

## SETTLEMENT OF CRIMINAL OFFENCES BASED ON VICTIM RECOVERY AND PROTECTION THROUGH THE VILLAGE KRAMA ASSEMBLY (A STUDY IN SESAIT VILLAGE, NORTH LOMBOK DISTRICT)

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### **ABSTRACT**

*This research aims to explore the case settlement mechanism through MKD, specifically examining the forms of recovery and victim protection provided by MKD. This empirical legal study adopts a socio-legal approach and employs case studies. The findings reveal that the criminal case resolution process through MKD starts with a report, followed by verification and the scheduling of a meeting by MKD. A mediation process then takes place, where if the parties agree to reconcile, MKD drafts a peace deed. If not, minutes are prepared, and MKD advises the parties to pursue formal legal channels. In terms of victim recovery and protection, particularly in domestic violence cases, during mediation, the victim is kept separate from the perpetrator to prevent further violence, intimidation, or third-party intervention. Should reconciliation be reached, a peace deed is drawn up, stipulating that if the perpetrator repeats their actions, litigation will follow immediately. This approach serves to deter future offenses and safeguard victims. Given the Sesait village community's strong adherence to customary law, perpetrators who sign a peace deed are also subject to traditional sanctions imposed by tau loka empat. These sanctions aim to restore relationships between the parties and reintegrate harmony within the community. The sanctions not only reduce the stigma surrounding the perpetrator but also provide support to the victim. Thus, the recovery concept in the Sesait community extends beyond the victim to include the perpetrator and the broader community.*

**Keywords:** *criminal offense resolution, victim recovery and protection, village krama assembly.*

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### **INTRODUCTION**

Each region in Indonesia has different characteristics and types of problems. This is due to the heterogeneous nature of society, where each sub-group of Indonesian society and its culture is entirely different. These differences are also reflected in how people resolve a dispute or conflict. These regions have different ways of resolving the dispute. The value system, political norms, economics, and beliefs strongly influence the resolution of a dispute in society. There are at least two kinds of conflict resolution institutions known in society, namely:

1. Traditional conflict resolution institutions originate from the people's political and legal systems and take place traditionally.

## 2. Dispute-resolution institutions are built from the political and legal systems of the state.

Based on this, the institution of settlement is built on the political and legal system of the state. The dispute resolution process is carried out through the court, which includes a hearing in court where the judge has the authority to control and decide the dispute. Consequently, disputants must face each other to protect their legal rights in court. This type of institution ensures that those who engage in unlawful behavior face appropriate legal consequences.

In contrast to traditional conflict resolution institutions, which stem from the political and legal systems of the people and take place traditionally, a dispute is resolved outside the courts based on the community's values, for example, through customary institutions or other institutions derived from the community's values.

Indonesia itself, recognizes the existence of Alternative Dispute Resolution (ADR) through out-of-court settlement, regulated in Law Number 30 of 1990 concerning Arbitration and Alternative Dispute Resolution. Article 1 point 10 of the Law explains that out-of-court dispute resolution methods include consultation, negotiation, mediation, conciliation, or expert judgment. The National Criminal Code, set to be enforced in 3 years, implies related to the settlement of cases outside the court. Article 132 paragraph 1 letter g states that the prosecutorial authority can be canceled if a settlement process outside the court has occurred. Therefore, the National Criminal Code creates space for out-of court settlement process. As a result, if a case has been resolved outside the judicial process, the authority to prosecute becomes void.

The Indonesian people have long known the methods of out-of-court settlement. Long before Western law entered Indonesia, and long before the formation of national law, the Indonesian people had their customary laws, local wisdom, rules related to law enforcement, and conflict resolution mechanisms.

As is the case with the Sasak people, they have long recognized a way of resolution that prioritizes values that are believed and ingrained. The value put forward is the value of deliberation to reach an agreement, so a conflict or dispute should be resolved through consensus. The settlement is usually assisted by certain parties in the Sasak tribe known as krama. Krama is an institution in society that regulates the procedures in community life.

