *Restorative Justice* in military regulations, among others, regulated in the regulations of Law Number 25 of 2014 concerning the Law on Military Discipline and Law Number 31 of 1997 concerning Military Courts.

Implementation of restorative justice (*Restorative Justice*) in military courts showed a commitment to more humanist and rehabilitation-oriented legal reforms. Article 2 of Supreme Court Regulation Number 1 of 2024 explains that Judges adjudicate criminal cases with justice *Restorative Justice*. It is carried out based on the following principles: (1) Restoration of the situation, (2) Strengthening the rights, needs and interests of the victim, (3) Responsibility of the Defendant, (4) Crime as a final effort, (5) Consensuality, (6) Transparency and accountability.

Implementation of restorative justice (*Restorative Justice*) in the Military Court affirmed that the Military Court can apply the guidelines, the principles of restorative justice in adjudicating certain criminal cases based on article 5 of Supreme Court Regulation number 1 of 2024 which states: "Judges apply guidelines for adjudicating criminal cases based on Restorative Justice through the recovery of victims' losses and/or the restoration of relations between the Defendant, Victims, and the community through judgments". This allows the settlement of criminal cases not only through punishment, but also through more comprehensive and sustainable recovery efforts.

The presence of this Supreme Court Regulation also opens up opportunities for the military to adopt a more inclusive and participatory approach in criminal dispute resolution. In a military context, where discipline and hierarchy are very strict, the application of restorative justice can help address problems more effectively by involving all parties involved. Through mediation, dialogue, mutual agreement, and customary law, restorative justice can create more peaceful and equitable solutions.

The application of restorative justice in the military environment is also expected to have a positive impact on the development of soldiers. With this approach, soldiers who commit criminal offenses can be given the opportunity to improve themselves and contribute back to society. In addition, victims also receive proper attention and recovery, so that a sense of justice can be achieved more comprehensively. With the implementation of Supreme Court Regulation Number 1 of 2024, it is hoped that there will be an improvement in the quality of law enforcement in the military environment. The restorative justice approach can reduce the rate of recidivism, improve social relations, and create a more harmonious environment. Thus, this regulation is an important step in realizing a fairer, humane, and effective justice system in Indonesia, including in the military environment.

The implementation of restorative justice in the crime of persecution committed by TNI soldiers can be seen in the Decision of the Military Court II-06 Pontianak Number 37-K/PM. I-05/AD/VI/2022. In this case, the crime of persecution committed by a soldier was resolved not only through formal legal channels, but also with the approach of Dayak Kaninjal customary law. This approach reflects the principle of restorative justice which emphasizes the restoration of relationships and losses suffered by victims and communities. In this process, the Kaninjal Dayak customary law played an important role in resolving conflicts. Through customary mechanisms, victims and perpetrators participate in mediation facilitated by local traditional leaders. This provides an opportunity for the victim to voice his or her suffering and for the perpetrator to show remorse and make amends.

This ruling shows that the restorative justice approach is able to accommodate local values and the culture of the local community. In these cases, settlement through Kaninjal Dayak customary law not only strengthens social relations between the parties involved, but also ensures that justice is achieved in a more inclusive and participatory manner by providing Kaninjal customary sanctions. Recognition and respect for customary law provide additional legitimacy to the judicial process carried out.

In the Decision of the Military Court II-06 Pontianak Number 37-K/PM. I-05/AD/VI/2022 on Tuesday, September 12, 2022 stated that defendant-1 Pratu Ahmad Peri NRP 31160288990994 and defendant-2 Prada Afrudin Tami NRP 31190589270997 legally and convincingly proven guilty of

committing the crime of "Persecution together" and criminalizing the defendants, therefore defendant-1 is sentenced to imprisonment for 6 (six) months stipulates that as long as Defendant-1 is in temporary detention deducted entirely from the sentence imposed, Defendant-2 Imprisonment for 6 (six) months stipulates that while Defendant-2 is in temporary detention, all of the sentences imposed are deducted from the sentence imposed and charge the Defendants a case fee of Rp7,500.00 (seven thousand five hundred rupiah) each.

