The Restorative Justice Model that Combines the Criminal Procedure Code and Living Laws in the Community in the Melayu Asahan Community, North Sumatra

Azmiati Zuliah

Faculty of Law, Universitas Dharmawangsa

E-mail: emizuliah@dharmawangsa.ac.id

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Abstract

The resolution of cases involving children in conflict with the law in Indonesia still lacks a clear concept regarding the application model of diversion and the living law in society. This study is significant considering the numerous restorative justice models based on living law in society that have not been accommodated in Indonesian legislation. This research aims to understand, analyze, and describe: (1) the regulation of restorative justice in resolving criminal acts by Children in Conflict with the Law in Indonesia through diversion; (2) the concept of restorative justice in the practice of local wisdom of the Malay Asahan cultural community; and (3) a model of combining RJ application according to the provisions of the Juvenile Justice Law. The study found that the Malay Asahan community, which includes the City of Tanjungbalai, Asahan Regency, and Batubara Regency, still practices "bapokat" in resolving cases of Children in Conflict with the Law. Bapokat plays a crucial role in overcoming several weaknesses of instruments, institutions, and Law Enforcement Officers (LEOs) in implementing the Juvenile Justice System Law in the three districts/cities. The study found that the Malay Asahan community integrates the application of the Juvenile Justice Law and the living law in society through the cultural practice of bapokat, involving institutions concerned with child protection, both government and non-governmental. The study concludes that village heads and village chiefs play a crucial role in preserving the local wisdom of bapokat while strengthening the implementation of the

Juvenile Justice Law through mediation procedures and recording cases of Children in Conflict with the Law at the village level. LEOs are recommended to receive local wisdom education in the context of applying restorative justice.

I. Introduction

The concept of restorative justice (RJ) in the resolution of Juveniles in Conflict with the Law in Indonesia still presents numerous challenges. Apart from lacking a clear concept of the relationship between RJ and the existing legal framework in society, RJ practices based on local wisdom have not been adequately incorporated into supporting regulations, including the amended Child Protection Law of 2015 (Law No. 35) and Law No. 11 concerning the Juvenile Criminal Justice System, as well as Law No. 1 of 2003 on the Criminal Code. Despite the fact that RJ values in cultural practices in various regions of Indonesia are significant potential enrichments for the RJ concept, the RJ concepts practiced by local communities or diverse ethnic groups in Indonesia have not been detailed enough to be incorporated into more practical policies at the regional level (such as at the district or city level). This would enable them to be recorded as part of Indonesia's international reports on the development of RJ in the country.

In addressing Children in Conflict with the Law (CCL) in Indonesia, the police institution is the forefront state institution, starting from the arrest, detention, investigation, and prosecution processes, all of which must adhere to the SPPA (Child Criminal Procedure Law). The mechanism for resolving CCL cases by the police as investigators is regulated in Government Regulation (PP) No. 65 of 2015 concerning the Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years Old. In the implementation of diversion, investigators must involve various parties, including the child offender and parents/guardians; the victim and parents/guardians; the social rehabilitation officer of the Correctional Facility (PK Bapas); community representatives; professional social workers; and social welfare personnel.

Ideally, in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System (SPPA), investigators are required to carry out diversion by prioritizing the concept of restorative justice in handling Children in Conflict with the Law (CCL).

Article 7, paragraph one (1) of Law No. 11 of 2021 states that diversion must be attempted at every level of examination, including investigation, prosecution, and examination in the District Court (PN). Paragraph two (2) of Article 7 outlines the diversion requirements, which include the offense committed by the child carrying a prison sentence of less than 7 (seven) years and not being a non-criminal repetition. This refers to criminal law. Repetition here means a criminal act committed by a child, whether similar or dissimilar, including criminal acts resolved through diversion.

According to the provisions of the Child Criminal Procedure Law (UU SPPA), the investigation of a child as a perpetrator of a criminal act can only be carried out if the child is aged 12 (twelve) years but has not reached the age of 18 (eighteen) years. Investigators may decide on a child under the age of 12 (twelve) to return the child to the parents/guardians and involve them in education, guidance, and counseling programs in relevant government agencies. The following are the steps to be taken by the police: 1. Submit a notice of the start of the investigation to the public prosecutor within 24 hours and coordinate. 2. Request community guidance to provide assistance to the child within 24 hours, conduct social research (Litmas), and involve social workers (Peksos). 3. Make notifications and offer diversion to the perpetrator or the victim's party (child/parent/guardian) within 7 x 24 hours. 4. Set a date for a consultation involving investigators, the perpetrator's party, and/or the victim (child/parent/guardian), community guidance, and professional social workers. 5. Continue the investigation process and submit the file to the public prosecutor and community guidance if diversion does not reach an agreement. 6. Lead the diversion consultation and create a report and minutes of the diversion process and send them to the public prosecutor if the previous diversion is agreed upon by the child perpetrator and the victim (child/parent/guardian). 7. Record the minutes of the diversion agreement that has been implemented and signed by the perpetrator and victim's party and submit the diversion agreement and minutes to the immediate investigator's supervisor, sending the letter and minutes to the Chief Judge of the District Court to obtain a determination. 8. Issue a decision letter to terminate the investigation no later than 3 days from the date of receipt of the court's determination. 9. Community Guidance and Professional Social Workers can provide assistance, guidance, and supervision of the diversion implementation and can carry out rehabilitation and social reintegration of the child, in collaboration with relevant institutions.[1]

In Indonesia, the National Police (Polri) recorded in 2018 that out of 4,514 children examined at the police level, only 670 children (15%) underwent the diversion process. The number of children diverted increased slightly in 2019, with 683 children (15%) going through the diversion process out of 4,691 examined. However, in 2020, the number of children diverted significantly decreased. Out of 4,873 children examined, only 473 children (10%) underwent diversion at the police level.[2] Based on the provisions of the SPPA (Child Protection Law), investigation against a child as a perpetrator of a criminal

[1] Marsudin Nainggolan, dkk., *Standart Operasional Prosudur Gugus Tugas Diversi dengan Pendekatan Restoratif* , (Medan: Pusat Kajian dan Perlindungan Anak, 2016) 25-26.

[2] Nainggolan, dkk. *Ibid.*

act can only be conducted if the perpetrator is aged 12 years or older but has not yet reached the age of 18. For children under the age of 12 when they commit a criminal act, the investigator decides to return them to their parents/guardians and includes them in an educational, developmental, and guidance program within government institutions.[3]

Not only in Indonesia, but the concept of Restorative Justice (RJ) globally also raises many questions. Gang, et al. (2021) mentioned in their study that there are still questions regarding the accuracy of implementing RJ, the achievement of established RJ goals, the selection of elements that can create the best outcomes for victims, the proper placement and allocation of time for victims, the types of parties that significantly benefit from RJ, the non-criminalization of sexual offenses, effective program elements, or conversely, those that harm victims of sexual violence and their families. The study emphasizes that policymakers and program designers should be able to leverage a range of evidence to justify funding and ensure that program goals can be achieved.[4]

The Maglione study (2021) mentions that restorative justice (RJ) research from normative, theoretical, and methodological perspectives has experienced proliferation, especially in the last three decades, supported by abundant criminology literature. However, participation in policy-making regarding RJ is still minimal, and the geographical distribution of studies is uneven.[5] Marder (2022) highlights RJ from the advocacy, reporting, and publication perspectives. According to him, the advocacy movement has supported RJ, and inter-stakeholder networks have developed. However, in terms of data availability and RJ reporting, it is insufficient, and publications are not yet routine. The information provided about RJ is currently open to multiple interpretations, and the elasticity of RJ and the possibilities of applying RJ with different approaches remain open, posing a challenge for academics. Clear operational articulation of concepts that are easy to evaluate is crucial to develop. Therefore, completeness of data and information about the RJ process that is published is important to be developed.[6]

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[3] Selamet Riadi, "Peran Penyidik Polri Dalam Penerapan Diversi Terhadap Anak Yang Berkonflik dengan Hukum (Studi Di PPA Polres Lombok Barat)", *Jurnal IUS Vol. IV Nomor 2 Agustus 2016, IUS Kajian Hukum dan Keadilan*, 128.

[4] W. Lawrence Neuman. *Qualitative research methods, qualitative and quantitative approaches*, Third ed., Alllyn and Bacon, Boston, 1991, 327-332; Keith. F. Puch, *Introduction to social research, quantitative and qualitative approaches*, (London. SAGE publications Ltd, 1998), 138. Fraenkel dalam Rusinah Joned. "Metodologi Penyelidikan." (Serdang: Faculty of Educational Studies Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor, Malaysia, 2001), 81. D. Loff Gang, Naylor B. & M. Kirkman (2021). A call for evaluation of restorative justice programs. *Trauma, Violence, & Abuse*, 22.1 (2021):186-190, 88, DOI: 10.1177/1524838019833003

[5] Giuseppe Maglione. "Restorative justice, crime victims and penal welfarism. Mapping and Contextualising Restorative Justice Policy in Scotland." *Social & Legal Studies* 30.5 (2021): 745-767, 746, DOI: 10.1177/0964663920965669

[6] Ian D. Marder. "Mapping restorative justice and restorative practices in criminal justice in the Republic of Ireland." *International Journal of Law, Crime and Justice* 70 (2022): 100544, 3-9, https://doi.org/10.1016/j.ijlcj.2022.100544

According to Absar (2020), based on the experience of common law countries in the last three decades, Restorative Justice (RJ) aims to: Support victims, repair damaged relationships resulting from crimes committed by offenders, condemn criminal behavior as unacceptable, encourage responsibility-taking by offenders, identify restorative and forward-looking outcomes, reduce recidivism, and identify factors contributing to the occurrence of crime. The RJ process is a form of humane and responsive justice that is not as fragile as the formal structure of adversarial justice, potentially being more cost-effective and efficient, both in monetary terms and in prevention, compared to conventional penology practices.[7]

In further development, Kennedy et al. (2019) introduced a term they refer to as Restorative Justice Intervention (RJI), consisting of three components: (a) discussions about the definition and goals of RJ; (b) education on the health and well-being needs of the offenders, along with emotional recognition skills while continuously holding them accountable, and (c) group discussions on the harm and damage caused to the victims and the community. In addition to these three components, offenders are also required to, among other things, document direct and indirect victims and all losses and damages, and write letters of apology to their direct and indirect victims. [8] Certainly, deliberation (discussion) is a crucial keyword in the RJ (Restorative Justice) process. Through his study, Kennedy recommends conducting an examination of the relationship between empathic responses and the level of recidivism to demonstrate changes in empathy both before and after RJ.