In practice, the Sasak community, especially those in Sesait village, recognize a form of settlement that is carried out outside the court, namely through *tau loka empat*, which oversees several villages incorporated in wet Sesait and through the Village krama assembly (hereinafter referred to as MKD) which is located in one Village. The settlement through *tau loka empat* is a customary settlement where the perpetrator will be tried by customary rules and subject to customary sanctions. While MKD in the Village, in resolving a case, is more directed to the mediation function and does not decide to impose sanctions as *tau loka empat*. Mediation is an effort made by the parties to resolve their dispute through mutual agreement with the help of a neutral mediator who is impartial to one of the parties and does not make a decision on the parties' dispute.

Mediation can also be interpreted as a process of deliberation by the parties to reach a consensus to resolve the existing problems. This means that MKD, in this case, aims to prevent cases or disputes between communities in Sesait village from reaching the realm of law.

The settlement through MKD prioritizes deliberation to maintain peace. One of MKD's functions is to help the Village and the village government in preserving cultural values that thrive in the Village. In Sesait Village, peace is a priority to maintain balance and resolve disputes through consensus. The goal is to restore the situation to how it was before the conflict, ensuring the rights of all parties. This demonstrates the importance of MKD so that the peace existing in the community is maintained, allowing those litigating or disputing to return to a pre-conflict state by ensuring the fulfillment of the rights of each party. This means that settlement through MKD is based on restoration and protection.

In the Village, the resolution of a case or dispute either through *tau loka empat* or through MKD prioritizes recovery as the values believed by the community so that people can live in harmony, peace, and coexistence both between fellow communities and nature, all of which must be in harmony so that life runs peacefully, disruption of relationships between humans and humans or other creatures can affect the balance of the universe. This research emphasizes the settlement of criminal cases. With the settlement of cases or disputes through MKD or *tau lokak empat* four, in this case, the community is given the choice to resolve their case whether through *loka empat* or MKD, because if a case has been resolved through MKD, then the case will not be entered or resolved again through *tau lokak empat* and vice versa.

Based on this, this research emphasizes settling criminal cases through MKD. Therefore, it is necessary to know how the settlement mechanism through MKD is used and how MKD provides recovery and protection for victims.

## METHOD

This research is a type of empirical legal study. It is conducted by examining and analyzing the resolution of criminal cases based on the recovery and protection of victims through MKD. The approaches used are juridical, sociological, and case approaches. The data used in this research consists of primary and secondary data. Primary data is in the form of interviews with traditional leaders, community leaders, and local communities, while secondary data is in the form of books, articles, and documents related to the research topic. The data analysis technique uses a qualitative descriptive method where the researcher describes the data in the form of resolving criminal cases through MKD, and then, based on this data, it is connected and studied based on existing legal provisions. Thus, a conclusion is obtained to understand and answer the problems raised in this study.

## ANALYSIS AND DISCUSSION

### A. Settlement of criminal offenses through the village krama assembly

The local wisdom in Indigenous law communities varies, one of which is reflected in how they resolve disputes. Customary law has its pattern in resolving disputes and has a distinctive and unique character compared to other legal systems. Customary law is born and grows from the community, so its existence is integrated and cannot be separated from the community. Out-of-court dispute resolution through customary institutions is a practice that has long existed in Indonesian society, customary institutions have an essential role in dispute resolution.

Case resolution mechanisms through customary institutions in Indonesia are essential in maintaining social harmony and resolving conflicts at the community level. Customary institutions, as entities rooted in local traditions and culture, have the authority recognized by the community to resolve disputes, be it land disputes, social conflicts, or criminal cases.

