

## Integrating Customary Criminal Sanctions in The Resolution of Domestic Violence in Maluku

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### Abstract

This study aims to examine the existence of customary criminal sanctions in resolving domestic violence (DV) cases in Maluku, particularly in the West Seram Regency. The research employs an empirical approach with a socio-legal model, combining the analysis of primary field data with a review of relevant legal literature. The high prevalence of domestic violence in Maluku, which continues to rise annually, raises significant concerns within society. This phenomenon not only affects victims physically and psychologically but also exacerbates social stigma against women and children who experience violence. Patriarchal culture in Indonesia reinforces gender inequality, where men are often viewed as dominant, normalizing violence against women in some instances. Additionally, victims' economic dependence on perpetrators further aggravates their situations. In Maluku, customary law plays a crucial role in community life, including in addressing domestic conflicts. However, the dominance of national criminal law, introduced during the colonial era, has marginalized the role of customary law. Despite this, in certain areas, such as West Seram Regency, customary criminal sanctions continue to be utilized for resolving domestic violence cases. The findings reveal that some customary communities in Maluku still practice traditional mechanisms to resolve DV cases. These mechanisms involve imposing customary sanctions, such as property compensation or community labor, aimed at restoring social and cosmic balance. While these practices are widely accepted within customary communities, they have limitations in addressing justice and trauma recovery for victims. The approach often emphasizes material resolutions without adequately addressing the psychological and social rehabilitation of victims.

## 1. Introduction

The Indonesian state recognizes and upholds human rights and basic human freedoms as rights inherent in human beings, which must be protected, respected and upheld in order to enhance human dignity, welfare, happiness, intelligence and justice<sup>1</sup>. The integrity and harmony of a happy, safe, peaceful household is the dream of everyone in the household. The Republic of Indonesia is a state based on God Almighty guaranteed by Article 29 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945). Thus, every person within the scope of the household in carrying out their rights and obligations must be based on religion. This needs to continue to be developed in order to build the integrity of the household. To realize integrity and harmony, is highly dependent on each person within the scope of the household, especially the level of quality of behavior and self-control of each person within the scope of the household.

<sup>1</sup> Budi Hermawan Bangun, "Hak Perempuan Dan Kesetaraan Gender Dalam Perspektif Filsafat Hukum," *Pandecta Research Law Journal* 15, no. 1 (2020): hal. 75, <https://doi.org/10.15294/pandecta.v15i1.23895>.

To prevent, protect victims, and take action against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection, and prosecution of perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. The state is of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination. The state's view is based on Article 28 of the 1945 Constitution of the Republic of Indonesia, along with its amendments. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person shall have the right to protection of self, family, honor, dignity, and property under their control, and shall have the right to security and protection from threats of fear to do or not to do something which is a human right".

Domestic violence (hereinafter referred to as KDRT) is one that often occurs in Maluku. Law No. 23 of 2004 on the Elimination of Domestic Violence (hereinafter referred to as Law No. 23/2004) explains the definition of Domestic Violence as any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. Domestic violence has a much broader scope, not only involving husband and wife, parents and children, but much broader because it involves all elements of members who are within the scope of the household. Such as people who have a family relationship with people because of blood, marriage, breastfeeding, nurturing, and guardianship, who live in the household; and/or people who work to help the household and live in the household. Data on domestic violence based on Komnas Perempuan's Annual Record (CATAHU) 2024 amounted to 2,247 cases of complaints, which were received by Komnas Perempuan complaints in the personal sphere of violence against wives (KTI) as the highest violence of 674 cases, while complaints at Service Institutions, KTI ranked the highest at 1,573 cases.<sup>2</sup>

The high incidence of domestic violence can hurt the health of wives as victims. These impacts include fear, anxiety, fatigue, abnormalities, and post-traumatic stress, as well as eating and sleeping disorders, which are long-lasting reactions to acts of violence.<sup>3</sup> The high number of domestic violence cases has caused much concern in the community. Violence that occurs against women and children will traumatize victims. The causes of domestic violence are complex and related to the belief that men have power over women (and children), and can treat them violently if they wish.<sup>4</sup> The relationship between the trauma of witnessing domestic violence and the emergence of psychological problems weakens as the age of the

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<sup>3</sup> Mery Ramadani and Fitri Yuliani, "Kekerasan Dalam Rumah Tangga (KDRT) Sebagai Salah Satu Isu Kesehatan Masyarakat Secara Global," *Jurnal Kesehatan Masyarakat Andalas* 9, no. 2 (2017): hal. 81, <https://doi.org/10.24893/jkma.v9i2.191>.