Implementation *Restorative Justice* in the settlement of criminal acts of persecution by TNI soldiers whose cases have been resolved according to customary law have met the requirements for the application of criminal cases according to *Restorative Justice* Based on Article 6 paragraph (1) letter c which states that "The Judge applies the guidelines for adjudicating criminal cases based on restorative justice if one of the following criminal acts is fulfilled: a criminal act with a maximum penalty of 5 (five) years in prison in one of the charges, including the criminal act of jinayat according to qanun", in other words that the criminal act committed by the TNI soldier is charged with a maximum prison sentence of 2 (two) years 8 (eight) or a maximum fine of four thousand five hundred rupiah according to article 351 paragraph (1) of the Criminal Code, meaning that the judge can apply the guidelines for adjudicating criminal cases based on *Restorative Justice* in the crime of persecution by the TNI Soldier.

Guidelines for Adsecuting Criminal Cases Based on Restorative Justice in Criminal Acts that Cause Victims in the case have been resolved according to the Kaninjal Dayak customary law according to article 9 paragraph (2) which states that: "in the event that there has been peace between the defendant and the victim or his heirs before the trial and all agreements have been implemented, the judge may take this into consideration in the verdict and examination process" *Junto* Article 19 paragraph (1) and paragraph (3) letter b which states that: "The peace agreement and/or the Defendant's willingness to be responsible for the victim's losses and/or needs as a result of the crime is a reason that mitigates the punishment and/or becomes a consideration for imposing a conditional/supervised sentence in accordance with the provisions of laws and regulations. General conditions in the imposition of a conditional sentence/supervision by the Judge in the event that: The Defendant has carried out all agreements as referred to in Article 9 paragraph (2) or the Defendant has reached an agreement with the Victim as referred to in Article 10 paragraph (3)".

In the opinion of the author based on the above provisions, the implementation of the *Restorative Justice* in the settlement of the crime of persecution committed by TNI soldiers whose cases have been resolved according to customary law or settled peacefully between the defendant and the victim or his heirs before the trial and all agreements have been implemented, the judge may take this into consideration in the decision and examination process in accordance with article 9 paragraph (2), then the peace agreement and/or the willingness of the perpetrator to be responsible for the losses and/or needs of the victim as a result of the criminal act are reasons that reduce the punishment and/or become a consideration for imposing a conditional/supervised sentence in accordance with the provisions of laws and regulations in accordance with article 19 paragraph (1). In the settlement of the crime of persecution by TNI soldiers, the victim has been resolved through customary settlement on Sunday, May 15, 2022 through a customary agreement agreeing to pay a customary fine of Rp. 500,000,000,- and establish a peace treaty monument, this is a general condition by the Judge in imposing a conditional/supervised sentence.

Thus the author's explanation of the implementation of *Restorative Justice* in the settlement of criminal acts of persecution committed by TNI soldiers whose cases have been resolved according to customary law are reviewed from the settlement of *Restorative Justice* in the court stage based on the regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024, associated with the time of the case of the crime of persecution committed by TNI soldiers, the Supreme Court Regulation Number 1 of 2024 has not been implemented. In terms of the author's analysis at the time of the crime of persecution, it has been explained in this Chapter IV in sub-chapter A, point 1 concerning the Analysis of the Implementation of the Dayak Customary Law of Nangan Pinuh in the

Crime of Persecution and point 2 concerning the Analysis of Implication *Restorative Justice* In the settlement of the crime of persecution.

