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PARENTAL RESPONSIBILITY OF CHILDREN CRIME IN INDONESIAN CRIMINAL ADAT LAW

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Abstract

Children who are in conflict with the law cannot be separated from the responsibilities of parents as the first party in the child's environment. The relationship between parents and children is a harmonized relationship from a strong emotional connection on the basis of blood relations. This situation makes parents unable to release and be released responsibility for their children's behavior. When children are faced with the law, policies to take over the responsibility of supervising children from parents, by denying that parents actually have the opportunity to deal with the problems of children who are dealing with the law are more often chosen. Even though the responsibility is transferred from the parents, they will find it difficult to rebuild the relationships they previously had with their children. This connection shows that parents also play a role when their children commit criminal acts indirectly.

Keywords: Criminal Adat Responsibility, Parent, Children commit with a crime

Abstrak

Anak yang berkonflik dengan hukum tidak dapat dilepaskan dari tanggung jawab orang tua sebagai pihak pertama yang berada dalam lingkungan anak. Hubungan antara orang tua dan anak merupakan hubungan yang terharmonisasi dari hubungan emosional yang kuat atas dasar pertalian darah. Keadaan inilah yang menjadikan orang tua tidak bisa melepaskan dan dilepaskan tanggung jawab terhadap perilaku anaknya. Ketika anak berhadapan dengan hukum, kebijakan untuk mengambil alih tanggung jawab pengawasan anak dari orangtua, dengan menyangkal bahwa sebenarnya orang tua punya kesempatan untuk mengatasi masalah anak yang berhadapan dengan hukum lebih sering menjadi pilihan. Padahal begitu tanggung jawab itu dipindahkan dari orangtua, mereka akan menemui kesulitan untuk membangun kembali hubungan yang sebelumnya mereka miliki dengan anak-anak mereka. Kaitan inilah yang menunjukan bahwa orang tua juga berperan saat anaknya melakukan tindak pidana secara tidak langsung.

Kata Kunci: Pertanggungjawaban pidana adat, orang tua, kejahatan anak

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I. INTRODUCTION

After 74 years of independence, since 1945 until now Indonesia still uses Dutch colonial law. of course this is surprising, because as a nation that is rich in culture, it certainly has legal resources that live and develop within Indonesian society itself. The original law that belongs to the Indonesian nation is actually values that originate from the Indonesian community itself. Specifically about criminal adat law, it has the same principle, which lives and develops from the identity of the Indonesian nation itself, namely Pancasila. The national legal system which is also the legal system of the Pancasila must be an elaboration of all the principles of the Pancasila as a whole. Therefore, it is necessary to develop an idea of the quality of dispensation of justice that is more compatible with the Pancasila legal system. To develop the Pancasila legal system requires not only the support of a clean and authoritative government, but also by a "benevolent" government based on moral supremacy. The VI National Law Seminar in 1994 also concluded that adat law, where it is stated that adat law is an important source of law in national life. Therefore, efforts are needed to develop this customary law, one of which is by conducting adat law research that is directed at finding legal principles and norms that can be transformed into national law.

Plans for the development of national laws that intersect with Pancasila can be seen from the advice in the form of a national law that functions as a guardian. Pengayoman is a character from Pancasila which protects the people of Indonesia. The relationship between Pancasila as the legal ideal and Pancasila as the highest legal norm, can be illustrated by the notion that legal ideals have a constitutive function, which can determine the basis of a legal system, also has a regulative function that can determine whether a positive law is fair or unfair.[1] In a sense, Pancasila as a legal ideal can judge the current positive law in Indonesia, whether it is in accordance with the character of the Indonesian nation, so that it can be accepted as a determinant of fairness in law enforcement.

In the Child Criminal Justice System Law, several criminal sanctions can be given to children who commit criminal acts. As stated in Article 71, it is stated that basic crimes for children consist of criminal warnings, criminal conditions such as guidance outside the institution, service to the community, and criminal supervision. Then there are also job training, coaching in institutions, and finally criminal imprisonment. In addition to the above crimes, there are also additional crimes consisting of deprivation of profits obtained from criminal acts, or fulfillment of customary obligations.

With the existence of criminal provisions in the form of fulfilling customary obligations, this provides wider space for adatlaw to play a role. The customary obligation referred to, in accordance with the explanation in the Law states that "customary obligations are fines or actions that must be fulfilled based on local customary norms that still respect the dignity of the child and do not endanger the child's physical and mental health".

Provisions regarding the fulfillment of customary obligations are still unclear, because there is no complete and clear explanation so that these provisions can be applied. If it is left to the customary provisions, then there will be no similarity in handling, therefore, this research is conducted to extract the essence of customary norms in Indonesia, so that they can be uniformly applied so as not to make a difference in handling using principles and norms adat law.

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[1] Hamid S Attamimi, Pancasila Has the Law in the Life of Indonesian Nation Law ', in Pancasila As an Idiology in Various Fields of Living Life, Nation, and State ‘, ed. by Oetojo and Alfian Oesman (1991), Jakarta: BP7 Pusat, *p*. 62.

In the legislation, the responsibility of children is independently fulfilled with criminality, namely criminal warnings, criminal conditions, job training, guidance and imprisonment. Prison punishment is a type of criminal restriction on independence, and until now it is still a favorite for sanctions on children. Even though the sanctions for limiting independence for children who commit criminal acts are now considered unfit and can have a negative impact on the children themselves. Even though it is now known as the concept of diversion in order to take action against children who have problems with the law. In Government Regulation Number 65 of 2015 concerning Guidelines for Diversion and Handling of Children Who Are Not 12 Years Old, it is stated that the purpose of diversion is to achieve peace between victims and children, resolve child cases outside the judicial process, avoid children from deprivation of independence, encourage community to participate, and instill responsibility for children. All of the objectives of the diversion are to show how the responsibilities of parents are those who educate and supervise children. Even in these provisions, there are options for implementing diversion involving children and / or parents / guardians. This means that at this position parents / guardians are also not required to be involved. The Indonesian Child Protection Commission (KPAI) stated in 2015 that the implementation of diversion by law enforcement officials starting from the police, prosecutors and courts was still below 50%. This shows that law enforcers have not prioritized diversion as a solution to the problem of child crime. Maybe it is understandable because there was no Government Regulation at that time. However, in December 2018, data from the Directorate General of Corrections of the Ministry of Law and Human Rights Republic of Indonesia released data that almost all children in conflict with the law were settled with criminal law. There were 2,368 cases, 2338 children became criminal children, while 30 children became state children. There is no civil child status at all. This data shows that law enforcement is still oriented to provide criminality to children in conflict with the law.