This institution is a mediator that helps disputing parties reach an agreement. One area that still upholds these values is Sesait Village, located in North Lombok Regency. The Sesait Village community has a customary institution to resolve its disputes, which are not only civil but also criminal. The customary institution is the Village Krama Assembly, otherwise called MKD, which is a Village Customary Institution in charge of resolving Adat and other disputes in the Village.

Case resolution through the Village Krama assembly is a dispute resolution that prioritizes the principles of deliberation and local wisdom. The Village Krama assembly acts as a mediator

who helps the disputing parties reach an agreement. The management of MKD in Sesait Village consists of 9 people who come from various elements of society, namely:

- a. Village traditional leaders;
- b. Religious figures
- c. Village Government; and
- d. Community leaders

In addition, in the Village, MKD has the following objectives:

- a. fostering harmony among Village community members:
- b. maintaining peace.
- c. handling disputes in the Village.

MKD’s main task is to assist the village government in facilitating dispute resolution. In carrying out this primary task, MKD has the following functions:

- a. facilitating mediation of disputes that occur in the Village community;
- b. developing coordination and cooperation between village institutions and the Village Government in saving and preserving cultural values that grow and develop in the Village;
- c. documenting and inventorying values and norms developed or developing in the community.

Based on these tasks, the Sesait Village community can resolve their disputes through various institutions. The dispute resolution mechanism, if done through MKD, is as follows:

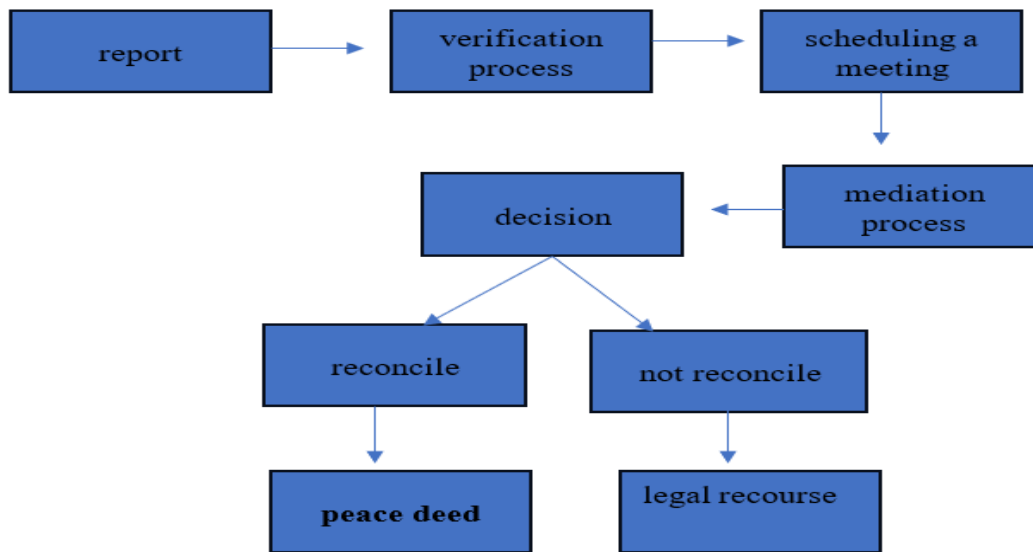


Figure 1.

Mechanism of case settlement through MKD

As for the description of the chart, in case of a dispute within the community, the community can report to the hamlet head first or directly to MKD. If the Dusun head can resolve the report, it will not be forwarded to MKD. However, if it cannot be resolved the report is then submitted to MKD either orally or in writing. Oral reports are transcribed by the MKD secretary and signed or thumbprinted by the reporting party.

MKD then verifies and deepens the dispute report. Subsequently, MKD arranges a mediation meeting within 14 days of receiving reports, bringing together the disputes parties. . During the mediation process , MKD allows all parties to voice their opinions and arguments to find mutually acceptable solutions, promoting togetherness and mutual respect.

