

Prospects for Settlement of Minor Crimes Through Village Judiciary in Indonesia

Muhammad Azil Maskur¹, Pujiyono², Irma Cahyaningtyas³, Anis Widyawati⁴
{azilmskur85@mail.unnes.ac.id¹}

Universitas Diponegoro, Indonesia^{1, 2, 3}
Universitas Negeri Semarang, Indonesia⁴

Abstract. Prison inmate in Central Java as of March 2021 reached 11,278 people scattered across 46 prisons and detention centres. This data shows that prison sentences are indeed the prima donna. According to numerous studies, prison sentences do not solve problems comprehensively and do not recover victims of crimes. Making prison sentences as prima donna does not reflect the goals of modern criminal law as well which focuses on a mixed theory of retributive and utilitarian which emphasizes on improving the perpetrators of crimes, protecting victims and restoring the rights of victims. Therefore, it is necessary to search for other judiciary formats in reducing imprisonment in order to achieve the purpose of punishment, one of the formats is the concept of village justice. It is a kind of community conciliation court at the lowest level of government and directly touches the community. The purposes of this study are (1) to analyse the juridical basis for the existence of village courts in Indonesia, and (2) to observe the prospect of resolving minor criminal cases through village judiciary in Central Java Province. The research method used is qualitative with an empirically juridical approach. The results of discussion in this paper found out, first, the fact that there is no specific regulation of village judiciary. Nevertheless, juridically in Law Number 6 of 2014 concerning Villages, it is stated that village apparatus have been facilitated with broad authority in managing community interests based on public initiatives. Moreover, the village head has the authority to carry out community development and village community empowerment. Based on these conditions, village justice can be applied in Indonesia. Second, according to the results of research conducted by a number of researchers in numerous villages in Central Java, it shows that villages have implemented the village justice model in solving problems of minor crimes. Despite the village courts have succeeded in solving distinctive issues, both acts that violate written rules and unwritten rules (Living Law).

Keywords: Village Court, Minor Case, Crime

1 Introduction

Indonesia is a large country with a population of 270.20 million in 2020 (bps.go.id). In addition to a large population, Indonesian is a remarkably diverse nation, encompassing of diverse ethnic groups, religions, races, groups, and cultures. This diversity cannot avoid massive interactions among the communities.

Massify of social interactions, which indeed, having disparate interests, causes countless involved parties gain positive and negative impacts. Positive interactions will certainly be beneficial, whilst negative interactions will create losses and cause problems and controversy in the community.

The state as an entity given power by the people to reach the common goals as mandated by the 1945 Constitution, particularly "to protect the entire Indonesian citizens and the entire homeland of Indonesia, to promote public welfare, to educate the nation's life, and to participate in accomplishing world order based on independence, eternal peace and social justice" must exist as a problem solver in the society. The presence of the state in society is not a night watchman (*nachtwachterstaat*) such as the USA concept [1].

Based on the statistics of the Supreme Court of the Republic of Indonesia, in 2020 there were 18,001 cases that were decided on appeal in the jurisdiction of the high court both civil and criminal. Criminal cases alone reached 10,982. (<https://badilum.mahkamahagung.go.id/>). Other data shows that cases that went to the Supreme Court in 2019 reached a record of 20,058, in 2020 as many as 20,532 (<https://www.mahkamahagung.go.id/>).

The enormous number of cases, specifically the criminal cases, cannot be separated from the number of cases in the community that went to the first level court in the District Court. Settlement of cases through formal justice based on the purpose of sentencing more tends to be a retaliation (*retributive*). This can be discovered from the number of criminal cases that have been resolved through the judiciary led to imprisonment. Arief [2] argues that imprisonment is the *prima donna* in imposing sanctions since Indonesia's independence indeed. In the period 1973-1982, 81.84% of the types of punishment imposed were imprisonment with an increase of 5%.

Data for the jurisdiction of Central Java Province about the number of prison residents shows that prison sentences are the *prima donna* indeed. Data as of March 2021 there are around 11,278 people occupying 46 prisons and detention centres throughout Central Java.

The number of cases turns out not only can make punishment ineffective, but law enforcement officials, particularly judges, can hardly rest because of the overburden. On average, 164 cases per judge per year must be undertaken. This is overload (<https://leip.or.id/>).

As an endeavour to achieve the goal of punishment and the goal of a law state that promotes prosperity and reduces the load on law enforcement officials and prison capacity, it is necessary to make endeavours to resolve criminal cases without entering the formal court and being able to be resolved at the district level in the smallest area in Indonesia, particularly the village.