The implementation of this diversion is also only oriented to children, and does not even rule out the possibility that children will continue to be convicted. Even if a criminal act is carried out, for example, restrictions on the independence of the child should still pay attention to respect for the rights of children which can be realized in the form of providing child activities that are beneficial for the improvement of health and self-respect for children in order to prepare children to integrate in society. The desire to give criminality to parents whose children commit criminal acts is not in contradiction with the concept of diversion, because their children will still pay attention to their rights, so that the goal of preparing children to reintegrate in society can still be achieved.

For criminal penalties against children also reap criticism, because a child who is still dependent on his parents economically certainly gets money to pay the fine from his parents. Matters relating to the provision of criminal sanctions for parents of children who commit crimes still need to be studied further, because so far the regulation has not yet existed.

The problems that will be encountered are one of them in criminal responsibility. If implementing the rules related to fulfilling these customary obligations, then the form of criminal liability in adat law is that if the child commits a crime / crime, then the parent is also responsible in a criminal manner, will be in conflict with the principles of criminal law applicable in Indonesia today, where a person commits a crime, he must individually account for his crime, including the offender is a child. This research actually aims to provide a bridge to the concept so that the provisions regarding the fulfillment of customary obligations in the Child Criminal Justice System Law can be implemented.

Even though the threat has been given a severe threat to children who commit a crime, in reality the level of child crime remains high, as expressed by the Chairperson of the Indonesian Child Protection Commission (KPAI) that children as perpetrators of violence tend to increase. The facts obtained by KPAI revealed that in 2014, there were 67 cases of children who were perpetrators of violence, while in 2015 it increased to 79 cases. While the cases of children as brawlers also increased. If in 2014 there were 46 cases, 2015 reached 103 cases. This fact shows that the threat of punishment for children has not provided a significant influence on the decline in crime by children.

For examples of criminal acts above, how should parents be held accountable as parties who should provide supervision and education to children, so that children do not commit crimes in such a manner. Parents can also take responsibility for the actions of their children, because the child is a party that has not been independent of his personality, so that he can commit actions that harm the community.

Children who are in conflict with the law cannot be separated from the responsibilities of parents as the first party in the child's environment. The relationship between parents and children is a harmonized relationship from a strong emotional connection on the basis of blood relations. This situation makes parents unable to release and be released responsibility for their children's behavior. When the child is faced with the law, the first question that often arises is how the supervision given by his parents in his child's growth and development. The community also demands and expects parents to be responsible for the behavior of their children. It is the question of parental supervision in this condition. When children are faced with the law, policies to take over the responsibility of supervising children from parents, by denying that parents actually have the opportunity to deal with the problems of children who are dealing with the law are more often chosen. Even though the responsibility is transferred from the parents, they will find it difficult to rebuild the relationships they previously had with their children.

This connection shows that parents also play a role when their children commit criminal acts indirectly. Parents play an important role in the education of their children who will later determine the direction in which the child's behavior will be formed.

II. ANALISYS AND DISCUSSION

2.1. The Difference Between Original Indonesian Law and Dutch Legal Heritage

When compared with western law (European law) as applicable in Indonesia today, the systematics of adat law is very simple, even most are not systematic. The systematics of adatlaw is closer to the Anglo Saxon system, called Common law, which is different from Civil law from continental Europe. For example adat law does not recognize explicit differences between public law and private law. In the context of approaching the British legal system, Djojodigoeno said that in an Anglo Saxon State, there is no common law system other than the adat law system, only the material is different. In the adat law system the material is original Indonesian law while the common law legal system contains many elements of ancient Roman law.

On the other hand, adat law can change and adapt to certain conditions of community development. This ability to change and develop is actually a general characteristic of unwritten and uncodified law, as is adat law. Regarding the ability to develop adat law, it is judged to be precisely the thing that is owned by law. In his explanation, Djojodigoeno stated that endurance and ability changed adat law, in accordance with the characteristic of adat law as an unwritten element.

Adat law has a living and developing, or dynamic nature. The point is that adat law can follow the development of society that requires changes in the legal basis along the way of its history. It is also worth noting also the view of Paul Scholten, who stated that the attachment of logic lies not only in the rules of positive law, whether those listed in the legislation or anything that has the same strength, are included in the law that is not formulated (unwritten law), law as an element of our mental life. A legal decision comes from the rules, but he is independent of the rules, and becomes the basis of the new rules.[2]

Scholten van Oud-Haarlem's view suggests that there are some objections, which mainly rely on the assumption that Dutch law will be odd (*niet geeigend*) for a country that has a population of millions of people and is not Christian or pagan, which has various religions and customs, while many of the population are Muslim and adhere to the joints of their religion as well as their written rules and customs. That is, the use of Dutch law is a violation of the rights, customs of the population that is not a European nation, and the resolution of many different legal and customary structures. The assertion of the above opinion is the use of Dutch law from the beginning until now, is a restraint on the rights of the Indonesian nation itself, which is rich in legal sources derived from beliefs and customs.