If the parties agree to reconcile, MKD prepares a peace agreement with the knowledge of the Village Head. However, if no reconciliation is reached, MKD makes minutes and recommends the parties to the dispute to take formal legal action. As it is known that the Sesait village community upholds customary values that have been implemented for generations, so if the case violates the provisions stipulated in customary law, then in the decision, if accepted, the party found guilty will receive sanctions by the provisions of customary law decided by *tau loka empat*.

This mechanism demonstrates that MKD serves as a mediator for community disputes, facilitating agreements while respecting the community's values.

### Forms of Victim Recovery and Protection by the Village Krama Assembly

Protecting victims of criminal offenses is a crucial aspect of the legal system that aims to provide justice and recovery for individuals who have experienced crime. In Indonesia, various protection efforts have been regulated in law, but challenges in implementation still exist. A critical form of protection is through the Witness and Victim Protection Agency (LPSK), which protects witnesses and victims during the judicial process. LPSK is responsible for providing security and support to victims so that they can testify without fear<sup>1</sup> This includes providing legal assistance, physical protection, and psychological support. It is important to ensure that victims feel safe and can give testimony without fear of retaliation from the perpetrator.<sup>2</sup>

In addition, the state also guarantees victims' rights to obtain information about the progress of their cases, which is part of the human rights that must be fulfilled.<sup>3</sup> Furthermore, the state also protects restitution and compensation mechanisms for crime victims. Restitution is the obligation of the perpetrator to compensate the victim for the losses suffered due to the criminal offense.

Considering that the settlement is not only done through litigation, the forms of victim protection are not regulated in the law. The forms of protection for victims of crime provided by customary institutions in Indonesia reflect the values of local wisdom and traditions of the local community. Customary institutions are essential in resolving conflicts and protecting victims through mediation and deliberation. In many Indigenous communities, problem-solving is done in a non-litigation manner, where the parties involved in the conflict are invited to dialogue and reach a mutually beneficial agreement. This process aims to resolve the problem and restore social relations that may have been disrupted due to the crime.<sup>4</sup>

In addition, indigenous institutions often provide emotional and social support to victims. In Indigenous contexts, victims of crime are not only considered suffering individuals but also part of the larger community. Therefore, customary institutions endeavor to reintegrate victims into society by providing moral support and assistance through traditional rituals or ceremonies to restore the victim's dignity and social status.<sup>5</sup> This shows that victim protection at the local level is legal and includes social and cultural aspects that are important for victims' psychological recovery.

<sup>1</sup>Apriani, N. A., & Hadi, H. (2021). Perlindungan Hukum Saksi Dan Korban Penganiayaan Oleh Lembaga Perlindungan Saksi Dan Korban. *Justicia Sains Jurnal Ilmu Hukum*. <https://doi.org/10.24967/jcs.v5i2.1287>

<sup>2</sup>Komariah, M. (2015). Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (Lpsk). *Jurnal Ilmiah Galuh Justisi*. <https://doi.org/10.25157/jigj.v3i2.421>

<sup>3</sup>Rahmi, A. (2019). Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Seksual Dalam Sistem Hukum Di Indonesia. *De Lega Lata Jurnal Ilmu Hukum*. <https://doi.org/10.30596/dll.v4i2.3173>

<sup>4</sup>Murdiyambroto, D. T. (2023). Penyelesaian Kasus Tersangka Odgj Melalui Restorative Justice. *Jurnal Impresi Indonesia*. <https://doi.org/10.58344/jii.v2i9.3505>

<sup>5</sup>*Policy Paper Perlindungan Hukum Melalui Jalur Non Litigasi Bagi Masyarakat Adat*. (2023). <https://doi.org/10.30641/kumhampress.90>

As in Sesait Village, North Lombok Regency, MKD is a customary institution that resolves disputes between community members and provides recovery and protection to victims of crime. As in cases of domestic violence that have occurred in the Village, where the victim and perpetrator resolve their problems through MKD, during the settlement process, the victim is separated from the perpetrator, where usually the victim will be given protection by being placed in the house of the hamlet head as an effort to anticipate that there will be no further violence or intervention from other parties during the process of resolving the case and providing security for the victim. While at the home of the Dusun head, the victim is provided with physical and psychological care, sometimes offered by religious leaders through advice that can reassure her psychology.