<sup>4</sup> H.Z Wadjo and Astuti Nur Fadillah, "Perlindungan Hukum Terhadap Perempuan Dan Anak Yang Menjadi Korban Kekerasan Dalam Rumah Tangga Di Desa Klis," *Community Development Journal* 2, no. 2 (2021), <https://doi.org/10.18860/egalita.v16i1.12125>.

child increases.<sup>5</sup> In other words, the likelihood of behavioral problems due to domestic violence is lower if children witness domestic violence at an older age. This indicates that age and more mature understanding can be protective factors for the negative effects of domestic violence trauma. However, not all violence that children see and hear directly can always be monitored by parents.<sup>6</sup>

In fact, in the Maluku region, problems can still be found where women are often victimized. Cases of violence against women and children that occur in the Maluku Province area continue to increase. From 2022 to 2023, this case has reached 525 cases. Head of the Renakta Sub-Directorate of the Maluku Police General Criminal Investigation Directorate, AKBP Sulastris Sukijang, said that in 2022 the handling of cases of violence against women and children was recorded as many as 77 cases. Of the dozens of cases that occurred, 63 of them happened to women.<sup>7</sup>

Research conducted by the author, several studies have been conducted previously related to domestic violence, including the ideal concept of preventing domestic violence against women which discusses the ideal concept of preventing domestic violence against women through the provision of shelters or safe houses for women victims of domestic violence. Furthermore, the implementation of Law No. 23/2004 on the Elimination of Domestic Violence in the Law Enforcement Process (hereinafter referred to as Law No. 23/2004) (a solution to protect the law against victims) which discusses solutions in preventing and overcoming the occurrence of domestic violence to realize law enforcement.<sup>8</sup> Research on domestic violence was also conducted by Margie Gladies Sopacua, who discussed the implementation of restorative justice as a basis for solving domestic violence problems in Indonesia.<sup>9</sup> The contribution of recent studies as a comparison has a fundamental difference from the research researched by the author. The novelty of the author's research relates to the use of customary punishment in the settlement of criminal acts of domestic violence in Maluku which is carried out outside the judicial process. In certain areas in Maluku, one of which is in West Seram Regency, Tanimbar Islands Regency, the local community prefers the customary route as a solution to problems including domestic violence. In this study, the researcher draws comparisons with three previous studies to highlight the novelty of the research. First, the study by La Jamaa titled "*Penanggulangan Kekerasan Dalam Rumah Tangga Dalam Pandangan Masyarakat Kabupaten Maluku Tengah*" demonstrated that despite the enactment of Law No. 23

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<sup>5</sup> Ellora Sukardi, Debora Pasaribu, and Vanesia Ciayadi Kwang. 2021. "Upaya Penanggulangan Kekerasan Dalam Rumah Tangga Akibat Covid-19 Perspektif Teori Keadilan Bermartabat". *Jurnal Lemhannas RI* 9 (1), 11-24. <https://doi.org/10.55960/jlri.v9i1.373>

<sup>6</sup> Isyatul Mardiyati, "Dampak Trauma Kekerasan Dalam Rumah Tangga Terhadap Perkembangan Psikis Anak," *Raheema: Jurnal Studi Gender Dan Anak* 2, no. 1 (2015): hal. 27, <https://doi.org/10.24260/raheema.v2i1.166>.

<sup>7</sup> Polda Maluku, "Polda Maluku: Kasus Kekerasan Perempuan Dan Anak Meningkat," Polda Maluku, 2023.