2.2. Efforts to Reform Indonesian Criminal Law

If until now Indonesia still applies criminal law inherited from the colonial era, then this is a weakness of the existing law. In several UN congresses it was stated that the criminal law system which had existed in several countries (especially those originating / imported from foreign law during the colonial period), was generally "obsolete and unjust" (outdated and unfair) and "outmoded and unreal "(outdated and not in accordance with reality). This is because the criminal law system in several countries originating / imported from foreign law as long as the colonial era, is not rooted in cultural values and even there is a "discrepancy" with the aspirations of the people, and is not responsive to today's social needs. Even criminal law that ignores moral and cultural values, among others, by the continued application of foreign law inherited from colonial times, can be a criminogen factor.

The appeal to rethink the crime prevention policy with criminal law means that it can be interpreted as an effort to make improvements to current criminal law policies. If it is associated with the statement that the colonial law of colonial heritage is something that is not rooted in the moral values and culture of Indonesia, then the improvement / renewal that needs to be done towards the current Indonesian criminal law policy is to pay attention to and incorporate elements of moral values and Indonesian culture. In other words, according to Barda Nawawi Arief, efforts are needed to carry out legal excavations, and Indonesia as a country that has many original legal sources that live in the community, then the legal excavation is naturally done on legal sources that live in Indonesian society.

As the basis of the application of adat law in the present, Soepomo can take the opinion that it cannot be separated from the influence of the old provisions of Daendels and Raffles that adat law can apply in the court insofar as it does not conflict with recognized principles of justice and propriety general, or in terms of Raffles origin does not conflict with the "universal an acknowledged principles of natural justice". Likewise, adatlaw relating to adat crimes can certainly be enforced as long as it does not conflict with the aforementioned principle.

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[2] Elwi Danil, '*Appreciation for the Law of Indigenous Crimes in National Criminal Law*', 2018, *p*. 1–12.

Efforts to renew criminal law in Indonesia do not just arise, but are also driven by changes in society that occurred after world war, and for emerging countries also want changes in the field of constitutionality. Including Indonesia, as a newly independent country at that time also wanted to make its own state of affairs, one of which was to make its own law. Isn't criminal law supposed to be a reflection of the cultural values that live in the community concerned? Thus we can draw the thread of the need as a new country, that Indonesia wants to have its own law which is no longer a law originating from colonialism, on the other hand, the Indonesian nation is rich in ethnic diversity, customs, habits and living laws. in the community that meets in the unitary State of the Republic of Indonesia

In line with the opinion of Gustav Radbruch "Das Straftrecht ersetzen durch etwas besseres" (renewing criminal law does not mean improving criminal law, but replacing it with a better one). The process of replacing this criminal law is a process of improving criminal law.[3] Replace with a better one. The Indonesian nation has strong and rich cultural roots and customs, it should not be difficult to unite all of the existing potential into one national legal scope that can be accepted by all Indonesian people. The things above show a synergy, where the Indonesian people want to form their own laws originating from the original laws of the Indonesian nation, on the other hand history states that Indonesian criminal law is currently the inheritance of invaders, which were made for Europeans, which certainly has differences towards principles, beliefs and culture with the Indonesian people. Soedarto further argued that Dutch influence was very large in Indonesian law. The amount of Dutch influence can occur because:

1. The principle of concordance adopted in the Dutch legal system,
2. Law that developed in Indonesia is largely based on the teachings and theories developed in the western world,
3. The practice of the judiciary held in Indonesia, almost entirely comes from the laws and regulations and the doctrine of the Law above.

This influence certainly brings new things to legal development in Indonesia. But that does not mean that the Indonesian people cannot return to their own national identity. The concordance principle adopted in the Dutch legal system, de jure and de facto should have collapsed since the independence of the Indonesian nation occurred. The teachings and legal theories developed in the western world can be adapted to the development of law in Indonesia. As stated above, that legal science that developed in Indonesia is largely based on the teachings and theories developed in the western world. Certainly it will have fundamental differences ranging from the outlook on life to the customs of the Indonesian people. The Indonesian nation which is based on Pancasila and has a family character, is very different from the West which is individualistic, and is based not like the Pancasila. Things that are very technical, such as judicial practice, should also be linked to the practice of Indonesian legal justice which also has its own principles.

2.3. The Dutch View of the Existence of Indonesian Original Law

It was only at the beginning of the twentieth century that Van Vollenhoven carried out an investigation which eventually gave birth to the adat law which met adat law at the beginning of time and raised it to the degree of science.[4] This situation shows that the Netherlands actually showed concern for the development of original Indonesian law, and there were even efforts to study and develop it. however, along

[3] Soedarto, *A Dilemma in the Renewal of the Indonesian Criminal System* (1974), Semarang.*p. 3*

[4] Soepomo ; Djokosutono, *Adat Law Political Hystori,* II (1954), Djambatan. *p.*5

with the study of adat law which is getting more and more perfect, the Dutch government is still blindly deaf about the fruit of the investigation of adat law and in no way heeded the guidance of indigenous knowledge about the possibilities contained in the original law of the Indonesian nation. This happened because the Dutch government had its own interests, both political and economic, by forcing the law to be used for the Indonesian people.

At first the Dutch government codified criminal law in Indonesia between the ones that apply to European groups and to indigenous (Indonesian) and foreign eastern groups. The situation was valid from 1866 to 1918. In 1915 a codification of unification criminal law was made, namely a criminal law that applies to all groups of people in Indonesia. This codification of the criminal law came into force in 1918 under the name Wetboek van Strafrecht (Criminal Code). This Criminal Code is still valid in Indonesia until now, which is nothing but the result of unification, and is a replica of the Dutch Criminal Code in 1881. Of course this situation makes us have to continue to make improvements as well as adjustments to the original law that Indonesia has. Unification carried out by the Dutch government against Indonesian criminal law has the motives of the interests of the Netherlands itself, on the other hand the Indonesian nation has its own original law. Even today the Indonesian people still hold on to the Unification, both from the theoretical aspects to the norms. Quoting what was stated by Soepomo, that the adat law system had been laid out by Van Vollenhoven in his book Het Adatrecht van Nederland Indie, with which Van Vollenhoven provided a way and basis for the Indonesian people to further investigate adat law.[5]

It should be understood that Utrecht's statement is related to adat law owned by the Indonesian people, that:[6]

"It can be said that the criminal law that now applies in all regions of Indonesia is a written criminal law (codified). But the codification of the criminal law is not the desire of the Indonesian people themselves. it can be said that in the past century the codification of the criminal law was forced by the Dutch on the Indonesian people ".