2 Research Question

The research questions addressed in this study are:

1. How is the juridical review of the existence of village courts in Indonesia?
2. How are the prospects for resolving minor criminal cases through village courts in Indonesia?

3 Methodology

This study applies the Juridical Empirical method. This is to answer the topic of problems related to the prospect of village justice that cannot be achieved only by looking at the norms, but also must explore the conditions and social situations surrounding it [3].

Through this research method, moreover in order to answer the first problem related to the juridical review of the village courts, it can realize a comprehensive portrait as well of how the prospects of village courts are in resolving minor criminal cases in Indonesia. Sources of data

used in this study are primary and secondary data. The data is validated by using the source triangulation method

4 Result and Discussion

4.1 Juridical Overview of Village Courts in Indonesia

Legal issues must be completely resolved by taking into account the legality of settlement instruments through the criminal justice system. The judicial system comes from the word system and judiciary. According to the Big Indonesian Dictionary, the system is a set of elements that are regularly interrelated hence to form a totality, an orderly arrangement of views, theories, principles, and so on. Meanwhile the judiciary is everything about court cases (<https://kbbi.web.id/system>, <https://kbbi.web.id/judiciary>).

Theoretically, the understanding of the criminal justice system based on Reksodiputro's opinion is a system in a society to restrain the criminal problems. The mitigation is meant an endeavour to control crime thus it remains within the community tolerance constrain. Meanwhile, according to Romli Atmasasmita, the criminal justice system is meant as a term that shows the working mechanism in crime prevention using a basic system approach. A similar definition stated by Remington & Ohlin which defines the criminal justice system as the use of a systems approach to the administrative mechanism of criminal justice, while criminal justice as a system itself is the result of the interaction between legislation, administrative practices, and social attitudes or behaviour.

The justice system in Indonesia is regulated in various regulations. In the constitution, Article 24 of the 1945 Constitution which states:

- 1) Judicial power is an independent power to administer justice to uphold law and justice
- 2) Judicial power is exerted by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court.
- 3) Other bodies whose functions are related to judicial power are regulated by law.

Juridically, village courts are not known in Indonesian criminal law. Every criminal case can only be resolved through the criminal justice system undertaken by investigative institutions, prosecution agencies, and court institutions.

Nevertheless, on the occasion of viewed from the characteristics of villages in Indonesia, as regulated in Law Number 6 of 2014 concerning Villages, there are several references that can be used as a juridical basis for the existence of a village court, including:

- a) The juridical definition of a village in Article 1 point 1, Village is a village and customary village or what is called by another name, hereinafter referred to as Village, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.
- b) The Village Authority contained in Article 18, states that the Village Authority includes authority in the field of Village Administration, implementation of Village Development, Village community development, and Village community empowerment based on community initiatives, origin rights, and Village customs.
- c) Article 26 paragraph (1) regulates the duties of the Village Head, namely the Village Head in charge of administering Village Government, implementing Village Development, developing Village community, and empowering Village communities.

- d) Article 103 related to the authority of the Traditional Village, one of its authorities is the implementation of the peace trial of the Traditional Village court in accordance with the provisions of the legislation.

4.2 Prospects of Settlement of Minor Criminal Cases Through Village Courts in Indonesia

Village courts are simple courts with different models in each village. This village court is a local wisdom created by the village community in solving problems. There is no name for village courts in any problem solving. Villagers refer to it as a settlement by deliberation.

The results of the research that the author conducted in various villages in Central Java, can find facts as follows:

4.2.1 Dusun Village, Lasem District, Kab. Rembang

The results of the author's interview with the secretary of the Dasun village, Lasem District, Rembang Regency, Exsan Ali Setyo Nugroho, S.Pd. related to minor cases that occurred in Dasun Village, that the Dasun village community had a number of times resolved minor cases, such as thefts. Once in Dasun village there was a theft committed by underage children, which was carried out in BUM Desa, then the child's parents and village officials discussed and finally resolved the problem with local wisdom. As a sanction, the children were solicited to conduct social works in the form of cleaning the BUM Desa areas for a certain period of time. This sanction is given as a defence. After the sanction is given, the problem is resolved and is not continued to the local police investigator.

4.2.2 Mejobo Village, Mejobo District, Kab. Kudus

Mejobo Village is a village that is structurally different from other villages on the coast of the city and in the highlands. People who tend to be modern, every problem that exists in the village, both light and heavy, in undertaking the settlement always involves the police apart as babinkamtibmas. This was revealed by Teguh as an apparatus from Mejobo Village. In the event that the family has finished and witnessed by Babinkamtibmas then the case is declared finished.