<sup>8</sup> Rena Yulia, "Implementasi Undang-Undang Nomor 23 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Dalam Proses Penegakan Hukum (Sebuah Solusi Dalam Upaya Perlindungan Hukum Terhadap Korban," *Jurnal Hukum Pro Justitia*, Vol. 24, no. 3 (2006): pp.292-300

<sup>9</sup> Margie Gladies Sopacua, "Implementasi Keadilan Restoratif Sebagai Landasan dalam Penyelesaian Masalah Kekerasan Dalam Rumah Tangga di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 6, no.1 (2024): 96-111. Accessed: November 1, 2024, <https://doi.org/10.14710/jphi.v6i1.%p>

of 2004 on the Elimination of Domestic Violence, domestic violence persists in society. The research highlights how the Muslim community in Salahutu, Leihitu, and Leihitu Barat sub-districts, Maluku Tengah Regency, addresses this issue by utilizing local wisdom through the role of saudara kawin (marital kin), an approach effective in preventing domestic violence without requiring repressive law enforcement interventions.<sup>10</sup> Second, the research by Hadibah Zachra Wadjo titled “*Advokasi Oleh Lembaga Adat Terhadap Korban Kekerasan Dalam Rumah Tangga Di Desa Tutuwaru Kecamatan Pulau Leti Kabupaten Maluku Barat Daya*” reveals that, under Law No. 23 of 2004, domestic violence encompasses acts that cause suffering, neglect, or loss of self-confidence, ability to act, trust, or severe psychological distress, particularly for women. This study underlines the role of traditional institutions in advocating for and supporting victims of domestic violence, emphasizing the importance of community-based approaches.<sup>11</sup> Third, the study by Yonna Beatrix Salamor titled “*Penggunaan Pidana Adat Dalam Penyelesaian Kasus KDRT Di Maluku Tengah*” found that, although Maluku Tengah is an adat (customary law) region that preserves nearly 99% of its traditional practices, criminal matters, including domestic violence cases, are predominantly resolved through national criminal law.<sup>12</sup>

These prior studies provide valuable insights into the interplay between local customs and formal legal mechanisms in addressing domestic violence. However, the novelty of the current research lies in its focus on the application of customary punishment as a method for resolving domestic violence cases outside the judicial system in Maluku. This study specifically examines the use of customary justice in West Seram Regency and Tanimbar Islands Regency, where local communities prefer customary processes to address domestic violence. This approach reflects a unique integration of traditional values and conflict resolution methods, which differentiates it from prior research that emphasized either formal legal mechanisms or the role of adat institutions in victim advocacy. This investigation aims to enrich the discourse on integrating customary and national legal frameworks in addressing domestic violence.

## 2. Methods

The type of research used to answer the problem is empirical juridical, in accordance with the problems and objectives of this research, the type of research is socio-legal research<sup>13</sup>, namely a combination research method between doctrinal legal research methods and empirical legal research methods. This research uses primary data sources and secondary data. The data obtained is then analyzed using qualitative analysis techniques so that the research results obtained can provide an overview and answer the problems in this study.

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<sup>10</sup> La Jamaa and Anwar Lateni, “Penanggulangan Kekerasan Dalam Rumah Tangga Dalam Pandangan Masyarakat Kabupaten Maluku Tengah,” *Tahkim* 14, no. 2 (2018), <https://doi.org/10.33477/thk.v14i2.619>.

<sup>11</sup> Wadjo and Fadillah, “Perlindungan Hukum Terhadap Perempuan Dan Anak Yang Menjadi Korban Kekerasan Dalam Rumah Tangga Di Desa Klis.”

<sup>12</sup> Yonna Beatrix Salmer, “Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan Dan Efektivitas,” *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 11, no. 1 (2022): 75–93, <https://doi.org/10.24252/ad.v1i2.34207>.