"Bapokat" for the Melayu Asahan community is a term that signifies consensus or agreement. The term consensus itself is a very important keyword in resolving problems and conflicts that occur in various customary communities throughout Indonesia. From an anthropolinguistic perspective, the term "bapokat" is synonymous with "mufakat," aligning with the anthropolinguistic understanding of Hymes (1964: 277) as a discipline that examines language in the context of anthropology, or the study of language as a source of culture and cultural practices.[9]

Consensus is always associated with the term consultation. Consultation is the essence of dispute resolution efforts to reach a decision. The consultation system can be

[7] Absar Aftab Absar. "Restorative justice in Islam with special reference to the concept of Diyya." *Journal of Victimology and Victim Justice* 3.1 (2020): 38-56, DOI: 10.1177/2516606920927277

[8] Joseph LD Kennedy, *et.al.* "Long-term effectiveness of a brief restorative justice intervention." *International journal of offender therapy and comparative criminology* 63.1 (2019): 3-17, 15, DOI: 10.1177/0306624X18779202

[9] Chendy AP Sulistyo, *Tradisi Upah-Upah Adat Melayu di Kota Rantau Prapat, Sumatera Utara,* Pertemuan Ilmiah Bahasa dan Sastra Indonesia (PIBSI) XL 2018, 554

implemented in neutral places such as meunasah, involving community leaders, and the parties concerned are brought in. Decisions made in customary courts must be based on the consensus reached through consultation that is grounded in the legal principles of the customary justice implementers. [10] The elders say, "When there is consensus, heavy burdens become light and must be lifted." Conversely, "whoever goes against consensus is a sign that they are not in the right tradition."[11] In the context of the fundamental principles outlined in the legal objectives according to Islamic law, known as adhdhararul, they are as follows: preserving religion, preserving life, preserving intellect, preserving lineage, preserving wealth, and preserving honor.[12] Musyawarah untuk mufakat is a concrete form of a forum for the formulation of wise consensus, not just any consensus that can deviate into an agreement based on self-interest or mere transactional interests.[13]

In the Minangkabau traditional philosophy, "bapokat" is referred to as "Nan Sakato," meaning unanimous, in agreement, and in harmony. This term is interpreted to uphold unity, solidarity, tolerance, and so on. Regarding this matter, Sjarifoedin (2014:90) stated that four elements must be adhered to by every member of the Minangkabau community to realize an ideal societal life, namely: (1) Saiyo Sakato, in accordance with the proverb: "kapalo samo hitam, pikiran balain-lain." This involves engaging in deliberation for consensus, following the saying, "bulek aia dek pambuluah, bulek kato dek mufakat, picaklah buliah dilayangkan, bulek lah buliah digolongkan;" (2) Sahino Samalu: In Minangkabau society, there is a sense of humility and mutual respect. The close relationships within the ethnic group dissolve individual pride into the collective pride of the ethnic group; (3) Anggo Tanggo: Interpreted as the creation of orderly and disciplined social interactions. Despite inevitable mistakes and lapses in social life, these errors must be resolved according to rules; and (4) Sapikua Sajinjiang: All tasks are considered collective responsibility, as per the proverb "nan barek samo dipikua, nan ringgan samo dijinjiang." Life among community members is likened to "aur with tebing," supporting and assisting each other.[14] In Lampung, Herlambang's research on the development of

[10] Hasnul Arifin Melayu, Keadilan untuk Anak: Penguatan Sistem Hukum Adat dalam Penanganan Anak Berkonflik dengan Hukum, *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*, 10 (1):129-149, 136

[11] Griven Herrie Putera, *Rekonstruksi Pendidikan Karakter di Indonesia: Analisis Filosofis Terhadap Tunjuk Ajar Melayu (Butir-Butir Budaya Melayu Riau Karya Tenas Effendy)*, *Disertasi*, 1441 H. / 2020 M, Program Pascasarjana (PPS) Universitas Islam Negeri (UIN) Sultan Syarif Kasim Riau, 217-218.

[12] Fuad Hasbi Ash – Shiddieqy, ed., Falsafah Hukum Islam (Semarang: PT. Pustaka Rizki Putra, 2001), 169.

[13]Konsep Musyawarah Dan Ganti Rugi Dalam Pengadaan Tanah Untuk Kepentingan Umum dalam Perspektif Hukum Islam diakses dari https://dspace.uii.ac.id/bitstream/handle/123456789/9266/pdf%20tesis.pdf?sequence=1&isAllowed=y. diakses pada tanggal 20 Maret 2021.

[14] Ulfatun Nafi'ah (ed.) *Sejarah Lokal: Tantangan Dan Masa Depan*, Prosiding Seminar Nasional 26 April 2017 (Fakultas

local consensus wisdom, Rajo Penghulu, regarding the involvement of the police in issue resolution, reveals that only 1% acknowledge police involvement, while 11% state they have never involved the police, and 88% did not respond. For them, problem resolution can be achieved through deliberation without extensively involving other parties, arguing: "Well, nowadays people don't pay much attention to figures in decision-making, what matters is discussion, just reaching a consensus is enough."

The aim is to prevent problems from escalating.[15] The term "mufakat" is also known in Acehnese custom. The result of consensus in musyawarah can become a law known as "adat muhakamah," which is the customary law stemming from the manifestation of deliberation and consensus. It is one of the sources of customary law in Aceh.[16] The customary law and religious law are like twins; when the customary law agrees with the Islamic law, the state is peaceful without chaos.[17] The resolution of disputes through mediation essentially involves consultation and consensus. This can be implied in the proverb "tatarek panyang talingkang paneuk," meaning that a problem depends heavily on the wisdom of the parties involved. Every dispute, if prolonged, can become lengthy, and conversely, it can be simplified or even eliminated if desired. The principles of consultation and consensus are inherent in the dispute resolution process in Aceh. In principle, Islamic values that intersect with local customs are translated into the context of conflict resolution, aiming to achieve comprehensive peace—peace within individuals, society, and the state. The realization of this peace can only be obtained through agreements built through consultations to find appropriate solutions to various conflicts occurring in society.[18] In Aceh, for example, there is a customary law known as the Gampong customary court, which is a peace tribunal through consensus deliberation led by the Keuchik (village head) with members such as Tengku Meunasah, Tuha Peut Gampong, and community leaders/intellectuals. This serves as the first-level customary court. Additionally, there is the Mukim customary court: a peace tribunal through consensus deliberation led by the Imum Mukim (sub-district head) with members like Imum Syik and Tuha Peuet Mukim, serving as an appellate customary court for resolving

Ilmu Sosial - Universitas Negeri Malang, 2017) 115.

[15] Herlambang. *Development of "Mufakat Rajo Penghulu" as Indonesian Local Wisdom for Dispute Resolution in Bengkulu City,* Proceeding Bengkulu International Conference On Social Policy and Social Development Social Policy and Social Development on Local, Regional, and International Perspective, November 16–17, 2017 (University of Bengkulu, Bengkulu, Indonesia, 2017), 75.

[16] M. Ridha, dkk. ***Peumat Jaroe: Proses Mediasi Menuju Harmoni dalam Masyarakat Aceh,*** *Muslim Zainuddin & Hasnul Arifin Melayu* (eds.), Cet. I (Banda Aceh: Lhee Sagoe Press, 2017), 27.

[17] M. Ridha, dkk., *Ibid.*, 36.

[18] M. Ridha, dkk., *Ibid.*, 61.

disputes that remain unresolved at the village level.[19]

This study is important considering that within the Asahan Malay community, "bapokat" serves as a mediation model with a cultural approach in resolving issues outside the judicial process. The practice of "bapokat" also significantly influences the subsequent customary processes or activities. "Bapokat" is also a driving factor in the success of dispute resolution. According to Muhammad Takari, the institution of consultation in the Malay community is a form of social control and supervision for mutual interests.[20] In the Malay proverb, it is expressed: "Signs of life are like a mate in shame, discard the bad, clarify the unclear, untangle the tangled; magnify a big mistake, eliminate a small one." Another expression is, "Do not reveal disgrace, do not unveil shame, also do not speak of others' disgrace, but rather focus on examining one's own disgrace."[21] The traditional leader who serves as a mediator in guiding charismatic and authoritative meetings, respected and revered, becomes a driving factor in the success of the deliberation, with its decisions adhered to by the parties involved.[22] The Malay expression says, "Fortunate is the house with its master, fortunate is the state with its leader, prosperous is the village with its head, prosperous is the state with its king." This expression elucidates the central role of traditional leaders or "respected individuals" in maintaining harmony and peace in Malay society.[23] The Malay traditional leader is elevated like a tall tree, leading by example, illustrating that a leader should be a role model and example with a sharp tongue and an open door, capable of bringing peace, order, and prosperity to the community[24] to achieve common goals.[25] The Asahan Malay community also remains steadfast in appreciating the norms and cultural values greatly influenced by Islamic teachings[26] and Islamic law that has been practiced for centuries.[27] Unlike the general Malay society, the Asahan Malay community is among the common people or the majority group that is not based on original Malay roots (based on lineage) but rather on Malay customs and traditions. Nevertheless, they still adhere to Malay customs in their lives and existence.

A study related to the local wisdom of the Malay community was presented by Suhal Kusairi (2022), which focuses on the connection of Ugahari with the impact of

[19] M. Ridha, dkk., *Ibid.*, xxi.
[20] Muhammad Takari Bin Jilin Syahrial, *Adat Dalam Peradaban Melayu*, (Medan: FIB USU, 2015), 23.
[21] Muhammad Takari. *Adat Melayu,* http://muhammadtakari.weebly.com/adat-melayu.html
[22] Wawancara dengan Datuk Yuscan Bentara Sabda Asahan, di kota Tanjungbalai, pada tanggal 5 Agustus 2020.
[23] Tenas Effendi, Tenas,*Tunjuk Ajar Melayu.* (Yogyakarta: Balai Kajian dan pengembangan Melayu, 2004), 65.
[24] Haron Daud, *Sejarah Melayu: Satu Kajian daripada Aspek Pensejarahan Budaya*, (Malaysia: Dewan Bahasa dan Pustaka Kementrian Pendidikan, 1989), 91.
[25] Soerjono Soekanto, *Hukum adat Indonesia*, (Jakarta: Raja Grafindo Persada,1983), 154.
[26] Wawancara dengan Datuk Yuscan Bentara Sabda Asahan, di kota Tanjungbalai, pada tanggal 5 Agustus 2020.
[27] Trisno Raharjo, Mediasi Pidana dalam Ketentuan Hukum Pidana Adat, *Jurnal Hukum* No. 3 Vol. (17 Juli 2010), 492.

information technology advancement on the work-life balance. The study discusses the development of the work-life balance theory, particularly concerning culture and local wisdom, using eight constructs of endogenous variables: Integration [3], Autonomy [4], Interference [5], Segmentation [6], Job satisfaction [7], Job stress [8], Permeability [9], and Flexibility [3].[28]

The study related to local wisdom in Indonesia by Sibarani et al. (2021) discusses the Poda Na Lima tradition 'Five Principles of Cleanliness,' which is part of the local wisdom of the Batak Toba community. This study defines local wisdom as cultural values and social norms used to address current societal challenges and to prepare the younger generation for a more peaceful and prosperous future.[29] Another study is Murhaini's (2021) research on the farming cycle of the Dayak community in Kalimantan. He refers to local wisdom as a "system" that encompasses underlying values. In his study, he highlights the values of togetherness, love, mutual cooperation, art, as well as ritual and spiritual aspects throughout the farming cycle of the Dayak community. This system also serves as a way for them to sustain their territory by marking their living areas through replanting various crops.[30]

This study focuses on describing the practice of Restorative Justice (RJ) based on the local wisdom of the Malay culture in Asahan, Sumatra, known as "bapokat." It aims to depict the bapokat process in resolving criminal offenses involving Children in Conflict with the Law.

Through this study, it is hoped to answer three questions: (1) how is restorative justice regulated in resolving criminal offenses involving Children in Conflict with the Law in Indonesia through diversion; (2) what is the concept of restorative justice in the practice of local wisdom in the Malay culture of Asahan; and (3) how is a combined model of applying RJ in accordance with the provisions of the SPPA Law with bapokat as a living law in the community in resolving criminal offenses involving Children in Conflict with the Law in the Malay Asahan community.