The Utrecht statement certainly explained to the Indonesian Nation, that the criminal law in force in Indonesia today was a codification imposed by the Dutch as invaders. The term "forced" might be reasonable because the Dutch had previously colonized Indonesia for a long time, so that of course it would leave a lot of inheritance, including law. Regarding the codification of European criminal law, after being codified, the colonial government then paid attention to criminal law which still applies to non-Europeans (native Indonesians and foreign easterners). The colonial government at that time considered that criminal law that applies to non-Europeans strongly does not guarantee legal certainty and is colorful. Therefore, then the colonial government, in this case through the Governor-General in power, made the Criminal Code for newly codified Europeans also apply to non-Europeans (Indonesian and foreign east). Although at the same time, the General Prosecutor (Attorney General) Der Kinderen has another opinion, namely for non-Europeans to be codified in their own criminal law, do not make it valid for them the Criminal Code for Europeans.[7]

The view that Indonesia should have its own criminal law built on its own principles, has existed since the colonial era, but the Dutch colonialists did not wish for it, so they continued to impose European criminal law on the Indonesian people. Even though Indonesians themselves have various concepts, principles, even norms

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[5] Bushar Muhammad, *Adat Law Principles (an introduction)*, 3rd edn (1981), Jakarta: Pradnya Paramita, 1981. *p*.102

[6] Hilman Hadikusuma, *Criminal adat Law* (1979), Bandung: Alumni. *p*. 15

[7] E. Utrecht, *Criminal Law I* (1986) Surabaya: Pustaka Tinta Mas. *p. 44*

that also develop in the community in Indonesia. So that a review of the original laws of Indonesia is also needed to better suit the character of the Indonesian people. This is also the basis of Utrecht's view, saying that European criminal law was imposed on the Indonesian people by Dutch colonialism.

Utrecht also emphasized that the colonial government's refusal of the proposal to separate criminal law for Europeans with criminal law for non-European (Indonesia), indicated that how low the colonial government's knowledge of adat law in the past century. Not Vulgus (ordinary people) who are not familiar with adat law, but European judges and prosecutors. Der Kinderen, who initially proposed to separate criminal law for Europeans with criminal law for non-Europeans, finally took the position to copy the Criminal Code for Europeans to not Europeans.[8]

III. PARENT'S CRIMINAL RESPONSIBILITY AGAINST CHILD CRIMES

In the perspective of the Convention on the Rights of the Child, several factors that cause children to conflict with the law include the obstruction of the right to life, life and development, as well as the right of education, culture and leisure time that is not obtained naturally by the child. Even though all these rights should be given by parents. With the enormous contribution of parents that parents should do, it is only natural that parents also take responsibility if the child in his life journey makes mistakes that cause harm or suffering to others (criminal acts).

In connection with the responsibilities of parents for children who commit criminal acts, so far parents have only been given space to be morally responsible. Parents are only charged for the return of children by the judge's decision in the form of action to parents to be given attention and education so that children can improve themselves. The rest of the child is asked to be responsible independently for the wrong actions he has committed. In this case, according to Deborah C England, that parents' mistakes in terms of control can lead to criminal acts on children. Therefore sanctions are needed for parents who do not do so.

The model of parents' criminal liability for crimes committed by children in criminal law in Indonesia is that parents are also responsible for their children's actions (communal responsibility). This difference will be studied further as the object of research, because Indonesia has its own legal source that comes from the values of Indonesian society itself, which turns out to be not in line with the legal principles that have been carried out as positive law in the process of criminal responsibility.In the perspective of criminal adat law in Indonesia, there are several indigenous people who still practice their norms in daily life, including West Sumatra, Lampung and Baduy.

Cases involving children are included in disgrace, both for families and tribes, so that if a child commits a crime or violation that disturbs the community, it will not be exposed to a wide audience. So in criminal adat cases involving children, the identity of a child who commits curfew or theft cannot be mentioned. The two case models above, the settlement is also carried out in stages, starting from the family, ethnic groups, so that if they cannot be resolved at the tribal level, they will be taken to the Nagari. However, because it was successfully completed at the family level, the decision was not recorded. This is a matter that holds in the adat court, in addition to maintaining balance in indigenous peoples, also in the framework of cleaning up the disgrace in the community, therefore not being disseminated. This is reflected in various principles of adat law in West Sumatra.

[8] E. Utrecht, *Criminal Law I* (1986), Surabaya: Pustaka Tinta Mas. *p*. 45

The model for resolving criminal adat cases in West Sumatra shows a very careful effort in handling cases carried out by children. Even though he made a mistake, but keeping his children protected by his rights is still being done. It can be explained that completing cases in stages as mentioned above is a long step and involves many parties, so that it can have an impact on the emergence of fear of children if they commit violations again, and their families and people will have a more serious impact on supervising children they. Therefore, the West Sumatra adat law community considers adat law more acceptable to the community.

The Minangkabau adat community generally carries out these principles, not limited to certain tribes or nagari, because it is a rule that is made based on the Minangkabau customs agreement. In its application, of course it will experience irregularities. These deviations can then cause imbalances in the community, so actions that can restore this balance are needed. In Koto Tinggi Nagari itself there were not many deviations in the community that occurred. Which matter is related to events / events that contain heavy categorical criminal elements, such as drug abuse, the indigenous people will submit the case to the police. If there is a criminal act in the form of theft, immorality, religious mischief, and even the murder that can be sought for resolution based on the customary level, it will be settled within the scope of adat law.