<sup>13</sup> Sulistyowati Irianto, *Metode Penelitian Hukum dan Refleksi*, (Jakarta: Yayasan Obor, 2009), hal. 177

### 3. Results and Discussion

#### 3.1. Factors Causing Domestic Violence in Maluku

Customary law in Indonesia, as recognized in Article 18B paragraph (2) of the 1945 Constitution, is an important part of the community's cultural identity. In resolving cases of domestic violence (hereinafter referred to as KDRT), customary law is often an option in certain areas, as it is considered faster, more affordable, and reflects the values of the local community. One of the fundamental differences between customary law and national law lies in its approach to perpetrators and victims. Customary law tends to focus on restoring social harmony, which is often realized through material sanctions such as land payments, financial compensation, or community work. These mechanisms aim to restore social balance, but often neglect the restoration of individuals, particularly victims. In contrast, national law as stipulated in the Criminal Code has a retributive approach that focuses on punishing perpetrators as a form of accountability and deterrent effect, while also paying attention to victim rehabilitation as an important element in modern criminal justice.

To increase the relevance of customary law in resolving domestic violence cases, there needs to be an effort to integrate gender justice and human rights values into customary practices. For example, customary sanctions can include elements of victim rehabilitation, such as psychological counseling or community support for victims to restore their lives. This approach not only strengthens the restorative aspects of customary law, but also ensures that the needs of victims as individuals are met. Integration between customary law and national law can be a solution to overcome the conflict of values in resolving domestic violence. One way is to develop formal mechanisms whereby customary settlements are recognized as part of the national justice system but remain overseen by legal authorities to ensure compliance with gender justice and human rights principles. This mechanism could include evaluation of customary sanctions to ensure that victims receive adequate remedies, both materially and psychologically.

The strong patriarchal culture in Indonesia is one of the main obstacles to realizing women's right to live free from violence. In a patriarchal system, men are often seen as having a dominant position in household relationships, while women are placed in a subordinate position. This mindset not only creates gender inequality but also normalizes violence as a way to maintain control in domestic relationships. As a result, victimized women often face social stigma, pressure to maintain the marriage, and lack of access to effective justice mechanisms. This phenomenon is contrary to human rights principles that uphold the equality and dignity of all human beings.

Patriarchal culture has a significant influence on the occurrence of domestic violence in Indonesia. In a patriarchal system, men are often seen as the dominant party and have more control than women, who are seen as subordinate. This creates gender injustice that normalizes violence against women in the context of the household. The influence of patriarchy as one of the triggers for domestic violence is:

1. Social Construction

Patriarchal culture shapes the view that women are inferior and must submit to men. In many cases, acts of violence against women are considered normal and even justified as part of the husband's control over his wife.

2. Normalization of violence

In a pariah society, domestic violence is often not considered a serious offense. Instead, it is seen as the husband's right to organize and control his wife, which reinforces the cycle of violence.

3. Stigmatization of victims

Women who are victims of domestic violence are often blamed for the violence they experience. This view reinforces women's subordinate position and limits their access to justice and protection.

4. Economic and educational inequality

Patriarchal culture also affects women's access to education and employment opportunities, contributing to their economic dependence on men. When women lack financial independence, they are more vulnerable to violence because they feel trapped in harmful relationships.

In addition to patriarchal culture as one of the causes of domestic violence, several other factors also cause domestic violence,<sup>14</sup> including:

1. Psychological factors

The psychological condition of the perpetrator greatly influences the occurrence of domestic violence. Emotional problems, mental disorders, and emotional instability can drive individuals to commit violent acts. Perpetrators who experience stress or frustration often use violence as a way to express dissatisfaction or cope with the pressure they are experiencing.

2. Environmental factors

The living environment also influences the occurrence of domestic violence. Easy access to weapons or drugs, alcohol, can increase the aggressiveness of the perpetrator. An unstable security situation in the neighborhood can also be a trigger for violence.

3. Individual Factors

Individual traits such as low self-control, tendency to be aggressive, lack of empathy can increase the likelihood of someone becoming a perpetrator of domestic violence. In addition, past experiences with violence either as a witness, victim or perpetrator often influence an individual's future behavior.