2. Research Method

[28] Suhal Kusairi, *et al.* "The role of local wisdom``Ugahari''and the impact of internet and mobile technology on work-life-balance during COVID-19 outbreak: Data set from malaysian workers." *Data in brief* 40 (2022): 107779, 1-3, https://doi.org/10.1016/j.dib.2021.107779

[29] Robert Sibarani, Peninna Simanjuntak, and Echo J. Sibarani. "The role of women in preserving local wisdom Poda Na Lima 'Five Advices of Cleanliness' for the community health in Toba Batak at Lake Toba area." *Gaceta Sanitaria* 35 (2021): S533-S536, https://doi.org/10.1016/j.gaceta.2021.10.086

[30] Suriansyah Murhaini. "The farming management of Dayak People's community based on local wisdom ecosystem in Kalimantan Indonesia." *Heliyon* 7.12 (2021): 1-2, e08578, https://doi.org/10.1016/j.heliyon.2021.e08578

The research method employed in this study is a qualitative approach of empirical juridical type (socio-legal) with descriptive analysis. Data collection is carried out through interviews, observations, and literature reviews. The data collected are qualitative in nature[31] related to the local wisdom of Malay Asahan in the organized and selective process of resolving cases involving Children in Conflict with the Law[32] redesigned, interpreted, and re-described[33] based on what happened [34] both known and experienced. As a qualitative study, data is collected directly [35] and analyzed holistically (comprehensively),[36] Deep, systematic, and deductive, this research employs an in-depth analysis to present an overview of bapokat, offered in this study as a model for a restorative justice approach based on local wisdom. The resolution of cases involving children in conflict with the law, through the local wisdom approach of bapokat by the cultural community in North Sumatra, is implemented in three (3) districts/cities: Tanjungbalai City, Asahan District, and Batubara District. Traditional Malay figures in the three (3) research locations acknowledge that culturally, they are still part of a single culture, namely, Malay Asahan.

3. Results and Discussion

Restorative Justice Through Diversion in Three City Districts in North Sumatra

The investigators at the Police Resort (Polres) in three Districts/Cities (Asahan District, Batubara District, and Tanjungbalai City) implement Restorative Justice through the application of diversion.

Tanjungbalai Polres applies RJ through penal mediation in handling cases involving children in conflict with the law, prioritizing the principle of the best interests of the child. However, Tanjungbalai Polres only has 4 (four) certified investigators in the Child Protection Unit, consisting of 2 (two) females and 2 (two)

[31] Fraenkel dalam Rusinah Joned. "Metodologi Penyelidikan." (Serdang: Faculty of Educational Studies Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor, Malaysia, 2001), 81.

[32] W. Lawrence Neuman. *Qualitative research methods, qualitative and quantitative approaches*, Third ed., Alllyn and Bacon, Boston, 1991, 327-332; Keith. F. Puch, *Introduction to social research, quantitative and qualitative approaches*, (London. SAGE publications Ltd, 1998), 138.

[33] S. Nasution. *Metode Penelitian Naturalistik Kualitatif.* Bandung: Transsito (1992), 54; HH. Nawawi. *Manajemen Strategik, Organisasi Non Profit Bidang Pemerintahan Dengan Ilustrasi di Bidang Pendidikan* (Yogyakarta: Gadjah, 2000); I. S. P. Morrisey, GL. Morrisey dan Perencanaan. Terjemahan oleh: Gianto Widianto (Jakarta: Prenhallindo, 2002). Lihat juga, S. Nasution. *Metode Penelitian Naturalistik Kualitatif* (Tarsito: Bandung, 2003)," *library. fis. uny. ac. id/opac/index. php*

[34] J.R Fraenkel & N.E Walle. *How to design and evaluate research in education* (Singapore, McGraw-Hill, 1993), 45.

[35] R. Bogdan & S. Biklen. "Qualitative." *Research In Education: an Introduction to Teory and Methodes* (Boston: Allyn and Bacon Inc, 1982), 27

[36] Rusinah Joned. "Metodologi Penyelidikan" (Serdang: Faculty of Educational Studies Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor, Malaysia, 2001), 82.

males. These investigators can also be reassigned at any time.[37] Starting from April 2021, the Tanjungbalai Police Resort has implemented RJ as a step towards improving law enforcement by considering the living law in society. The innovative model of combining diversion with the living law in society is carried out by establishing a musyawarah hall based on local wisdom at each police sector (Polsek). The musyawarah hall serves as a place for the disputing parties to come together and engage in heartfelt discussions.[38] The Tanjungbalai City Police collaborate with the Indonesian Child Protection Commission (KPAID), the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), and the Correctional Institution (Bapas) of Tanjungbalai City in handling Child in Need of Assistance (ABH) cases with a restorative justice approach. They create an Examination Report (BAP) after receiving a report and submit it to Bapas. Subsequently, Bapas conducts a Community Study (Litmas) in the perpetrator's home environment to understand the family's conditions and factors supporting the child's involvement in criminal events. The investigator, acting as a facilitator, will summon both the reporting and reported parties when Bapas has issued recommendations based on its litmas to the investigator.

The victim's party will be accompanied by a social worker, and the perpetrator's party will be assisted by Bapas..[39] The Tanjungbalai Police Department received 38 reported cases from 2017 to 2020. Among these, the cases of human trafficking (ABH) handled by the Tanjungbalai Police in the last three years were 11 cases in 2017, 16 cases in 2018, 7 cases in 2019, and 4 cases in 2020. The types of criminal acts include violence/assault in 13 cases, sexual abuse/rape in 11 cases, theft in 5 cases, and drug-related offenses in 21 cases.[40] In cases of assault causing bodily harm (ABH), restorative justice is generally attempted. Out of the cases that were successfully diverted using a restorative justice approach, there were only 9 cases (3 in 2017, 4 in 2018, and 2 in 2019), while the remaining 29 cases (8 in 2017, 12 in 2018, 5 in 2019, and 4 in 2020) proceeded to court. The types of cases that could be resolved through diversion with a restorative justice approach include theft, violence, and abuse. According to the District Court data, ABH cases handled by the Tanjungbalai Police

[37] Wawancara dengan Kanit PPA Polres Tanjung Balai, Bripka CW Simatupang. Di kantor Polres Tanjungbalai, pada tanggal 15 April 2020.

[38] Balai Musyawaroh Polres Tanjungbalai Dukung Program 100 Hari Kerja Kapolri, Independen News, https://independennews.com/balai-musyawaroh-polres-tanjungbalai-dukung-program-100-hari-kerja-kapolri/

[39] Wawancara dengan Kanit PPA Polres Tanjung Balai, Bripka CW Simatupang, di kantor Polres Tanjungbalai, pada tanggal 15 April 2020.

[40] *Ibid.*

Resort were less successful in diversion with a restorative justice approach and ended up in court. From January to June 2022, there were 20 cases. In 2018, there were 5 cases, 6 cases in 2019, 3 cases in 2020, 5 cases in 2021, and 1 case in 2022 (up to January). Most of these cases were categorized as drug-related. The processing time varied, taking up to 38 days.[41] Determination of the requested Diversion Agreement to the Tanjungbalai District Court for the years 2018-2022[42] Cases that cannot be resolved (29 cases) through Restorative Justice (diversion) and proceed to court include assault, violence, drugs, and abuse.

The resolution of child abuse cases at Tanjungbalai Police Resort occurs when the crime committed is punishable by a 7-year imprisonment threat and the child involved is under 14 years old. In such cases, Tanjungbalai Police Resort will invite various parties, including the Correctional Facility (Bapas), Social Workers (Sakti Peksos Kemensos), KPAID or P2TP2A, parents of the victim, perpetrator, and the child, to collectively resolve the case.[43] The term "diversion" is generally applied in mild cases, not for serious criminal offenses such as murder, grand theft, violent theft, rape, assault, serious injury/death, drug trafficking, firearms, and terrorism.[44] A case example in Tanjungbalai includes the rape case involving Jf (11 years old) as the perpetrator against the victim Sy (8 years old). In resolving this case, the Women and Children Protection Unit (Unit PPA) of the Tanjungbalai City Police requested assistance from the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) to pursue restorative justice, as mandated by Law Number 11 of 2012 concerning SPPA (Child Protection). In other specific cases such as motorcycle theft, sodomy, and other indecent acts, restorative justice is carried out by inviting the involved parties, Probation Board (BAPAS), Social Services (Peksos), the Indonesian Child Protection Commission (KPAID), and the resolution is conducted at the Tanjungbalai City Police, with successful cases being referred to the court through a diversion report.[45] Agus Salim Hutagalung, Chairperson of P2TP2A Tanjungbalai City, stated that in the involvement of P2TP2A and KPAID so far, there has never been a

[41] SIPP PN Tanjungbalai, Pembaharuan Data: Rabu, 15 Jun. 2022 17:05:52 WIB, Total: 48 Perkara, lihat http://sipp.pn-tanjungbalai.go.id/list_perkara

[42] Menurut Data yang diperoleh langsung dari Ketua PN Tanjungbalai Yanti Suryani Siregar, SH, M.H sejak tahun 2018 hingga 2021, banyak kasus tidak menghasilkan kesepakatan diversi. Wawancara pada tanggal 16 Juni 2022 di Pengadilan Negeri Tanjungbalai.

[43] *Ibid.*

[44] *Ibid.*

[45] Wawancara dengan Kanit PPA Polres Tanjung Balai, Bripka CW Simatupang. Di kantor Polres Tanjung Balai, pada tanggal 15 April 2020.

diversion report in handling cases of child abuse (ABH) in Tanjungbalai City. However, the Head of the PPA Unit at the Tanjungbalai Police Resort mentioned that, in certain cases, the Tanjungbalai Police Resort submits requests to the Tanjungbalai District Court. Thus, the application of Restorative Justice (RJ) through diversion in Tanjungbalai involves various parties, including P2TP2A, Bapas, and Peksos. Not all reported cases must be resolved by investigators immediately; instead, they may request other institutions to handle them. Some cases, such as theft, sodomy, and indecency, are resolved at the Tanjungbalai Police Resort while coordinating with Bapas and Peksos. The result of social research (litmas) is a prerequisite for whether a case can be diverted or not.