In this process, if there is a decision in the form of an agreement to reconcile, a deed of peace will be made, and one of the contents is that if it happens again, then he has the right to report it to the authorities immediately. This is done to protect the victim so that the perpetrator does not dare to commit his actions again. In the Sesait community because they still uphold customary law, these actions are acts that violate customary law so that the perpetrator will be subject to customary sanctions by existing awik-awik.

Likewise, if the theft case is resolved through MKD. In that case, the perpetrator will be subject to customary sanctions by *tau loka empat* for committing a customary violation by compensating and carrying out customary events. This illustrates the existence of restitution and compensation in customary law. The sanction aims to restore relations between parties and harmony in the community, so it is expected to reduce the negative stigma against the perpetrator and support the victim.<sup>6</sup> This provides a sense of justice for the victim and enables the perpetrator to right their wrongs and contribute back to society.<sup>7</sup>

As said by Bagir Manan, quoted by Arifin Rada,<sup>8</sup> the settlement of criminal events in customary law communities is not so different from how civil disputes are resolved. There are two approaches to resolving criminal events, namely, the magical aspect and the material aspect. The mystical element relates to efforts to restore the magical balance disturbed by the criminal event organized through certain ceremonies such as providing offerings or sacrificing animals as 'ransom.' The extreme is sanctioned as expelling or expelling offenders from the legal community concerned. The material aspect relates to efforts to reconcile the relationship between the perpetrator (family of the perpetrator) and the victim (family of the victim). This is also done with various peace ceremonies between the two parties. Another form is the obligation of the perpetrator (family of the perpetrator) to do something, such as declaring guilt, apologizing, or giving specific compensation or fines.

Based on this, it can be said that the settlement of disputes outside the court can be classified as a high-quality settlement because it is resolved without leaving a residue of hatred and revenge in the tuna. As in the settlement through MKD, it will not leave hatred, hostility, or mutual resentment between the parties because of their trust and adherence to the values they believe in.

## CONCLUSION

<sup>6</sup>Ginting, Y. P. (2024). Penyelesaian Tindak Pidana Dengan Melibatkan Tokoh Adat/Pemangku Kepentingan: Sebuah Pendekatan Restoratif. *Jurnal Locus Penelitian Dan Pengabdian*. <https://doi.org/10.58344/locus.v3i3.2531>

<sup>7</sup>Bontot, I. N. (2023). Konflik Pada Desa Adat Di Bali : Masalah Dan Solusi Penyelesaiannya. *Belom Bahadat*. <https://doi.org/10.33363/bb.v13i2.1042>

<sup>8</sup>Rada, A. (2010). *Peranan hukum adat Larvul Ngabal dalam proses penyelesaian tindak pidana pembunuhan pada konflik horizontal di Kepulauan Kei*. Universitas Brawijaya.

Alternative dispute resolution through customary institutions is a long-standing practice in Indonesian society. Customary institutions, such as the MKD, play an essential role in resolving disputes by mediating between conflicting parties to reach an agreement based on consensus. In Sesait Village, North Lombok District, MKD acts as a customary institution that handles various disputes, including criminal cases, by mediating between the parties and involving representatives from multiple community elements. In addition, the protection and recovery of victims of crime are vital in the legal system, not only in legal norms but also customary norms also protect victims as MKD does by protecting victims and conducting recovery by reintegrating them into the community through mediation and customary events, which emphasize the welfare and unity of the community. Non-litigation approaches to dispute resolution based on justice and local values are essential to achieve comprehensive and sustainable solutions, free from hatred and animosity while upholding existing principles.

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