The tiered settlement referred to is, the first settlement between families. If the perpetrators of crimes are still children which are seen as still within the reach of the family, the resolution of each parent of both parties. Parents of both parties met to find a settlement in a family manner first. If there are no more points of settlement between families, then the next effort will be at the level of the (larger family), with the hope that if discussed with a larger family, the best solution can be found. Then if it is not finished at the community level, then it rises to the tribal level, if it is not finished to the jorong level, to the Nagari level. This means that the completion at the nagari level to solve social problems is already at the fifth level. Nagari will not receive a report if it has not been completed at the lower level. Whenever there is, the Nagari will be directed back to the thrust, so next to the level below the level to the level of the family or people.

If it is later proven that the child commits a crime or acts that disturb the community, then the responsibility is not only given to the child who does it, but to the family (parents as influential parties in the family) or his people. The influence between parents and (ninik mamak) in families, can now be said to have more influence is parents.

In completing the case above, it shows that parents or extended families (including tribal leaders) cannot be separated from responsibility if there are members of their traditional tribe committing a crime / crime. This reinforces that within indigenous peoples, the relationship between family and tribal communities is very strong, so that if there are deviant things done, all are responsible. The form of accountability is that parents, family, and even their tribe, also bear the sanctions given by adat courts.

In Lampung's indigenous people, the settlement of adat cases above is a solution in order to restore the balance of the people who have been damaged by the perpetrators. The form of responsibility is also carried out by the family (parents) of the perpetrator. However, within the Lampung indigenous people, it does not directly involve large families or people such as in West Sumatra and Papua, but is still limited to its core family. Parents in this matter immediately played a role, from the time the adat court proceeded to the verdict, even filed an objection to the adat ruling. The character of the people of Lampung who have piil, or great self-esteem, causes if there

is a problem with family members, then as far as possible does not bring shame to the family name so that it must be resolved directly by the family concerned. Traditional elders play a role in assessing violations that have been committed, and impose sanctions if the actions can be proven. In the above case, because the perpetrator is the child of the balancer (traditional figure), the solution becomes more concise, because the offender's parents can call the other counterweight. Nevertheless, the sanctions imposed did not see the position of the perpetrators or their parents. The right to apply for relief is also not due to the position of the perpetrator's parents, but also can be done by other parties who have problems.

Traditional leadership in the Lampung community is a blood and tribal leadership. Every problem that arises is resolved by kinship deliberations, both between families to between parties. The balance structure of the Lampung indigenous people has the authority to make social norms, and also legal norms that are used as guidelines for indigenous peoples to behave in the associations of members of indigenous peoples and other communities. These norms must be a guideline for indigenous people, so that balance in the community can be maintained. In order to solve the existing problem, the institution of balance is concerned with the principle of togetherness in the life of deliberation to get consensus which then the decision must be obeyed by all citizens. This process is carried out in order to complete the case above. The balancers conduct deliberations to get consensus, so that sanctions can be received in a generous manner both by the perpetrators and the victims.

The implementation of deliberations in order to resolve various problems within the Lampung indigenous people, can be seen from the systematic responsibility of punyimbang, which is carried out in stages. Problems related to the tribe were resolved by the tribe punyimbang, reported to the village hamlet or buwaiy in the village. This method shows that the level of deliberation starts from family, tribal and village meetings, and empties into kebuwaiyan (marga). The deliberation decision made creates and establishes the general behavior patterns of community members in the form of norms and contains permits and prohibitions (cepalo). This is what made the basis for Lampung's indigenous people in their attitude, resolving problems that disrupt balance. All decisions in the form of decisions / decisions of the punyimbang must be made in a meeting called perwatin, according to its level starting from family, relatives / ethnicity, village, and kebuwaiyan.

Perwatin is also carried out in order to resolve legal problems that occur within the Lampung indigenous people. According to Zainudin Hasan, the title of Suntan Raja Yang Tuan, Perwatin does not only carry out judicial functions, but also performs legislative functions. Regarding Lampung's adat law, Zainudin Hasan Degree Suntan Raja Yang Tuan also explained that in practice at this time, adat punishment in the Lampng custom is only limited to fines, compensation (nyukak), and exclusion from adat and family relations. Some adat cases regulated in Lampung adat law are found in the Kitab Kuntjara Raja Niti, which was re-copied by ST Jaya Penatih Teruna in 1947, which regulates the procedures and rules of life of Lampung people (Pepadun). Of the several articles that exist, there are arrangements regarding adat offenses or adat crimes, including damaging the growing plants of people (the tanom stamps grow), cases of stealing (stealing), and taking people's wives (ngakuk bubbai). In addition there are also damaging the agreement letter (sometimes ko agreement letter), false oath, pregnancy out of wedlock (nganak mak kahwin), up to 12 cases of people who may not be witnesses (jelema sai mak can be a witness).

Even though it is still alive, but now the settlement of criminal cases using adat law is very rare, even though according to Zainudin Hasan, the settlement of criminal cases through adat law can be a middle way alternative to problems of criminal law in

Indonesia, such as prisons that are over prisoners, crimes that continue to increase, criminalization, as well as insecurity and even social shocks in the community as a result of the increasing number of crimes. With the use of adat criminal law as an alternative, it can maximize the role of adat law which has long lived and remains in the midst of the community, for example in the Lampung indigenous people. The role of adat sanctions as above, turned out to be very positive towards reducing the number of crimes that occurred. In this case the preventive function can be said to be successful. With the conception that adat sanctions are also the responsibility of families, tribes, and even clans, the perpetrators of crimes in the community will feel more monitored and reluctant to commit crimes again.

Zainudin Hasan stressed that no crime perpetrators who were given adat sanctions repeated their crimes again. Similar to the concept of adat law in general, the responsibility for a crime committed by someone is not only the culprit who is responsible, but the family and even the tribe are also responsible. Including in this case the crime committed by the child, the family and even the clan must also be responsible for sanctions. It is not possible for a child to pay adat sanctions, so the family and the clan must bear it. After that, the child who commits a crime will be closely monitored by his family and relatives so as not to commit crimes again. This form then causes the criminal offender, especially the child, to feel embarrassed, reluctant, and not even want to commit a crime again.