5. Conclusion

5.1. Conclusion

Based on the description of the research mentioned above, the author will draw conclusions based on the formulation of the problem from the results of the research and discussion, which are as follows:

1. That seen from the principles *Restorative Justice* and the principles of customary law are the same, which is a restoration of the relationship and redemption of wrongs that the perpetrator of the criminal act (his family) wants to do against the victim of the criminal act (his family) (peace efforts) outside the court with the intention and purpose that the legal problems arising from the occurrence of the criminal act can be resolved properly by reaching an agreement and agreement between the parties. The application of this principle aims to restore social balance, restore damaged relationships, and ensure that justice is achieved through restoration, not just punishment. This principle emphasizes the importance of admitting wrongdoing by the perpetrator, understanding the impact of his actions on the victim and the community, and committing to redress the harm caused. Application of the principles *Restorative Justice* In the case of persecution by TNI soldiers against the Dayak indigenous people that has been resolved according to customary law, the perpetrator is subject to customary sanctions by paying a customary fine of Rp 500,000,000 and erecting a peace treaty monument as a symbol of peace between the perpetrator and the victim. Thus, the principles of Kaninjal Customary Law in Nanga Pinuh have been applied consistently and fairly to the cases of persecution committed by TNI Soldiers, in other words the principles of *Restorative Justice* can be applied to the crime of persecution whose case has been resolved according to customary law.
2. That in the case of persecution committed by TNI soldiers against members of the Dayak Kaninjal community whose case has been resolved according to customary law, it is a settlement of criminal acts in a *Restorative Justice* in other words, the imposition of customary law on TNI soldiers who commit the persecution is a settlement of criminal acts in a *Restorative Justice*, that the purpose of *Restorative Justice* It is not focused on retaliation for the perpetrators of criminal acts, but rather seeks a fair solution by emphasizing that the restoration to the original state has been achieved with the settlement of customary law. The author concludes that customary law is the basis for the settlement of *Restorative Justice* in the criminal act of persecution committed by TNI soldiers, so the author is of the opinion that the Inspector should make and convey a legal opinion to the Officer Submitting the Case which can be in the form of a request that the case be resolved according to the soldier's discipline law, or closed for the sake of the law, public interest or military interest because the case has been resolved in a timely manner. *Restorative Justice* by having undergone customary law. Furthermore, after the issuance of Supreme Court Regulation Number 1 of 2024, the implementation of *Restorative Justice* In the settlement of criminal acts of persecution committed by TNI soldiers whose cases have been resolved according to customary law or settled peacefully between the defendant and the victim or his heirs before the trial and all agreements have been implemented, the judge can take this into consideration in the verdict and examination process. In the settlement of the crime of persecution by TNI soldiers, the victim has been resolved through the settlement of customary law, this is a general condition by the Judge in the imposition of a conditional / supervised criminal verdict.

5.2. Suggestion

After the author has made some conclusions to this research, the author will give some suggestions as follows:

1. The application of the principles of *Restorative Justice* in the case of persecution by TNI soldiers against the Kaninjal Dayak Indigenous people that has been resolved through customary law shows that this approach can provide more comprehensive and restorative justice, both for the victims, perpetrators, and the community. So the author's suggestion is that if a criminal act occurs where the case has been resolved according to customary law, the settlement is the application of restorative justice.

2. That in the criminal act of persecution committed by TNI soldiers against the members of the Dayak Kaninjal indigenous tribe whose case has been resolved according to customary law, there has been an agreement from customary law, the imposition of customary law on TNI soldiers who commit the persecution is a settlement of the crime through *Restorative Justice*, then the author's suggestion should be considered by the judge in order to release or impose a conditional/supervised sentence or be returned to Ankum to be resolved by military discipline.
3. In the military environment, basically never implement the settlement of criminal acts in a restorative justice manner (*Restorative Justice*) because there is no regulation that explains scientifically about *Restorative Justice*, with the existence of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice, this can be the basis for future guidelines that are expected to be used by TNI Soldiers who commit The criminal act can be resolved through *Restorative Justice*.