The Asahan Police Resort believes that the community in Asahan Regency, especially in the Malay community, generally exhibits democratic tendencies. Therefore, cases submitted to the Asahan Police Resort are typically those that cannot be resolved at the community level, or the parties involved initially do not desire reconciliation. The Asahan Police Resort applies diversion in ABH cases when there has been restitution for the victim through compensation or traditional settlement. The PPA Unit of the Asahan Police Resort recorded that, from 2017 to 2020, there were 39 successfully diverted cases, with 23 of them resolved through RJ diversion (2 cases in 2017, 10 cases in 2018, 7 cases in 2019, and 4 cases in 2020). The remaining 15 cases from 2017 to 2020 were not successfully diverted (1 case in 2017, 11 cases in 2018, and 4 cases in 2019), all involving children aged 13-17. The types of cases diverted (39 cases) in 2017 included 2 assault cases; in 2018, 1 case of molestation, 6 assault cases, and 3 rape cases; in 2019, 4 rape cases and 3 assault cases; in 2020, 3 rape cases and assault cases. The types of cases not successfully diverted (15 cases) involved children aged 13-17. According to the Kisaran District Court, out of a total of 294 cases handled in the last 5 years, 12 were ABH cases, mostly categorized as child protection, narcotics, and theft cases. The processing time varied, up to 24 days. The Asahan Police Resort mentioned that out of 24 molestation cases, 11 were successfully diverted, and the remaining 13 cases proceeded to the judicial process. The police faced challenges due to the limited infrastructure, especially juvenile detention centers, when the consensus of the child could not be detained and had to be handed over to the state.[46] The SPPA (Child Criminal Justice System) regulates that when Restorative Justice (RJ) is successfully implemented through reconciliation with or without compensation, return to

[46] *Ibid*

parents/guardians, participation in education or training at an educational institution for a maximum of 3 (three) months, or community service, the outcome of such agreement is documented in the form of a diversion agreement. If the diversion process does not result in an agreement or the diversion agreement is not implemented, then the criminal juvenile justice process is continued at each level.[47] Dewi Margolang, a Social Worker (Peksos) from the Ministry of Social Affairs in Asahan Regency, stated that in the process of handling children as offenders, the Asahan Police involve the role of BAPAS in providing assistance to the child and engage Peksos and Child Protection Agencies to carry out Restorative Justice (RJ). Cases where parents/guardians are unable to provide guidance result in the child being handed over to the Social Services Department. An example is the case of child abuse handled by the PPA Unit of Asahan Police, involving an incident where P (15 years old) assaulted R (15 years old), who was a schoolmate. The case was halted and concluded at the police level. Referring to the provisions of Law Number 11 of 2012 on SPPA, when diversion with a restorative justice approach is successful during the investigation stage, investigators must strive for diversion. The investigator issues a Notice of Termination of Investigation (SP3) based on the achievement of diversion.

Batubara Police handled 45 cases from 2017 to April 2020. In 2017, there were 7 cases, 17 cases in 2018, 18 cases in 2019, and 3 cases in 2020 until April. According to an interview with the Head of Criminal Investigation (Kasat Reskrim) of Batubara Police, police officers are familiar with the principles of restorative justice. The police have long issued a Confidential Telegram (TR) Kabareskrim No. 1124/XI/2006 regarding the Guidelines for the Implementation of Diversion for the Police. Batubara Police generally request complainants to resolve cases through consensus at the community level. However, the authority to use restorative justice with a diversion approach is not fully maximized by the police due to certain cases involving children that must be forwarded to the prosecutor's office, such as cases of sexual abuse and drug-related offenses. For less severe cases such as ordinary sexual abuse, assault, or theft, diversion is usually attempted. The Head of Criminal Investigation at Batubara Police stated, "Diversion with a restorative justice approach is usually done for minor offenses or cases of assault or theft. However, for cases of sexual abuse or drug offenses, all are handed over. However, efforts for peace are usually made for cases involving child perpetrators."

[47] *Ibid.*

From 2017 to 2020, Batubara Police handled 45 cases of Child in Conflict with the Law (ABH). Out of these, only 11 cases were successfully diverted with a restorative justice approach, with details of 4 cases in 2017, 5 cases in 2018, 2 cases in 2019, and none in 2020. This indicates that fewer cases reported to the Asahan Police were successfully resolved at the police level and concluded in court. In the 45 ABH cases handled by Batubara Police from 2017 to 2020, only 11 cases were successfully diverted, while 34 cases were not successful with a restorative justice approach. Details include 3 cases in 2017, 12 cases in 2018, 16 cases in 2019, and 3 cases in 2020. An actual criminal case handled by the PPA Unit of Batubara Police through diversion is the case of sexual abuse involving individuals SR, MA, AS, and MS against MA (13 years old).[48] Nevertheless, Epson, the Commissioner of the Child Protection Commission (KPAID) in Batubara Regency, stated that KPAID has never seen or received a court decree from the District Court regarding cases of children successfully diverted through restorative justice approaches in the police. The police argue that not all cases resolved with RJ receive a court decree. Even if sent to the Chief of the District Court to obtain a decree, it is rarely handed over to the police if not requested.

From the above description, it is clear that the police in three Districts/Cities (Tanjungbalai, Asahan, and Batubara Police Residences) consider the type of child criminal offense, still have limitations in facilities and infrastructure for providing Social Protection Houses for Children (RPSA) or Social Welfare Institutions (LPKS), no collaboration for sheltering children for rehabilitation, resulting in children being returned to parents without monitoring and supervision. Certified or trained investigators on child rights and handling Child in Conflict with the Law (ABH) cases are limited, negotiating compensation for victims can also hinder the reconciliation process because victims demand compensation that is either irrelevant, unreasonable, or too high, without considering the perpetrator's family's ability. Additionally, the role of religious, community, and traditional leaders in implementing RJ in the police is not optimal. Therefore, most ABH cases are not successfully diverted and proceed to court.

Restorative Justice Perspective of Local Wisdom of the Asahan Malay Community

Sharpless et al., (2022) state that restorative justice includes, among other things,

[48] Wawancara dengan orangtua Korban MA di rumah kediamannya di Desa Pematang Nibung, Kabupaten Batubara dan Dani Pekerja Sosial (Peksos) Kemensos di Kabupaten Batubara, pada tanggal 1 juni 2020.

aspects of peace, family group conferences, and victim-offender mediation. These components emerge as alternative or additional responses to the current justice system, both in pre-charge, post-charge, pre-sentence, and post-sentence phases. Citing Strang & Braithwaite (2001), Goodmark (2015), Brandstetter et al., (2017), Nettleton & Strang (2018), and Sharpless et al., RJ is defined as a victim-centered justice approach that focuses on repairing harm between the victim, the aggrieved party, and the offender, the one causing harm, while ensuring accountability for the offender. The process involves bringing the offender and making them safe from further harm by acknowledging and addressing the harm and trauma suffered by the victim. It includes engaging members of the community, family, and friends of the victim in the practical process, as well as providing support and reintegration.[49] There are three major components that need to come together in the restorative justice process, namely the victim, the offender, and the community.[50] Eva Achjani Zulfa notes that the concept of RJ (Rechtsinstitutie) found in customary law is derived from Supomo's views on the general characteristics of Indonesian customary law, namely: a religious pattern; communal in nature, placing the individual as someone bound to the community; collectively maintaining a balance between the physical and spiritual aspects of individuals, groups, and their environment; preserving the balance of the cosmic order; safeguarding the interests of society in accordance with the lines and balance of the cosmos; violations of customary law are considered violations of cosmic order and result in suffering not only for the violator but also for the community.[51] Sullivan, Dennis, and Larry Tifft (2007) describe that Restorative Justice (RJ) is portrayed as communicating the accountability of offenders (discomfort of sanctions) without compromising the goal of restoration as evidence of a sincere commitment to reducing future criminality and the possibility of recovery. To achieve a universal balance, crime recovery is considered more superior than punishing individuals as they should.[52]

In the Asahan Malay community, the foundation of accountability is based on the teachings of Islam. Legal competence in Islamic teachings or Ahliyah al-ada'

[49] Laurel Sharpless, Trace Kershaw, and Tiara C. Willie. "Associations between state-level restorative justice policies and mental health among women survivors of intimate partner violence." *SSM-Mental Health* 2 (2022): 100085, 2, https://doi.org/10.1016/j.ssmmh.2022.100085

[50] Daniel W. Van Ness and Karen Heerderks Strong, *Restoring Justice: An Introduction toRestorative Justice*, Fourth Edition, (LexisNexis:Anderson Publishing, 2010), 22.

[51] Eva Achjani Zulfa, Pergeseran Paradigma Pemidanaan. Bandung: Lubuk Agung, *2011*, 68 mengutip tulisan Supomo, *Hubungan Individu dan masyarakat dalam Hukum Adat*, cet 2 (Jakarta: Pradnya Paranitha, 1970), p.l. Lihat juga Ahmad Ubbe, "Peradilan Adat dan Keadilan Restoratif", 2.2, Jurnal *Rechtsvinding*, 165.

[52] Dennis Sullivan & Larry Tifft. *Handbook of restorative justice: A global perspective*. Routledge, 2007, 467.

consists of three levels: 1) Adim al-ahliyah or individuals who have not yet reached the age of around 7 years; 2) Ahliyah al-'ada naqishash, or individuals who have reached around 7 years to the threshold of adulthood; and 3) Ahliyyah al-ada' kamilah, referring to adults.[53] In Malay society, children are highly protected and valued. When a child commits a dishonorable act, the child cannot be fully held accountable. In this case, the responsibility still lies with the parents and the community.[54] The Asahan Malay community has a strong Islamic religious pattern. The Malay community of Asahan is synonymous with the teachings and values of Islam, which emphasize the position of humans based on universal humanitarian values. The teachings and values of Islam make the Malay people a community that fosters unity.[55]

The form of accountability for actions or violations committed by a Child facing the Law that is resolved outside the legal process includes: paying compensation, also known as "ubat tekojut" or paying compensation for medical expenses; apologizing without paying compensation; surrendering to religious leaders; and performing certain tasks or jobs.[56] Taking responsibility is one of the primary traits in the life of Malays, so anyone who lacks it is considered to be violating customs, disregarding entrusted advice, and denying religious principles. Individuals who are not responsible are not only scorned in social interactions but are often abandoned in various community activities.[57]

1. The Term Bapokat According to Community Leaders

The results of the interview with the traditional figure indicate that the term "bapokat" is still known and recognized by the legal existence in the community, as a closely related part of other local wisdom such as "manyonggot," wages, "uang takojut," and "makan bajambar." The following table details information about the term "bapokat":

Table 1. The term Bapokat according to traditional figures/cultural figures in Tanjungbalai City, Asahan and Batubara Regency

Information on Asahan Malay Traditional

[53] Amir Syarifuddin, *Ushul Fiqih Jilid II*, (Jakarta: Logos Wacana Ilmu, 1997), 359.

[54] Wawancara dengan Agustoni, Pensiunan PNS tugas terakhir di Kesbangpol Kota Tanjungbalai juga sebagai tokoh masyarakat yang berpengalaman dalam menyelesaikan masalah dengan mekanisme adat, pada tanggal 29 Agustus 2020.

[55] Tenas Effendi, *Tunjuk Ajar Melayu* Edisi Ke-2, (Yogyakarta: Balai Kajian dan Pengembangan Melayu, 2006), **5-13**

[56] Wawancara dengan Datuk Muda Indra Syah Putra, Pemerhati Budaya dan Adat Kota Tanjungbalai dan Agustoni, Pensiunan PNS terakhir di Kesbangpol Kota Tanjungbalai dan juga tokoh masyarakat yang berpengalaman dalam menyelesaikan masalah dengan adat *bapokat*, pada tanggal 3 Februari 2021 di Kota Tanjungbalai.

[57] Tenas Effendi, *Op.Cit*, 209.

		Figures/Culturists		
	Term	**Bapokati City**	**Tanjungbalai Regency**	**Asahan Regency**
	Meaning	Agree, come to an agreement	Agree, come to an agreement	Agree, come to an agreement
	Objective	Make decisions on problems	Make decisions on problems	
	Function	Resolution of problems, disputes or cases	Resolution of problems, disputes or cases	Dispute or case resolution
	Form	Deliberation, the sitting of the elders	Deliberation, looking for and asking respected figures or people to mediate	Deliberation, mediation, bringing delegates to resolve problems
	Results	Traditional procession: Menonggot or joputsemangat, wages, or through tekojut money	The settlement was completed according to Malay traditional traditions	Solving problems with a cultural customs approach

Source: Primary data, 2022 (Edited).