4.2.3 Parikesit Village, Suren Gede Village, Jojogan Village, Serang Village, Kejajar District, Wonosobo Regency, Wonosobo

These three villages are relatively the same, namely when there is a community problem, the first thing to do is to resolve it amicably. This was revealed by Ahmad Fauzi, the village head of Suren Gede, that during the last 5 years there have been several criminal acts, including potato theft, motorcycle theft, and adultery. Some were resolved at the village level, by bringing together litigants and then being sanctioned in the form of fines. In the case of adultery, a sanction was imposed in the form of being expelled from returning to the village of Suren Gede for numerous years. Added by Nadir Kasi Kesra Parikesit, that for his village in the event that there is a criminal act such as theft, after being met and then forgiven, but if he repeats the act again, then it is not forgiven and is taken to the local police station.

Considering the facts in several villages in Central Java, it can be concluded that the resolution of village community problems through village courts is ordinary, but the names are not village courts. Some of them are called deliberation, mediation, and trial. Nevertheless, all of them are of the same type, involving conflicting parties and local village officials. These different models are the order of people's lives in their respective environments.

This is in accordance with the general understanding of society term, such as a group of individuals who live together, work together, in order to attain common interests who already have a life order, norms, customs, which are adhered to in their environment [4].

Village communities that have their own local wisdom must be properly maintained, including methods for solving problems in their community. The state does not exist to destroy the existing order as long as the order does not conflict with the principles of general law. This is in line with the goals and functions of the criminal justice system as well, particularly as a crime control system (crime containment system), and secondary prevention [5].

Therefore, criminal justice in Indonesia is very prospective. The prospect of implementing justice in Indonesia can be understood from 3 (three) reasons, they are:

1) Philosophical

Philosophically, justice is a means to achieve justice. The village court is a means that has been evaluated in the field to solve the problem of criminal acts in the light category well and provide justice for all parties.

2) Juridical

Juridically, village courts are indeed unknown in the judicial power system, because the 1945 Constitution and Law Number 48 of 2009 concerning Judicial Power stipulate that judicial power is only exerted by the Supreme Court and the lower courts, such as General Courts, Military Courts, Administrative Courts The State and the Religious Courts, but legally based on Law Number 6 of 2014 concerning Villages, they recognize that the village has the right of origin and traditional rights in regulating and managing the interests of the local community in realizing the ideals of independence based on the Constitution of the Republic of Indonesia. 1945. Hence, the settlement of minor criminal cases through the local wisdom system in the village with numerous names and can be called the village court is a legal matter, both formal and material.

3) Sociological

Sociologically, based on the results of research conducted by the author, the system for resolving minor criminal cases such as theft, ordinary persecution, fights between residents, to adultery (infidelity) has been well resolved by the village community with the village justice system. Although the implementation is not yet systematic and uniform. The name of the judicial model does not exist. indeed This is as described by Talib [6] that there are numerous ways to resolve disputes in the community, they are consultation, negotiation, mediation, consolidation, and expert judgment.

Therefore, sociologically in Indonesian society who have long known the village justice system, this village court is prospective as a solution to legal problems at the village level.

5 Conclusion

From the results of research and discussion, it can be concluded, among others:

- 1) Juridically, the existence of village courts in Indonesia is recognized in the Constitution of the Republic of Indonesia and the Village Law. Although the name formally seems to be seen as contrary to existing regulations, materially the name of the judiciary is a common name and can be used in the process of solving problems in the community.
- 2) The prospect of resolving minor criminal cases through village courts in Indonesia is enormous. This prospect is strongly supported by philosophical, juridical, and sociological reasons.

References

- [1] Ridlwan, Z. (2011). Negara Hukum Indonesia Kebalikan Nachtwachterstaat. *Fiat Justisia: Jurnal Ilmu Hukum*, 5(2).
- [2] Barda, A. N. (2010). Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan PidanaPenjara, cet. 3. *Yogyakarta: Genta Publishing*.
- [3] Fajar, M., & Achmad, Y. (2010). Dualisme penelitian hukum normatif dan empiris. *Yogyakarta: Pustaka Pelajar*.
- [4] Prasetyo, D. (2020). Memahami Masyarakat Dan Perspektifnya. *Jurnal Manajemen Pendidikan Dan Ilmu Sosial*, 1(1), 163–175.
- [5] Sugiharto, R. (2022). *Sistem Peradilan Pidana Indonesia dan Sekilas Sistem Peradilan Pidana di Beberapa Negara*. Unissula Press.
- [6] Talib, I. (2013). Bentuk putusan penyelesaian sengketa berdasarkan mediasi. *Lex et Societatis*, 1(1).