References

- Dokku, S. R., & Kandula, D. (2021). A study on issues and challenges of information technology act 2000 in India. *Annals of Justice and Humanity*, 1(1), 39-49. doi:<https://doi.org/10.35912/ajh.v1i1.1389>
- Hadikusuma, H. (1980). *Pokok-pokok pengertian hukum adat*: Alumni.
- Harefa, P. G., Idham, I., & Erniyanti, E. (2023). Analisis Teori Hukum terhadap Penegakan Tindak Pidana Pemalsuan Uang: Analisis Teori Hukum Positif dan Teori Hukum Responsif. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 2(2), 113-119. doi:<https://doi.org/10.35912/jihham.v2i2.1923>
- Hermawan, W., Respationo, S., Erniyanti, E., & Fadlan, F. (2022). Juridical analysis of the involvement of the Indonesian National Army in countering criminal acts of terrorism criminal acts of terrorism. *Dynamics of Politics and Democracy*, 2(1), 11-21. doi:<https://doi.org/10.35912/dpd.v2i1.1803>
- Istahar, H. K., Aulia, K. P., Dermawan, W., & Akim, A. (2023). Indonesian Hajj Diplomacy To Increase Hajj Quota During The Joko Widodo Presidency: 2015-2023. *Dynamics of Politics and Democracy*, 2(2), 39-60. doi:<https://doi.org/10.35912/dpd.v2i2.1884>
- Maramis, F. (2012). *Hukum Pidana Umum dan Tertulis*: Rajawali Pers.
- Marzuki, P. M. (2005). *Penelitian hukum*.
- Moechthar, O. (2019). *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan di Indonesia*: Kencana.
- Natamiharja, R., Panjaitan, O. D. A., & Setiawan, I. (2025). Arbitrase Internasional: Evaluasi Efektivitasnya sebagai Mekanisme Penyelesaian Sengketa Alternatif. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 4(2), 83-89. doi:<http://doi.org/10.35912/jihham.v4i2.3297>
- Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.
- Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif.
- Peraturan Pemerintah (PP) Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah.
- Prasetyo, T., & Barakatullah, A. H. (2011). *Ilmu hukum Dan Filsafat hukum: Studi Pemikiran Ahli hukum sepanjang Zaman*. Yogyakarta: Pustaka Pelajar.
- Pruitt, D. G., & Rubin, J. Z. (2004). *Teori konflik sosial*. Yogyakarta Pustaka Pelajar.
- Siagian, A., Riza, K., & Lubis, I. H. (2023). Analisis Penegakan Hukum terhadap Perusahaan Pers yang Tidak Berbadan Hukum. *Kajian Ilmiah Hukum dan Kenegaraan*, 1(1), 35-42. doi:<https://doi.org/10.35912/kihan.v1i1.1867>
- Sianturi, S. R. (1983). *Tindak Pidana di KUHP Berikut Uraianannya*. Jakarta: Alumni AHM-PTM.
- Sianturi, S. R. (2020). *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Storia Grafika.
- Suartama, S. M., & Dewi, C. I. D. L. (2023). Efektivitas atas Tata Kepemerintahan yang Baik dalam Penyelenggaraan Pengadaan Barang dan Jasa Pemerintah Kabupaten Karangasem. *Kajian Ilmiah Hukum dan Kenegaraan*, 1(2), 105-112. doi:<https://doi.org/10.35912/kihan.v1i2.1952>
- Sukardi. (2020). *Restorative Justice Dalam Penegakan Hukum Pidana Indonesia*: Rajawali Pers.

- Tarasari, N., & Nasywa, Z. (2021). Alternative settlement of dispute between Israel and Palestine. *Annals of Justice and Humanity*, 1(1), 21-27. doi:<https://doi.org/10.35912/ajh.v1i1.1382>
- Undang-Undang Republik Indonesia Nomor 25 Tahun 2014 tentang Hukum Disiplin Militer.
- Usman, R. (2013). *Pilihan penyelesaian sengketa di luar pengadilan*. Bandung: PT. Citra Aditya Bakti.
- Utomo, L. (2016). *Hukum Adat*: Rajawali Pers.
- Wulansari, E. M. (2023). Permodelan dan Bentuk Hukum Pokok-Pokok Haluan Negara sebagai Payung Hukum Pelaksanaan Pembangunan Berkesinambungan dalam Rangka Menghadapi Revolusi Industri 5.0 dan Indonesia Emas. *Kajian Ilmiah Hukum dan Kenegaraan*, 2(1), 17-36. doi:<https://doi.org/10.35912/kihan.v2i1.2346>