The Malay community in Asahan places a strong emphasis on the process of musyawarah in every decision-making process. The role of traditional leaders is crucial in formulating and determining a decision. Decisions made in customary courts are based on consensus reached through musyawarah and are grounded in the legal principles of the customary justice implementers.[58] The principle of consultation and consensus is one of the pillars in Malay customs. The expression of honoring consultation is reflected in the Malay tradition saying, "Uphold customs through

[58] Hasnul Arifin Melayu, Keadilan untuk Anak: Penguatan Sistem Hukum Adat dalam Penanganan Anak Berkonflik dengan Hukum, *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum,* 10 (1):129-149, 136

consensus, uphold blessings through consultation." Another customary expression states, "In consultation, the good and the bad will be revealed" or "In consensus, the heavy and the light are lifted equally." Agreements reached through consultation are a collective responsibility and cannot be ignored or avoided. Violating agreements is highly shameful, both for oneself and for the family and community. The elders say, "When there is unanimous consensus, the heavy and the light must be lifted," on the other hand, "whoever breaks the consensus is a sign that they lack tradition."[59] The "Upah-upah" activity is only present in some districts in Riau and North Sumatra, mainly among the Batak ethnic group in those provincial areas.[60] Menurut Fitri Yanti, proses penyelesaian masalah atau sengketa di komunitas adat Melayu In Bagansiapiapi, Riau, it is usually led by a traditional leader. In its implementation, conflict resolution is carried out by bringing together conflicting parties facing each other. Community leaders, acting as mediators and negotiators, play a crucial role in determining the severity of sanctions to be imposed on community members involved in the dispute.

2. Overview of Results and Findings

In the third (location) study, a total of 13 (thirteen) cases were found to be resolved using the traditional approach known as "bapokat." To be more specific, 4 cases were in Tanjungbalai, 5 cases in Asahan, and 4 cases in Batubara. Among the 4 cases in Tanjungbalai, 1 was found in the Kuala Silo Bestari Subdistrict of North Tanjungbalai, 1 in the Datuk Bandar Timur Subdistrict, Teluk Nibung, and 1 in the Perwira Subdistrict of South Tanjungbalai. Meanwhile, in Asahan, 5 cases were found, with 1 each in Silau Laut Village, Benteng Village in Talawi Subdistrict, Tinggi Raja Village in Tinggi Raja Subdistrict, Air Joman, and Sei Kepayang. In Asahan Regency, the remaining 4 cases were found, with 2 in Teluk Puai Village and the other 2 in Tanjung Tiram and Talawi. When analyzed over time (years), it was found that between 2018 and 2022, out of the 13 cases resolved with bapokat, 2 occurred and/or were resolved in 2018, 2 in 2019, 5 in 2020, 3 in 2021, and 1 in 2022. Based on the types of cases, it is known that cases resolved with bapokat in the Malay community of Asahan include: motorcycle accidents, including those resulting in death; school bullying; sodomy; abduction of minors; indecent acts or immoral cases; livestock theft;

[59] Griven Herrie Putera, *Rekonstruksi Pendidikan Karakter di Indonesia: Analisis Filosofis Terhadap Tunjuk Ajar Melayu (Butir-Butir Budaya Melayu Riau Karya Tenas Effendy), Disertasi*, 1441 H. / 2020 M, Program Pascasarjana (PPS) Universitas Islam Negeri (UIN) Sultan Syarif Kasim Riau, 217-218.

[60] Chendy AP Sulistyo, *Op.cit.*, 554.

and theft of crops such as coconuts and seafood such as clams and shells. From the age perspective, it is known that there is one child aged 12 or 13, 5 children aged 14-15, and 7 children aged 16-17. In terms of final decisions or agreements, it is known that all were made through deliberation, resulting in several decisions, including calling both parents, medical treatment and compensation or just compensation without medical treatment, apologies and medical expenses, and an apology with a recovery cost of IDR 5 million. Regarding cases of immorality and abduction of minors, some paid for traditional medicine (tekojut) and continued the victim's education, marrying the child after completing high school; some had the perpetrator's and victim's children continue schooling without getting married; some married immediately; while others only paid for traditional medicine (tekojut). In terms of role distribution, the resolution with bapokat involved figures and community leaders from P2TP2A, with only 1 case involving the police (Polmas), 1 case mentioning the involvement of the Head of the Community as a decision-maker, and 1 case involving a key figure. Out of the 13 cases, only 3 cases involved the Child Protection Agency.

3. Bapokat Mechanism

In general, the conflict resolution mechanism in the Malay indigenous community, including the Asahan Malay, consists of: Welcome/introduction, presentation of chronology, sorting and clarifying issues, discussion and negotiation, generating options, determining agreement points and formulating decisions, recording and retelling the agreed-upon decisions, and concluding the resolution. Decisions are made based on mutual agreement and should not harm both parties, the perpetrator, and the victim. The resolution stage is crucial as it determines whether the resolution process will proceed. In this stage, the ninik mamak (community leaders) take several steps, including contacting the involved parties, providing initial resolution information, coordinating conflicting parties, determining attendees, setting meeting goals, agreeing on time and place, and creating a sense of security for both parties to meet and discuss their disputes. If both parties do not agree to a peaceful resolution, the matter can be resolved through criminal law or based on the Criminal Procedure Code (KUHAP).

The mechanism of settling disputes outside the judicial process through the cultural approach of bapokat in the Asahan Malay community is inseparable from the traditions of tepung tawar (flour ceremony) and balai (traditional hall). Tepung tawar serves as a ceremonial tool accompanying prayers, seeking safety, grace, and

protection from Allah. Tepung tawar includes properties such as a tray. Symbolically, the order of items in the tray signifies equipment, customs, desires, family, and peace. The ingredients on the plates symbolize purity of heart, honor, sincerity, self-worth, growth, and seeking blessings. The white bowl filled with water and sliced or quartered limau pagar (citrus fruit) represents cooling, cleanliness, and tranquility. The seven types of leaves tied together symbolize healing, cleansing, forgiveness, and comforting troubled hearts. Each item in tepung tawar has specific meanings and purposes, contributing to clarity, cleanliness, defense against supernatural forces, longevity, protection, sustenance, and strength.

The balai, a familiar Malay tradition, plays a role in dispute resolution and rehabilitation efforts. The two colors of the balai, yellow and white, represent nobility and sincerity, respectively. The contents of the balai, symbolized by yellow or white glutinous rice, signify strong unity. The flag represents honor, dignity, and unity, while boiled chicken or duck eggs symbolize success, generational development, and strength. Additionally, the singgang chicken, with its head and legs discarded, represents the struggle and sacrifice for justice.[61] The color of the hall also has meaning. White is a symbol of sincerity.[62]

In general, the mediator chosen by the parties is someone respected. Once the mediator is agreed upon, they will visit the victim's house and convey the good intentions of the perpetrator's parents so that the case experienced by the victim can be resolved amicably. If there is a statement "bilo ondak datang," it means there is acceptance from the victim's family to accept the good intentions of the perpetrator's family. Traditional mediation, known as "bapokat," is then conducted, with each party having a spokesperson or mediator. Present in the bapokat proceedings, in addition to the spokespersons, are the victim, the perpetrator, parents/guardians, spokespersons/mediators, representatives of the community (religious leaders, customary leaders, community leaders, youth leaders), and representatives of the Village/Subdistrict Government.

The perpetrator's spokesperson conveys the purpose of their visit and requests the victim's party to accept the good intentions, inquiring about the form of recovery or compensation that can be given to the victim. The victim's spokesperson usually

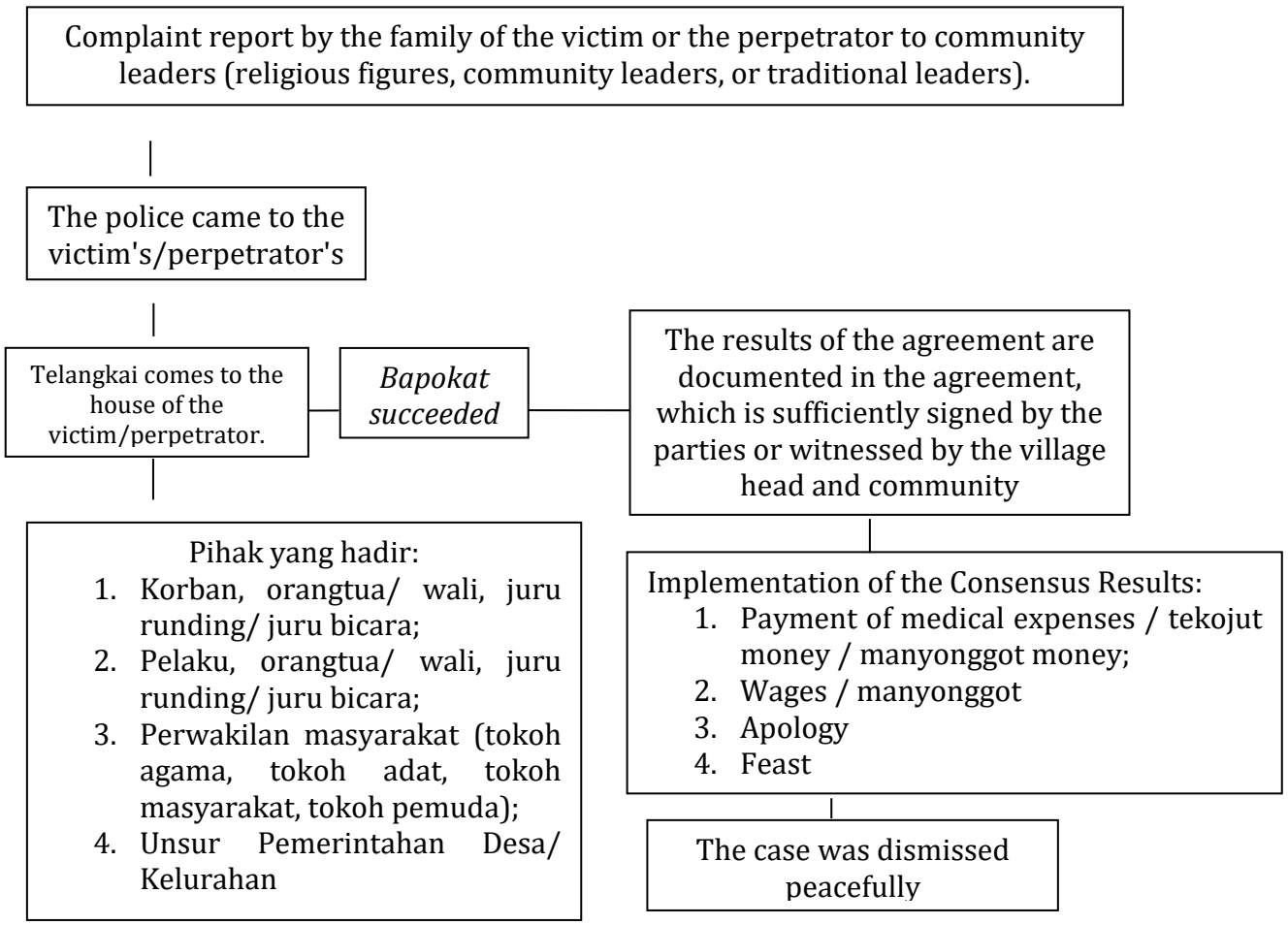
[61] PD. Mabmi kota tanjungbalai, adat budaya melayu tanjungbalai, DM Firyadi, dkk. (ed.) (MABMI Tanjungbalai, 2014), 11-15

[62] Datuk Yuschan Adat Resam Melayu Pesisir Sumatera Timur: Tepak Sirih / Cerana, Balai, Tepung Tawar, Tutur, Biro Adat Seni Budaya, Majelis Adat Budaya Melayu Medan Utara (Imammu, 2014), 13-14.

responds, often initiated and interspersed with poetry, proverbs, and pleas, accepting the visit and asking the community representative to act as a mediator based on voluntary appointment to gather information from the victim, perpetrator, and witnesses. They then inquire again with each spokesperson on how to reach an agreement. The victim's spokesperson is invited to state and convey the family's agreement.