In the Baduy adat law community, the perpetrators of criminal offenses who are children in the Baduy traditional criminal law are considered not to be convicted. In general, if there is a case that a child commits a crime, the offender will be returned to his parents, unless his parents surrender, unable to educate the child and the handling is left to the criminal adat law of the Baduy. The criminal act committed by this child, the resulting consequences are transferred to his parents to be resolved.

In the Baduy criminal adat law, it is also understood that the balance has been disrupted by the existence of a criminal act, and there have been casualties. Accountability for criminal acts carried out by this child is transferred to parents to restore damaged balance. This form of parental responsibility is manifested in the form of compensation payments to the victims and actions imposed on parents to educate and supervise their children's behavior.

The description in the Baduy adat criminal law above shows similarities with the principles of adat law in general, where the child as a person who has not been established, is considered unable to be responsible for the actions he committed. Therefore parents as the party responsible for the growth and development of children, must be responsible for the actions of their children. Adat decisions will impose parents or family responsibilities. The form of responsibility is to replace the losses suffered by the victim, as well as the burden to educate and supervise the behavior of his child.

Formal Baduy criminal law applies the principle of ultimum remedium so that the new Baduy traditional criminal justice system is used if settlement of cases at the family level of the parties (perpetrators and victims) does not work. This means that adat justice in the Baduy indigenous community also has a pattern every time there is a deviant act in the community, the family attempts to resolve the problem first. If it cannot be completed, it will gradually arrive at the adat court. The initial stage is always sought to be resolved on the family side. So in fact in a broader perspective, the stages of settlement at the family level are part of the traditional Baduy criminal justice system. If in the family stage it cannot be completed, Jaro Tangtu, as for adat, with other traditional leaders will conduct an investigation into the field, if light is

sufficient, it will be resolved by Jaro Tangtu, but if it is not completed, then it will be submitted to the Baduy traditional justice system.

In principle, in the criminal adat law of the Baduy, an offender must be cleansed of his / her inner and outer birth, including child offenders. Cleaning is a manifestation of the responsibility of the perpetrators of criminal acts. Outward cleansing takes the form of accountability of the perpetrator to the victim who is tangible in the sanction received. The sanctions are in the form of being reprimanded / reprimanded, discharged / advised, compensation for forgiveness, compensation, and expelled from the Baduy community in becoming citizens of the Outer Baduy. The perpetrator's inner cleansing is manifested in the ritual of giving up or delivering starch. Ngabokoran is a ceremony of inner cleansing of criminal acts that are not too heavy. Handover of starch is a ceremony of inner cleansing of serious crimes. Ngabokoran and serah patience are also integral to the cleansing of the village for criminal acts that have occurred by appealing forgiveness to the ancestors led by the puun. According to Ferry Faturokhman, all the sanctions above were borne by the perpetrators' families.

The principle in the Baduy adat law community is in line with the doctrine of adat law, where criminal liability is an effort to cleanse the heart. In the sense of criminal liability is the manifestation of returning the balance damaged due to the occurrence of irregularities. Cleaning is a manifestation of the criminal responsibility of criminal offenders. Outward cleansing is the responsibility of the perpetrator to the victim who manifests in the sanction received. Whereas inner cleansing is manifested in traditional ceremonies which are to be drained or to hand over starch. Ngabokoran is a ceremony of inner cleansing of criminal acts that are not too heavy. Whereas the handover of starch is a traditional ceremony as an attempt to cleanse the interior of a serious crime. Integrally, these two traditional ceremonies in the framework of cleaning the village for crimes that occurred, to apologize to the ancestors.

In its responsibility, criminal offenders do not account for themselves. If there is an adult, the extended family is also responsible for paying the adat fines that have been decided by the adat court. If the perpetrators are children, then the parents are responsible, even though they are usually helped by their extended family.

Settlement at this family level also in principle does not give up the responsibility of parents to their child's deviant behavior. Even though it was decided outside the adat court, the responsibility for the child who committed the crime remained with his parents. However, there are differences in light and severe offenses. With regard to serious criminal offenses such as murder, the settlement of the family level can be stepped straight to the settlement by Jaro Tangtu and jaro7 / jaro dangka. Whereas in a misdemeanor will be passed with family deliberations first. Nevertheless, according to Ferry Faturokhman, the responsibility for children who commit criminal acts remains with their parents or family.

Accountability like the one done above in the Baduy adat law community is in order for parents or families to properly monitor family members so that they do no harm to others. Family members, including children, will hesitate to commit crimes. This shows that Baduy adat law also adheres to strong kinship principles, so that the behavior of family members, especially children, is also the responsibility of their parents or extended family.

In the three examples of indigenous peoples above, it can be seen about some similarities and differences in the context of handling crimes committed by children. The difference is not all crimes committed by children, parents also take responsibility. For serious crimes such as murder and drug crimes, more of the indigenous people of West Sumatra and Lampung were immediately resolved through the authorities, in this case submitted to the police for further action. In the Baduy adat

law community, it can be attempted to be resolved first through adat institutions. If through adat institutions cannot be resolved, it will be left to the authorities to be resolved through the positive law of the State. Whereas the similarities for minor crimes, such as theft, destruction, the five adat law communities are more likely to resolve the issue through adat institutions, so that they can be given adat sanctions.

From the three examples of criminal adat liability models above, it can be seen that parents / families have an important role in their children's behavior. Parents, even their tribes, are also responsible for what the child does. This shows that the form of criminal responsibility in the indigenous peoples of West Sumatra, Lampung and Baduy does not use the model of individual accountability as applicable in Indonesia today. Children as an inseparable part of a community, certainly influenced in their growth and development from the environment. The family is the closest environment, and parents are the first educators and the main supervisor of children's behavior. This is evident in the indigenous community, which in fact is also a characteristic of Indonesian society in general.