Domestic violence is not only a criminal offense in the context of national law, but also a serious violation of human rights, particularly women's right to live free from violence. This right is explicitly stated in various international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as CEDAW), which has been ratified by Indonesia through Law No. 7/1984. In this context, domestic violence can be understood as a violation of the state's obligation to protect women from gender-based violence, which includes physical, psychological, and social protection for women.

<sup>14</sup> Hasudungan Sinaga, "Mengungkap Realitas dan Solusi Terhadap Kekerasan Dalam Rumah Tangga," *IBLAM Law Review* (2), no.2 (2022): 188-210, <https://ejournal.iblam.ac.id/IRL/index.php/ILR/article/download/236/255/1031&ved>

Indonesia, as a state party to CEDAW, has an obligation to eliminate gender-based violence, including domestic violence, by adopting effective policies and legislative measures. Article 2 of CEDAW specifically requires states to eliminate discrimination against women in all its forms through legislation, policies, and administrative practices that support gender equality. However, the implementation of this obligation often encounters obstacles at the practical level. Customary legal systems and local cultures, despite their restorative values, are often unable to meet the protection and rehabilitation needs of victims, especially in the context of restoring psychological trauma and respecting women's rights.

The state's responsibility in eliminating domestic violence is not only limited to the enforcement of the national criminal law, but also includes prevention and rehabilitation for victims. States must ensure that existing laws and policies reflect the principles of gender justice and meet ratified international standards. This includes providing adequate legal protection to victims, providing equal access to the justice system, and removing social and structural barriers that prevent victims from reporting cases of violence.

### **3.2. The Existence of Customary Penalty in Resolving Domestic Violence in Maluku**

Indonesian national law juridically recognizes customary law through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects the legal entity of indigenous peoples and their traditional rights, as long as its existence is still alive, in accordance with the development of society, and does not conflict with the principles of the Unitary State of the Republic of Indonesia, laws and regulations, and human rights. However, in practice, national law allows indigenous peoples to settle traditional settlements, including in cases of domestic violence.

The conflict of values between customary law and national law in the resolution of domestic violence cases reflects fundamental differences in the goals, philosophies and approaches of the two legal systems. Customary law, which is restorative, emphasizes the restoration of social harmony and cosmic balance in society. Meanwhile, national law, especially as regulated in the Criminal Code (hereinafter referred to as the KUHP), has a retributive approach that aims to provide appropriate punishment to the perpetrator as a form of accountability for violating the law.

In the context of Indonesian national law, recognition of customary law is regulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. However, this recognition is conditional, meaning that customary law is only recognized to the extent that it does not conflict with national law, human rights, and the public interest. This shows that national law accommodates customary law, but with certain limitations to ensure alignment with modern principles, including gender justice and the protection of human rights.

The dominance of the Indonesian Criminal Code (hereinafter referred to as KUHP) as a representation of western law brought by the Dutch, along with the length of time the Dutch colonization of Indonesia, there has been a transformation of the legal system and social values of society, which has directly marginalized the existence of laws that live in society or customary law. The dominance of Western law controls the regulation of community life, both

in the public and private sectors. Mutatis mutandis, the enforcement of western law has imposed a western value system on the value system of Indonesian society, which between the two is a different value system.<sup>15</sup>

Customary criminal law as a living law is a reality that cannot be eliminated or killed. Customary criminal law concerns the social ideals and justice of the community, it becomes flesh and blood in the life of the community. Therefore, even though the Criminal Code still dominates the enactment of criminal law in Indonesia, society and legal defense is a defense based on a sense of justice that lives, develops and is maintained in a certain time context. Actions considered as evil or contrary to the provisions of customary criminal law, are temporary, in line with the sense of justice and public awareness, towards the appreciation of moral norms, religion, and manners in society. So that an act at one time is considered a customary offense, with the passage of time it can be seen as not a customary offense, and vice versa. Customary criminal law, because it is not "preexistent", does not recognize the principle of legality in determining customary offenses as regulated in the Criminal Code, where an act can be punished if there are legal rules that have been customary before the act is committed. Customary offenses occur when there is a prohibition to perform an act because the act is perceived by the community as inappropriate, and reprehensible because if violated it is seen as disrupting the cosmic balance and causing turmoil in society.<sup>16</sup>