If what the perpetrator's spokesperson conveys is accepted by the victim or the parents, the date for the implementation of the agreement will be determined. The outcome of the agreement can involve the obligation to provide compensation by giving money, traditional items, or other forms, or it can be without compensation, depending on the agreement. If there are injuries involving bleeding, compensation is typically required. The agreement is documented in a contract, with the local authorities also signing, and representatives from the victim and perpetrator acting as witnesses. Handshakes occur between the perpetrator/parents, victim/parents, and other involved parties. On the agreed-upon date, the child of the perpetrator, the parents, and the family return to the victim's house to implement the agreement and carry out traditional ceremonies, including compensation, prayers, and feasting, often involving representatives from the community and local government.

Gambar 1: Bapokat Mechanism



Source: Primary data, 2022 (Edited).

The mechanism of resolving ABH by the Asahan Malay community can be explained as follows from the image above: (1) The reporter can come directly from (the victim/parents/guardians), (the perpetrator/parents/guardians) to community leaders, whether it be religious figures, respected community elders, or customary leaders, seeking advice and input on the case experienced by their child; (2) Community leaders will express their opinions and discuss to find a solution to visit the home of the victim or perpetrator, if it's the perpetrator's home, it means the victim requests accountability from the perpetrator. If it's the victim's home, it means the perpetrator/parents hope that the resolution of the case can be resolved through consensus through customary laws. The mechanism for resolving ABH cannot be separated from the culture of tepung tawar (a ritual of blessing) and balai (community hall). Tepung tawar is a traditional ceremonial device as an accompaniment to

prayers.[63]

4. Bapokat as a Model of Restorative Justice

The resolution of juvenile cases with a traditional indigenous approach, known as "bapokat," is akin to the principles of restorative justice. The term "bapokat" is recognized in the Asahan Malay language, which, in practice, shares the same principles as ultimun remedium. The parties involved in resolving juvenile cases with the law include the victim, the offender, and the community, aiming to resolve issues and endeavoring to steer the child away from punishment. In the RJ approach, the resolution process involves the victim, the offender, and the community.[64] This is what sets RJ apart from conventional judicial processes, which determine guilt and address the harm/suffering experienced by an individual or multiple individuals in a forum between the perpetrator of a crime and the state according to systematic rules.

In the context of Asahan Malay local wisdom, Bapokat serves as a model of restorative justice, in line with the views of Zehr and Toews (2004: 403), who emphasize two key principles of RJ: humility and respect. [65] The concept of bapokat as an RJ approach in resolving cases of ABH is also in line with the proposals of 'meeting conception', 'reparative conception', and 'transformative conception' in interpreting RJ.[66] This study found that there are at least four models of involvement of parties related to child abuse and customary leaders in resolving child abuse cases. These models include RJ implemented under the P2TP2A mechanism, RJ implemented by Polmas, RJ processed by the Police, and Bapokat managed by community leaders. Each of these involved elements also includes parties in dispute, whether perpetrators or victims, and their respective families. The legal power potential of Bapokat can be seen by involving local government authorities, including at the village or neighborhood level. Generally, government elements are presented as witnesses either by signing documents or simply providing testimony. Therefore, resolving child abuse cases outside the judicial process through the cultural approach of Bapokat (managed by the community) is one of the settlement models based on local wisdom. Decisions made through this approach must not contradict the principles of Islamic law. The concept of resolving child abuse outside the judicial process through the customary approach of Bapokat in the Melayu Asahan community empowers religious figures, customary

[63]PD MABMI Kota Tanjungbalai, Adat Budaya Melayu, DM Firyadi, dkk, ed., (MABMI Tanjungbalai, 2014), hlm. 8-9
[64]*Ibid.,* 23.
[65] Johnstone, Gerry, and Daniel Van Ness, eds. *Handbook of restorative justice*. Routledge, 2013, 19.
[66] Johnstone, *et. al.*, eds. *Handbook of restorative justice*. Routledge, 2013, 20.

leaders, community leaders, or respected elders. Their presence is acknowledged by the community, thus the decisions made are generally well-respected and adhered to.

5. Practice of Implementing the SPPA Law and the living law in the Asahan Malay Community

This study found that, besides being conducted independently by the community, several models of implementing community-based conflict resolution (bapokat) in the research locations (Tanjunbalai City, Asahan, and Batubara Districts) are a combination of RJ and local wisdom. In the implementation of the SPPA Law, Law Enforcement Officers incorporate elements of bapokat into the mediation process, whether facilitated by the Police, P2TP2A, KPAID, Polmas, or other relevant institutions. In the mediation process in Tanjungbalai, for example, P2TP2A as the mediator involves community leaders, witnesses, Babinkantibmas (police officers assigned to villages), and other relevant parties for negotiation. The formation of P2TP2A is based, among other things, on the commitment of the Indonesian Government to implement the results of the Beijing Platform For Action 1995, CEDAW & MDGs for poverty eradication, as well as realizing gender equality and justice.[67] P2TP2A is a series of activities aimed at providing protection for victims of violence, carried out collectively by relevant agencies or institutions as a unified effort in providing health rehabilitation, social rehabilitation, repatriation, social reintegration, and legal assistance.[68] The implementation of integrated child protection services by P2TP2A is regulated in the provisions of the Regional Regulation coordinated by the Regional Apparatus Organization which has the main tasks and functions in the field of child protection, and coordinates with regional apparatus organizations and related agencies in fulfilling children's rights.[69] P2TP2A or Polmas facilitates and invites various parties for the resolution process, including local authorities, Bhabinkamtibmas (Police Officers assigned to maintain security and public order), victims, perpetrators, parents/families of both parties, and educators if the case occurs in the field of education. Besides P2TP2A, in other cases, Polmas, Kepling, or the head of neighborhood associations serve as mediators. The result of the discussion is that

[67] Emmy Suryana Lubis, "Advokasi Pembentukan Pusat Pelayanan Terpadu Pemberdayaan Perempuan & Anak (P2TP2A) di Kabupaten/Kota" *Makalah dalam memperkuat P2TP2A di Kabupaten/Kota - Sumatera Utara,* Dinas Pemberdayaan Perempuan dan Perlindungan Anak, Provinsi Sumatera Utara, 2017.

[68] Pasal 1 e Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 6 Tahun 2015 Tentang Sistem Pemberdayaan Perempuan dan Perlindungan Anak.

[69] Pasal 36 Peraturan Daerah Kota Tanjungbalai Nomor 1 Tahun 2019 tentang Penyelenggaraan Perlindungan Anak. bagian kedua Penyelenggaraan Layanan Terpadu Anak,

both parties shake hands and agree on the timing of the traditional "upah-upah" ceremony (shaving ceremony) as part of the reconciliation efforts. According to Effendi et al. (2008:3), the traditional Upah-upah ceremony is usually accompanied by small or large feasts accompanied by prayers for safety. This Upah-upah activity only exists in several districts in Riau and North Sumatra, mostly among the Batak ethnic group in those provinces.[70]

In cases found in Asahan, almost all cases of domestic violence are resolved according to the Bapokat mechanism in accordance with Asahan Malay customs. Generally, customary leaders and community leaders play direct roles as mediators or act as parties who find mediators. Mediators are usually chosen from respected individuals and generally still have kinship ties due to strong familial bonds. Bapokat is carried out by involving each negotiator or spokesperson attended by the perpetrator's parents/guardians, community representatives (religious figures, customary leaders, community leaders, youth leaders), and elements of the Village/Urban Government. Negotiators from the perpetrator convey the purpose of their visit and request the victim to accept goodwill and inquire about the form of restitution or compensation that can be provided to the victim. Negotiators from the victim's side usually respond with verses or traditional sayings, expressing acceptance of the visit and requesting community representatives acting as mediators to gather information from the victim, perpetrator, and witnesses, then asking each negotiator again. Each negotiator then conveys the agreement of the victim's family. If the victim accepts, the implementation and fulfillment of the agreement are determined (which may include the obligation to provide compensation by giving money, goods, or services, or without compensation according to the agreement; if there are injuries resulting in bloodshed, compensation is generally provided). The agreement is documented in a contract, and local government officials also sign it along with representatives from the victim and perpetrator as witnesses. The disputing parties shake hands, and those present witness it. On the agreed date, the perpetrator's child, parents, and family return to the victim's house to implement the agreement and carry out any compensation. In cases of assault, for example, compensation may involve providing rice cakes, giving advice, followed by a communal meal, either brought by the perpetrator's family or provided by the victim's family.

In cases found in Batubara, the Bapokat mechanism in accordance with customs

[70] Chendy AP Sulistyo, *Op.cit.*, 553.

is implemented at the community level involving Peksos (excluding involvement of law enforcement), except if there is no agreement and the case cannot be resolved further, then the case is reported to P2TP2A. Thus, there are at least three mechanisms for resolving domestic violence cases: (1) RJ incorporating Bapokat elements; (2) Bapokat mechanism which may lead to legal procedures; (3) Bapokat mechanism resolved according to custom. Each mechanism has its own procedures, initiated either by community initiatives in legal matters or by law enforcement combining legal authority with local wisdom. From the three models of resolving domestic violence cases in the Asahan Malay community, various parties are involved in Tanjungbalai, Asahan, and Batubara. A prominent similarity in decision-making is that disputing parties choose the institution or element they trust and appoint to resolve their issues. A prominent difference lies in the customary approach with Bapokat, where the mediator's role is crucial for the smoothness of the resolution process besides customary and community leaders who are decision-makers.