As we know that Indonesian society is not an individualist society. Relationship is so strong, even outside of indigenous peoples. This is very much related to the philosophy of Indonesian society, namely participatory denken, integral thinking in harmony with the universe and longing for a harmonious and balanced atmosphere in social life. This relationship in the explanation of Hilman Hadikusama stated that adat relations are laws that show the personality of adat law, the law that regulates the position of individuals as legal subjects is inseparable from their position as family members and families cannot be separated from their relationship with relatives. In simple terms it can be said that the adat law of kinship includes the legal relationship between parents and niece, child niece with members of the relatives of the father and mother and family and the position of the child's niece and their responsibilities reciprocally with parents, family and relatives. The above thought then underlies that the child in kinship cannot be separated from his parents, so that whatever is done by the child, parents and family cannot be released. It is not stated directly if the child commits a crime how the position of parents and family, but the explanation also shows that the child who does not do the right thing, which disrupts the balance in the community, resulting in instability in the community, it can be said that parents and family are also not can be released from the action.

In other words, if a child commits a crime / act that disrupts the balance in the community in the form of a crime, then the parent can also be held responsible for the act. This is an illustration of the concept of criminal liability in traditional criminal law in Indonesia. Regarding other parties such as other families or indigenous groups, considering that in general Indonesian people no longer gather in indigenous communities, then their criminal liability can only be rationally taken over by parents as the closest relatives of the offender's child.

The model of accountability as in adat law is more binding on someone to be careful to commit a crime / deviant act. Based on the results of the study, it is seen that children who have committed a crime / deviant deed will not repeat their actions, this is due to feeling embarrassed for their actions, and there is greater supervision from the family, even the tribe (the surrounding environment) so that children's behavior will be very supervised. The sanctions and supervision provided also cause other children not to commit similar acts. It can be said that this model of shared (communal) accountability can reduce the crime that occurs. It is evident that according to the informants, crimes committed by children within the scope of indigenous peoples are very rare.

The form of parental responsibility for criminal acts committed by the children of the three indigenous peoples basically has the same meaning that parents are responsible for deviating / crimes committed by their children, even though not all deeds are deviant / crimes committed by children, their parents take responsibility. Then the sanctions given to parents are also limited to fines, and if the child commits a crime that results in expulsion from the local indigenous community, parents will also be asked to accompany their child, although this is very rare.

The facts above are actually relevant to some opinions about the relationship between parents and children's behavior. Crimes that occur at the age of children / adolescents, certainly can not immediately be seen in fact what happened.

For crimes committed by children in terms of their accountability, their parents are also asked to be responsible for both serious and minor crimes. Serious crimes such as murder, parents are required to pay compensation for adat court decisions. In indigenous peoples, killing in their adat decisions will be given compensation for the death of a person. Of course the amount of compensation that was decided was very large, so that if the child who committed the crime would not be able to provide compensation. However, in essence, it is not only a matter of inability to pay compensation, but furthermore is a matter of kinship which forms the basis of indigenous peoples relations. This kinship is a family philosophy, so that one another cannot be separated both structurally and functionally. Therefore if a child commits a crime, then the parents also take responsibility.

Adat law in Indonesia, has similarities, namely both with a legal background that lives in the community. Laws that originate from the values that live in society, certainly better reflect the nation itself. The implementation of the living law can certainly be more meaningful and acceptable as a rule of everyday life. Regarding the sanctions given for accountability, in principle it also contains the value that parents cannot be separated from supervision and education of their children, so that if a child commits a crime that is detrimental to the community, the parent cannot be separated from his responsibility to take responsibility for the child's actions. Whereas in Indonesian adat law it states that the character of Indonesian society that is family-based, has a high kinship in living in a community. So that it gives responsibility to parents for mistakes made by their children, more able to accept and obey because these rules come from the community itself.

Criminal adat law in Indonesia adheres to the doctrine that adat crimes are things that can disrupt the balance of indigenous peoples, and against delict actions or actions that disrupt the balance of indigenous peoples sanctions are generally carried out by traditional officials. As for the form of accountability, errors can be imposed on the person of the perpetrator, or his family, or his adat head. This is what can become the basis for being able to be involved in addition to the perpetrators of criminal acts in living law in Indonesia.

In the case of perpetrators of criminal offenses committed by children, which of course also disturbs the balance of society, if you see children based on law still under the supervision of their parents, then parents can also be asked for criminal responsibility if the child commits a crime that can be dropped criminal. This cannot be done if it is based on the current legal provisions in Indonesia. With a model of criminal liability as in adat criminal law, where errors can be imposed on the person of the perpetrator, family, or adat head, the idea of holding criminal responsibility to parents if their child commits a criminal act, can be done.

With the situation as background, we can see the legal problems of parents' obligations more clearly. As a country that continues to grow, and juvenile delinquency spreads from urban areas to the outskirts of the city, people are worried

and seek solutions. For decades, various social control theories have become the main approaches to solving juvenile delinquency problems. The idea is that because there is so much out there in the world that attracts young people into delinquency, so it must build greater social control. In other words, if adults (parents) do not build hard and fast rules and then follow up by enforcing those rules, teens will do so involving themselves in delinquency activities. This shows concern about the increasing prevalence of juvenile delinquency, where parents must provide hard and fast control so that children (teenagers) are controlled and do not commit delinquency / crime.

The role of parents in shaping the personality of a child turns out to be very decisive. Parents who can take this role well will be able to direct and shape children to be good, noble, and far from wanting to do deviant acts. Various acts of violence / crime committed by children / adolescents are one of them is the influence of the family. Families where children / adolescents live are an important part of influencing negative actions taken by children. The family, which is the closest small unit of the child, will determine the growth and development of the child. Family can be said to be the main foundation for children's development. Delinking in children / adolescents is basically a product of the mental state of parents, family members and the environment of close neighbors.