The reality that customary criminal law is a means of balancing the turmoil in society due to offense violations, serves to maintain harmony, conflict resolution (conflict opioicing), maintain community solidarity as a reflection of the moral, religious, and moral ideals of society and its nature that is not 'prae existence'. Customary criminal law has the following characteristics:<sup>17</sup>

1. Comprehensive and unifying  
Its cosmic nature, which is interconnected with each other. Customary criminal law does not distinguish between civil offenses.
2. Open-ended provisions  
This is based on the inability to predict what will happen so it is not certain, the provisions are always open to all events or actions that may occur.
3. Differentiating the problem  
In the event of an offense, what is seen is not merely the act and its consequences, but what is the background and who is the perpetrator. With this nature of thought, then in finding a solution in an event becomes different.
4. Trial by request  
Resolving customary violations is largely based on requests or complaints, demands or lawsuits from parties who are harmed or treated unfairly.
5. Reaction or corrective action

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<sup>15</sup> Pujjiono, 2005. *Hukum Pidana Adat Sub\_culture Kehidupan Hukum Indonesia*. Bahan Kuliah Teori Ilmu Hukum, Program Doktor Ilmu Hukum UNDIP Semarang.

<sup>16</sup> I Made Widnyana, 1993, *Kapita Selekta Hukum Pidana Adat*, Bandung: PT. Eresco, hal. 3

<sup>17</sup> Hilman Hadikusuma, 1984. *Hukum Pidana Adat*. Bandung: Alumni Bandung, hal. 22-24



This corrective action is not only imposed on the perpetrator but also imposed on his relatives or family and can even be imposed on the community concerned to restore the disturbed balance.

Based on the description above, it can be seen that the main purpose of resolving customary criminal offenses is not based on a retributive view, but as a means of resolving conflicts, maintaining harmony among community members, and maintaining solidarity. In a broader dimension, customary crimes also restore cosmic balance, this is realized by the obligation (as a punishment) for the perpetrator to carry out customary ceremonies even though the perpetrator has been sentenced to fines or corporal punishment by the judicial institution, to restore the cosmic balance.

Domestic violence is a classic problem that has been considered a private matter between husband and wife or parent-child. The settlement also uses a restorative justice approach so that sometimes, the justice expected by victims of domestic violence is not obtained properly. The assumption of "domestic problems" as a problem that can be resolved "within the family" by husband and wife, does not always provide justice for the victim, nor does the perpetrator get a deterrent effect for the actions committed. Based on the research conducted, the following data on domestic violence cases in the last 3 years will be presented in each research location:

**Tabel 1.** Data on domestic violence cases in the last 3 years, Source: Polda Maluku, Polres SBB and Polres Malteng

	2022	2023	2024
<b>Ambon City</b>	41	43	19
<b>SBB</b>	38	42	30
<b>CentralTengah</b>	31	35	15

The data above shows the high number of domestic violence crimes received by the police. Based on the research conducted, reports of alleged domestic violence crimes that occurred came from various negeri within the jurisdiction of each research location. Some of the villages within the jurisdiction are still traditional villages, where customary law is still alive and integrated with the community. The results of this study also found that specifically for forms of domestic violence in customary lands based on the research location, the settlement using customary law is only still used in customary lands within the administrative area of West Seram Regency (SBB). Field data shows that out of 30 (thirty) cases of domestic violence in 2024, 12 (twelve) cases were resolved outside the court using customary law.