According to Simatupang, generally when the community reports complaints to the police, the Tanjungbalai City Police Resort will initially refer the case, but the final resolution remains with the cultural approach of Bapokat. This is requested by the police to P2TP2A so that the case can be resolved through familial means, and if unsuccessful, the case is then forwarded to the police. Edi Usman stated that Tanjungbalai City, no longer consisting purely of Malays, hopes to strengthen the presence of Polmas in each district for consultation. Many cases are resolved with Bapokat.[71]

6. Bapokat Practice in Resolving Cases of Children in Conflict with the Law

The child referred to in Malay society is a male child who has reached puberty/mukallaf, meaning an adult burdened with religious/customary laws; when his voice has changed and become hoarse, he is considered an adult. This generally occurs above the age of 15, which is the onset of puberty. A girl is considered an adult after she has menstruated, so she is called an adult or, in Malay, "anak dara." As she approaches puberty, she is still called "jejarah" or "jarah," which means a growing girl.[72]

In cases involving Children in Conflict with the Law, community leaders have a role in facilitating peace so that harmony is fostered within society. The cultural practice of "bapokat" is somewhat similar to the Restorative Justice (RJ) approach

[71] Wawancara dengan Edi Usman, Kepala Lingkungan Perjuangan Kecamatan Teluk Nibung, pada tanggal 3 Juni 2022 di Kota Tanjungbalai

[72] Tengku H.M. Lah Husny, *Op.Cit*, 119-120.

advocated and recommended by many experts and institutions committed to child protection. The resolution of Children in Conflict with the Law cases within the Malay community in Asahan, which generates agreements framed within this traditional custom, continues to be preserved in various aspects of community life in the Asahan Malay community. Based on interview results, resolving criminal cases outside the judicial process through consensus-based deliberation is considered more beneficial by all parties involved because it is faster, both parties can determine the schedule and venue of informal meetings, they have the freedom to choose a neutral third party whom they respect and trust according to their role and function in society, and the relationships formed are harmonious, familial, peaceful, and final, binding both parties to implementation, witnessed by the community, led by customary leaders, and known by the local government. [73]

Cases handled with legal and cultural approaches among the communities of Tanjungbalai, Asahan, and Batubara. The table above clearly shows that the bapokat approach still has weaknesses in terms of data collection and documentation, resulting in many cases that could be resolved with bapokat not being recorded in the Village. Unlike the RJ approach, which is handled by government agencies or APH, generally recorded because it involves the Village authorities in signing peace agreements.

Cases resolved with the cultural approach of bapokat can almost entirely be resolved by the community, although in certain cases involving village government officials. Generally, bapokat is followed up with manyonggot or compensation. This study has mapped out that most sub-districts in Tanjungbalai, Asahan, and Batubara prefer the bapokat approach in resolving conflicts. Topographically, communities with strong cultural ties are typically located in coastal areas. Demographically, communities still predominantly Malay prefer bapokat as the conflict resolution approach. Success factors in ABH within the Asahan Malay Community are influenced by dissatisfaction with court settlements, respected and authoritative leaders, strong rural culture, and the Open Society Layer System.

Among the obstacles to resolution through bapokat are the lack of goodwill, weak evidence, biased leaders, and the tendency for reporting to the Police to carry more weight. The lack of goodwill usually arises from the perpetrator's family/parents refusing to reconcile or not adhering to the results of the deliberations. The case is then

[73] Wawancara dengan Agustoni, Pensiunan PNS tugas terakhir di Kesbangpol Kota Tanjungbalai juga sebagai tokoh masyarakat yang berpengalaman dalam menyelesaikan masalah dengan mekanisme adat *bapokat*, di kota Tanjungbalai, pada tanggal 29 Agustus 2020..

handed over to law enforcement officials. Azizi stated, "Once, there was a case we facilitated where an agreement was reached to compensate for the damages inflicted on the victim, but it wasn't implemented due to the lack of goodwill from the perpetrator's parents."

The case of ABH (Act of Violence Resulting in Bodily Harm) that occurred in Kota Tanjungbalai was resolved through the traditional village meeting model, among which are cases of sodomy and bullying in schools. In the case of sodomy, the victim's parents sought assistance from community leaders to resolve it outside the judicial process through traditional consensus resolution. In the bullying case, the school promised to resolve the issue, but they were never brought together with the perpetrator's family.[74] The victim's mother brought the issue to a community leader who works at the Integrated Service Center for Women's Empowerment and Child Protection (P2TP2A) under the auspices of the Department of Women's Empowerment and Child Protection (Dinas P3A and PMK) in the city of Tanjungbalai so that her case could be resolved through mutual consultation. The peace agreement was signed by the parties, namely the perpetrator's parents and the victim, conducted at the office of the Department of Women's Empowerment and Child Protection (Dinas P3A and PMK) in the city of Tanjungbalai, guided by a Mediator at P2TP2A and witnessed by the Head of the Department of Women's Empowerment and Child Protection (Dinas P3A and PMK), the Headmaster, Class Guardian, and Chairperson of P2TP2A of Tanjungbalai City.

An example of a case of Domestic Violence (ABH) that occurred in Asahan Regency was resolved through a customary mediation model, such as a case of rape that occurred in 2020, where the family requested assistance from community leaders to facilitate the resolution of the case through mutual consultation to achieve consensus with a customary approach and finally, the case could be resolved with an agreement. Both parties signed the peace agreement, witnessed by both parents, the perpetrator's family, the victim, and the community leader.

Another example of Domestic Violence (ABH) cases in Batubara Regency involves traffic accidents and fights. A traffic accident resulting in death occurred in 2019. The case resolution began with representatives from the community of Tanjung Tiram District informing the residents of Perupuk Village. The perpetrator's parents

[74] Wawancara yang dilakukan dengan keluarga korban, orangtua pelaku, Peksos Kemensos dan P2TP2A kota Tanjungbalai, pada tanggal 18 Maret 2021.

requested assistance from a community leader (Tok Udin, a respected elder in Perupuk Village) to act as a mediator and agreed to accompany them to the victim's residence in Tanjung Tiram District. After the funeral process, Tok Udin as the spokesperson accompanied the parents of the perpetrator's child to the victim's residence and conveyed an apology, seeking a familial resolution to the case. The peace agreement was signed by the parties at the victim's residence and witnessed by the local government representative, the village head.[75] In cases of fights between children that occurred in 2019, resolution was also conducted through the traditional cultural approach of "bapokat" and did not escalate to legal avenues. The family of the perpetrator appealed to community leaders to act as mediators, meeting with the victim's family at their home to convey the sincere intentions of the perpetrator's parents so that the case involving their child could be resolved according to the "bapokat" tradition.[76] The victim's family accepted the good intention and agreed to hold a deliberation the next day, with each party appointing a spokesperson. Peace was conducted traditionally through the tradition of "menyonggot" whose timing was agreed upon during the implementation of "bapokat" (traditional gathering). The customary deliberation of "bapokat" was documented in an agreement signed by the parties involved, the local village government, and witnesses from each side. Typically, when an agreement is reached during "bapokat," the victim's family and the perpetrator shake hands, forgive each other, embrace each other, and recite traditional proverbs. The "menyonggot" ritual is followed by activities such as offering offerings with a tray containing glutinous rice, chicken, eggs, and cloth wrapped around the bodies of the perpetrator's and victim's children.

Based on the criminal cases found, including offenses against the body and life, such as a motorcycle accident in 2018 in the Kuala Silo Bestari sub-district, North Tanjungbalai District, a fight in the Benteng Village in 2019, and bullying at Datuk Bandar Timur School in Tanjungbalai. Resolution is achieved through deliberation, agreeing or rejecting the costs of medical treatment, offerings/"menyonggot". Offenses against morality are applied to child offenders who elope with minors, which occurred in 2020 in Perwira Village, South Tanjungbalai District, Tanjungbalai City, and in Tinggi Raja Village, Tinggi Raja District, Asahan. Traditional deliberations agreed to

[75] Wawancara dengan Tok Udin, Tokoh masyarakat/ tokoh adat (Nan dituakan), pada tanggal 3 Juni 2022, di desa Perupuk , Kecamatan Lima Puluh Pesisir, Kabupaten Batubara.

[76] Husnel Anwar Matondang, *Kewajiban Tuhan: Pemikiran Kontroversial Ulama Tanjungbalai Asahan Syaikh Ismail Abdul Wahhab* (Medan: LP2IK, 2004), 18.

resolve the cases while ensuring the continuation of education. Cases of sodomy in Sentang Village, Meranti District, were resolved through deliberation involving medical expenses and offerings/"menyonggot". Cases involving property offenses occurred in 2020 in Perwira Village, South Tanjungbalai District, and in Bagan Induk Village, Asahan Regency, in 2019. The resolution involved returning the juvenile perpetrators to their families and community supervision.

Murder and adultery cases in the Malay community in Asahan are generally handed over to authorities, unlike theft, traffic accidents, or elopement of young girls, which can be resolved through customary deliberation. These acts are not always physical but often spiritual, in the form of customary obligations.

In the three research locations, a total of 13 cases were resolved through "bapokat" customs. Specifically, 4 cases were in Tanjungbalai, 5 cases in Asahan, and 4 cases in Batubara. In Tanjungbalai, 4 cases were found in Kuala Silo Bestari Subdistrict, North Tanjungbalai District, Datuk Bandar Timur Subdistrict, Teluk Nibung, and Perwira Village, South Tanjungbalai District. In Asahan, 5 cases were found in Silau Laut Village, Benteng Village, Talawi District, Tinggi Raja Village, Tinggi Raja District, Air Joman, and Sei Kepayang. In Asahan Regency, 4 cases were found, 2 in Teluk Puai Village, and 2 others in Tanjung Tiram and Talawi. From 2018 to 2022, out of 13 cases resolved through "bapokat," 2 occurred and/or were resolved in 2018, 2 in 2019, 5 in 2020, 3 in 2021, and 1 in 2022. The cases included motorcycle accidents resulting in death, school bullying, sodomy, elopement of minors, adultery, livestock and crop theft, such as coconuts, and theft of sea products such as clams and shellfish.

In terms of age, there was one child aged 12 or 13, 5 children aged 14-15, and 7 children aged 16-17. All resolutions were made through deliberation resulting in various decisions: summoning parents, medical treatment and offerings/"menyonggot", or only offerings/"menyonggot" without medical treatment, apology and medical expenses, apology and payment of recovery costs amounting to Rp. 5 million. Regarding adultery and elopement of minors, some cases involved paying for medical expenses and continuing the victim's education, while others involved the perpetrator and victim continuing their education without marriage, immediate marriage, or only paying for medical expenses. In terms of role distribution, community leaders played a key role in "bapokat" resolutions. Out of 13 cases, only 3 involved P2TP2A (Women and Children's Protection Institution), 1 involved Polmas (Community Security), 1 mentioned the involvement of the Head of the Environment

as a decision-maker, and 1 involved the Child Protection Agency.