In the interaction between parents and children, according to Ivan Nye at least four elements are expected to be always present:

1. Internalized Control,
   Occurs through the mediation of children's beliefs on a matter. This type of supervision includes efforts to internalize the values and norms associated with the formation of fear.
2. Indirect control
   In the form of planting confidence in the child so that feelings and will arise to not hurt or make the family "njaga praja" embarrassed. This type of supervision greatly determines the formation of a sense of attachment of children to parents and families.
3. Direct control
   This model emphasizes the prohibition and punishment of children. An example is the rules about using leisure time as well as possible, both when parents are not at home or when the child is outside the home.
4. Need satisfaction
   Related to the ability of parents to prepare children for success, both in school and in association with their peers and in the community.

The model of interaction between parents, families and children shows that children's development depends on their parents and family environment. This interaction determines the child's development. If the child gets good interaction and supervision from parents and family, the child will grow well and will not commit deviant actions. In other languages, parents cannot be released if the child commits a deviation / crime.

As Kartini Kartono stated that children who lack attention and affection from their parents will always feel insecure, lose shelter and stand on their feet. In the future, children who lose the attention and affection of their parents will develop compensatory reactions (demanding losses in the past) in the form of revenge or an attitude contrary to the outside world. Bring up negative reactions to his life, such as stealing, disturbing others, and other negative attitudes. These things are done in order to attract the attention of parents and their surroundings, to show who they are (ego). The next time the child will begin to develop a more comprehensive reaction, such as

committing a criminal act for his life satisfaction. This is what later becomes the children's sources of deviant behavior.

It relates to the model of criminal liability if a child commits a criminal act or other deviant act. Our national law, in this case the Criminal Code, still adheres to the principle of who commits a crime, then he is responsible for his actions, including if the child commits a crime. The difference possessed by the principle in our adat criminal law is that a child who commits a crime is not responsible for his actions, but his parents, even his extended family will take responsibility.

Regarding the criminal responsibility of children, Gerry Maher argues that, there are two contrasting senses of criminal responsibility. The first sense is concerned with the capacity to engage in criminal conduct. The second is related to the process of being held answerable for such conduct. According to him there are two different meanings of criminal liability. The first definition looks at the capacity of people who commit crimes. Whereas the second understanding is related to the process by which people are responsible for the act. This opinion emphasizes the capacity of criminal offenders, in this case children. Whereas Gregor Urbas argues that crime is not only when the behavior is sufficiently serious or repetitive that the responses within the family or educational environment are deemed inadequate. According to him, criminal prosecution is only part of the reach of the public's response to the mistakes of adolescents (young people), and is usually only done when bad behavior is serious or repetitive so that responses in the family or educational environment are considered inadequate. The emphasis is on juvenile errors in the form of serious bad behavior and is done repeatedly, until it is considered family and the educational environment is not sufficient to guide children to commit crimes.

Randall Humm in his opinion expressed parental responsibility laws designed to induce increased parental control of their children by holding parents responsible when they commit commit delinquent acts. These laws implicitly presume parental omnipotence, and result in parents being finished not for their own acts, but for those of their children.

The opinion explained that the law on parental responsibility had become a popular mechanism designed to encourage parental control of their children by asking parents to be criminally responsible when their children commit acts of mischief. These rules implicitly assume the ability of parents, and produce parents who are punished not because of their own actions or negligence, but because of the actions of their children. They always judge that inadequate parental supervision of children is indicated by one or more misbehavior of their children. The assessment includes sanctions such as periodic detention and fines, requirements to attend counseling and parental education classes, and orders for parents to do restitution to victims of their child delinquency. Thus, the rules regarding parents who must be responsible for violating their children are basically to improve parental control over children so that they do not violate the law, and also to give victims a sense of justice for the attention and replacement of people. Parent of offender.

Barda Nawawi Arief in his conclusion regarding the issue of legal protection for children, stated several things:

1. The general principle that applies is criminal liability is personal / individual, that is only imposed on people who commit criminal acts (personal principles) and only imposed on people who are guilty (principle of guilt / culpability).
2. The application of the principle of individual criminal liability for adults is a natural thing, because adults should be seen as individuals who are free and independent (independent), and able to take full responsibility for the actions

they do. But if this principle is applied to children, it is still worth reviewing again because the child cannot be said to be an independent person.

3. To compensate for the system of punishment / individual accountability, a system of structural / functional accountability needs to be assessed. Weaknesses arising from individual accountability are very fragmented, namely seeing crime prevention / prevention efforts from the individual point of view of the perpetrator. Is it enough for child crime to be overcome only by convicting / punishing the child, even though the problem of the child is more a structural problem, because of the lack of independence and dependence of the child, it can be said that children who commit crimes are actually "structural victims" or "environmental victims".

The above statement is in line with the Convention on the Rights of the Child in 1989, in Article 5 stated that "The state must respect the rights and responsibilities of other parents and their families (extended family) to safeguard children according to their capability." Parents and families in this matter stressed on responsibility. The statement can mean that responsibility for children lies with parents and their families, including if the child commits a crime. In Article 3 of this Convention, it states that "The state must pay attention and if necessary take steps if it turns out that parents or other parties entrusted with responsibility fail to play their role as guardians of the interests of children." The steps taken can be in the form of policies to also give sanctions to parents or other parties who are entrusted with responsibility for the care of children, because in principle the child grows and develops in the upbringing of parents or in the family environment.

IV. CONCLUSION

The independence that has been obtained for 74 years, should be used as an Indonesian nation to build its own law, no longer refer to the Dutch colonial law, which has been many revised in the Netherlands itself. The position of adat criminal law in the legal system in Indonesia has a place in people's lives, especially traditional communities. With the recognition of laws that live through arrangements that exist and are recognized in our national law, giving space for adat law to be more developed. Historical evidence has revealed that for the Indonesian people, the law must be developed from the Indonesian people themselves, and the Dutch colonial inheritance law should be used as a benchmark to develop the original law of the Indonesian nation. One that must be developed is a form of parental criminal responsibility if the child commits a crime. In the Indonesian traditional criminal law, the criminal responsibility is not only in the conduct, but also in the parents, family, or even the indigenous people.

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