The decrease in the number of cases of domestic violence in several regions such as Ambon, Seram Bagian Barat (SBB), and Central Maluku (Malteng) in 2024 compared to previous years can provide mixed indications. On the one hand, this decline can be considered as evidence that conflict resolution mechanisms, both through customary law and national law, have a certain effectiveness. However, on the other hand, this trend may be also influenced by other factors that hinder the reporting of cases so that the recorded data does not represent the actual reality. Domestic violence resolution mechanisms are often more accessible to local communities. In areas such as SBB and Malteng, customary law based on community values is considered more practical and faster than the formal justice system. Settlements through customary law are usually conducted by traditional leaders or local customary institutions, who function as mediators between the perpetrator and victim. This

mechanism often results in sanctions in the form of material compensation such as the granting of land or work for the village. This approach aims to restore social balance within the community. However, from a modern legal perspective, these mechanisms often ignore the individual needs of the victim, such as the recovery of psychological trauma and respect for the victim's dignity as an individual.

In resolving domestic violence cases, customary law is often used as an alternative mechanism in certain areas such as Seram Bagian Barat, where customary communities have strong structures and mechanisms. These mechanisms usually involve mediation by traditional leaders or customary institutions to find a solution that is acceptable to all parties. This process often results in sanctions in the form of material compensation or labor for the community, aimed at restoring social harmony. However, from the perspective of national law, customary settlements can be formally recognized if they meet certain conditions, such as the consent of both parties, no violation of the principles of justice, and no deprivation of the victim's rights to further legal protection.

While the restorative approach in customary law has positive value in maintaining social relations, it often lacks attention to healing the victim's trauma and deterring the perpetrator. Customary sanctions that focus on material compensation can neglect victims' psychological rehabilitation needs and recognition of their dignity as individuals. On the other hand, the retributive approach in the Criminal Code focuses on punishment for perpetrators as a form of responsibility for their actions. This punishment aims to provide a deterrent effect, both to the perpetrator and the community at large, but often pays less attention to restoring the social relations that are the strength of customary law. To integrate these two approaches, a mechanism is needed that combines the restorative values of customary law with the retributive principles of the Criminal Code. One way is to create a collaborative framework between customary institutions and formal legal institutions, where customary resolution processes can be recognized as part of the national justice system. This process should involve oversight by the legal apparatus to ensure that victims' rights are protected and sanctions imposed reflect justice for all parties.

The retributive approach in national criminal law focuses on punishment of perpetrators, including imprisonment or fines, which aims to provide a deterrent effect. In addition, national laws also provide for the protection and rehabilitation of victims, which is part of modern justice. However, the implementation of national laws in remote areas often faces various obstacles. Limited access to justice institutions, lack of legal education, and community distrust of the formal justice system are major obstacles that reduce its effectiveness.

The customary courts that use customary means to resolve crimes of domestic violence are Loki, Buano, and Taniwel. The settlement mechanism can be described as follows: the customary government (in this case called the State Saniri Board) receives a report or complaint from the victim. The report is then followed up, and a discussion is held to obtain settlement steps by the Saniri Negeri. The initial step of the settlement begins with summoning both the alleged perpetrator and the victim. At this stage, the Saniri negeri body functions as a mediator who mediates between the two parties to find solutions to the problems that occur. After the mediation process, the Saniri body will hold a meeting to determine what action will

be given to the perpetrator. The action imposed by the saniri body can be in the form of customary sanctions, namely the payment of property in the form of giving land or hamlets for the victim, or work for the state or village.

This sanction mechanism for domestic violence is obeyed and carried out by both the perpetrator and the victim. So that the settlement process is considered complete and provides a sense of justice for the perpetrator and victim. When examined from the perspective of criminal law and gender justice, the settlement of domestic violence does not provide a sense of justice and fulfillment of victims' rights. This is because the acts committed, the mechanisms, and sanctions imposed only focus on the settlement by providing some valuable materials, while the recovery for the victim is not carried out properly so that the trauma experienced by the victim will remain and it is difficult to heal.

#### 4. Conclusions

The existence of customary law is still alive and used as part of community life, including in solving problems that arise in indigenous peoples including the problem of domestic violence. The existence of customary law in the settlement of domestic violence can be seen from the data on cases of settlement using customary law in the Loki, Buano, and Taniwel lands. The use of the customary law route still has a negative impact by not fulfilling the recovery for victims after the occurrence of domestic violence which provides prolonged trauma for victims.

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