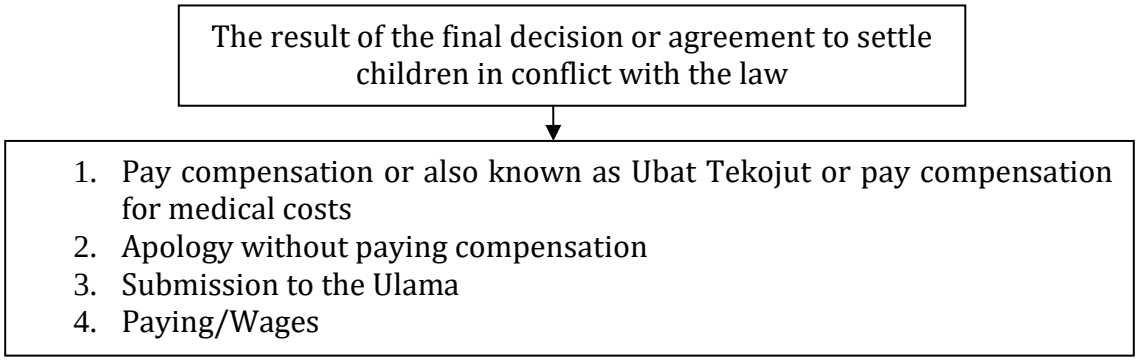
7. Bapokat Practice in Resolving Cases of Children in Conflict with the Law

The result of the ABH settlement agreement reached by the Malay Asahan community with a cultural approach called bapokat is as follows: (1) Decision or Agreement by Paying Compensation or also referred to as Ubat Tekojut or Paying Compensation for Medical Expenses as a form of accountability for mistakes committed, such as the obligation of parents of an injured child to provide ubat tekojut (herbal medicine) to the injured child. If blood is drawn, it is obligatory to slaughter a chicken and place it in a basket containing glutinous rice and eggs.[77] (2) Decision or agreement on Adoption of Children to Scholars. Sheikh Silau, as the traditional leader and scholar in the Silau Laut District of Asahan Regency, stated that a child who commits mistakes in the community will be placed in the orphanage or religious school under his management and will be adopted and educated by him, especially if the child is an orphan, a destitute, or a convert, they will receive special attention. Sheikh Silau also invited villagers and explained to the public that a child who has committed prohibited acts has been adopted and become a child and sibling according to tradition.[78] (3) Decision or Agreement with Apology. This type of sanction is the lowest. The parents of the child as the perpetrators will come to meet both parents/family of the victim and say, "One, two, three, four, five, six, seven," while holding the injured child's ear and saying if the pain seems serious, we will come bringing sugar, asking permission for their child's actions, and will treat them." The basis for criminal abolition can be understood as a basis for assessing an individual's actions facing the law, whether the individual deserves punishment or not. The basis for criminal abolition consists of justifying and forgiving grounds. The justifying basis is the nature of the illegal act being absent or not proven, so the defendant must be acquitted. The forgiving basis is when the elements of the offense are proven but the fault lies not with the perpetrator; the defendant is released from all claims. According to Edi Setiadi, the basis for criminal abolition is divided into two, namely the justifying basis (rechtvaardiging gronden) and the forgiving basis (schulduit sluiting gronden) which are regulated in Book 1 Chapter II, up to Article 52 of the Criminal Code. The basis for criminal abolition is also regulated outside the Criminal Code, namely: a) The right of parents/guardians to educate their children/teachers to their students; b)

[77] Wawancara dengan H. Arifin, Pemerhati Budaya dan Adat kota Tanjungbalai, pada tanggal 17 April 2020.
[78] *Ibid.*

Rights of office or employment; c) Case designation; d) If both parties do not agree to a peaceful settlement, it can be resolved through criminal law or based on the Criminal Procedure Code (KUHAP). The process of settling criminal cases based on the KUHAP consists of three stages: Examination at the investigation level; prosecution; and trial examination.[79] (4) Judgment or agreement with Menyonggot. Generally, when a child's case involves the shedding of blood due to an experienced event. Menyonggot is a series of final settlements of disputes that must be carried out as a form of recovery through customary mechanisms.[80] Menyonggot is done with a ritual called balei or balai, which contains glutinous rice and chicken complete with its flags and eggs. Menyonggot restores the strength of the soul (spirit) that has been struck by calamity by offering a bid as cold as possible. Menyonggot serves as the perfection of the process of reaching an agreement for recovery using balei along with glutinous rice and its contents. The purpose of menyonggot is to foster strong brotherhood even though there may have been hostility at the beginning.[81] This reconciliation process is called the perfection of giving, which can be done with or without compensation. Generally, after the wages are implemented, family ties become closer, and relationships are maintained well.

Figure 3: Final Decision or Agreement in the ABH Settlement by the Asahan Malay Community



The decision or agreement in the settlement of ABH (Assault, Battery, and Harassment) in the Asahan Malay community is closely related to the abolition of

[79] Fitri Yanti, Penyelesaian Perkara Tindak Pidana Perkelahian Antar Warga Menurut Hukum Adat Melayu Riau Bagansiapiapi, *Jom Fakultan Hukum*, Vol. III No. 2, Oktober 2016, 11-12.

[80] Husnel Anwar Matondang, *Kewajiban Tuhan: Pemikiran Kontroversial Ulama Tanjungbalai Asahan Syaikh Ismail Abdul Wahhab* (Medan: LP2IK, 2004), 18. Bandingkan juga upah-upah di dalam tulisanNalom Siahaan, *Adat Dalihan Natolu: Prinsip dan Pelaksanaannya* (Jakarta: Tulus Jaya, 1982), 81.

[81] Wawancara dengan, Datuk Yuschan Bentara Sabda Asahan, Pemerhati Budaya dan Adat Kota Tanjungbalai, pada tanggal 5 Agustus 2020.

punishment. The lawyer's approach is closely related to the abolition policy, namely forgiveness (Schuld uit sluiting gronden). This means that the Asahan Malay community has recognized the abolition policy, namely forgiveness. The forgiveness policy means that the elements of the offense have been proven but the guilt is not attributed to the perpetrator; the defendant is released from all charges. According to Edi Setiadi, the abolition policy is divided into two, namely the justifying basis (rechtvaardiging gronden) and the forgiving basis (schuld uit sluiting gronden), the regulations of which are contained in Book 1 Chapter II, up to Article 52 of the Criminal Code.[82] The basis of the abolition of punishment is also regulated outside the Indonesian Penal Code (KUHP), divided into three: the right of parents/guardians to educate their children, teachers to their students; the right of office or employment; and Zaaknoming.[83] In the customary approach within the Malay community of Asahan in resolving ABH (Anak Buah Kapal, or crew member) issues, there are no sanctions that revoke the freedom of the child, and there are no fines or imprisonment penalties. Sanctions only involve admitting guilt, apologizing directly, followed by the tradition of having a communal meal to forgive each other. Minor offenses are resolved by paying compensation as agreed upon or through what is termed "Ubat Tekojut" (compensation for damaged goods or medical expenses). Animal sacrifices are also part of the resolution process. The type of animal sacrificed corresponds to the severity and quality of the offense committed, with a black chicken for the lightest cases, goats and buffaloes for more serious cases. From interviews, it is acknowledged by the community that when a dispute involves the village chief or headman, the resolution becomes legally binding. Furthermore, ABH issues resolved in this manner never resurface in legal proceedings.

8. Encouraging and inhibiting factors for the success of Bapokat

The success factor of bapokat in resolving cases involving children facing legal issues within the Asahan Malay community is influenced by the dissatisfaction of the community towards court resolutions. As a result, the community perceives out-of-court settlements as more beneficial solutions.[84] "In addition to the faster process and lower cost, the presence of respected and authoritative leaders also contributes to the

[82] *Ibid.*, 73-74.
[83] *Ibid.*
[84] Wawancara dengan Agustoni, Pensiunan PNS tugas terakhir di Kesbangpol Kota Tanjungbalai juga sebagai tokoh masyarakat yang berpengalaman dalam menyelesaikan masalah dengan mekanisme adat *bapokat*, di kota Tanjungbalai, pada tanggal 29 Agustus 2020..

success of bapokat. Consultations and decisions involving respected leaders are also obeyed by both perpetrators and victims."[85] The expression from the Malay community of Asahan states, "fortunate is the house with its owner, fortunate is the land with its leader, good is the village with its leader, good is the country with its king." The "respected figure" is someone who has met certain criteria. In the Asahan Malay society, such a respected figure is highly esteemed, elevated equally, and given priority. Community leaders or customary figures who meet the criteria are regarded as role models, examples, and exemplars whose words are respected, whose doors are open, and who are believed capable of bringing peace, order, and prosperity to the community. They possess strong idealism and are believed to make decisions that do not deviate from norms and values but are based on tradition, in accordance with the teachings of the Qur'an and Hadith.[86]

The cultural factor also drives the success of bapokat applied in resolving cases outside the judicial process, including cases involving children in conflict with the law. In this regard, Takari refers to it as a musyawarah institution, which functions to control and oversee social life with the aim of collective interests.[87] The Malay culture of Asahan teaches that signs of social harmony in Malay society include feeling ashamed when someone else feels ashamed, discarding the bad, clarifying the murky, resolving the tangled, minimizing significant mistakes, eliminating minor ones. Shame should not be exposed, embarrassment should not be revealed, and the faults of others should not be spoken of, only our own faults should be examined.[88] The Asahan Malay community also adheres to the Malay philosophy known as "berturai," which means well-organized or a society with a sense of order (social order), prioritizing peace and harmony, living together with mutual respect, being free yet bound within the community.[89] The factor of an open-layered social system contributes to the success of Bapokat. Fortes suggests that the kinship system can be used to describe the social structure of the relevant community. Kinship refers to social units consisting of several families that have blood relations or marital ties.[90]

[85]Wawancara dengan Datuk Yuscan Bentara Sabda Asahan, di kota Tanjungbalai, pada tanggal 5 Agustus 2020.
[86]Wawancara dengan Datuk Yuscan Bentara Sabda Asahan, di kota Tanjungbalai, pada tanggal 5 Agustus 2020.
[87]Muhammad Takari Bin Jilin Syahrial, *Adat DalamPeradaban Melayu*, (Medan :FIB USU, 2015), 23.
[88]Muhammad Takari, Adat Melayu diakses dari http://muhammadtakari.weebly.com/adat-melayu.html, pada tanggal 5 Juli 2020.
[89]Tengku H.M. Lah Husny, *Lintasan Sejarah Peradaban dan Budaya Penduduk Melayu – Pesisir Sumatera Utara 1612-1950*, (Medan: N P,V, 17270/F, 1975), 101.
[90]A. Suriyaman Mustari, *Hukum Adat Dahulu dan Akan Datang*, (Jakarta: PT Kharisma Putra Utama: 2017), 51.

4. Conclusion

The implementation of restorative justice in resolving criminal acts committed by Children in Conflict with the Law in Indonesia through diversion, as stipulated in Law Number 11 of 2012 concerning the Juvenile Justice System, demands that investigators prioritize the concept of restorative justice in handling Children in Conflict with the Law (CCL). Article 7, paragraph one (1), regulates the age of the child and indicates it is not a repetition of non-criminal behavior. The stages and mechanisms of diversion are further regulated from investigation notification, assistance, consultations, court determination to guidance, supervision, rehabilitation, and social reintegration of children, in cooperation with relevant institutions. Restorative justice practiced through the local wisdom of the Asahan Malay community has proven to strengthen the Juvenile Justice System Law through the role of customary leaders and village heads. "Bapokat" as the local wisdom of the Asahan Malay cultural community is highly effective in resolving issues involving children in conflict with the law in Tanjungbalai City, Asahan Regency, and Batubara Regency. The role of "Telangkai" (mediator) from community or customary leaders is a crucial keyword in the "bapokat" process. Data on the resolution of CCL through restorative justice under the Juvenile Justice System Law is not yet representative of the actual data because most CCL cases can actually be resolved through the "bapokat" approach. Thus, village heads and village chiefs play an important role in preserving the local wisdom of "bapokat" while also strengthening the implementation of the Juvenile Justice System Law through mediation procedures and recording CCL cases at the village level. Updates to Indonesian criminal law require regulations on the procedure for recording cases resolved through cultural approaches and local wisdom based on village/neighborhood development in resolving CCL. In the implementation of restorative justice, law enforcement agencies are advised to receive local wisdom education in the context of implementing the Juvenile Justice System Law. In addition to diversion, a combination model of RJ application in accordance with the provisions of the Juvenile Justice System Law with "bapokat" as living law in the community in resolving criminal acts committed by Children in Conflict with the Law in the Asahan Malay community is practiced by the Regional Police in three districts in North Sumatra, namely Tanjubalai City Police, Asahan Police, Batubara Police, through a council facilitated by the district police and in cooperation with community/cultural leaders. The combination model of RJ based on the Juvenile Justice System Law with

living law in the community is also practiced through the facilitation of P2TP2A, KPAID, Polmas in resolving CCL in the Asahan Malay community.

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